The Planning Inspectorate

Appeal Decisions

Site visit made on 24 October 2018

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 22 March 2019

Two appeals relating to land at 20 Ashurst Road, Brighton, BN2 4PH

- The appeals are made under sections 174 and 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made respectively by Mr George Birtwell against an enforcement notice issued by Brighton & Hove City Council and by Mr Oliver Dorman against a refusal to grant a certificate of lawful use or development (LDC) by that Council.

Appeal A - Ref: APP/Q1445/C/18/3203508 – enforcement notice appeal

- The enforcement notice was issued on 18 April 2018.
- The breach of planning control as alleged in the notice is *Without planning permission the material change of use of the property from a Dwellinghouse (C3) to a 9-bedroom House in Multiple Occupation (Sui Generis). Unauthorised construction to the roof to facilitate loft conversion, including rear dormer, hip-to-gable extension and front rooflights*.
- The requirements of the notice are *Cease the use of the property as a House in Multiple Occupation (sui generis); Remove the dormer to the rear roofslope; Remove the hip to gable roof alteration; Remove the rooflights to the front roofslope; Reinstate the roof to its appearance prior to the unauthorised development*.
- The period for compliance with the requirements is *Three months from the date the notice takes effect to cease the use of the property as a House in Multiple Occupation (sui generis); and Six months from the date the notice takes effect to remove the rear dormer, hip-to-gable extension and front rooflights and reinstate the roof*.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal B - Ref: APP/Q1445/X/18/3196654 – the LDC appeal

- The application Ref BH2017/03120, dated 14/09/2017, was refused by notice dated 25/01/2018.
- The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is *Conversion of loft space, including hip to gable side extension and dormer to rear*.

Summary of Decisions

1. Both appeals succeed as set out in the Formal Decisions.

Preliminary Considerations

2. As there is no deemed application for planning permission respect of Appeal A, my decision is therefore confined to the matters of fact and law raised by the legal grounds of appeal (b) and (c), followed if required by grounds (f) and (g). The lawful development certificate (LDC) Appeal B must be considered on the

same basis, and irrespective of planning merit. It follows that though I have noted the representations relating to planning merit made by both parties, including the Council's view that the Appellant had been aware of implementing *a layout in breach of planning control*, these can only affect my decision where they relate to the legal grounds of appeal.

3. The enforcement notice alleges a material change of use requiring permission, and that the works to the roof required permission because they were integral to the said change of use. It is agreed by the parties that but for this alleged link the changes to the roof would have been permitted under the General Permitted Development Order (GPDO), and I concur.

4. It follows that whether there has been a material change of use is central to both aspects of the appeals. A necessary starting point is to establish what the lawful original use was. This is disputed between the parties. The Council refers to use as a Dwellinghouse (C3)[1], on the basis that a 2013 planning permission for a change of use to 7 bed house in multiple occupation (HMO) was not implemented[2]. The Appellant considers that the premises were in lawful use as a small HMO before the 2013 permission, that this had been implemented, and that the increase to the present 9 bed HMO use did not amount to a material change of use.

5. I shall consider these and related matters below.

The previous use of the premises

6. The appeal premises were built in the last century as a semi-detached dwelling part of an estate of similar buildings. In April 2013 the Council made an Article 4 Direction removing GPDO rights to changes of use from C3 dwellinghouse to C4 HMO use in this area. It follows that the Council's reference to the absence of a continuous 10 year C4 use prior to that date is not relevant. As to whether there was as claimed by the Appellant a C4 use before the Article 4 Direction took effect I consider the most direct evidence is in the grant of planning permission by the Council in December 2013 for *Change of use from small house in multiple occupation (C4) to 7 bed house in multiple occupation (Sui Generis) incorporating alterations to fenestration. (Part retrospective).* Given that the Council had just secured an Article 4 Direction to control changes from family dwellinghouses to HMO I consider it most unlikely that they would have accepted without adequate enquiry an applicant's claim that the property was already in multiple occupation. This is particularly the case as the Council had that same year refused permission to a similar application for an 8 bed HMO without providing what the Council considered adequate communal space. I conclude on the balance of probability the property was in C4 use in 2013.

7. As to whether the 2013 permission was implemented, the permission itself states that the proposal was in part retrospective. Two conditions precedent barred occupation before cycle parking and recycling storage were provided, and they have been provided. In 2014 the Council issued an HMO licence for occupation by 8 persons. As the roof works/rooms had not been built then, this would have required using the communal living room shown on the approved plans as a bedroom. The Council considers that this increase in occupation above that approved was a breach of planning control. As the 2013 permission

[1] The Town and Country Planning (Use Classes) Order 1987 relates.
[2] The January 2018 decision on the LDC application states, however, that there had been a change from a Sui Generis HMO for 7 occupants, and a Council appeal statement provided on 17 July 2018 states at 3.5 that *….the lawful use of the property was as a seven person HMO laid out over two floors.*

included as condition No 1 that the development permitted … *be carried out in accordance with the approved drawings listed below…* it may well be that the failure to provide the communal room was in breach thereof[3]. It does not, however, necessarily follow that any departure from the approved plans meant that the 2013 approval had not been implemented. This is a matter of fact and degree, to be decided on the individual circumstances of a particular case. I have taken into account that a change of use from C4 to a larger *house in multiple occupation (Sui Generis)* had taken place, that conditions precedent requirements had been met, and that the layout shown on the approved plans was in the main implemented. I have concluded that the 2013 permission was implemented. Having reached this conclusion I do not need to consider the Appellant's disputed claim that a period of 7 bed use with the living room provided preceded the 8 bed use that followed its use as a bedroom .

8. The roof alterations were made from June to November 2017. Thereafter they provided two rooms on a new attic floor. The property was then occupied by 9 persons and has an HMO licence for that number. The present arrangement of rooms includes the provision of the communal living room shown in the 2013 approved plans.

The appeal on legal grounds (b) and (c) against the enforcement notice

9. From the foregoing consideration and conclusions I now turn to the two legal grounds of appeal. As to the appeal on ground (b), it is not in dispute that the dwelling is being used as a nine bedroom house in multiple occupation, and that the works to the roof have taken place. The appeal on ground (b) therefore fails. The Appellants legal case turns rather on ground (c), which seeks to establish that what has happened did not amount to a material change of use requiring planning permission, and that accordingly the works to the roof were permitted development.

10. For the reasons stated I have concluded that the lawful use of the premises is as a 7 bedroom house in multiple occupation (Sui Generis) as approved in 2013. It is thus the change from that state to the present one that needs to be considered. The change from 7 to 9 bedrooms is a significant proportionate increase, but I consider that it has not altered the perceived character of the use. The physical changes to the roof complied with GPDO size and form requirements and thus were within the range of changes potentially normal within the nearby similar houses. As to the wider planning effects of increased use, additional HMO accommodation at this site breaches policy objectives for the distribution of HMO accommodation, though the wording of the relevant policy[4] appears to focus upon preventing the formation of new HMO rather than the enlargement of an existing one. The significance of this departure from policy is, however, markedly reduced by the acceptability of larger Sui Generis HMO use of the premises as established by the 2013 permission[5]. Additionally the planning objection to an 8 bed HMO earlier that year emphasised the absence of sufficient communal space, and the 2013 7 bed approval followed upon an amended plan showing the present living room in that rather than bedroom use. There is indeed no evidence that the standard of accommodation for occupiers is inadequate. As to direct effect upon neighbours, there is no

[3] I do not, however, formally determine this matter as it is not before me for decision. I note that no condition was imposed expressly seeking to retain the communal room or limiting the number of bedrooms.
[4] CP21 of Brighton and Hove City Plan 2016.
[5] In this regard I note that the officer report expressly acknowledges that the 2013 permission remains extant and is not time sensitive.

evidence of any complaint since completion of the roof works and provision of the living room[6].

11. Having regard to the foregoing matters I have concluded as a matter of fact and degree that there has not been a material change of use of the premises. The appeal on ground (c) thus succeeds, and the enforcement notice will be quashed. In these circumstances the disputed question of whether the alleged change of use and the roof works were so closely associated as make the roof works liable to enforcement action is no longer relevant. Similarly the appeals on grounds (f) and (g) against the enforcement notice are no longer before me for decision.

The LDC appeal

12. As the refusal of the LDC application for the roof works was founded upon the claimed material change of use of the premises, my decision to the contrary set out above leads to the further conclusion that the decision to withhold an LDC was not well advised. The appeal will therefore succeed and I will issue an LDC for the development which I consider lawful.

13. I have taken into account all the other matters raised in the representations, including numerous appeal decisions and judgements variously helpful but covering a wide variety of situations and evidential range, but do not find that they alter or are necessary to my conclusions on these appeals.

FORMAL DECISIONS

Appeal A - Ref: APP/Q1445/C/18/3203508 – enforcement notice appeal

14. The appeal succeeds and the enforcement notice is quashed.

Appeal B - Ref: APP/Q1445/X/18/3196654 – the LDC appeal

15. The appeal succeeds and a Certificate is granted, and attached.

V F Ammoun

INSPECTOR

[6] A complaint about noise disturbance was made in 2015.

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14/09/2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would accord with the requirements of Schedule 2, Part 1, Classes B, C, and G of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

V F Ammoun
Inspector

Date: 22 March 2019
Reference: **APP/Q1445/X/18/3196654**

First Schedule
Conversion of loft space, including hip to gable side extension and dormer to rear as shown on the plans accompanying application BH2017/03120.

Second Schedule

Land at 20 Ashurst Road, Brighton, BN2 4PH.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.