The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2015

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 10 February 2016

Appeal Ref: APP/Q1445/C/15/3070056
9 Adams Close, Brighton BN1 7HU

- 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 Mrs Laura Dwyer-Smith against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 8 May 2015.
- The breach of planning control as alleged in the notice is 'Without planning permission, change of use of the property from a dwelling house (C3) to use as a house in multiple occupation (C4) providing accommodation for between three and six unrelated individuals, who share basic amenities including a kitchen, living space and a bathroom.
- The requirement of the notice is to cease the use of the property as a House in Multiple Occupation (Class C4).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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 a correction.

The Notice

1. The act of development is 'material change of use'. I will therefore correct the notice to refer to that. This minor correction would not result in injustice to either party.

Appeal on ground (c)

2. In appealing on ground (c), the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the matters stated in the enforcement notice do not amount to a breach of planning control.

3. The appellant contends that the change of use of the property is not material as a HMO[1] use has not harmed the appearance of the appeal building or the wider street scene. It is conceded that the use of the property to accommodate 6 unrelated persons rather than a single family unit normally associated with a C3 dwelling may result in a marginal increase in noise and disturbance from additional comings and goings. However, the appellant states that no evidence has been provided by the Council to suggest that any increase in noise and disturbance has occurred as a result of the use or that, if it did, it would amount to material harm to the living conditions of adjacent occupiers.

[1] HMO is a House in Multiple Occupation.

4. Class C3 Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) is defined as
'Use as a dwellinghouse (whether or not as a sole or main residence) by —
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Interpretation of Class C3
For the purposes of Class C3 (a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004.'

5. The appellant states that she purchased the property in April 2014 and was informed at that time that the previous tenants were a group of students and prior to that tenancy, the property was occupied by a family. The appellant notes that the property has been let as a shared house by between 3 and 6 unrelated individuals in recent years and has also been let to a family between tenancies by students.

6. The property is currently occupied by 6 individuals with shared kitchen, living room and bathroom facilities. On the ground floor is a living room, double bedroom (with sink), WC and shower; on the first floor are two double bedrooms (with sinks) and a kitchen; on the second floor are three double bedrooms (with sinks) and a bathroom.

7. There is no substantiated evidence that the tenants comprise a single household in accordance with section 258 of the Housing Act 2004. As such, the use of the property by six individuals does not fall within Class C3 of the UCO. However, it does fall within Class C4 Houses in multiple occupation of the UCO which is defined as a 'Use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'.

8. The Council has adopted[2] a direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) which requires a change between Class C3 (use as a dwellinghouse) and Class C4 (use as a dwellinghouse by not more than 6 residents as a HMO) to be authorised by a grant of planning permission. The appeal site is within the area covered by this direction.

9. Notwithstanding my conclusion that the use falls within Class C4, I must also consider whether or not the use would be materially different from the use of the property as a Class C3 dwellinghouse, as it existed when last occupied as such.

10. The submitted information provides no detail as to the pattern of occupation by the tenant family referred to in the appellant's submissions. In the absence of detailed information on how the property was occupied, and drawing on my own judgement and experience, it is more likely than not, that occupation by six independent students results in a different pattern of activity, which is likely to have resulted in a more intensive form of occupation including comings and goings, with individual journey patterns and a lack of shared lives' and participation in the community than would be expected from a single household

[2] April 2013

occupation. To my mind this type of occupation is materially different from a single household occupation by a family.

11. On the evidence provided the appellant has failed to demonstrate on the balance of probability, in a precise and unambiguous way, that a material change of use of the property from a dwelling house (C3) to use as a house in multiple occupation (C4) providing accommodation for between three and six unrelated individuals, who share basic amenities including a kitchen, living space and a bathroom has not taken place. The appeal on ground (c) therefore fails.

Appeal on ground (a)

Main issues

12. I consider that the main issues in relation to the ground (a) appeal are the effect of the use of the appeal property as a HMO on the living conditions of local residents and whether it would support a mixed and balanced community.

Reasons

13. The appeal property is a mid terrace, three storey building, on the west side of Adams Close.

14. As stated above, the area is subject to an Article 4 Direction removing permitted development rights to change from Class C3 to Class C4 of the UCO which came into effect in April 2013. The Council state that the emergence of concentrations of students in HMO's, particularly close to existing university campuses in the city, has brought about rapid changes to the local populations, housing markets and residential environments in these areas. It therefore wants to make sure that local communities are balanced in terms of the type of housing available and the people that live there. The Council's report in relation to the introduction of the Article 4 Direction is stated to identify issues including increased noise disturbance, refuse, litter and fly tipping problems, higher burglary and crime rates and increased parking demand related to concentrations of HMO's. Reference is also made to Environmental Health records for noise complaints and refuse in the gardens within the areas included within the Article 4 Direction.

15. Saved Policy QD27 of the Brighton and Hove Local Plan 2005 (BHLP) indicates that permission should not be granted where it would cause material nuisance and loss of amenity. The explanatory text of BHLP Policy HO14 recognises that in some areas of the City a concentration of HMO's can cause various problems and refers to the importance of protecting amenities when assessing new HMO proposals with particular reference to Policies QD27 and HO4. BHLP Policy HO4 seeks to make the best use of the limited amount of land available for housing and supports higher density housing in suitable locations whilst creating high quality living environments which respect their surroundings and take full account of matters such as community safety and crime prevention.

16. Local residents have referred to disturbance resulting from students moving in one case at 1am and other times within the early hours, noise and disturbance both during acceptable and anti social hours on a number of occasions, refuse being left outside the house or in the rear garden, refuse containers blowing into parked cars, parking issues and also to the number of HMO's in the area.

17. The Council have carried out a mapping exercise within a 50m radius of the appeal site and state that there are currently 7 registered Class C4 or HMO dwellings within the mapped area. This is not disputed by the appellant and equates to a concentration of 14.6% HMO/Class C4 use.

18. The appeal property is a mid-terrace property, with bedroom accommodation over three floors. It is close to other HMO/Class C4 properties and in a residential area consisting mainly of family dwellings. On the evidence available, the use has resulted in harm to the amenities of adjacent residents and residents are aware of the occupation of the property by individuals. As such, I consider it is contrary to BHLP Policies QD27 and HO14. It would also be contrary to one of the core planning principles of the Framework which is that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.

19. The Council has an emerging plan, the Brighton and Hove Submission City Plan Part One (February 2013) (CP) which was the subject of an initial hearing at the end of October 2013. Paragraph 216 of the National Planning Policy Framework (the Framework) states that from the day of publication decision takers may also give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the Framework. CP Policy CP21 part ii refers to HMO's and is relevant to the consideration of this appeal. Whilst there were objections to part i of Policy CP21 there were no objections to part ii of the policy which is the part that is relevant to the appeal development. The parties have referred to appeal decisions[3] where the issue of the weight to be attached to CP Policy CP21 has been considered. I have considered the evidence in relation to this policy that has been provided by the parties and have concluded, in the light of that evidence and in accordance with the Framework, that part ii of the policy should be afforded substantial weight.

20. CP Policy CP21 part ii resists a change of use to Class C4 where more than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use. The concentration of HMO/Class C4 uses within a 50m radius of the appeal site is above the threshold set by the emerging Policy CP21 and, as such, the development fails to support mixed and balanced communities or to ensure that a range of housing needs continue to be accommodated throughout the city. The appeal development is therefore also contrary to emerging CP Policy CP21 part ii.

Conclusion

21. For the reason give above the appeal on ground (a) fails.

Appeal on ground (g)

22. This ground of appeal is that the time given to comply with the notice is too short. The Council have given six months for compliance. The appellant considers that she requires twelve months to comply.

[3] APP/Q1445/A/14/2214205, APP/Q1445/A/13/2206186, APP/Q1445/C/14/2225896 & 2225897, APP/Q1445/A/14/2214317.

23. In support of this ground of appeal the appellant refers to 'tenancy agreements'. Specifically, the appellant refers to an existing short hold tenancy which ended in June 2015 and a new tenancy being in place for July 2015 to July 2016. She also states it would be disadvantageous to both the tenant and the appellant if the current tenancy were forced to be terminated prematurely by the enforcement notice.

24. Whilst I note the appellant's concern in relation to termination of the tenancy agreement this does not justify the extension of the period for compliance. In my view, a period of six months would more or less accord with the termination of the most recently agreed tenancy and would allow adequate time for existing occupants to look for alternative accommodation. Furthermore, the Council has the power to further extend the period for compliance with the notice under section 173A(1)(b) of the 1990 Act as amended, should further information indicate that this would be appropriate.

25. For the reasons given above the appeal on ground (g) fails.

Conclusion

26. For the reasons given above I conclude that the appeal should fail. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal decision

27. It is directed that the enforcement notice is corrected by the insertion of the words 'the material' between 'planning permission,' and 'change of use' in paragraph 3.

28. Subject to this correction 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.

Hilda Higenbottam

Inspector