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## Appeal Decision

Site visit made on 10 July 2017

**by Nicola Davies BA DipTP MRTPI**

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

**Decision date: 28 July 2017**

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**Appeal Ref: APP/Q1445/W/17/3170068**

**6 Trafalgar Court, Brighton, West Sussex BN1 4FB**

- 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 John Ariel against the decision of Brighton & Hove City Council.
  - The application Ref BH2016/02764, dated 20 July 2016, was refused by notice dated 21 September 2016.
  - The development proposed is change of use from residential dwelling (C3) to a four bedroom small house in multiple occupation.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from residential dwelling (C3) to a four bedroom small house in multiple occupation at 6 Trafalgar Court, Brighton, West Sussex BN1 4FB in accordance with the terms of the application, Ref BH2016/02764, dated 20 July 2016 subject to the following conditions: -
  - 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
  - 2) The development hereby permitted shall be carried out in accordance with approved drawing 'Proposed Floor Plans' and drawing number 2016/18/02.
  - 3) The development hereby permitted shall be occupied by no more than four (4) persons at any time.

### Preliminary Matters

2. The description of proposed development provided on the planning application form has been replaced by a different description on the Council's decision letter. The appellant has used the Council's description on its appeal form. For consistency I have used the Council's description of proposed development here.
3. It appeared at my visit that much of the proposed development had taken place but I have no substantive evidence before me that would confirm that it has been completed in accordance with the plans that are the subject of this appeal. I have therefore considered the proposed development as a stand-alone development.

4. The appellant has put forward an additional plan, drawing number 2016/18/02. The plan shows the same proposed layout as those plans submitted in support of the planning application, however this subsequent plan hosts additional bedroom furniture annotations for single person occupancy bedrooms which form part of the appellant's case. This information does not change the proposal and, as such, the plan would not, in my view, prejudice the interests of third parties. For this reason I have had regard to this plan.

### **Main Issue**

5. The main issue is whether the development provides acceptable living conditions for its occupants.

### **Reasons**

6. No 6 Trafalgar Court is a three-storey terraced property located on the eastern side of Trafalgar Court, a short and narrow non-through road with double yellow line parking restriction in place. A total of four bedrooms would be created which would allow an occupancy of up to four individuals. The conversion has seen the living room on the ground floor made into a bedroom and the living room has been relocated to the first floor. The reconfiguration of the internal layout of the building has created an entrance corridor and bedroom at ground level, a new WC/shower room at first floor and the existing bathroom at second floor has been removed to form a larger bedroom.
7. An Article 4 Direction is in place that prevents the change of use of this property from a dwelling to a small HMO. The property is subject to a draft HMO licence, under the separate provisions of the Housing Act 2004, as an HMO for up to four occupants. The local planning authority has not adopted space standards for HMOs for planning purposes but the appellant indicates that all bedrooms and the kitchen exceed the Council's licencing standards set for HMO accommodation.
8. Whilst the Council contend that the local planning authority seeks to secure a higher standard of accommodation than the bare minimum fit for human habitation, the proposed accommodation appears to be consistent with the single person occupancy space requirements of the Council's licencing scheme for shared houses in respect of the bedrooms. The appellant's additional plan illustrate that the single occupation bedrooms can accommodate furniture and circulation space. I am satisfied that the bedrooms would achieve an acceptable standard of accommodation for the occupiers.
9. Although the kitchen is likely to be usable by one person at a time it meets the licencing size requirement for kitchens without dining facilities within shared houses. I saw during my site visit that the ground floor kitchen comprises a range of cupboards and appliances, but it is small and would not be capable of incorporating a dining area. I note that there is no specific dining room size standard set by the licencing standards for HMOs of up to four person occupancy.
10. I observed the first floor living room, whilst it hosted a sofa and comfortable chairs, included a dining area with a small table and three dining chairs. The space within this room was not so constrained as to be cramped with these combined facilities within it. The room is light and provides a reasonably pleasant and functional communal space. I acknowledge that the use of this

dining area would involve taking food and crockery/cutlery up and down a flight of stairs and may not be a conventional or a convenient place in which to eat meals. However, I do not consider that this arrangement in this particular case to be so unconventional as to be unacceptable.

11. The Council refer me to an appeal decision at 139 Lewes Road, Brighton<sup>1</sup>. The shared living room and dining space in that proposal has some similarity to the proposal before me in that those facilities were on a different floor level to that of the kitchen. However, in that case the shared living room and dining space were proposed at a lower ground floor level. The Inspector, although considering that to be an inconvenient place in which to eat meals, also considered it was not an attractive place to eat meals. That proposal also related to a larger HMO with other constraints to the proposed accommodation. I therefore consider the proposal before me to be different and, therefore, it can and should be considered on its own merit.
12. The layout of the small HMO would result in the occupiers frequently passing along the entrance corridor and the stairwell/corridor to access the living/dining room and bathroom facilities. Whilst such movements adjacent the ground and first floor rear bedrooms would create some degree of noise within these corridors, I do not consider this would be of a level and/or frequency that would cause harmful noise and disturbance to the occupiers of these bedrooms.
13. The Council is also concerned that the occupier of the ground floor bedroom would experience noise and lack of privacy as the window fronts directly onto a road in a city centre location. I accept that Trafalgar Street is a busy commercial street but Trafalgar Court that leads off Trafalgar Street is not a through road and has parking restrictions in place. There would not be a high number of passers-by. I do not, therefore, consider the occupiers of this ground floor bedroom would experience unacceptable noise disturbance or harm to their privacy.
14. Accordingly, I consider that No 6 Trafalgar Court provides an acceptable standard of accommodation for its use as a small HMO.
15. For these reasons, I conclude that the development would provide acceptable living conditions for its occupants. I find no conflict with Policy QD27 of the Brighton and Hove Local Plan, which seeks to ensure that a change of use will not cause nuisance or loss of amenity to existing or proposed occupiers, amongst other matters. Furthermore, I find that the proposed development would not conflict with bullet point four of the core planning principles (paragraph 17) of the National Planning Policy Framework that seeks a good standard of amenity for all existing and future occupants of land and buildings.

### **Conditions**

16. I have considered the planning conditions suggested by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Policy Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.

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<sup>1</sup> Appeal reference APP/Q1445/W/17/3168211

17. I consider a condition limiting the maximum number of occupants to four to be appropriate to ensure the standard of accommodation is and remains acceptable for the occupiers of the property.
18. The Council considers that the removal of Class A to E of Schedule 2, Part 1 of the Town and Country (General Permitted Development) Order 2015 permitted development rights would be appropriate. It is not entirely clear what harm might occur to the living conditions of adjoining occupiers or to the character and appearance of the area if such permitted development rights were implemented at the property. I refer to the advice in the Planning Practice Guidance which states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here.

### **Conclusions**

19. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

*Nicola Davies*

INSPECTOR