
Appeal Decisions

Site visit made on 1 November 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 23 November 2016

Appeal A Ref: APP/Q1445/W/16/3152902

Ground Floor, 2 Upper Bevendean Avenue, Brighton BN2 4FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Bernie Bird against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/04057, dated 5 November 2015, was refused by notice dated 24 December 2015.
 - The development proposed is the change of use of a building from office use (Class B1(a)) to a dwellinghouse (Class C3).
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Appeal B Ref: APP/Q1445/W/16/3152906

Ground Floor, 2 Upper Bevendean Avenue, Brighton BN2 4FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Bernie Bird against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00016, dated 4 January 2016, was refused by notice dated 9 May 2016.
 - The development proposed is the change of use from an office (B1) to a dwelling (C3) with associated external alterations.
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Decisions

1. Appeal A is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of a building from office use (Class B1(a)) to a dwellinghouse (Class C3) at Ground Floor, 2 Upper Bevendean Avenue, Brighton BN2 4FF, in accordance with the terms of the application, Ref BH2015/04057, dated 5 November 2015, subject to the attached schedule of conditions.
2. Appeal B is allowed and permission is granted for the change of use from an office (B1) to a dwelling (C3) with associated external alterations at Ground Floor, 2 Upper Bevendean Avenue, Brighton BN2 4FF, in accordance with the terms of the application, Ref BH2016/00016, dated 4 January 2016, subject to the attached schedule of conditions.

Preliminary Matter

3. The two appeals, one relating to an application for prior approval and the other an application for planning permission, are essentially alternative applications for the same proposal. It is necessary to deal with each in turn.

Appeal A

Main Issue

4. There is no dispute that the proposal would meet all the requirements listed in paragraphs O.1(a) and O.1(c) to O.1(g) of the 2015 Order for permitted development under Class O. In addition, there is no dispute that prior approval is not required for matters (a) to (c) in paragraph O.2 of the Order subject to three conditions being imposed.
5. Therefore the main issue in this case is whether the building was used for a use falling within Class B1(a) (offices) on 29 May 2013 or when last in use. If so, the requirement in paragraph O.1(b) of the Order would also be met and the proposal would be permitted development under Class O.

Reasons

6. The appeal relates to the ground floor of No 2 Upper Bevendean Avenue, a two storey mid terrace property in a residential area which is adjacent to a hot food takeaway and convenience store on one side, and flats on the other. The first floor of No 2 is also a flat. The ground floor is currently occupied as the base for a plumbing business, and the proposal is to convert this to a one bedroom flat either as permitted development under the provisions of Class O or with the benefit of planning permission.
7. There is no suggestion that the use of the premises has changed significantly since 29 May 2013, Bird Heating & Plumbing Ltd having been in occupation since well before that date.
8. The premises comprise four rooms together with a central lobby/corridor and a yard to the rear where waste materials and refuse/recycling are kept prior to disposal. The front room comprises a general office with desks, computers, filing cabinets, work planning charts etc and provides a workspace for two or three staff. Behind this lies a smaller single office for the business manager, again with desk, files and computer. The central lobby/corridor area allows for access to the rear two rooms but also includes a small work surface, files and a filing cabinet as well as some racks for storage.
9. The two rooms to the rear are fitted with floor to ceiling racking for the storage of miscellaneous plumbing parts and accessories used in connection with the business. Whilst the larger of the two rooms is solely used for such purposes, the smaller includes a kitchenette area for the use of the office staff and access to toilet facilities for the premises.
10. There is no dispute that the premises comprise a single planning unit, but the Council argue that the plumbing business amounts to a mixed use, with office (B1(a)) use at the front and storage (B8) use to the rear. If this is the case, the provisions of Class O would not apply. However, by far the most significant activities taking place in the premises are office activities. All the members of staff based in the building are office/managerial staff, no members of staff are dedicated to supervise or operate the storage uses. The materials and parts stored are solely used by the plumbing business itself, with no supplies being sold on to other businesses or the public.
11. The miscellaneous materials and parts are supplied to, or collected by, field

staff when reporting into the office before and after individual jobs. As such the storage in the premises forms an integral part of the office activities for administering the business rather than being a separate business function. Under half the space in the premises is used for storage and only one room is dedicated for the purpose, the other also being used regularly by office staff to make refreshments and access the toilet.

12. The storage use in two rooms is therefore ancillary or incidental to the primary office use of the premises as a whole. As such, the use of the premises on 29 May 2013 or when last in use falls within Class B1 (a) (offices) and the proposal therefore comprises permitted development under Class O.
13. In relation to the matters listed in paragraph O.2 of the Order, three conditions are necessary. These require the provision of secure covered parking facilities for one bicycle in the interests of sustainable transport and two conditions to ensure possible sources of contamination are identified and properly dealt with before and during construction. These conditions are reasonably related to the subject matter of the prior approval and should therefore be imposed.

Appeal B

14. This appeal relates to an application for planning permission for the change of use of the premises to a flat, but with changes to the front and rear elevations that would not be permitted by the Class O prior approval.
15. As explained above, I have found the existing use to be an office (B1(a)) and have changed the description of the application accordingly. The proposal would therefore be contrary to Policy CP3 of the Brighton & Hove City Plan Part One which seeks to protect existing employment sites. However, I do not need to consider the planning merits of the appeal as whatever the outcome, the fallback position is that permission is granted through success with Appeal A.
16. There is no dispute that the proposed alterations to the elevations would be acceptable so I shall grant planning permission. In addition to the conditions imposed under Appeal A it is necessary to impose the standard implementation time limit, define the plans which have been approved in the interests of certainty, require matching materials to ensure a satisfactory appearance and ensure the provision of suitable refuse/recycling storage facilities.

Conclusion

17. The requirements for permitted development under Class O of the 2015 Order are fully met so Appeal A should succeed subject to three conditions. For the reasons given, Appeal B should also be allowed subject to conditions. It will be up to the appellant which permission is implemented.

David Reed

INSPECTOR

Schedule of Conditions – Appeal A

- 1) The development hereby permitted shall not be first occupied until secure covered cycle parking facilities for a minimum of one bicycle have been

installed to the rear of the building and made available for use. The facilities shall thereafter be retained for use at all times.

- 2) Prior to commencement of development, a full asbestos survey of the premises, undertaken by a suitably qualified specialist, shall be submitted to and approved in writing by the local planning authority. In the event that any asbestos containing materials are found, a report shall be submitted to the local planning authority containing evidence to show that all such materials have been removed from the premises and taken to a suitably licensed waste disposal site.
- 3) If, during construction, contamination not previously identified is found to be present at the site then no further development shall be carried out until a method statement identifying, assessing the risk and proposing remediation measures, together with an implementation programme, shall be submitted to and approved in writing by the local planning authority. The remediation measures shall then be carried out as approved.

Schedule of Conditions – Appeal B

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3560.PL.10 and 3560.PL.02
- 3) The external finishes of the development hereby permitted shall match in material, colour, style, bonding and texture those of the existing building.
- 4) The development hereby permitted shall not be first occupied until refuse and recycling storage facilities have been installed to the side or rear of the building and made available for use. The facilities shall thereafter be retained for use at all times.
- 5) The development hereby permitted shall not be first occupied until secure covered cycle parking facilities for a minimum of one bicycle have been installed to the rear of the building and made available for use. The facilities shall thereafter be retained for use at all times.
- 6) Prior to commencement of development, a full asbestos survey of the premises, undertaken by a suitably qualified specialist, shall be submitted to and approved in writing by the local planning authority. In the event that any asbestos containing materials are found, a report shall be submitted to the local planning authority containing evidence to show that all such materials have been removed from the premises and taken to a suitably licensed waste disposal site.
- 7) If, during construction, contamination not previously identified is found to be present at the site then no further development shall be carried out until a method statement identifying, assessing the risk and proposing remediation measures, together with an implementation programme, shall be submitted to and approved in writing by the local planning authority. The remediation measures shall then be carried out as approved.