The Planning Inspectorate

Appeal Decisions

Site visit made on 19 December 2016

by D E Morden MRTPI

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

Decision date: 6 January 2017

Appeal A: APP/Q1445/C/16/3146395
17 Bernard Road, Brighton, BN2 3ER

- 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 D Rayward against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice, reference 2013/0590, is dated 10 February 2016.
- The breach of planning control as alleged in the notice is the change of use of the property from a dwelling house (C3) to use as a house in multiple occupation.
- The requirement of the notice is to cease the use of the property as a house in multiple occupation.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Decision: I direct that the Notice be varied by substituting the word 'Three' for the word 'Two' in paragraph 6. Subject to that variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/Q1445/W/15/3140558
17 Bernard Road, Brighton, BN2 3ER

- 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 Millhouse Enterprises Limited against the decision of Brighton & Hove City Council.
- The application Ref BH2015/03534, dated 1 October 2015, was refused by notice dated 13 November 2015.
- The development proposed is the change of use from a C3 dwelling to a C4 shared dwelling for 6 persons.

Decision: The appeal is dismissed.

Preliminary Matters

1. Dealing with two procedural points on Appeal A, firstly, the Council stated that the time for compliance should have stipulated 3 months. There was an administrative error and the requirement should be varied to state 3 months. Secondly, in the officers' report there is a comment from the Council's legal department that the Notice only requires the use as a sui generis HMO to cease and does not refer to Class C4 HMOs. It is suggested that a further Notice is required to deal with this and hence the current Notice was issued.

2. In my view that is not necessarily correct (although it is a matter of law and for the Courts do determine if necessary). The Use Classes Order (UCO) has

separated out HMOs where between three and six people reside and put them into a use class (Class C4); they are commonly referred to as small HMOs. Any other HMO (i.e., 7 people and upwards) does not come within any use class and to that extent it is like every other use that does not fall within any of the specified use classes in the UCO – it constitute sui generis use.

3. Whether or not the 2014 Notice did not cover all HMOs simply because it described it as a sui generis HMO providing 7 bedrooms, the current notice steers clear of any wording about bedrooms, people living there or anything else that could be taken as restrictive in what is includes.

4. Turning to the s78 appeal, I saw at my visit that the alterations listed as proposed in the application the change of the ground floor front room from a bedroom into a shared living room and the provision of a 6 bedroom HMO had in fact already occurred. I shall, therefore deal with this appeal on the basis that it concerns an application under s73A of the Town and Country planning Act 1990 (as amended) – one where the development has already been undertaken.

Appeal B – s78 appeal - APP/Q1445/W/15/3140558

Main Issues

5. I consider that the main issues in this case, having regard to the prevailing policies in the adopted development plan, are the effect of the development on the character of the surrounding community, secondly the effect of the development on the living conditions of adjoining and nearby residential occupiers and thirdly, whether an adequate standard of accommodation is being provided for the occupiers of the property.

Planning Policy

6. There has been a change to the status of the policies referred to in the enforcement notice and refusal notice. The refusal was based on the saved policies in the Brighton & Hove Local Plan 2005 (LP) and the emerging policies of the submission stage City Plan Part One (CP) as well as the NPPF and all other material considerations.

7. Following the Inspector's report on the City Plan in February 2016 it was adopted by the Council on 24 March 2016 and is now the Development Plan for the City. With the adoption of the plan (as opposed to being an emerging plan at the time of the last appeal in June 2015), Policy CP21 now carries full weight. The policy relates to student accommodation and notes that changes of use to an HMO will not be permitted where more than 10% of dwellings within a 50m radius of any application site are already in such use. The objective is to ensure that a suitable range of housing types remain available in the area and to maintain mixed and balanced communities. The policy is in conformity with paragraph 50 of the National Planning Policy Framework (the Framework) which promotes a mix of housing types to suit local demand.

8. Policy QD27 of the LP is a saved policy and still therefore carries full weight in determining this appeal. The policy states that permission will not be granted for development where it would cause a material nuisance and loss of amenity to, amongst other things, adjacent occupiers and existing residents generally. Both policies should be afforded significant weight in determining this appeal.

Reasoning

9. In dealing with all the issues, whilst this has to be considered as an appeal afresh, it is also relevant for me to take into account the dismissal of the enforcement appeal on this site made as recently as June 2015 (Ref: APP/Q1445/14/2225896). I acknowledge that that appeal concerned the use of the property as an HMO with seven bedrooms and there was no shared living room but the principle of considering this type of development in this area of the town has not changed (paragraph 15 of that decision). Also, bearing in mind that the room changed from a bedroom to the shared living room is the ground floor front room, the problem of nuisance to immediately adjoining occupiers set out in the last decision has also not changed (paragraph 17 of that decision).

10. The change of use proposed would in normal circumstances be 'permitted development' by virtue of the Town and Country Planning (General Permitted Development) Order 2015 and not therefore require planning permission to be obtained. Problems as the Council sees it in retaining a suitable mix of housing types and retaining family homes led to the making of an Article 4 Direction Order in April 2013 removing that permitted development right. Unless there was a significant problem such an Order would not be proposed and confirmed.

11. The appellant questioned the 10% figure and also the fact that a 50m radius is used in which to look. These guidelines are now within a recently adopted policy and should be given full weight. It may always appear to be arbitrary when a minimum or maximum is set down anywhere but one cannot escape from the fact that one has to set levels against which to measure things (in the same way that the GPDO sets out limits of size for various permitted developments). It is easy to question such guidelines and maximum/minimum criteria but those set out in this policy have been through the local plan consultation and examination process so it is correct to use them in deciding if permission should be granted.

12. Similarly it is always easy to say that something is just over the limit and/or that one more will make little or no difference to the percentage and not have a significant detrimental effect on the future mix of housing types. The line has to be drawn somewhere however, and whilst the percentage of 10% does not appear to be exceeded by the same amount that it was when the previous appeal was dismissed it is still exceeded before this proposal is added to the mix. Further when the acceptable percentage is 10% then any extra one in a high density area will always appear as a very small increase in overall percentage terms.

13. I consider that allowing this appeal would have a harmful effect on and undermine the Council's aim of maintaining a balanced supply of housing types and supply of family dwellings and accommodation to rent unless a strict control is kept over such proposals for change of use such as this. Allowing this appeal would further increase the imbalance currently existing in the mix of housing types available in Brighton.

14. The appellant's representations did make a brief reference to a lack of a 5 year housing supply on the basis that there was a shortfall in the planned housing provision in the Draft City Plan as modified in 2015 and the Objectively Assessed Housing Need for the plan period. Since that statement was produced (it accompanied the appeal in December 2015) the local plan

Inspector has published her report (in February 2016) and the plan has been adopted, including Policy CP21. The Inspector's report sets out reasons for the apparent shortfall in particular the poor market conditions that have existed in the area for some time and the considerable number of restraints there are to new development/redevelopment in the area. It is also recognised that the planned annual target has in fact only been reached in three of the last 20 years in any event. Very little information has been provided in the representations and in these circumstances it would not be appropriate for me to conclude that a Local Plan was adopted in March 2016 was instantly out of date in respect of housing provision.

15. Turning to the second main issue I acknowledge that there are now 6 bedrooms proposed rather than the 7 that existed at the time of the last appeal. Whilst there is one less bedroom it does not overcome the objections found by the previous inspector in my view. A lounge is now provided but it does no really provide sufficient room for all six people to sit in it at the same time and there is no guarantee they would want to in any event. I consider it is still likely that occupants would spend a lot of time in their own rooms. These are mainly on the upper floors and adjoin bedrooms of the adjacent properties; this more intensive use would cause increased noise and disturbance for those living in the adjacent dwellings in the terrace.

16. The appellant refers to the powers of the Council's Environmental Department and statutory noise nuisance action that could be taken if there was a problem. This is very difficult to instigate and the level of noise necessary for such action to be successful is, in my view, much more than one should have to suffer if the disturbance is being heard in adjoining bedrooms. Permission should not be granted for something that is likely to be so intolerable that it would need to be pursued through that course of action. There are letters of objection to this proposal from those living within two or three doors of the appeal site and they raise objections which in my view should carry weight in deciding whether or not this appeal should be allowed.

17. As stated by the previous inspector in paragraph 9 of her decision the type of accommodation has led to complaints about night time comings and goings in noisier and larger groups than would normally be the case for such a property occupied by a family. Reducing the occupants from 7 to 6 will make no material difference to the level of disturbance caused in my view and nothing has been put forward to convince me that I should reach a different conclusion to the previous inspector on this issue.

18. The third main issue concerns the actual accommodation provided and in particular the two rooms in the attic/roof space on the top floor. The appellant stated that each room provided at least 9sq m floor space with room for a bed, sink, wardrobe or chest of drawers, and a study desk. Whilst that is true of four of the units it is not true of the two rooms in the roof space. The chest of drawers was a very small bedside cabinet squeezed between the sink and single bed in one room and some shelves in the other with no room for a decent sized desk. The floor space at full standing height was extremely limited amounting to only about 3sq m in one of the rooms.

19. I acknowledge that the premises may have been given a licence by the licensing authority department of the Council (and for when the property had 7 bedrooms and no shared lounge area) but I agree with the Council that the

accommodation on the top floor is poor and there is really only space for one room at a similar standard to the four on the lower floors. Overall the amenity space for the occupants of the property is extremely limited and the two rooms on the top floor are very poor; the development should not be permitted.

20. Taking all these factors into account I conclude that the development is contrary to policy CP21 of the CP and Policy QD27 of the LP and should be refused. There are no planning conditions that would ameliorate the objections sufficiently to allow permission to be granted and I shall dismiss this appeal.

The appeal on Ground (g) – Appeal A

21. On ground (g) the appellant claimed that the period for compliance should be extended to six months. The property is let to international students on assured short hold tenancies; they are studying at the University of Brighton International College. They are here in the UK alone with no family support network that could provide them with alternative accommodation if they were forced to vacate the property in the short term. They would become homeless.

22. The Council stated that it considered that three months was sufficient and that the landlord ought to be able to find alternative accommodation in the short term. Further the time should not be based upon what is the academic year for the students as the appellant was aware when he let the building that it was not authorised.

23. A time limit should be reasonable from the day a notice is confirmed and does not take into account that the use may have been going on for some considerable period of time. No information is provided regarding the current tenancy agreement (the one existing at the time the notice was issued was for 35 weeks expiring at the end of August 2016). I also note that the agreement is with the College rather than with the occupants.

24. In these circumstances I acknowledge that this is where the occupants live and whilst the College it seems has a responsibility to find them alternative accommodation that may not be easy. I am also aware, however, that the use is causing a nuisance to those living nearby and should not continue any longer than necessary.

25. Taking these factors into account I conclude that three months should give sufficient time for alternative accommodation to be found if the occupants are indeed scheduled to remain in Brighton for longer than that and the appeal on this ground fails accordingly. I will uphold the notice as varied (from 2 months to 3 months as per paragraph 1 of this decision).

D E Morden

INSPECTOR