



Appeal Decision

Site visit made on 17 February 2010

by **Frances Mahoney DipTP MRTPI IHBC**

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

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Decision date:
15 March 2010

Appeal Ref: APP/Q1445/A/09/2113100 8, Pavilion Parade, Brighton BN2 1RA

- 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 Baron Homes Corporation Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/04679, dated 20 December 2007, was refused by notice dated 31 March 2009.
- The development proposed is the retrospective planning application for the change of use of the basement, ground, first and second floors from offices to residential.

Decision

1. I dismiss the appeal.

Procedural matters

2. The terms of the description of development adopted by the Council as well as that on the planning application form refers to the change of use as being retrospective. The submitted drawings show that there are no works of conversion from offices to residential use. I saw at my site visit that the office units were in use as residential flats, in active occupancy. It is clear to me that the change of use of the basement, ground, first and second floors from offices to residential has already taken place and that it has been carried out in accordance with the submitted plans. I shall therefore deal with the appeal on this basis.

Main issues

3. The main issues in this case are the effect of the development on; local employment opportunities; and on the living conditions of the residents of the flats in respect of the nature of the habitable rooms.

Reasons

4. No 8 Pavilion Parade is a five storey property with basement, part of a fine terrace of early 19th century buildings listed Grade II which, whilst altered over time, still retains some sense of the elegance of its period. The magnificence of the Royal Pavilion stands just on the other side of Pavilion Parade, a busy City road.
5. The terrace, of which No 8 forms part, includes a number of office uses alongside some flats. This mixture of business and residential uses is reflected in the character of the development within the immediate area of the appeal

site and is one of the characterising features of the Valley Gardens Conservation Area of which the appeal site forms part. The location of the Law Courts just around the corner in Edward Street seems to have attracted a number of Solicitor's offices to the area. The University also has offices at the end of the Pavilion Parade terrace and I did note other office users in the immediate area located within other terraced buildings which were undoubtedly built as Regency residences.

Local employment opportunities

6. The appeal property is well located in terms of public transport links and access to services being central to the City's commercial area. The building was previously used as small office suites, with the third and fourth floors being used as a residential maisonette, a use which will continue.
7. *The Brighton & Hove Local Plan 2005* (LP) policy EM5 sets out that the change of use of office premises will not be granted unless they are genuinely redundant. From the submitted evidence it would seem that No 8 was marketed from September 2004 until October 2005 when the appellant company purchased it. Some detail is offered as to how the freehold of the premises was offered for sale, but this does not include the detail of the strategy employed; why the offices were not marketed to let as a further option; targeted advertisements and their level of frequency which would actively promote the premises with the intention to achieve a sale or letting at a realistic market value; nor the level of interest generated, including viewings and feedback.
8. However, in fact the 2004-2005 marketing strategy was successful as the appellant company purchased the building marketed as offices and a two bedroom maisonette. I also note that the purchase followed an aborted negotiation with another interested party.
9. The appellant company has submitted some more up-to-date evidence of the availability of office premises in the Brighton City centre area. I did note that virtually all of the examples highlighted were being offered to let rather than as a freehold purchase as No 8 was offered. However, no evidence has been submitted that the appeal property has been offered to the market as office space, either to let or as a freehold premises, by the appellant company since October 2005. Whilst I appreciate that the economic circumstances have changed considerably in recent times, the lack of evidence of the prolonged and consistent efforts of the appellant company to find office users for the building, I find to be a significant deficiency in their case that the office space is no longer required, as a justification for the premature change of use of the building to flats.
10. The change of use and occupation of the relevant floor space as flats has removed any immediate possibility of employment uses reoccupying the appeal property. However, as no works of conversion were required to bring the flats into use, it would be similarly a comparatively simple operation to restore the office use back to the building.
11. The appellant also contends that the building is no longer suitable for the modern office user. However, no convincing evidence has been submitted to substantiate this claim. I did note that a number of other buildings of a similar

period to No 8 appeared to be in active use as offices, either subdivided into suites or occupied by single users.

12. It is for these reasons that I am not satisfied that it has been demonstrated that the office use at No 8 is genuinely redundant. Therefore, I consider that the appeal proposal would be contrary to LP saved policies EM5 and EM6 which seek to protect local employment opportunities.

Living conditions

13. The quality of the living conditions of the residents of the flats, with particular regard to the size of the flats and the lack of natural light and ventilation to both the kitchens and bathrooms has been raised as a concern.
14. Of the 7 flats, 4 include a separate living room, back bedroom, both being good size rooms, with a central kitchen and shower room; whilst the other 3 are bedsits but still provide a reasonable size space suitable for single person occupancy. In all cases all of the habitable rooms have external windows allowing light and fresh air into the flats. The lack of ventilation and natural light to what I consider to be non habitable rooms is not an uncommon arrangement in the development of flats.
15. The flats lack any on-site amenity space for residents to enjoy. However, opposite the appeal site is the Royal Pavilion including the surrounding park, and only a short walk away is the Brighton sea front and beach, both of which offer considerable opportunities for recreational use by residents. In my judgement, the availability of these easily accessible public spaces to the residents of the flats, makes up for the lack of useable on-site amenity space, particularly in such an urban location.
16. Consequently, I do not consider that the change of use to flats is contrary to LP saved policies HO5 and QD27 which seek to secure amenity space for residents appropriate to the scale and character of the development.

Other matters

17. LP policy requires that Lifetime Homes criteria should be incorporated in the design of new development, wherever practicable (HO13); that secure cycle storage facilities be provided (SU2, TR1 & TR14); refuse/recycling facilities be provided (SU2 & QD27); and that a satisfactory level of efficiency in the use of energy, water and materials should all be achieved (SU2).
18. As a listed building, on a confined site, within a dense urban area, No 8 has limitations in the way the structure of the building can be adapted and its operational limitations. Nonetheless, in respect of matters relating to the sustainability of the development, it seems to me that it would be possible to devise a scheme to improve the efficiency in the use of energy, water and materials within the building.
19. The appeal property is centrally located to the City and within ready walking distance to the shops and services. I also saw regular local buses passing up and down Pavilion Parade. The provision of secure cycle storage facilities would be an advantage. However, No 8 does not lend itself to accommodating the 9 cycle spaces which are required. It is likely that any residents who have cycles, have made their own informal arrangements such as storing them within

- hallways or in their flats. However, in any case LP policy TR14 does offer the option of the need for cycle storage being met by the provision of facilities on the public highway or for a contribution to improvements to cycling infrastructure being made. This would seem to me to be just such a case and an appropriate way of dealing with this aspect of the change of use.
20. Similarly, in respect of refuse and recycling it is likely that residents have devised their own arrangements to manage their waste disposal. However, whilst recognising that there is no outside space for the location of bins, nonetheless it may be possible to design into the internal circulation spaces some storage facilities.
21. In respect of Lifetime Homes criteria, I have no evidence that full consideration has been given by the appellant company to the need to incorporate, where practicable the policy requirements. However, I am mindful that the appeal property is a grade II listed building which may offer only limited opportunities to achieve the criteria if practicable.
22. In all of the above cases under the heading of "Other matters", I do not consider that the limitations on the compliance with the identified LP saved policies, either individually or in combination, are so significantly harmful as should warrant the withholding of planning permission in this instance. In reaching this view I have also taken into account the character of the area; the nature of the uses of the neighbouring buildings; character, appearance and integrity of the listed building; and the lawful use of the building as offices.
23. In addition, taking into account the mixed use nature of the character of the Valley Gardens Conservation Area and that this appeal concerns purely a change of use of the building from offices to flats without any internal or external alterations to the listed building, I do not consider that the scheme has any effect on the character or appearance of the Conservation Area.

Conclusion

24. Nonetheless, in conclusion, I consider the harm caused to local employment opportunities by the change of use of the basement, ground, first and second floors from offices to residential at No 8 Pavilion Parade is of such significance as should warrant the dismissal of this appeal.

Frances Mahoney

INSPECTOR