



Appeal Decisions

Site visit made on 18 July 2011

by Martin Joyce DipTP MRTPI

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

Decision date: 8 August 2011

Appeal A: APP/Q1445/C/11/2150997 128 Church Road, Hove BN3 2EA

- 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 Foad Abdolkhani against an enforcement notice (Notice A) issued by the Brighton & Hove City Council.
- The Council's reference is 2008/0270.
- The notice was issued on 3 March 2011.
- The breach of planning control as alleged in the notice is, without planning permission, the use of the first floor offices as a residential flat.
- The requirements of the notice are to cease the unauthorised use of the first floor of the property as a residential flat.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/Q1445/C/11/2150998 128 Church Road, Hove BN3 2EA

- 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 Foad Abdolkhani against an enforcement notice (Notice B) issued by the Brighton & Hove City Council.
- The Council's reference is 2008/0270.
- The notice was issued on 3 March 2011.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of plastic uPVC windows at first floor level to the north and west elevations.
- The requirements of the notice are to:
 1. Remove the unauthorised two plastic windows from the north elevation at first floor level and three plastic windows from the west elevation at first floor level; OR,
 2. Install the five windows as granted planning permission under application BH2009/01865 as indicated in drawing number 02-02 rev. C and subject to condition 3 of that approval.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal C: APP/Q1445/A/11/2151148
128 Church Road, Hove BN3 2EA

- 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 Foad Abdolkhani against the decision of the Brighton & Hove City Council.
- The application, Ref: BH2010/01982, dated 18 June 2010, was refused by notice dated 8 December 2010.
- The development proposed is the provision of a three-bedroom flat – change of use from office to residential; and, replacement windows from timber to uPVC.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The Section 78 appeal (Appeal C) concerns essentially the same development as that covered by the two enforcement notices that are the subject of Appeals A and B - the change of use of first floor offices to a residential flat, and the installation of uPVC windows on the north and west elevations of that flat in place of the original timber windows. I saw at my inspection, however, that the appeal property has been further altered in a manner that is not shown on the submitted application plans. Although the elevations given on Drawing No 03 show that a former garage in the south-western corner of the appeal site is to be demolished, the proposed first floor plan, on Drawing No 01, is inconsistent with that annotation, as it indicates that the garage would remain with "existing plant on flat roof".
2. The garage has, however, been demolished, and the ground floor of the property extended to the south. The external staircase which provides access to the first floor has been re-positioned from the north of the garage to a location adjacent to the southern boundary, and a terrace to the south of the main entrance to the first floor has been extended southward so that it covers the whole of the ground floor extension. I estimate that the terrace, which has been surfaced with timber decking, has been extended by about 3m.
3. It is my understanding that the Council are investigating this possible further breach of planning control. Planning permission has been granted for the change of use of the basement and ground floors of the property from financial (Class A2) to Restaurant (Class A3)¹ with external changes². However, the approved plan, which is that referred to in requirement 2 of Notice B, shows that the external staircase to the first floor would remain in its original position. There is, therefore, an apparent divergence from that plan.
4. The extended terrace and the re-positioned external staircase access are not before me in these appeals as they are not shown on the plans submitted with the application that is the subject of Appeal C. Consequently, third party objections from occupiers of the flats to the south of the appeal property, at No 22 Medina Villas, which relate to noise disturbance, overlooking and loss of privacy from the extended terrace, cannot be taken into account in my determination of these appeals. The objections are for the Council to consider in the context of their current enforcement investigations.

¹ Classes A2 and A3 of the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005 (UCO).

² Planning permission No BH2009/01865, dated 15 October 2009.

THE APPEALS ON GROUND (a) AND THE SECTION 78 APPEAL

Main Issues

5. The main issues in these appeals are:
 - a. the effect of the change of use on the Council's policy in respect of the retention of office accommodation; and,
 - b. the effect of the new fenestration on the character and appearance of the surrounding area, including whether the development preserves or enhances the character or appearance of the Cliftonville Conservation Area.

Reasoning

Policy considerations in relation to the change of use

6. Policy EM6 of the Brighton and Hove Local Plan 2005 (LP) states that small industrial, business and warehouse premises (Use Classes B1, B2 and B8 of 235 sq m or less) will be retained for employment purposes unless a number of criteria are met. These include that the premises have been assessed and are genuinely redundant i.e. that they are vacant and have been marketed locally at a price that reflects their condition and commercial value and for a period of time that reflects the likely demand for the size of premises. Policy EM5, concerning the release of redundant office floorspace and conversion to other uses, is also pertinent. This states, amongst other things, that planning permission will not be granted for the change of use of office premises or office sites to other purposes, unless they are genuinely redundant because the site is unsuitable for redevelopment or the premises are unsuitable and cannot be readily converted to provide different types of office accommodation. A number of criteria are then set out to assist in the determination of "redundancy", and the policy concludes with the statement that if the offices are genuinely redundant, preference will be given to alternative employment generating uses, followed by affordable housing.
7. The appeal property was originally used as a bank, with offices above last used as an employment agency. The appellant states that the first floor has been vacant since at least 2007 but no further information has been provided to support this contention and, crucially, no evidence is available to confirm or otherwise whether the property was the subject of any marketing. In this context the appellant admits that such information was not provided with his planning application, but states that it is now available in the context of Appeal A. However, nothing has been supplied with the grounds of appeal.
8. I can only conclude that the tests set by the relevant Council policy have not been met and that the appellant has failed to show that the offices were redundant, or unsuitable for further use in the same Use Class, or that any marketing exercise, at a realistic price, has been undertaken. The consequence of this is that the objectives of the Council's employment policies would be undermined if the new use of the first floor as a residential flat were to be sanctioned through a grant of planning permission. The reasoned justification for the policies show that the Council are seeking to make the best use of the limited amount of land available for new development, and that well located sites need to be retained, particularly in the contest of an identified Structure Plan shortfall of office sites. Additionally the retention of sites in

Brighton & Hove is needed because of its designation as a Priority Area for Economic Regeneration, and loss of floorspace could reduce the ability to meet employment needs locally. Loss of sites would also increase unemployment for those unable to travel out of the City to work each day, as well as increase the need to commute elsewhere, especially by private car, which is less sustainable.

9. My conclusion on this issue is that the change of use that has taken place materially harms the Council's policy, as set out in the LP, in respect of the retention of office accommodation within the City.

Effect on character and appearance

10. The character of the surrounding area is mixed, with a variety of land uses, building styles, and ages and scale of development. In terms of appearance, the use of traditional materials, and associated detailing, on the majority of buildings in the immediate vicinity and in the wider Conservation Area, is a particular feature, notwithstanding that there are a number of examples of non-traditional windows apparent.
11. In this context, the Council issued an Article 4 Direction on 28 July 2005 covering the Conservation Area which removed permitted development rights under The Town and Country Planning (General Permitted Development) Order 1995 as amended for a number of forms of development including the replacement of windows under Part 1 of Schedule 1. This does not apply directly to the appeal property, as its lawful use is not that of a single dwellinghouse and thus permitted development rights do not apply, but it illustrates the Council's desire to maintain features of importance to the Area. In relation to doors and windows, the Article 4 Direction states that aluminium or plastic replacements are generally not acceptable.
12. Various Policies in the LP also seek to ensure a high standard of design in new development, including Policies QD1 and QD2. Policy HE6, concerning development within or affecting the setting of Conservation Areas, is particularly pertinent. It states that proposals should preserve or enhance the character or appearance of the Area and should show, amongst other things, a consistently high standard of design and detailing reflecting the scale and character or appearance of the Area, including building forms, and the use of building materials and finishes which are sympathetic to the Area. A footnote confirms that, in respect of criterion (a) of the Policy, which includes the term "building forms", the alteration of the style and detail of traditional panelled timber doors and timber sliding sash, or original timber or metal casement windows, will be resisted.
13. The uPVC windows installed at the appeal property lack the texture and depth of traditional timber windows and represent a loss of quality both in the context of the host building, its immediate surroundings and the wider Conservation Area. The appeal building is situated in a prominent location on a corner site and is visible in views in both directions along Church Road, as well as from the upper end of Osborne Villas. In those views, the uPVC windows look out of place and incongruous. I note that there are several other buildings in Church Road where uPVC windows have been installed, but they are not in the majority and are not on such a prominent corner building. In any event, they detract also from the character and appearance of the area, and do not provide a sound argument for further diminution of visual quality.

14. I note that the appellant considers that the Council have been inconsistent in their approach, but it seems to me that many of the uPVC windows in other buildings are of some age, and may well pre-date both the Council's LP policy and the Article 4 Direction. My conclusion on this issue is that the uPVC windows materially harm the character and appearance of the surrounding area, and neither preserve nor enhance that of the wider Cliftonville Conservation Area, contrary to the relevant policies of the LP.
15. It follows from my conclusions on the main issues that the appeals on grounds (a) against Notices A and B, and in respect of Appeal C, fail, and that planning permission will not be granted.

Other Matters

16. All other matters raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main grounds and issues of these appeals. I have also considered whether these appeals gives rise to any issues bearing on existing national planning policies but I conclude that they do not; the draft National Planning Policy Framework, recently issued, does not, therefore need to be taken into account.

Conclusions

17. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed application. Appeal C should also be dismissed.

FORMAL DECISIONS

Appeal A: APP/Q1445/C/11/2150997

18. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Appeal B: APP/Q1445/C/11/2150998

19. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Appeal C: APP/Q1445/A/11/2151148

20. The appeal is dismissed.

Martin Joyce

INSPECTOR

