The Planning Inspectorate

Appeal Decisions

Site visit made on 26 May 2015

by Katie Peerless Dip Arch RIBA

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

Decision date: 9 June 2015

2 Appeals at 17 Bernard Road, Brighton BN2 3ER
Appeal A: APP/Q1445/C/14/2225896
Appeal B: APP/Q1445/C/14/2225897

- The appeals are 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 (Appeal A) and Mrs S Rayward (Appeal B) against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2013/0590.
- The notice was issued on 11 August 2014.
- The breach of planning control as alleged in the notice is a change of use of the property from a dwellinghouse (C3) to use as a house in multiple occupation (HMO) (sui generis) providing 7 bedrooms for unrelated individuals, who share basic amenities including a kitchen, living space and a bathroom.
- The requirements of the notice are cease the use of the property as a house in multiple occupation (HMO) (sui generis).
- The period for compliance with the requirements is 6 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.

Decisions

1. The appeals are dismissed.

Main Issues

2. I consider that the main issues in this case are:

   (i) on ground (c), whether the change of use is material, such that planning permission is required to authorise it and

   (ii) on ground (a), effect of the development on the character of the surrounding community and local amenity.

Site and surroundings

3. The appeal property is a terraced house in a residential street where there are a mixture of single family dwellings and houses in multiple occupation (HMOs), many of which are rented out to students. The house at present contains 7 bedrooms for rent to individual occupants, who share a kitchen/living area, 2 shower rooms and another separate WC.

4. There is a small garden to the rear from which a sizeable utility room/storage area, sited under the rear ground floor room and suitable for bicycles, can be accessed. There is unregulated on-street car parking outside the property. The house has been registered as an HMO with the Council and has been granted the appropriate licence.

Planning policy

5. The Brighton and Hove Local Plan 2005 (LP) contains policies HO14 which notes that such accommodation is needed but must be to an acceptable standard and policy QD27 which seeks to protect the amenities of nearby occupants where a change of use is proposed. The LP is now out of date and is in the process of being replaced by the Brighton City Plan which has been the subject of public examination and is now awaiting the Inspector's Report.

6. This emerging Plan contains policy CP21 which relates to student accommodation and, in part B (ii), notes that applications for a change of use of a single dwelling to an HMO will not be permitted where more than 10% of dwellings within a 50m radius of the application site are already in such a use. This is to ensure that a suitable range of housing types remain available and to maintain mixed and balanced communities.

Reasons

Ground (c)

7. The appellants claim that that planning permission is not required for the proposal to use the house as a *sui generis* 'large' HMO (that is one for more than 6 residents) because the change of use is not 'material' in planning terms.

8. The conversion of the appeal property from a family house to a large HMO would, in this particular case, have no perceptible impact on the appearance of the area. However, the change of use has already been noticed by nearby residents who have complained about noise levels from the property, which have been the result of the type and intensity of the use. Despite the appellants stating that there have been no objections to the proposal, I have received 4 detailed complaints about the impacts of the current levels and type of occupation, in addition to the concerns raised by the Council. The appellants suggest that any noise and disturbance reported does not go beyond that reasonably expected from a Class 3 dwelling.

9. However, all the main living rooms have been converted into bedrooms, the attic has been converted to 2 additional bedrooms and a typical Class 3 family dwellinghouse is not occupied by 7 unrelated adults of similar ages. Such a group, who in this case would normally be students, are likely to have different lifestyles from working families with young children and the way they use the building is already having an impact on the amenity of their neighbours. There have been reports of a greater level of night time comings and goings, in noisier and larger groups, than would generally be the case in a residential street and these have provided disturbing to other residents.

10. I conclude that there has been a material change of use through the conversion to a sui generis HMO and planning permission for this change is required. The appeals on ground (c) therefore fail.

Ground (a)

11. The relevant part of policy CP21 has not been subject to any objections and is in conformity with the aim of delivering a mix of housing types to suit local demand, as explained in paragraph 50 of the National Planning Policy Framework. Other modifications to the City Plan have taken place since the appeal decisions quoted by both the parties in support of their cases were issued and it is now closer to adoption than it was at those times.

12. The examining Inspector has been in consultation with the Council about the various potential modifications to the emerging Plan, but policy CP21 was not included in these discussions. I therefore consider that the policy should be afforded significant weight when reaching my decision.

13. The Council has adopted a direction under Article 4 of the Town and Country Planning Act 1990 (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. Although this is not directly relevant to this case, which concerns development in a different use class, the relatively recent[1] adoption of the Direction confirms that it has been considered necessary to retain planning controls over the loss of family housing to HMO uses.

14. The Council have carried out an assessment of the number of HMO uses in the 50m vicinity of the appeal site and it seems that the numbers considerably exceed the 10% limit set by policy CP21, being over 18%. The appellants complain that it is not clear how the Council has calculated the relevant number of properties in HMO use. However, the method for doing this is set out in the supporting text to policy CP21, at paragraph 4.217. Although this is a relatively broad brush approach, the percentage figure has nevertheless been set taking the most recent information on housing need into account.

15. I am concerned that to allow the conversion would undermine the Council's objective of maintaining a balanced supply of family dwellings and accommodation for rent to individuals. The emerging Local Plan takes account of the most up-to-date information on housing need, including that for the student population of the City. The use as an HMO would not only conflict with the aims and objectives of policy CP21 but would also have a cumulative effect, further increasing the existing imbalance in the mix of available housing types.

16. I also consider that because the development is having a detrimental impact on the living conditions of neighbouring occupants, as explained above, this conflicts with the aims of adopted policy QD27 and the 4th bullet point of paragraph 17 of the National Planning Policy Framework.

17. It is also the case that the amenity space for the occupants of the property within the house is very limited. Although it may be acceptable for the issue of an HMO licence, it nevertheless means that the bedrooms are more likely to be used by the occupants for living space as well as for sleeping. As some of these rooms are adjacent to the bedrooms of the adjoining properties, this more intensive use could also result in increased disturbance for the adjacent occupiers in the terrace. For all these reasons I conclude that the appeals on ground (a) should not succeed.

Ground (g)

18. The appellants consider that the compliance period of 6 months is not long enough as the house is let on an assured shorthold tenancy that ends in June 2015. Due to the length of the appeal process, this date has now been reached and it would be a reasonable assumption that the property has not been re-let past this date, given the uncertainty about the legality of the current use. I therefore consider that 6 months is a reasonable period to comply with the enforcement notice and the appeals on ground (g) fail.

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[1] April 2013

Conclusions

19. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Katie Peerless

Inspector