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## Appeal Decision

Site visit made on 28 June 2016

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 11 July 2016**

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**Appeal Ref: APP/Q1445/W/16/3144596**

**6a Westbourne Grove, Hove, Sussex BN3 5PJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class P of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr S Hardwick (Brighton and Hove Properties Limited) against the decision of Brighton & Hove City Council.
- The application Ref BH2015/03483, dated 28 September 2015, was refused by notice dated 25 November 2015.
- The development proposed is prior approval for change of use from storage (Class B8) to residential (Class C3) to form 1 no. studio flat at first floor level.

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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council's sole reason for refusal is that insufficient evidence has been submitted to demonstrate that the appeal property has been in storage (class B8 use) on 19 March 2014 or for a four year period prior to the application submission. In addition, in order for the conditions in Class P.2 to be met, consideration of the impacts of the development on the matters set out in Class P.2(b) (i) to (vi) is necessary.

### Main Issues

3. The main issues are therefore:
  - Whether the proposal is permitted development having regard to Class P of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015); and
  - If the proposal is permitted development under the provisions of GPDO 2015, whether the proposal is acceptable with regard to its impacts on air quality, transport and highways, contamination, flooding, noise, and provision for storage and distribution services in the area.

### Reasons

4. The appeal property forms part of a two storey terrace block located to the rear of a shopping parade on Portland Road. Access is provided via Westbourne Gardens. No 6a is at first floor level and is accessed by a separate entrance to the ground floor unit at No 6.

5. P.2(a) of the GPDO 2015 requires a developer to submit a statement with the application setting out the evidence relied upon to demonstrate that the development is permitted by Class P as set out in P.1(a) and P.1(b).
6. The Council has stated that no formal planning permission or Lawful Development certificate exists for No 6a for Class B8 use. The appellant has submitted extracts from officer reports relating to planning applications involving the property in support of the appeal. Whilst the site address for an application in 2014<sup>1</sup> is given as Nos 5 and 6, it can be seen from the officer report and the application drawings that the proposal also related to the upper floors of these two ground floor units.
7. The planning application form for the 2014 application states that the existing use for all of the units (Nos 5, 5a, 6, and 6a) was within Use Class B8. The Council's report repeats the applicant's own description of the premises subject of that application as "storage and craft in one unit and builders store in another". However, the Council did not corroborate this description, which is not sufficiently clear to identify the specific use of No 6a, as opposed to the other three units that also formed part of the planning application.
8. The planning officer report from 2014 refers to the Westbourne Grove terrace as a whole as being in commercial use, but this is a broad description which could encompass a range of general industrial uses as well as distribution and storage. Moreover, the officer reports for the previous planning applications in 2002<sup>2</sup> and 2014, and the drawings from the 2014 application<sup>3</sup> refer to the existing use of the first floor at No 6a as a workshop. This could encompass manufacturing or general industrial activities of a nature that could fall within either Class B1 or B2 use.
9. Further to the above, the business rates records indicate that No 6a had an office use from 2010 to at least 25 September 2015. The appellant advised the Council at the time of the application that the premises were in use as office (Class B1) in 2010, but that a change of use had occurred to storage. Whilst there is a permitted change from Class B1 to B8 under the Town and Country Planning (Use Classes) Order 1987 (as amended), there is no conclusive evidence before me to suggest that such a change has taken place.
10. Consequently it is not possible to say with any certainty that No 6a was used *solely* for a storage or distribution use as required by P.1.(a) and (b). I therefore conclude that the proposal does not meet the requirements for being permitted development under the GPDO 2015. It follows that it is unnecessary for me to consider the impact of the proposals with regard to the conditions set out in Class P.2. My conclusion on this matter would not preclude any application that the appellant may wish to make under s191 and s192 of the 1990 Act (as amended).
11. For the reasons set out above, the appeal should be dismissed.

*Claire Victory* INSPECTOR

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<sup>1</sup> Ref. BH2014/02925

<sup>2</sup> Ref. BH2002/00726/FP

<sup>3</sup> Drawing dated 26 August 2014