



Appeal Decision

Site visit made on 16 July 2013

by Sheila Holden BSc MSc CEng TPP MICE MRTPI FCIHT

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

Decision date: 26 July 2013

Appeal Ref: APP/Q1445/A/13/2193161

181 Portland Road, Hove, East Sussex BN3 5QJ

- 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 F W Tang against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/03352, dated 19 October 2012 was refused by notice dated 13 December 2012.
 - The development proposed is a change of use of ground floor 181 Portland Road from B1 office to A3 restaurant to form an extension of existing restaurant at 179 Portland Road.
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Decision

1. The appeal is allowed and planning permission granted for a change of use of the ground floor at 181 Portland Road, Hove, East Sussex BN3 5QJ from B1 office to A3 restaurant to form an extension of existing restaurant at 179 Portland Road, subject to the following conditions:
 - 1) The change of use hereby permitted shall be carried out in accordance with the following approved plans, RFA 12/243/01 and RFA 12/243/02.
 - 2) The use hereby permitted shall not be open to customers except between 12.00 and 22.00 hours. No activities associated with operating the restaurant shall take place between the hours of 23.30 and 06.30 on any day.
 - 3) Within three calendar months of the date of this decision a scheme for the storage of refuse and recycling shall be submitted to and approved in writing by the local planning authority. The scheme shall be operated in accordance with the agreed details and the refuse and recycling storage facilities shall be retained thereafter for those purposes.

Procedural matter

2. No 181 is part of a row of seven commercial units outside the designated Portland Road shopping area. The terrace includes several restaurants, including that at No 179 and only one in retail use. No 181 had previously been used to support a business associated with car sales and valeting, although there was no display area for vehicles. The application form stated that the site was in B1 use. However, this does not demonstrate that this is its lawful use and the appellant provided some evidence of the site's previous use as a restaurant/café. He therefore contends that the unit had changed to a sui generis mix of uses that operated without the benefit of planning permission.

The Council states that there is no planning history to provide certainty as to the lawful use of the premises. However, it assessed the proposal on the basis of a B1 use. Although the evidence as to the lawful use of the site is inconclusive I have taken the representations of both parties into consideration in my determination of the appeal. At the time of my site visit No 181 had been incorporated into the restaurant.

Main issue

3. The main issue is whether the change of use would result in an unacceptable reduction in the supply of employment sites in the City.

Reasons

4. The underlying aim of saved Policy EM6 of the Brighton & Hove Local Plan is to retain small industrial, business and warehouse premises in the City for employment purposes. The supporting text to the policy reiterates the importance of retaining small workshop units within the urban fabric and suggests that there is strong demand for small and inexpensive business units. Changes of use will only be permitted where a series of criteria are met. Criterion (b) of the Policy requires premises to have been assessed as genuinely redundant prior to permitting a change of use. In order to demonstrate this the Council requires evidence that the premises have been marketed at an appropriate price for an adequate time period. No such evidence was presented with the application, probably due to the uncertainties relating to the lawful use of the site. Criteria (c), (d) and (e) are not applicable to this case.
5. However, it seems to me that the location of these particular premises, which include a glazed shop front within a local centre that has a mixture of commercial uses, could not be described as a workshop unit. Neither would it appear to be attractive to the 'high-tech' office sector, which the Local Plan identified as being in short supply. In any event the Council did not provide any up to date information about the current demand for such units. Furthermore, the Local Plan was adopted prior to the recession and was addressing the requirements up to 2011 that were set out in the Structure Plan. This has been superseded by more recent policy, including the National Planning Policy Framework (The Framework), which is a material consideration in this case.
6. The Framework puts great emphasis on the need to support economic growth. Paragraph 21 states that local authorities should support existing business sectors, be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances. The proposal would secure an additional three jobs, two of which would be part time. It would also ensure that an active frontage was maintained in this part of Portland Road. Whilst the change of use would not comply with the requirements of Criterion (b) of Policy EM6, it would not conflict with the underlying aim of the policy to retain sites that generate employment. In these circumstances I consider that the benefits that would accrue from the expansion of the existing restaurant would outweigh the limited conflict with the development plan.
7. I therefore conclude that the proposed change of use would not give rise to an unacceptable loss of an employment site within the City or be contrary to the

underlying objectives of Policy EM6 of the Local Plan. The limited evidence of the previous use of the site as a restaurant/café adds weight to this conclusion. I therefore consider that the expansion of the restaurant into this adjoining unit is acceptable.

8. In the event that the appeal was allowed the Council has suggested conditions restricting the hours of operation of the enlarged restaurant. This is justified to protect the living conditions of neighbours. A condition requiring agreement to the refuse and recycling arrangements is necessary to ensure satisfactory disposal of food and other waste, thereby protecting the amenity of local residents. I have imposed a condition specifying the plans for the avoidance of doubt and in the interests of proper planning. As the development has already taken place the standard time limit is not required.
9. Having regard to these, and all other relevant matters raised, I conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

