



Appeal Decision

Site visit made on 11 December 2018

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State

Decision date: 10 January 2019

Appeal Ref: APP/Q1445/C/17/3190555

22c Silwood Street, Brighton BN1 2PS

- 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 J W Standing against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 5 October 2017.
 - The breach of planning control as alleged in the notice is on the 17 August 2016 planning permission BH2016/02093 was granted for a change of use from six bedroom small house in multiple occupation (C4) to eight bedroom house in multiple occupation (sue generis), subject to 4 conditions. Condition 1 states the development shall be carried out in accordance with the approved drawings. One of those approved drawings is entitled 'proposed plans and elevations – 3559.PL.10B-7 June 2016'. It appears to the Council that the condition is not being complied with as the first floor front bedroom and bathroom have been altered to create two bedrooms and a shower room and the front second floor front bedroom and bathroom have been altered to create two bedrooms and a shower room. These alterations do not comply with the drawing. Condition 2 states the approved development shall only be occupied by a maximum of eight (8) persons. It appears to the Council that the property is occupied by nine (9) persons.
 - The requirements of the notice are to return the internal layout of the land to that shown on the drawing 'proposed plans and elevations – 3559.PL.10B-7 June 2016' approved in connection with planning permission reference BH2016/02093 and to occupy the land with no more than eight (8) persons.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Reasons

Ground (b)

3. The appellant argues that the alteration works were carried out after completion of the works in the planning permission. However, there is no argument that the alterations have occurred which is what ground (b) covers, so I will consider this matter under ground (c).

4. The appellant argues that at the time the notice was served, and this continues to date, there were only 8 persons occupying the premises in accordance with the condition of the relevant planning permission.
5. The appellant has applied for and been refused planning permission for use of the premises as a nine person HMO, but he notes that the occupation has continued as an 8 person HMO in the meantime. The Council has confirmed that a check with Council Tax shows that there are 8 persons living in the property thus complying with this part of the notice. The submission of a planning application does not itself indicate that development has already occurred, unless it is noted as being retrospective. While I appreciate that it has been the intention of the appellant to create a 9 person HMO, the evidence does not, on the balance of probability, support that this has already occurred and such use is currently prevented by the condition on the planning permission.
6. The appeal on ground (b) succeeds in this respect.

Ground (c)

7. The ground of appeal is that the matter alleged does not constitute a breach of planning control.
8. The appellant notes that the work comprising the planning permission was completed and it was only afterwards that the further alterations were undertaken. The conditions attached to the permission do not require the internal layout of this part to remain unchanged in the same way condition 2 requires the number of persons to remain at eight.
9. Condition 1 of the planning permission does require that the development be carried out in accordance with the approved plans. At the time the appellant noted that application was part retrospective, and the work had already been completed in accordance with the approved plans, only occupancy by 8 persons was left to be implemented. The condition did not have a requirement for permanent retention of that layout and therefore further internal alterations are not prevented, and the works undertaken are not a breach of planning control and do not require planning permission. Condition 3 required the lounge, kitchen and dining rooms to be retained, but no others.
10. The Council argues the layout associated with approval BH2016/02093 was fundamental to the suitability of the property to be used as an 8 bedroom HMO in order to ensure a satisfactory standard of accommodation for present and future occupiers. It is that layout that was applied for and that the decision was based on. The Council say that even though the permission does not explicitly state this, the layout should remain in perpetuity, and any other layout means the permission is not valid and use for an 8 person HMO is unauthorised.
11. However, there is no support for this in planning law and the definition of what is development. If the Council had wanted the whole internal layout to be retained as it did other rooms, that should have been added to condition 3 or included in another condition. The works are internal only and do not affect the external appearance of the building and therefore did not require planning permission.
12. The appeal on ground (c) succeeds.

13. As the appeal has succeeded on grounds (b) and (c) the notice will be quashed and there is no need to consider the other grounds of appeal.

Graham Dudley

Inspector

