



Appeal Decision

Site visit made on 22 October 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2024

Appeal Ref: APP/Q1445/X/24/3338602

33 Richmond Place, Brighton BN2 9NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Tim Clapham of Grand Avenue Developments Ltd against the decision of Brighton & Hove City Council.
- The application ref BH2023/02805, dated 18 October 2023, was refused by notice dated 20 December 2023.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is backpacker hostel and bar.

Summary Decision: The appeal is dismissed.

Background and Main Issue

1. The application form states that the proposed development was described in the covering letter. The description of development in the banner heading above is taken from the appeal form. The decision notice of the Council describes the proposal as "Certificate of lawfulness to confirm planning permission BH2009/01556 (change of use of bar/live music venue and residential accommodation to backpacker hostel (sui generis) (retrospective).) has been partly implemented, thereby allowing for the remaining works to be undertaken without the need for further consents."
2. The covering letter states that the question is whether operational development has occurred in accordance with the 2009 consent which would constitute a lawful commencement. It states that the appellant was seeking, at the time of application, to ascertain whether they could complete the development subject of planning permission reference BH2009/01556. That would include removal of any works carried out other than in accordance with that permission. The description within the decision notice appears to reflect the contents of the covering letter. For these reasons, I will consider the appeal on the basis of the description taken from the decision notice and it is that description that I would use on any LDC.
3. The Council suggest that the building became vacant and the backpacker hostel use ceased during 2020. That isn't disputed by the appellant.
4. Therefore, the main issue is whether the Council's decision not to issue a certificate of lawful use or development was well-founded, in regard to the completion of the development in accordance with planning permission reference BH2009/01556.

5. A certificate issued under section 192 of the Town and Country Planning Act 1990 (the Act) would confirm that the use or operations described in the application would be lawful if instituted or begun at the time of application. I note that further works, other than in accordance with planning permission reference BH2009/01556, have been undertaken at the property since the application for this certificate. The building appears to now be in use as flats in the upper floors and boxing gym on the ground floor. However, I am only able to consider the lawfulness of the proposed development at the date of application.
6. I note that a planning application under reference BH2023/00201 was refused. That was for the change of use from bar/live music venue and hostel (Sui Generis) to commercial (Class E) at ground floor and basement level and 6no residential units (Class C3) to upper floors, incorporating installation of rear dormer.
7. In the case of LDCs the burden of proof is on the appellant, with the relevant test of the evidence being on the balance of probability. Evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.

Reasons

8. The parties agree that as the application for the development reference BH2009/01556 was retrospective, it has been implemented. I see no reason to disagree. However, the development appears never to have been completed.
9. At the time of application for this LDC the appellant had begun further works to the building. These included lowering the ceiling of the ground floor and raising the first floor to create the additional floor in between. It appears that was linked to the conversion of the upper floors of the building to flats. It was not in accordance with planning permission reference BH2009/01556. At that stage, the work was not complete and no alternative use appears to have commenced, although it is somewhat unclear as to what point it had reached.
10. The works carried out only affected the interior of the building and, as such, would not normally comprise development as defined by section 55 of the Act. However, the works combined with the use ceasing and building having been vacant indicate the use permitted may have been abandoned. The Council suggest that the works were part of a conversion of the building to another use, such that they comprised development as part of that change of use. That change of use was not authorised, neither was it regularised by planning application reference BH2023/00201.
11. The appellant is seeking through this application to return the floors in the building to their original heights and proceed with conversion of the building in accordance with planning permission reference BH2009/01556.
12. The appellant suggests that it is not relevant whether the backpacker hostel use and the works necessary to complete that use in accordance with planning permission reference BH2009/01556 WOULD resume, but whether it CAN (emphasis taken from the appellant's statement). However, the factors as to whether a use is abandoned include consideration of the owner's intentions.

13. The works to insert an additional floor in and of themselves need not relate to a change of use. However, subsequent works have led to the conversion of the upper floors of the building to flats. There is a boxing gym in the ground floor. That demonstrates, along with planning application reference BH2023/00201, the owner's intentions to change the use of the building. In addition, the appellant has provided some reasons supporting the loss of the backpacker hostel, such as negative feedback from previous occupants.
14. Whilst the conversion of the building to another use had not been completed at the time of application, the physical condition of the building as a result of the building works was sufficient to indicate abandonment of the backpacker hostel use. The hostel appears to have closed in or soon after January 2020. The period that the building was vacant prior to the application subject of this appeal was around 2½ years, much of it during the pandemic, such that the period of non-use is sufficient to indicate abandonment. Whilst the flats were not capable of occupation at the time of application, the physical works had commenced that indicate conversion of the building to another use.
15. These factors indicate that the backpacker hostel use granted under planning permission reference BH2009/01556 has been abandoned. As a result, it would not be possible to complete that development, even if the floor levels were reinstated.
16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use of bar/live music venue and residential accommodation to backpacker hostel in accordance with planning permission reference BH2009/01556 was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act (as amended).

Formal Decision

17. The appeal is dismissed.

AJ Steen

INSPECTOR