



# Appeal Decision

Site visit made on 22 June 2010

by **Graham Dudley BA (Hons) Arch Dip**  
Cons AA RIBA FRICS

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

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**Decision date:**  
**8 July 2010**

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## Appeal Ref: APP/Q1445/A/09/2118944

### 169 North Street, Brighton, East Sussex BN1 1EA

- 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 Limited against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01600, dated 1 July 2009, was refused by notice dated 25 September 2009.
- The development proposed is a change of use of vacant hairdressers (A1 Class use) to Restaurant (A3 Class use)

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## Decision

1. I dismiss the appeal.

## Main issues

2. The main issues are:
  - The effect of the proposal on the vitality and viability of the shopping centre.
  - The effect of the proposal on the living conditions of neighbouring occupiers with particular reference to odour and noise.
  - Whether bin storage and collection arrangements would be adequate.

## Reasons

### *Vitality and Viability*

3. The adopted Brighton and Hove Local Plan [LP] Policy SR4 relates to change of uses in the regional shopping centre. In particular, it notes that outside the prime frontages, the loss of retail uses will be permitted provided that a healthy balance and mix of uses (including A1 retail) is retained and concentrations of uses other than A1 are avoided. It also notes that the proposed use should still attract pedestrian activity to the centre and should not have a significantly harmful impact on the amenity of the area.
4. In my view, it is reasonable for the council to seek to ensure that there is a mix of uses to maintain the vitality and viability of the area. I consider that the policy objective is to ensure that there remains a reasonable number and mix of A1 retail units and that the policy requirement relating to 'and concentrations of other uses other than A1 are avoided' does not relate solely to concentrations of other particular uses, but other non A1 uses. Otherwise

you could end up with a situation where there were no strong concentrations of particular individual non A1 uses, but with little or possibly no A1 uses.

5. While I accept that an A3 use should not be ruled out in principle as this would attract pedestrian activity and continue activity into the evening, it has to be considered in context. In this location there are a significant number of uses other than A1, particularly in the area identified by the council. However, even if you go further on and look at the other side of the road, uses include more non A1 uses, such as the Royal Bank of Scotland in one direction and Strada in the other direction. While there are some more retail uses beyond those identified by the council, I consider overall that the change of use of this unit would cause a significant concentration of non A1 uses in the immediate area and that the mix in the wider area is not sufficient to justify the proposal. While there would be increased activity at night time, because of the many other similar uses I attach little weight to the benefit of this.
6. I appreciate that the appellant has endeavoured to let the unit for retail uses, but it identifies that 'this has consistently failed because it is surrounded in this block by non retail uses'. However, I consider that the difficulty in letting the unit is likely to relate in part to the current economic situation, as much as the location of the unit amongst the other non A1 uses. More importantly, I do not consider that this is a good argument, but would back up the need to maintain a reasonable mix of A1 uses. While there are other vacant units nearby, the number of these is relatively small and this adds little weight to justify the conversion of this unit. I have also taken into consideration the location near to a bus stop, but do not consider that this would have a significant impact, there being a number of bus stops in the main shopping area near to shop units.
7. Overall, the proposal would not accord with the aims and objectives of LP Policy SR4 and would have a harmful impact on the vitality and viability of the area.

### ***Odour and Noise***

8. There are residential uses with windows facing the inner courtyard immediately above the proposed use. I consider that given this proximity it is necessary to demonstrate that odour can be controlled in a way acceptable to neighbouring occupiers and without causing undue noise and disturbance.
9. The appellant has submitted details of some equipment that is capable of dealing with odours arising from restaurant use and also that there is a ventilation flue at the back of the building that serves La Tasca. While I accept in principle that it should be possible to resolve this issue by the use of this type of well-maintained equipment, it is necessary for it to be specifically considered in the context of the proposed use. In particular, it seems likely that the ventilation flue for La Tasca was designed for it and presumably its size is necessary for that use, so it seems unlikely that it would be adequate to take the extraction from another separate kitchen. Given that this is a listed building, it is necessary that the implication of the flue should be specifically considered so that any new flue, or enlargement of the existing flue, can be considered. Without this it is not possible to conclude, as necessary with a listed building, that its special architectural and historic interest would be preserved.

### ***Bin Storage***

10. There is a large bin storage area at the rear of the building and I noted at the site visit that there is also a bin at the front. The council has identified that there have been representations/complaints in the past from nearby residents relating to bin storage and therefore it is necessary to make adequate provision for the storage of bins. While the area of bins is well used, I consider that the management of the waste from this unit could be controlled by measures such as more regular collections as occurs at La Tasca and that this could be ensured by the imposition of a suitable condition. I therefore consider that the proposal would be acceptable in relation to bin storage.

### **Conclusion**

11. Notwithstanding my finding in relation to bin storage and taking into consideration all matters raised, overall I conclude that the proposal would be unacceptable because of the harm in relation to vitality and viability of the area and because of the potential for harm in relation to the odour extraction. The appeal should be dismissed.

*Graham Dudley*

