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## Appeal Decision

Site visit made on 18 December 2018

by **Timothy C King BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2019

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### Appeal Ref: **APP/Q1445/W/18/3206340** **87-89 Cowper Street, Hove BN3 5BN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Steve Leung against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/01150 was refused by notice dated 7 June 2018.
  - The application sought planning permission for the removal of condition 4 of BH2017/04200 (Conversion of existing six bedroom House in Multiple Occupation (C4) to form 2no dwellings (C3) with associated alterations) relating to the removal of permitted development rights), dated 22 March 2018.
  - The condition in dispute is No 4 which states that: *'No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse(s) as provided for within Schedule 2, Part 1, Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.'*
  - The reason given for the condition is: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.
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### Decision

1. The appeal is allowed and planning permission is granted for the removal of condition 4 of application BH2017/04200 'Conversion of existing six bedroom House in Multiple Occupation (C4) to form 2no dwellings (C3) with associated alterations', dated 22 March 2018, at 87-89 Cowper Street, Hove BN3 5BN, in accordance with application Ref BH2018/01150, but subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 22 March 2021.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 1738/10 Rev A, 1738/11 Rev B and Location Plan.
  - 3) The external finishes of the development hereby permitted shall match in material, colour, style, bonding and texture those of the existing building.

- 4) No extension, enlargement, alteration or provision within the curtilage of the dwellinghouses as provided for within Schedule 2, Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the local planning authority.
- 5) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 6) Prior to first occupation of the development hereby permitted a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments shall have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be provided in accordance with the approved details prior to first occupation of the development and shall thereafter be retained at all times.
- 7) Prior to first occupation of the development hereby permitted details of secure cycle storage facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to first occupation of the development and shall thereafter be retained for use at all times.

### **Background and Main Issue**

2. The planning permission granted for the change of use to from a House in Multiple Occupation (HMO), Class C4 to two dwellings (Class C3) includes a condition removing the permitted development (PD) rights for extensions, roof alterations and outbuildings, namely Classes A-E, at the site.
3. Taking the above background into account the main issue is whether the removal of Classes A-E PD rights is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers and in safeguarding the character of the area.

### **Reasons**

4. The appeal site comprises a terraced property, recently in use as a small HMO, with a maximum occupancy of six persons. The planning permission granted in 2018 (ref BH2017/04200) approved its conversion to two separate two-storey dwellings; one with three bedrooms and the other with one bedroom. At my site visit I viewed the property's rear and it did not appear that the approved external works have yet been carried out. Neither had the intended sub-division of the rear garden area, whereby the larger approved dwelling would be allotted the majority of a rather restricted, paved rear yard area. As such, although I did not consider it necessary to view the existing schedule of accommodation, it did not appear that the conversion has been implemented. Nonetheless, the planning permission remains extant.
5. The terraced dwellings on the north side of Cowper Street are, like those beyond the rear boundary on the south side of Wordsworth Street, set within small, shallow curtilages. As such, the respective facing rear elevations are at

- a close distance and the back garden space available is limited. Indeed, the case report relating to the approved conversion indicates that the external amenity space area is slightly below the standards applied.
6. PD rights are development which is considered to be acceptable in the normal course of events. All are subject to certain limitations, with Class A covering the enlargement or improvement of a dwellinghouse, Classes B and C are concerned with additions or alterations to a dwelling's roof, Class D covering the erection of entrance porches outside a dwelling's external door and Class E involving outbuildings that might be erected in a property's rear garden.
  7. Paragraph 55 of the National Planning Policy Framework says that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable. The Planning Practice Guidance (PPG) says that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. It comments that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
  8. I accept the appellant's point that a dwelling in C4 use would enjoy householder permitted development rights, and thereby a fallback position exists. However, the approved sub-division of the property into two separate dwellings, if implemented, would represent a significant material change in planning terms. In the event that permitted development rights under Class A or E were then exercised, this could impact significantly on the already very limited external open space at the rear, and could potentially adversely affect both the new dwellings and the future occupiers' enjoyment of such. This would affect the character of the area, and could also have implications for the amenities or living conditions of neighbouring occupiers. In addition, given the proximity, roof extensions under Class B could give rise to potential overlooking and loss of privacy to neighbours.
  9. The appellant, in support of his case, has referred to a previous planning appeal decision letter (*APP/P5870/W/15/3004224*) relating to a residential property in Sutton, Surrey. Here, in granting planning permission for a 2-bed semi-detached dwelling, the Council imposed a condition removing PD rights under Classes A and B. The appointed Inspector allowed the appeal and deleted the condition at issue commenting, in paragraph 6 of his decision letter, that he could not deduce any clear harm that might be caused to the amenity of future or existing occupiers, or harm to the character of the area, through development undertaken by way of either of these PD Classes. Further, he makes reference to the size of the plot and that the relationship of the new house with neighbouring properties would seem to allow for works under such rights. This suggests a clear distinction between the appeal property cited and the current case where the dwellings are more closely packed together, and an additional dwelling would be created through sub-division.
  10. My findings do not necessarily mean that should any future householder development proposals at the site arise they would be considered unacceptable in planning terms. Instead, it merely means that the Council would retain control to assess the impact of such given the contextual setting. This would also ensure that any such development could be measured against the relevant

local planning policies referred to by the Council. The fact that other neighbouring properties might still enjoy PD rights in this regard does not mean that controls should not be exercised in instances such as this where planning permission has been granted for development. It was evident from my site visit that the physical form of the surrounding properties has been altered over time. Neither does the location outside any conservation area have a bearing on such.

11. I therefore conclude that Condition No 4 serves a planning purpose, at least in part. However, I see no reason why the occupiers should be debarred from the entitlement available under Classes C or D. Neither of these would potentially have the implications discussed above. Nonetheless, removing Classes A, B and E PD rights is both reasonable and necessary in serving the interests of protecting the living conditions of neighbouring occupiers and in safeguarding the character of the area. Accordingly, I have deleted the original condition and replaced it with an amended version, accordingly.
12. In the interests of certainty I have imposed a condition requiring that the development be carried out in accordance with the approved plans. In addition, to ensure a satisfactory form of development conditions are imposed requiring that details of boundary treatments be submitted to, and approved by, the local planning authority, and that the external finishes used shall match those of the existing building. I have also adjusted the time limit period to accord with that of the original planning permission as is required in instances of S73 applications.
13. Conditions were previously also imposed relating to the submission of details as to refuse/recycling and cycle storage facilities. I acknowledge the need for such facilities at the site to ensure a good standard of development and in order to encourage travel by means other than private motor vehicles and include a condition to this effect.
14. For the above reasons, and having had regard to all matters raised, the appeal succeeds, albeit in part.

*Timothy C King*

INSPECTOR