



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: 15 April 2019

Appeal Ref: APP/Q1445/C/18/3199392 84 Brading Road, Brighton BN2 3PD

- The appeal is made by Mark Shields under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF2016/05105) issued by Brighton & Hove City Council on 13 February 2018.
 - The breach of planning control alleged in the notice is the material change of use of the property "from a dwellinghouse (C3) to a 7 bedroom House in Multiple Occupation (HMO) (Sui Generis)".
 - The requirement of the notice is "Cease the use of the property as a House in Multiple Occupation (HMO)".
 - The period for compliance with this requirement is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g). Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made by section 177(5).
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Background

1. The appellant states that he bought the property in 2008 and changed its use to a seven-bedroom HMO later in that year. This statement is supported by Council Tax entries, which record him as the owner on 28 April 2008 and the property being occupied by seven students with effect from 1 September 2008.
 2. An HMO licence for seven persons was applied for on 8 October 2008 and granted on 1 April 2009. The property has continued in use as a licensed seven-bedroom HMO since then, but planning permission for this use has never been obtained.
 3. The appellant contends that when he bought the property it was already in use as an authorised HMO by virtue of the provisions of the Class C3 then in force which, in addition to family use, specified that the use of a dwellinghouse "by not more than six residents living together as a single household" did not involve development requiring planning permission. (The Class C3 currently in force specifically excludes HMO uses. The present Class C4 provides for the use of a dwellinghouse by not more than six residents as an HMO, as defined in the Housing Act 2004.)
 4. The Council do not dispute the appellant's contention. Council Tax records indicate that the property was vacant between August 2007 and April 2008, but that it was occupied by four apparently unrelated persons between September 2006 and August 2007. Earlier Council Tax records going back to
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1997 suggest a similar manner of occupation throughout the period leading up to 2006.

5. Details of the households' living arrangements at these times are not available, but on the balance of probabilities it seems to me that the use of the property before its change of use to a seven-bedroom HMO was as single-household accommodation with unrelated residents sharing the domestic facilities. It was within Class C3 as it then existed, as well as constituting an HMO as defined in the Housing Act 2004. If that same use were instituted today it would be classed as C4.
6. The notice is therefore correct when it states that there has been a change of use from Class C3, but it should be appreciated that this is a reference to Class C3 as it existed at the time of the change in 2008. The use taking place within Class C3 before this change is a consideration to be taken into account when the planning merits of the appeal are assessed. There is a right under section 57(4) to revert to the previous lawful use without obtaining a further planning permission when an enforcement notice has been issued.

Decision

7. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the change of use of 84 Brading Road, Brighton BN2 3PD to a seven-bedroom dwellinghouse in multiple occupation.

Reasons for the decision

Ground (a)

8. The main issues in deciding whether planning permission should be granted for the change of use concern the community impact, the standard of the accommodation and the effect on neighbours' amenities.

Introduction

9. The Council's appeal representations contain a considerable amount of information about problems associated with HMOs and their residents, all of which I have taken into account. The information provided appears to be somewhat selective and outdated. In particular: -
 - (1) There is no mention of retained Policy HO14 of the Brighton & Hove Local Plan 2005, which deals specifically with HMOs.
 - (2) The introduction by the Council of new HMO licensing schemes and standards in 2018 is not referred to. These aim to improve the quality and control of HMO accommodation.
 - (3) The passages extracted from the appeal decision supplied by the Council in support of their policy interpretation are not representative of the decision as a whole or of other appeal decisions that do not support the Council's approach.
 - (4) The Government report of 2008 referred to (now archived) is the report of a study that was commissioned. The Council have not given it its full title,

which starts with the words "Evidence Gathering -". Its findings and recommendations are those of its authors, ECOTEC Research & Consulting Limited, and do not necessarily represent the views of the then Government (see the preface to the report at page 2). The extract listing what the Council state are identified by the report as the potential harmful impacts of HMOs on surrounding neighbourhoods is only a summary of the views put forward in lobbying and correspondence that prompted the commissioning of the study (see paragraph 1.2 of the report).

The development plan and other considerations

10. The decision on ground (a) must be made in accordance with the development plan, unless material considerations indicate otherwise. The key development plan policies, and my observations on their application to this appeal, are as follows: -

- Policy HO14 "Houses in multiple occupation (HMOs)" of the Brighton & Hove Local Plan 2005 seeks to prevent the loss of HMOs that meet Housing Act standards. The supporting text (paragraph 4.69) states that HMOs "play an important role in providing housing for young people and people who are socially or economically disadvantaged. They are often the only choice of housing for people who would otherwise be homeless. Given the overriding level of housing need in Brighton & Hove, it remains important to ensure that an adequate supply of HMO accommodation is retained".

The HMO in this appeal meets these standards and the requirement in the enforcement notice to cease its use as an HMO altogether would, if it were enforced, result in the loss of the 'small' HMO that previously existed.

- The Brighton & Hove City Plan Part One, adopted in 2016, is a strategic plan. Policy CP21 deals with "Student Accommodation and Houses in Multiple Occupation". It states: "To meet increasing accommodation demands from students and to create mixed, healthy and inclusive communities, the Council will support the provision of additional purpose built accommodation and actively manage the location of new Houses in Multiple Occupation". Section ii) deals with HMOs and states: "In order to support mixed and balanced communities and to ensure that a range of housing needs continue to be accommodated throughout the city, applications for new build HMO, and applications for the change of use to a Class C4 (Houses in multiple occupation) use, a mixed C3/C4 use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where:• More than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use".

The deemed planning application in this appeal is for the change of use of the dwellinghouse from a 'small' HMO to a seven-bedroom HMO. The percentage is stated in the Council's appeal statement to be 26.9%, but this may be an error since it was previously reported by the Council to be 40.26%. Paragraph 4.237 of the text supporting Policy CP21 indicates

that the percentage threshold will be applied in assessing planning applications for “new” HMOs.

- Policy QD27 of the Brighton & Hove Local Plan 2005 indicates that planning permission for a change of use of any kind will not be granted where it would cause “material nuisance and loss of amenity” to its users or neighbours. Paragraph 3.118 sets out the matters that could have this effect; they include disturbance from noise. The enforcement notice also refers to Policy SU10 of the Plan but I do not regard this policy as being significant to the appeal, since its focus is on inherently noisy uses.

In assessing whether material nuisance and loss of amenity would arise in this instance the Council’s HMO Licensing Standards should be taken into account.

11. There are no development plan policies that relate specifically to the standard of HMO accommodation. The Council have relied in this appeal on the Government publication “Technical housing standards - nationally described space standard” (March 2015) when assessing the bedrooms and internal areas in the HMO, but this publication makes it clear that the standards in these respects are only relevant to “new dwellings and have no other statutory meaning or use” (paragraph 2). The Government also indicated in March 2015 that these standards were not intended to be applied in the absence of an adopted planning policy. In this appeal, the Council’s HMO Licensing Standards should be taken into account.
12. The Council operate a Citywide national licensing scheme that applies to larger HMOs and a Citywide additional licensing scheme for smaller HMOs, which were introduced on 1 March 2018. All licensed HMOs are generally expected to meet the Council’s HMO Licensing Standards. The planning report I have received in connection with this appeal asserts that the licensing system is of limited application and seeks the “bare minimum”, and that the planning regime should therefore apply a “higher” standard, but the HMO Licensing Standards introduced by the Council since that report deal in detail with a wide range of matters, including the number of occupants, room sizes, bathroom and kitchen facilities, external tidiness, anti-social behaviour, waste and recycling and the overall management of the HMO. There are penalties for non-compliance with an HMO licence.

Main issue - community impact

13. The provisions and objectives of Policy CP21 are set out above. The way in which Section ii) of the policy has been drafted calls for the refusal of all HMO applications where the percentage has been exceeded even where, as in this appeal, the change is from one type of HMO to another. However, paragraph 4.237 suggests that Section ii) is only intended to be applied to new HMOs and Policy HO14 of the 2005 Local Plan seeks to prevent the loss of existing HMOs.

The authorised use of this dwellinghouse appears to be the ‘small’ HMO that existed from 1997 to 2007, which would permit occupation by a maximum of six residents. Authorising its change to the seven-bedroom HMO that has existed from 2008 to the present day would have no impact on the number of HMOs in the area or on the range of house types available; and the minor increase in activity that could occur as a result of the small addition to the

number of residents would not have a noticeable impact on the community. In these circumstances, I do not consider that I could reasonably conclude that the change was in conflict with the objectives of Policy CP21.

Main issue - the standard of the accommodation

14. The Council's planning objection is to the two bedrooms in the loft space. The floorspace in the front bedroom is less than the nationally described space standard referred to in paragraph 11 above, but this is not a relevant standard. The use of the floorspace in the back bedroom is limited by its configuration and the amount of headroom.
15. The HMO has been licensed by the Council since 2009 and the licence was renewed in April 2019. The licence restricts occupation of the HMO to a maximum of seven households and seven occupants. The HMO complies with the Council's HMO Licensing Standards, which include bedsit room sizes and take into account the shape and the floor-to-ceiling height of the bedsit rooms when useable living space is assessed.
16. Nothing I have seen or read about this HMO demonstrates that there is sufficient justification for applying different standards for planning purposes.

Main issue - the effect on neighbours' amenities

17. The Council state that the change of use would result in "material nuisance and loss of amenity" contrary to Policy QD27, because "Each additional resident in an HMO property occupied by a group of unconnected adults increases the level of activity, especially compared to a typical family with a similar number of members, such as more frequent comings and goings, different patterns of behaviour and the consequential disturbance". This statement gives the impression of appearing to consider certain members of the community to be, by definition, a problem because of the type of accommodation they live in.
18. The appellant points out that this house has not been used as a family home for at least twenty years and that the increase in the number of occupants is low. It is mentioned in a Council report that the Environmental Health department received nine complaints about noise between 1996 and 2015, but no details have been provided and their relevance to the appeal cannot therefore be assessed. No details of any of the alleged complaints about rubbish have been provided by the Council.
19. As well as general provisions relating to the management of the HMO, the HMO Standards and the conditions attached to the licence contain specific provisions dealing in detail with anti-social behaviour causing nuisance or annoyance to neighbours or the community and with refuse disposal and tidiness. The Council also have powers under environmental health legislation to deal with such matters.
20. In the circumstances described above, I do not consider that I could reasonably conclude that the change of use would result in material nuisance or loss of amenity contrary to Policy QD27.

Overall conclusions on ground (a)

21. For the above reasons, I have concluded that there are insufficient reasons for withholding planning permission for the change of use of the house to a seven-bedroom HMO. In this event, the Council have suggested that three planning conditions should be imposed. The first would restrict occupation to a maximum of seven persons; the second would require secure cycle-parking facilities to be provided; the third would require the communal areas to be retained as shown on a layout previously submitted for planning purposes.
22. I have not imposed these conditions because they are unnecessary. The first and the third since they would duplicate the adequate controls over these matters that are already in place through the HMO Licensing Standards and the HMO licensing system. The second since the only external location where cycles would in practice be parked is the rear garden, which is already secure.

Ground (g)

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

D.A.Hainsworth

INSPECTOR