



Appeal Decisions

Site visit made on 19 November 2012

by Bridget M Campbell BA(Hons) MRTPI

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

Decision date: 29 November 2012

Appeal A: APP/Q1445/C/12/2176487 62 Clyde Road, Brighton BN1 4NP

- 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 L Chrzaszcz against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2011/0805.
- The notice was issued on 23 April 2012.
- The breach of planning control as alleged in the notice is the conversion of the premises into four self contained flats without the benefit of planning permission.
- The requirements of the notice are:
 1. cessation of the use of the house as four self contained residential units;
 2. removal of the kitchen facilities from all but one of the self contained residential units;
 3. restoration of the property to one residential unit; and
 4. removal of all resultant debris.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: APP/Q1445/A/12/2177613 62 Clyde Road, Brighton BN1 4NP

- 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 L Chrzaszcz against the decision of Brighton & Hove City Council.
- The application Ref BH2011/03878, dated 13 December 2011, was refused by notice dated 29 March 2012.
- The development proposed is the conversion of a single dwelling into 3 flats.

Summary of Decision: The appeal is dismissed.

Appeal A, ground (a)

Main Issues

1. The main issues in this case are the effects of the proposals on the Council's housing strategy and on the living conditions of the occupiers of the units taking into account the standard of accommodation, cycle parking facilities and lifetime homes criteria.

Reasons

2. Criterion (a) of saved policy HO9 of the Brighton and Hove Local Plan 2005, allows for the conversion of dwellings into smaller units of self contained accommodation when the original floor area is greater than 115 sqm or where the dwelling has more than 3 bedrooms as originally built. Although there is disagreement as to the original number of bedrooms – the appellant counting rooms in the basement – the Council is content that the floor area exceeded the 115 sqm minimum. There is thus no objection in principle to a suitable conversion.
3. Criterion (b) of HO9 requires at least one unit to be suitable for family occupation with a minimum of two bedrooms. The Local Plan recognises the contribution that the conversion of larger properties makes in meeting the needs of a growing number of smaller households but it also identifies the need to cater for the high level of demand for smaller dwellings suitable for family accommodation. None of the units in the existing layout provides family accommodation as required and there is thus conflict with criterion (b) of policy HO9. The appeal is to be determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. To allow the appeal contrary to policy without special justification would make it difficult for the Council to resist other similar conversions with this particular shortcoming, the cumulative effect of which would be to seriously undermine the Council's housing strategy.
4. The Council has no adopted or advisory standards for flat conversions. It considers that the one bedroom flats on the ground and lower ground floors provide an adequate standard of accommodation and I find no reason to disagree. The size is not generous in either case but both have a decent kitchen with sufficient space for a small table and chairs, and both have a modest, but usable, bedroom, bathroom and living room. Cupboards for storage are also provided and the ground floor has an additional toilet. Each has the added benefit of access to its own small private garden.
5. As existing there are two further flats at first and second floors. The one bedroom flat at first floor is considerably smaller than the two below. The circulation space between rooms is minimal which is claustrophobic and causes difficulties when more than one person is present and the bedroom is barely adequate in size as the sole bedroom for the unit. However, the principal shortcoming is the exceptionally small kitchen. Not only is it not very long but it is so narrow that an open oven or cupboard door would leave no room to get by. It is too cramped to provide a reasonable standard of accommodation.
6. The room in the attic space is wholly unsuitable as a separate residential unit. It is lit by two high level rooflights which provide no outlook. Headroom over most of the floor area is extremely limited and I found that I had to stand directly under the recess of one of the rooflights in order to stand upright in the corner fitted out with kitchen units. It provides a very poor cramped standard of living accommodation.
7. The existing layout provides no secure, covered cycle parking for residents as is required by criterion (d) of HO9. For smaller units of accommodation, close to the city centre, cycling might well be a preferred means of travel if suitable facilities were available. Whilst I saw that there is a cycle stand opposite this property, the area is densely developed by similar housing, including flat

- conversions, with little opportunity to provide on site cycle storage facilities. The four residential units are likely to increase demand for on street cycle parking with no provision made to accommodate that increased demand.
8. Saved policy HO13 indicates that proposals for conversions and changes of use to provide residential accommodation will be expected to demonstrate wherever it is practicable, that lifetime homes criteria have been incorporated into the development. Notwithstanding the inclusion of this policy in the reasons for issuing the enforcement notice, the Council's access officer has commented that the existing building does not meet the criteria and that there would be no benefit in attempting to apply the policy in this instance. Since both entrances to the property from the street involve negotiating a set of stairs this seems to me to be a logical conclusion. Nonetheless, this finding does not outweigh the other harm that I have found.
 9. Concluding on the main issues: in failing to provide a suitable unit of family accommodation the development unacceptably undermines the Council's housing strategy; the cramped layout fails to provide satisfactory living conditions for the occupiers of the property; and there are no cycle parking facilities as required by policy. The development conflicts with saved Local Plan policies QD27, HO9 and TR14 which attract significant weight as they are broadly consistent with advice in the National Planning Policy Framework (NPPF).¹
 10. I have taken into account all other matters raised in support of the development including the letters from the existing tenants, the argument that there is no 5 year supply of housing land and reference to paragraph 49 of the NPPF, and that there is a demand for small units of residential accommodation. However neither these nor any of the other matters raised provide justification for poor quality residential accommodation which clearly conflicts with Development Plan policy. I note the examples of other schemes in the area drawn to my attention by the Appellant, but I have had regard to the specific circumstances evident at the appeal property.
 11. The appeal on ground (a) fails and permission will be refused on the deemed application for planning permission.

Appeal B

12. In this application, the intention is to leave the lower ground and ground floor flats as they are and to combine the first floor and attic accommodation to provide a two bed flat. The Appellant considers that this would provide a unit suitable for family accommodation in a less cramped 3 flat layout and so would address the Council's objections to the existing 4 flat layout. The main issues are the same as those set out above.
13. Having found the first floor kitchen to be too small to adequately serve the existing one bedroom dwelling, the cramped conditions in that room are clearly even less suited to serve a family dwelling. Where more than one person would be resident in the flat, that room would be positively hazardous to use if two people wanted access at the same time. In addition the living room accommodation would have to provide for all social living and dining activities for a family. That room is limited in size and this cannot be compensated for by access to any outdoor living space as the accommodation on the upper

¹ See para 215 of the NPPF

floors is divorced from the garden areas. The flat does not provide suitable family accommodation. Thus the revised layout would maintain the conflict with criterion (b) of HO9 and the unsatisfactory living conditions in the "family" unit would conflict with policies QD27 and HO5.

14. The proposed layout shows space for 3 bicycles at the front of the property at lower ground floor level. This is not secure covered parking as is required by criterion (d) of HO9. Moreover it is too cramped, access up and down a narrow staircase is unsatisfactory, and use of the area would be likely to cause loss of privacy and disturbance for the occupier of the lower ground floor flat. The proposed provision is not satisfactory. Whilst there is an indication that off-site provision might be possible by way of an appropriate contribution, there is nothing in place to demonstrate that this could be achieved (for example if monies were made available to the Council is the opportunity there to make relevant provision?), and a monetary contribution is not, in any event, an appropriate requirement for a planning condition.
15. The proposed revised layout for 3 flats does not overcome the objections identified in the existing 4 flat layout and thus the conclusions on the main issues remain the same. The appeal fails.

Appeal A, ground (f)

16. The Appellant claims that the requirements of the notice exceed what is necessary to remedy the breach of planning control because it requires all but one of the kitchens to be removed and it is claimed that there was a kitchen on the ground floor and another on the lower ground floor before the conversion to 4 flats took place.
17. The requirements of the notice cannot go beyond requiring remedy of the breach and thus it would be unreasonable to require anything to be removed that was there before the breach took place. Similarly requiring the property to be returned to use as a single family dwelling would go beyond remedying the breach. I therefore intend to vary the steps to require the use to cease and for the property to be restored to its condition before the breach took place. To this extent the appeal on ground (f) succeeds.

Appeal A, ground (g)

18. The Appellant considers 6 months insufficient to comply with the requirements of the notice. Upholding the notice will interfere with people's homes and it seems to me that the 12 months sought would be more reasonable to enable sufficient time for alternative accommodation to be sought before the works are undertaken. This would strike the appropriate balance when weighing the interests of the private individual against the public interest such that the response would be a proportionate one and there would be no violation of the Appellant's or the occupiers' Human Rights. To this limited extent the appeal on ground (g) succeeds.

Formal Decisions

Appeal A: APP/Q1445/C/12/2176487

19. The enforcement notice is varied by:
 - i) The deletion of the whole of the content of paragraph 5 and the substitution therefor of the following: "*cease the use of the house as 4 self contained*

residential units and restore the property to its condition before the breach took place"; and

- ii) The deletion from paragraph 6 of the words "6 months" and the substitution therefor of the words "12 months" as the period for compliance with the requirements of the notice

20. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and 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/A/12/2177613

21. The appeal is dismissed.

Bridget M Campbell

Inspector

