



Appeal Decision

Site visit made on 12 March 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 23 March 2019

Appeal Ref: APP/Q1445/C/18/3201967 39 Newmarket Road, Brighton BN2 3QG

- The appeal is made by Pelham Property Ltd under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 2016/0244) issued by Brighton & Hove City Council on 28 March 2018.
 - The breach of planning control alleged in the notice is "a material change of use from Single Dwellinghouse (Use Class C3) to House in Multiple Occupation (Use Class C4)".
 - The requirement of the notice is "Cease the use of the property as a House in Multiple Occupation (HMO)".
 - The period for compliance with the requirement is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g).
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Background and clarification

1. It is my understanding that the dwellinghouse was originally built as a dwellinghouse with two storeys and a basement. At some time during the history of the dwellinghouse, the basement became an independent unit of accommodation, separately occupied, with its own entrance from the road and with no internal connection to the remainder of the original dwellinghouse.
 2. The remainder continued in use as a dwellinghouse and exists as such to this day. The enforcement notice is directed at its change from a single dwellinghouse within Class C3 to a dwellinghouse used by not more than six residents as an HMO, which falls within the new Class C4 that came into force in April 2010. This change would normally be permitted development if it took place after October 2010, but in April 2012 the Council made an Article 4 Direction that withdrew the permitted development right to make this change in this part of Brighton with effect from 5 April 2013. The Direction is not retrospective.
 3. I am aware of the earlier appeals decision (APP/Q1445/C/17/3166639/40), where the enforcement notice was quashed because it was found to be unclear and invalid. Neither the Council nor the appellants are claiming in the current appeal that this is the case; the principal facts and the legal framework are not in dispute, apart from the date on which the change of use took place. I am satisfied from my analysis of the circumstances that both parties to the appeal are in no doubt about the meaning and import of the notice and that it is valid.
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Decision

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

Reasons for the decision

Ground (c)

5. The appellants maintain that the change of use was permitted development at the time when it was instituted. They have produced a statutory declaration made by the person who was the owner of the dwellinghouse between July 2013 and February 2016, in which he states that when he viewed it as a prospective purchaser in March 2013 it was occupied as an HMO.
6. In support of the declaration, this person has produced a copy of an assured shorthold tenancy agreement dated 2 January 2013 entered into between the previous owner and three apparently unrelated individuals, which grants a tenancy of the dwellinghouse to them for a period of six months commencing on that date. The agreement is signed by all the parties, dated and witnessed. Attached to it is a signed copy of the statutory notice under the Tenancy Deposit Scheme. Copies of the assured shorthold tenancy agreements entered into from August 2013 onwards have also been supplied.
7. In response, the Council state that it cannot be concluded that the change of use occurred before 5 April 2013. They maintain in their appeal statement that Council Tax records show a single occupant, Dallas Joe Harris, between August 2012 and March 2013 and two occupants, Paul Caar [*sic*] and Amanda Harris, between March 2013 and July 2013. At my request, the Council have supplied copies of all the Council Tax records to which they have referred.
8. Dallas Joe Harris is shown as a single occupant between August 2012 and March 2013, but the entry is in respect of a "maisonette". This is the only Council Tax record that refers to a maisonette here and this could be a reference to the basement accommodation. Amanda Harris and Paul Carr are not shown as occupants at all; their contact addresses are elsewhere and they are shown as being responsible, but only as owners, for the payment of Council Tax due up to 11 July 2013, with the property being recorded as unfurnished between 29 March 2013 and 12 May 2013. The person who gave the statutory declaration is recorded as the new owner on 12 August 2013, which is the date from which the dwellinghouse is recorded as being wholly occupied by students.
9. The Council Tax records supplied to me are not necessarily inconsistent with the appellants' account of events. On the balance of probabilities, it seems most likely that the dwellinghouse became an HMO within Class C4 on 2 January 2013 and that it was in use as an HMO when it was viewed in March 2013, before becoming vacant at the end of March until its ownership changed and it was re-let as an HMO within Class C4 in August 2013. I have therefore come to the conclusion that planning permission for the change of use from Class C3 to Class C4 was granted by Article 3(1) and Schedule 2, Part 3, Class I(b) of the Town and Country Planning (General Permitted Development) Order 1995 as substituted by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010. The gap in occupation in 2013 was a normal occurrence at times of changes in owners and

tenants; it did not affect this permission. The dwellinghouse has been occupied continuously as a Class C4 HMO since then.

10. The appeal has therefore succeeded on ground (c).

Ground (g)

11. As a result of the success of the appeal on ground (c), the enforcement notice has been quashed. Ground (g) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR

