The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 March 2019

Appeal Ref : APP/Q1445/C/18/3199386
Land at 9 Isfield Road, Brighton, BN1 7FE

- 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 Damien Zasikowski against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 26 February 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 single dwellinghouse (C3) to a small House in Multiple Occupation (C4).
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Application for costs

1. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.

Preliminary matter

2. The Appellant disagrees with the reasons for issue of the notice and argues that the Council made a mistake in terms of the number of bedrooms in the property. He says that he is prepared to accept conditions including restricting the number of occupants. But there is no ground (a) appeal and deemed planning application before me. It is not within my remit in this appeal to consider the future permitted use of the property nor the planning merits of the unauthorised use.

Ground (b) appeal

3. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests upon the Appellant and the test of evidence is the balance of probabilities.

4. An Article 4 Direction applies to the appeal site removing permitted development rights from development consisting of a change of use from Class C3 to Class C4.

5. The Appellant argues that the change of use from Class C3 to Class C4 alleged in the notice has not occurred as a matter of fact. He says that the appeal site is in use as a single dwellinghouse within the meaning of Class C3(c) and is not a house in multiple occupation within the meaning of Class C4.

6. Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) comprises use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). For the purposes of Class C3 (a) single household is to be construed in accordance with section 258 of the Housing Act 2004. Use Class C4 comprises use of a dwellinghouse by not more than six residents as a house in multiple occupation. Section 254 of the Housing Act defines a house in multiple occupation (HMO).

7. There is no dispute that the property is occupied by five students who moved in together as friends. The fact that they are unrelated is not conclusive as to whether they live together as a single household. In determining whether a Class C4 HMO use has occurred as a matter of fact I have taken into account relevant factors, including those identified in the Barnes[1] case. On balance I am not satisfied that the evidence shows that a Class C4 use as alleged in the notice has not occurred as a matter of fact. Whilst the Appellant's evidence does not need to be independently corroborated in order to be relied upon in this case it does not cover relevant matters in sufficient detail to enable me to draw a conclusion that the occupiers are living together as a single household within the meaning of Class C3(c). For example, there is no evidence before me as to where responsibility rests to recruit occupiers in the event that one of the occupiers leaves, nor the method of room allocation, nor the stability of the group composition. I have taken into account that the occupiers comprise a pre-formed group of friends who have a joint tenancy agreement with the Appellant but on balance in this case the sharing of basic facilities by five unrelated individuals suggests use of the dwellinghouse as a house in multiple occupation within the meaning of Class C4.

8. I conclude on the evidence before me that the Appellant has not discharged the burden of proof that rests upon him to show on the balance of probabilities that a Class C4 use has not occurred as a matter of fact. Consequently, the ground (b) appeal fails.

Ground (c) appeal

9. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The Appellant argues that the manner in which the dwellinghouse is used is so similar to a Class C3(c) use that it is not a material change of use.

10. It is not the purpose of a ground (c) appeal to run planning arguments as to the merits of the development more relevant to a ground (a) appeal. The change from Class C3 to C4 is not de minimus. It has the potential to change

[1] Barnes v Sheffield CC (1995) 27 HLR 719

the character of the land and the Council has a policy objective aimed at preventing the incremental impact of such changes affecting the balance of housing in the area.

11. On the evidence before me I conclude that the matters alleged constitute a breach of planning control and require planning permission. Consequently, the ground (c) appeal fails.

Formal Decision

12. The appeal is dismissed and the enforcement notice is upheld.

S.Prail

Inspector