



Appeal Decision

Site visit made on 24 June 2025

by **P Burley BA(Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th July 2025

Appeal Ref: APP/Q1445/W/25/3364923

6 Marlborough Place, Brighton BN1 1UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Gilyard Properties Limited against the decision of Brighton & Hove City Council.
 - The application Ref is BH2024/02114.
 - The development proposed is a temporary change of use of offices (Class E) to nine bedroom large house in multiple occupation (*Sui Generis*) for occupation by property guardians until the end of December 2026.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On the application form the appeal scheme was described as the temporary change of use of offices to HMO for occupation by property guardians. In the interests of clarity I have used the Council's more detailed description of development.
3. When I visited the site I noted that two ground floor rooms were being used as living accommodation and that the ground floor toilets had been converted to a shower / toilet room. The front rooms on all other floors had been divided into two by the addition of walls, and kitchens had been fitted on some floors. Other works were ongoing. The layout did not accord with the 'proposed' plans that have been submitted as part of the appeal. I have considered this appeal on the basis of the submitted plans.

Main Issues

4. The main issues are:
 - the effect of the appeal scheme on the supply of employment floorspace; and
 - whether the appeal scheme would provide acceptable living conditions for the future occupiers of the development with particular regard to noise.

Reasons

5. Policy CP3 of Brighton & Hove City Council's City Plan Part One (2016) says that the loss of unallocated sites or premises in, or whose last use was, employment use 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.

The policy does not make a distinction between permanent and temporary (or time-limited) changes of use.

6. Paragraph 4.39 sets out the criteria against which redundancy and unsuitability are to be assessed. These include the provision of 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 premises 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.
7. The appeal application was not accompanied by any marketing evidence but the application submission stated that *“existing marketing conditions indicate that finding new tenants will be difficult for the building”*. No further explanation or justification was provided.
8. The appellant has submitted a marketing report dated 10 April 2025 as part of this appeal. This notes that marketing commenced on 21 November 2024 and thus the report covers a period of about five months. The rent was not advertised and the report states that the agent received *“less than five enquiries to date”* but it does not document what might have dissuaded the enquiring parties from taking matters further.
9. Whilst in its final comments (letter dated 1 July 2025) the appellant has said that more than 7 months of marketing have now taken place, it has not provided any update on the outcome of the additional marketing that has taken place to date.
10. Having regard to the criteria listed in the adopted development plan, I am not satisfied that the marketing – in terms of both the length of the marketing period and the strategy that has been adopted – has been sufficiently robust to justify the loss of the existing use, even for a time-limited period. Therefore, I find that the appeal scheme conflicts with Policy CP3.

Living Conditions

11. The second reason for refusal relates to the effect of noise from nearby commercial premises on the living conditions of future residential occupiers of the proposed HMO.
12. This reason for refusal also raised issue in relation to nearby existing live music, cultural events and entertainment spaces which could have their operations restricted as a consequence of new residential uses in the vicinity. This is referred to as the ‘agent of change’ principle in the National Planning Policy Framework (the Framework).
13. During my visit I noted the proximity of the appeal site to a number of licenced premises, the Brighton Dome concert venue and Victoria Gardens which, according to the appellant, is used for open-air activities during the summer months such as the Brighton Festival.
14. Whilst the appellant has said that there are other residential properties in the vicinity of the appeal site I have not been provided with any evidence in that regard, nor do I have any information in relation to any mitigation measures that

may have been incorporated into such properties to ensure acceptable living conditions.

15. The appellant has argued that as the appeal application is for temporary use there would be the opportunity to measure noise while the premises were occupied over a 12 to 18-month period.
16. However, such monitoring would do nothing to ensure that living conditions in the temporary HMO accommodation were acceptable from the outset and, in the absence of mitigation, that noise would not give rise to complaints from occupiers about nearby noise-generating uses.
17. Accordingly, I cannot conclude that the appeal scheme would provide acceptable living conditions for the future occupiers of the development with particular regard to noise. Therefore I consider the appeal scheme to be contrary to policies DM20 and DM40 of Brighton & Hove City Council's City Plan Part Two (2022). It also conflicts with the Framework which says that where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

Other Matters

Other Planning Decisions

18. The appellant has said that the Council has not taken a consistent approach in relation to applications for the temporary occupation of buildings by live-in 'guardians' and it has given two examples of where temporary changes of use have been approved, noting that these illustrate that the Council has accepted the principle of a temporary change of use for guardianship elsewhere.
19. Whilst the Council has noted that there is a different policy context for one of these sites, I have not been provided with sufficient information to enable me to conclude whether there are any similarities between those permissions and the appeal scheme.
20. The Council has provided me with a copy of an appeal decision (APP/U5360/C/20/3265866), which relates to the unauthorised use of a public house as self-contained residential units, to support its argument that properties used for guardianships are generally not designed or adapted for residential use.
21. Whilst the appeal scheme includes some internal adaptations – such as the installation of fire lobbies, showers and the enlargement of a kitchen – I do not consider these, or the cost of making such alterations, to be material to my decision which is based on the main issues that I have identified. In any event, the appellant has noted that the changes would be reversible and that some may be needed or desirable to facilitate future occupation of the building for an employment use.

Housing Provision

22. The Council cannot demonstrate a five-year supply of housing land; the supply has recently reduced to 1.4 years (this is the position as of March 2024). In that context the appellant has noted that the temporary change of use would be a benefit,

albeit time-limited. Whilst I agree that the provision of housing is a benefit, the amount of weight that I attach to this is tempered by the temporary nature of the proposal.

Protection of the Building by Guardians

23. The Council has argued that the presence of guardians may limit the attractiveness of the offices to future occupiers and that office occupiers might be put off by not being able to occupy the premises until December 2026. Given that it has not provided any evidence to support this suggestion I do not attach any weight to this comment.
24. The appellant has said that occupation by guardians of an otherwise-vacant building would, while the property is being marketed, allow for the quick reporting of defects, avoid unauthorised occupation by squatters, and avoid the need to seal windows which could detract from the vitality and character and appearance of the area.
25. However, no evidence has been provided to demonstrate that the integrity and security of the building can only be achieved by way of the appeal scheme or by boarding up doors and windows.

Historic Environment

26. The appellant has argued that the appeal scheme involves the active re-use of a non-designated heritage asset which makes a positive contribution to the setting of a designated heritage asset, the Valley Gardens Conservation Area (CA). In this context, a proposal to ensure its active occupation should be accorded significant weight.
27. I have not been presented with any evidence to demonstrate why the appeal site should be considered as a non-designated heritage asset. Even if it were, I do not consider that the appeal scheme would materially affect, either positively or negatively, its significance.
28. However, given that the appeal site is in a CA, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. I consider that the appeal scheme would preserve the character and appearance of the area. Accordingly, I consider this to be a neutral consideration in the overall balance.
29. The appellant has also said that the Council did not take account of the desirability of keeping heritage assets in viable uses as advised in the Framework. However, given that the appellant has not demonstrated that the current lawful use is no longer viable, it is not possible to draw a sound conclusion in this regard.

Planning Balance

30. The Council has stated that as it is currently unable to demonstrate a five-year housing land supply, increased weight should be given to housing delivery when considering the planning balance in the determination of planning applications.

31. Policy CP3 affects the supply of land for housing and therefore the weight I attach to the effect of the appeal scheme on the supply of employment floorspace is affected by the application of paragraph 11(d) of the Framework.
32. Policies DM20 and DM40 do not affect the supply of housing, however – they seek to achieve acceptable living conditions and, with particular regard to noise, I consider them to be important for determining the application. I also consider policies in the Framework, and particularly the ‘agent of change’ principle, to be material considerations of significant weight.
33. Overall, whilst I attach positive weight to the delivery of temporary housing, I consider that the adverse impacts of the appeal scheme significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework and in the development plan when taken as a whole.

Conclusion

34. For the reasons given above the appeal should be dismissed.

P Burley

INSPECTOR