
Appeal Decision

Unaccompanied site visit made on 11 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2016

Appeal ref: APP/Q1445/X/16/3143998

27 Castle Street, Brighton, BN1 2HD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC) by Brighton and Hove City Council.
- The appeal is made by Small Pond Recordings Ltd.
- The application Ref: BH2015/03351 dated 16 September 2015 was refused by notice dated 24 November 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a lawful development certificate is sought is proposed change of use from storage and distribution (B8) to music recording studio (B1) with ancillary rehearsal facilities.

Summary of decision: The appeal is allowed and a LDC is granted.

Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The onus of proof in an application for a LDC rests with the appellant, the relevant test of the evidence being the balance of probability.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Discussion

4. By virtue of Article 3 and Class I in Part 3 to Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015, but subject to paragraph I.1, the change of use of a building from any use falling within Class B2 (general industrial) or B8 (storage or distribution) of the Schedule to the Use Classes Order, to a use for any purpose falling within Class

B1 (business) of that Schedule, constitutes permitted development. Paragraph I.1 states that development is not permitted by Class I, where the change is to or from a use falling within Class B8 of that Schedule, if the change of use relates to more than 500 square metres of floor space in the building.

5. There does not appear to be any dispute as to the previous lawful use of the premises, or as to the size of those premises, which the appellants confirm to be below 500 square metres. The appellants also propose steps, in particular with regard to sound proofing, to ensure that the use could be carried on in a residential area without causing harm to residential amenity. The basis upon which the Council refused to grant a LDC was that "the rehearsal facilities do not represent an ancillary function to the proposed Recording studio (B1) and instead represent a mixed use development. As such the proposed change of use is not permitted under Schedule 2, Part 3, Class I of the Town and Country Planning (General Permitted Development)(England) Order 2015."
6. I understand, from Section 8 of the Appeal Form, that the proposed change has since been implemented, though this does not alter the basis upon which the decision in relation to a LDC is to be made, the relevant date being the date of the application. In the proposed operational details forming Appendix 7 to the appellants' Statement of Case it is stated that "Small Pond Recordings is currently a record label and a live event promotions company and with the purchase of this building we want to finalise our operational status by building a set of variable quality recording & practicing studios together with an ancillary office area". It is further explained that there will be a main "Studio A" area which will be equipped with state of the art equipment, and that it will be this recording studio which will provide the platform where the appellants will record the artists. However, there will also be six other sonically isolated and acoustically treated rooms. These rooms will have multi track recorders, but will not have equipment to the same standard as the main recording studio, their purpose being to gather recordings made in a more relaxed atmosphere whereby the appellants can assess how good the bands are, "and see whether we should pursue a working relationship with them and offer them a possibility to record in Studio A and release their work through our label".
7. The Council calculate that the area of floor space within the building to be occupied by a 'live room' and 'control room' is approximately 46.2 square metres, whereas the areas of space shown on the plans as practice rooms have a total floor area of 103.55 square metres. Given the area of floor space for the use of rehearsal rooms the Council consider that this function is not ancillary to the use of the building as a recording studio but instead represents a mixed use development.
8. However, ancillary uses are not distinguished solely by scale, although that may be relevant. The essential feature is that there should be some functional relationship between the ancillary use and the primary use. Moreover, that functional relationship should not be founded on the personal choice of the person carrying out both activities together (see, for example, *Harrods v Secretary of State for the Environment, Transport and the Regions* [2002]JPL 1258) but on what in circumstances such as this would be viewed as reasonably ancillary activities. In this case, notwithstanding the greater area devoted to the six "rehearsal" rooms, it is possible to see the logic of the operation and how these will serve to further the main use of the building as a recording studio. On balance, therefore, I conclude that the appellant has demonstrated

that the use described in the application would have been lawful on the date of the application.

Conclusions

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal decision

10. The appeal is allowed and attached to this decision is a lawful development certificate describing the extent of the proposed use which is considered to be lawful.

Felix Bourne

Felix Bourne

INSPECTOR



Lawful Development Certificate

APPEAL REFERENCE APP/Q1445/X/16/3143998
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 16 September 2015 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged *and* hatched in black on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed change of use would have been permitted by Article 3 and Class I in Part 3 to Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015.

Felix Bourne

Felix Bourne

INSPECTOR

Dated : 27 October 2016

First Schedule

Proposed change of use from storage and distribution (B8) to music recording studio (B1) with ancillary rehearsal facilities, in accordance with the plans submitted with the application.

Second Schedule

Land at 27 Castle Street, Brighton, BN1 2HD.

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 October 2016

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