



Appeal Decision

Site visit made on 13 December 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal Ref: APP/Q1445/C/20/3261989

20 Clermont Road, Brighton BN1 6SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andrew Sturgeon against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 9 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, a change of use of basement and ground floor from office (B1) to residential (C3).
 - The requirements of the notice are:
 - Cease the use of the basement and ground floor as a residential unit (C3).
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is:
 - corrected by deleting the existing requirement under section 5 of the enforcement notice (what you are required to do) and its replacement with "Cease the use of the basement and ground floor as a residential unit (Use Class C3)".
 - varied by deleting the words "4 months" within section 6 (Time for Compliance) and its replacement with "8 months".
2. Subject to this correction and variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Matters raised by the appellant under grounds (e) and (f), querying whether the notice is clear and unambiguous are not matters for grounds (e) and (f), but are actually matters relating to the validity of the notice. I shall therefore deal with these matters here. In particular, the appellant states that the requirements of the notice which states "Cease the use of the basement and ground floor as a residential unit (C3)" is unclear since the basement and ground floor cannot be ceased. The Council state that the requirement is

missing the word "use" and therefore the requirement of the notice should read "Cease the use of the basement and ground floor as a residential unit (C3)". However, it is obvious and clear when reading the notice that this is a typographical error. For instance, the allegation, makes clear that it is the change of use from an office to a residential use that the notice is attacking. In addition, section 4 of the notice (reasons for issuing this notice) further states that *"The cessation of the unauthorised C3 residential use of the site is desirable and necessary in order to protect and preserve sufficient flexible employment space throughout the city..."*. It is necessary however to correct the requirement and insert the missing word "use" to complete the sentence. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

The appeal on ground (e)

4. The main issue to consider is whether the appellant has shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, he has been substantially prejudiced.
5. The appellant states that the notice was not properly served because it requires the appellant to *"Cease the of the basement and ground floor as a residential unit (C3)"* and as such the meaning is not clear. However, I have already dealt with this concern under the preliminary matters. Evidently, the appellant received a copy or copies of the enforcement notice and was able to lodge an appeal within the relevant timeframe. It cannot therefore be said that parties with an interest in the land have been substantially prejudiced.
6. Consequently, the appeal on ground (e) must fail.

Appeal on ground (a), the deemed planning application (DPA)

Main Issue

7. The main issue is the effect of the change of use on the provision of employment space throughout the city.

Reasons

8. The appeal site comprises the ground floor and basement of a mid terraced two storey Victorian property. The site was previously used as an office for over ten years by the appellant for his garden design business. More recently the site has been converted into a one bedroom residential unit (the subject of this appeal).
9. Policy CP3 Brighton and Hove City Plan Part 1, 2016 (City Plan) states that *"Sufficient employment sites and premises will be safeguarded in order to meet the needs of the city to 2030 to support job creation, the needs of modern business and the attractiveness of the city as a business location"*. Part 5 of Policy CP3 further states that *"Loss of unallocated sites or premises in, or whose last use was, employment use (Use Classes B1-B8) will only be permitted where the site or premises can be demonstrated to be redundant and incapable of meeting the needs of alternative employment uses (Use Classes B1-B8)"*. The supporting text for policy CP3 sets criteria (a-k) for assessing whether the site is redundant and unsuitable for modern employment uses, which will be considered below. As there is some overlap between these criteria, I have considered these together to avoid duplication.

Criteria a) location of the site; d) accessibility and e) proximity to public transport/trunk roads

10. The appeal site is located near to Preston Park Railway Station and within walking distance to both Preston Road (a main road with links into central Brighton) and bus stops. Therefore, in principle, the site is well located for an employment use, with good accessibility by public transport and trunk roads.

Criteria b) quality of the buildings; c) site or floor layout

11. The approximate net internal areas of the appeal site are 31.8sq.m at ground floor level and 27.3sq.m in the basement¹. The Council state that there is a demand for these smaller offices for Small and Medium Sized Enterprises (SME's) as demonstrated by the Employment Land Study, 2012 (ELS) referred to in the City Plan. I note that the appellant considers that this stated demand is inaccurate since it is based on a broad study from 2012. However, I have not been provided with any detailed evidence of a more recent ELS to inform the Council's policy and until an updated Employment Land Review is available, the evidence base for a change of policy is lacking. As such, the site has the potential to accommodate a smaller business.

Criteria f) other uses in the neighbourhood

12. Whilst a small number of non-residential and commercial uses remain in the area, the street is characterised by predominantly residential uses. A small office use in this location would not be expected to result in any environmental nuisance or amenity concerns to the local area.

Criteria g) cost of demolition/refurbishment sets against its future value for employment uses

13. The interior of the site appears to have been renovated recently and could be easily adapted for a small office use, similar to its last lawful use. As such, criteria g) is not directly relevant.

Criteria h) the length of time the site has been vacant

14. From the evidence submitted, it is unclear how long the unit was vacant for before being converted to a residential use.

Criteria i) documented evidence of the marketing strategy adopted, particularly whether it has been marketed at a price that reflects local market prices and attempts to make the building attractive to different business or employment uses (the length of marketing will need to reflect the size and nature of the site or premise and therefore whilst a year is considered a reasonable marketing period for small sites/ premises a longer period may be required for larger sites/ premises)

15. Contrary to the criteria, no marketing evidence for the appeal site has been submitted.

¹ Measurements taken from the Sequential Assessment Report prepared by Graves Son & Pilcher dated October 2019.

j) for office uses the prevailing vacancy rate for the size and type of office in Brighton & Hove should also be considered

16. Limited evidence has been provided as part of this appeal regarding the vacancy rate for the size and type of offices. Whilst the Sequential Assessment Report (SAR)² provides some commentary on the availability of other available commercial units in Brighton and Hove, limited details of the marketing strategies adopted for all of these other premises have been provided. Furthermore, based on the evidence submitted, I am unable to be certain that these other premises referred to have been marketed at a price that reflects the local market prices. This SAR also includes a marketing report for 18 Clermont Road. However, this report is dated December 2011 and is therefore ten years old. For the above reasons, I can only attach limited weight to the evidence submitted regarding the availability of other available vacant commercial units in Brighton and Hove.
17. In an attempt to demonstrate that there is no demand for office space or alternative employment uses in this location, the appellant has provided evidence of marketing for the office accommodation at No 19 Clermont Road. However, this relates to a completely different size and style of building, comprising a former single storey railway building, physically attached to the railway station. Therefore, whilst there are some similarities with the appeal site, with regard to its location, the office accommodation at No. 19 is not directly comparable to the appeal premises and does not justify the loss of employment space at the appeal site.
18. I also observed during my site visit, that there are a number of other commercial and employment generating uses, within the immediate vicinity of the appeal site, which include No 18 Clermont Road (Train Station health and fitness centre), No 18A Clermont Road (Brighton Consulting Rooms) and No 19 Clermont Road (Clok financial services).

k) for an office building whether change of use is the only practicable way of preserving a building of architectural or historic interest

19. The change of use has not affected the external appearance, or the historic interest, of the building. As such, criteria k) is not relevant to the current appeal before me.

Overall conclusion whether the site is redundant and unsuitable for modern employment uses

20. The views and findings of the SAR and the letter from Carr & Priddle which state that there is no demand for office space or alternative employment uses in this location are noted. However, in the absence of any robust marketing strategy for the appeal site specifically, it has not been satisfactorily demonstrated that there is no realistic prospect of the appeal site being re-used for offices or for an alternative employment use. Criterion k) makes clear that a year would be a reasonable marketing period for a small office such as this.
21. For the above reasons, I cannot be satisfied that the loss of the employment use has been fully justified in this instance. I therefore conclude that the change of use results in unacceptable harm to the provision of employment

² Prepared by Graves Son & Pilcher dated October 2019.

space throughout the city, in conflict with Policy CP3 of the City Plan, which seek the aforementioned aims.

Conclusion on Ground (a) and the Deemed Planning Application

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the provision of employment space throughout the city. None of the other matters raised by the appellant, including the benefits of providing an additional residential unit within the Preston Park Conservation Area outweighs this harm. Whilst I acknowledge that the Covid-19 pandemic has had an impact on the demand for offices in the short term, there is limited evidence before me regarding the longer term effects on the demand for office accommodation. It would therefore be premature to allow the appeal on the basis. There are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
23. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Appeal on ground (f)

24. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
25. The enforcement notice requires the cessation of the residential use and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
26. The appellant states that the steps required in the notice are not clear and unambiguous and are open to a variety of interpretations, some of which must be regarded as excessive. However, I have already dealt with this concern under preliminary matters, and subject to a minor correction, I am satisfied that the notice is clear and unambiguous.
27. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
28. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

29. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 4 months in order to provide sufficient time to allow current occupiers to find alternative accommodation and to carry out the works required safely.

30. Current occupiers might find it difficult under current housing market conditions to find suitable accommodation, particularly in light of the Covid-19 pandemic. I therefore consider that in the particular circumstances of this case, an 8 month compliance period is proportionate and reasonable. I shall therefore vary the period for compliance prior to upholding the notice to 8 months.
31. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a correction and variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR