Appeal Decisions

Site Inspection on 7 December 2018

by Graham Self MA MSc FRTPI

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

Decision date: 11 January 2019

Appeal Reference: APP/C/18/3201190
Site at: 249 Queens Park Road, Brighton BN2 9XJ

- The appeal is made by Mr Trevor Stacey under section 174 of the Town and Country Planning Act 1990 as amended, against an enforcement notice issued by Brighton and Hove City Council.
- The council's reference is ENF2017/00422.
- The notice is dated 15 March 2018.
- The breach of planning control alleged in the notice is: "Without planning permission the material change of use of the property from a small House in Multiple Occupation (C4) to a large House in Multiple Occupation (Sui Generis)".
- The requirements of the notice are: "Cease the use of the property as a House in Multiple Occupation (Sui Generis)".
- The period for compliance is three months.
- The appeal was originally made on grounds (a) and (g) as set out in Section 174(2) of the 1990 Act; but ground (a) was "barred" for legal reasons relating to the timing of a planning application for similar development.

Summary of Decision: The enforcement notice is varied to extend the period for compliance. Subject to that variation the appeal fails.

Appeal Reference: APP/W/18/3205130
Site at: 249 Queens Park Road, Brighton BN2 9XJ

- The appeal is made by Mr Trevor Stacey under section 78 of the Town and Country Planning Act 1990 as amended, against the failure by Brighton and Hove City Council to decide an application for planning permission within the statutory period.
- The application is dated 1 March 2018. The development was described in the application as: "Change of use from five bedroom small house in multiple occupation (C4) to large house in multiple occupation (Sui Generis) with alterations to fenestration".
- The council's reference is BH2018/00666.

Summary of Decision: The appeal fails.

Legal and Historical Matters

1. References are made below to the terms "small HMO" and "large or *sui generis* HMO". These descriptions refer to houses in multiple occupation and arise from the Town and Country Planning (Use Classes) Order 1987 as amended by later legislation (abbreviated below to "UCO"). For the purposes of planning law the UCO differentiates between a house in multiple occupation for not more than six people (a "small HMO" within Class C4 of the UCO) and a house in multiple occupation occupied by a larger number of people (a "large HMO" which is not

within any class of the UCO and is therefore a use of its own type, a description often labelled by planning lawyers as *sui generis*).

2. The appeal property is in a part of Brighton where a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order has evidently been in force since April 2013. This Order takes away normal "permitted development" rights allowing changes of use from Class C3 of the UCO (dwellinghouses) to Class C4 (small HMOs). The Direction was apparently made because of the impact of concentrations of HMOs on parts of Brighton including this neighbourhood.

3. An application was made in March 2017 for what was described as "retrospective planning for a "licensed 8 bed HMO" together with various changes to the internal layout. Permission was refused and a later appeal against the refusal was dismissed in February 2018. The appeal decision records that when the inspector saw the site in January 2018 it was occupied as an HMO with eight bedrooms.

4. As noted above, the enforcement notice was issued in March 2018, about two weeks after the date of the application now subject to the Section 78 appeal, which in turn was made about ten days after the February appeal decision. In summary, the inspector who determined the previous appeal held that the development was providing unacceptable living conditions for occupiers (particularly lack of natural light and outlook for the basement accommodation), contrary to local policies; he also held that the change of use had not adversely affected the residential character of the area and that although there was conflict with City Plan policy in this respect, this conflict did not in itself justify refusing planning permission.

Section 78 Appeal

5. The application now subject to the Section 78 appeal was expressed as seeking retrospective planning permission for a *sui generis* large HMO, and the appellant's statement dated April 2018 mentions that the site "currently [which I interpret as referring to the date of the statement] accommodates eight occupants". However, the basis of the application is that the property would be occupied by seven people, and that two windows would be installed in the side wall of the basement facing Carlyle Street.

6. Two main issues are raised by this appeal: first, the impact of the development on the character and general environment of the neighbourhood; second, the standard of accommodation for occupiers and the practicality of improving it. Both of these issues have to be considered having regard to relevant planning policies.

7. The City Council are understandably concerned about the effects which can result from concentrations of HMOs in established residential areas such as the area around the appeal site. Such developments can cumulatively harm the residential character and amenity of an area in various ways, partly because HMOs tend to house a more transient population than other types of residential use and HMO occupiers tend to have lifestyles which can clash with those of family-type or other occupiers.

8. The council refer in particular to policies CP19, CP21 and QD27 of the Brighton and Hove Local Plan. One of the purposes of policies CP19 and CP21 is evidently to support "mixed and balanced communities". This policy provides that planning permission will not be permitted for changes of use to *sui generis* HMOs where more than ten 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. Policy QD27 provides that development will not be permitted where (among other things) material nuisance and loss of amenity would be caused to adjacent residents.

9. The council do not make out a case against the proposal on grounds relating to noise, disturbance or other such effects on the area. In the light of the previous inspector's decision, the council state that they do not object to the application on grounds of the direct and cumulative impact of the change of use. Other properties in the neighbourhood may be HMOs, but this is difficult to discern from outside inspection and no evidence has been put forward about the proportion of nearby properties in such use. The council accept that the use of the property as a seven-person HMO would not harm the character or amenity of the area.

10. In those circumstances it seems to me that the conflict with local plan policy is more theoretical than real, and the council's policy-based case is weak. It cannot be sustainably argued, for example, that there is a conflict with policy QD27 about nuisance or loss of amenity for neighbours whilst accepting that no material nuisance or adverse amenity impact would be caused. Indeed, given the apparent need for student accommodation in this area, allowing this development, in a location where the local planning authority itself considers that no harm would be caused, could help to prevent more harmful development elsewhere.

11. As regards the standard of accommodation, the application drawings show what is labelled as a communal living room with lounge furniture on the ground floor with a kitchen-diner for shared use in the basement floor - this is the room which has limited natural light and no outlook except for a small light-well. The council accept that the combination of fewer occupants and increased amount of communal space "would now appear to represent a reasonable compromise". This statement was obviously made on the assumption that the largest of the ground floor rooms would be available for use as a communal lounge or living room as labelled on the application plan.

12. I have reservations about the practicality and likely effect of what is proposed. The seven current[1] occupiers of the property appear to have decided amongst themselves to use the smallest of the first floor rooms ("Bed 6" on the plans, which is only about 7.1 square metres in area) as a shared laundry room, and to use the large front ground floor room as one of the bed-sits. This leaves the basement as the communal living room and kitchen. The arrangement may well be acceptable to the current occupiers, but that is not a decisive point since there is a legitimate public interest in trying to maintain a reasonably good standard of residential environment in dwellings in Brighton, in line with Policy QD 27 of the Brighton and Hove Local Plan.[2] The inspector who decided the appeal in February 2018 stated when referring to the basement that "the living room and kitchen provide an oppressive environment….[which]….provides unacceptable living conditions for the occupiers of the HMO". I agree with that assessment.

13. The outside of the flank wall where two new windows are shown on the application drawings directly abuts the pavement along Carlyle Street. The proposed windows would be approximately at pavement level, with no space for a light-well, and they would be at a high level above the floor of the basement room. To provide reasonable privacy, they would have to be obscure-glazed or otherwise screened (for example with blinds or curtains). Some form of security and safety screening, such as an external metal grille, would probably also be

[1] "Current" here refers to what I saw on the date of my inspection.

[2] This is evidently a "retained" policy from the 2005 Local Plan.

necessary. Either way, I consider that the result would be unsatisfactory: the amount of natural light reaching the basement might be improved, but the resulting outlook and/or privacy would not provide a satisfactory environment, particularly for a room which, with seven occupiers of the house, is likely to be frequently used as a kitchen-dining room even assuming the availability for communal use of what is labelled as the living room on the first floor.

14. I also doubt the practical feasibility of installing these pavement-level windows. No details have been supplied showing how they would meet non-planning regulations and I think it likely that a condition requiring their installation would turn out to be unenforceable, even setting aside the legal difficulties of imposing a condition requiring future action on a permission which would be retrospective, despite the seven-person occupancy being expressed as prospective.

15. In reaching my decision I have had regard to all the other issues raised on which I have not specifically commented, including the submissions for the appellant about the timing of the enforcement action and what the appellant perceives as the council's failure to withdraw the enforcement notice. I consider that conditions could not make the development acceptable. In particular, I have considered the possibility of a conditional permission limiting occupancy of the property to less than seven persons; but this would not be the "large HMO" sought by the application and would not reflect the current level of occupancy. Conditions attempting to specify the exact use of individual rooms would also be so difficult to enforce in practice as to be invalid.

16. I conclude that although there are weaknesses in the council's case, there is good reason to refuse planning permission, as the living environment for occupiers is not and would not be satisfactory, contrary to Policy QD27 of the Local Plan. Therefore the appeal under Section 78 does not succeed.

Section 174 Appeal, Ground (g)

17. This ground of appeal relates to the period allowed for compliance with the enforcement notice. The appellant contends that the three month period would not provide reasonable time for arrangements to be made for the current tenants to be re-housed. A period of six months from the date of my decision is sought.

18. The main statement of case was submitted for the appellant in August 2018; the final comments are dated 3 September 2018. Full details of current tenancy arrangements have not been supplied, but there is evidence that earlier in 2018 the occupants were university students who could have conveniently moved out of the property during the summer of 2018. One of the then tenants complained to the council in May about "persistent evasion and silence" by the lettings agency.

19. The three-month compliance period specified by the council would apparently have extended beyond the end of the tenancies which were current when the notice was issued. It seems that new tenancies have been entered into, presumably in the hope that the enforcement notice would be quashed. I sympathise with the current occupiers, who may not be aware of the situation. On the other hand, from the information made available to me the appellant has not made out a compelling case for extending the compliance period. In an attempt to strike a reasonable and proportionate balance, I have decided to extend the compliance period to five months. (I have also had university term dates in mind here.) The appeal on ground (g) succeeds to that limited extent.

Formal Decisions

Section 78 Appeal (Reference APP/W/18/3205130)

20. I dismiss the appeal.

Section 174 Appeal (Reference APP/C/18/3201190)

21. I direct that the enforcement notice be varied by deleting the text in Section 6 under the heading "Time for Compliance" and substituting "Five months". Subject to that variation, I dismiss the appeal and uphold the enforcement notice as varied.

G F Self

Inspector