The Planning Inspectorate

Appeal Decision

Site visit made on 26 April 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 20 May 2016

Appeal Ref: APP/Q1445/C/15/3140098
21 Upper Wellington Road, Brighton, East Sussex BN2 3AN

- 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 Terence Hermon against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2013/0495.
- The notice was issued on 24 November 2015.
- The breach of planning control as alleged in the notice is: 'Without planning permission, the change of use of the property from a dwellinghouse (C3) to use as a House in Multiple Occupation'.
- The requirement of the notice is: 'Cease the use of the property as a House in Multiple Occupation'.
- The period for compliance with the requirement is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended.

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

The notice

1. The alleged breach of planning control set out in the enforcement notice should refer to a *material* change of use, that being the act of development as defined by statute. Moreover, a material change of use to a House in Multiple Occupation (HMO) is subject to a ten year time bar on enforcement action, rather than the four year limit referred to in section 4 of the notice. As the Appellant acknowledges that the conversion of the property only took place in 2013, no injustice arises from correcting the notice accordingly.

The appeal on ground (a)

Main issue

2. The main issue in determining the appeal on ground (a) is the effect of the development on:
   - the character and amenity of the surrounding area; and
   - the balance of the local community.

Planning policy

3. The development plan includes the Brighton & Hove City Plan Part One (CP), adopted in March 2016. Several CP policies have replaced policies in the Brighton & Hove Local Plan 2005 (LP) which had been saved following a

Direction made by the Secretary of State and referred to in submissions on this appeal. However, certain other saved LP policies remain part of the development plan in the wake of the CP's adoption. Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it.

4. The Appellant cites failure on the part of the Council to demonstrate a five year supply of deliverable housing sites as a reason for regarding CP Policy CP21[1], which amongst other things concerns the provision of HMOs, as not being up-to-date and thus outweighed by other factors for the purposes of paragraphs 14 and 49 of the Framework. However, I have not been provided with details of the current five year supply position. Moreover, the CP has, very recently, been found sound in circumstances where it seeks to meet only 44% of the objectively assessed need for new housing.

5. It is fair to assume that CP Policy CP21 would not have been endorsed by the examining Inspector in circumstances where the prevailing housing land supply position led her to conclude that it was not up-to-date. In any event, the policy aims to control the distribution and intensity of HMO development across the city as a whole, rather than limit its supply. I am therefore satisfied that the policy strikes a reasonable balance between the need for HMO accommodation and general housing needs and may, together with the other development plan policies, be given full weight for the purposes of my decision so far as relevant to the appeal.

Reasoning

6. The appeal property contains six bedrooms, each seemingly occupied by a single person unrelated to others in the building. There are communal living room, kitchen and bathroom/toilet facilities available to all the residents. This being so, I find on the evidence before me that the use falls within Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

7. Permitted development rights which enable single dwellinghouses within Class C3 of the Schedule to the UCO to become Class C4 HMOs with the benefit of deemed planning permission were removed by means of a Direction made under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 as amended[2]. The Direction came into effect on 5 April 2013.

Character and amenity

8. There is little of substance before me to suggest that use of the property as a HMO is any more detrimental to the appearance of the building itself or the wider street scene than its former use as a single dwellinghouse. No obvious alterations to the exterior have taken place as a direct result of the change of use. Moreover, photographic evidence suggests that the physical condition of the building has improved in recent years, albeit that there is nothing to

[1] The Appellant's comments in this regard relate to the draft version of Policy CP21 prior to the adoption of the CP.
[2] Since superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015. The provisions of Article 4 remain unchanged in the replacement Order.

indicate that an ongoing lawful use would not have facilitated an equivalent upgrade in its appearance.

9. I will therefore focus on the level and type of noise and disturbance likely to be associated with HMO use. Problems generated by unsociable behaviour on the part of particular individuals in HMOs are essentially a management matter and, as the Appellant suggests, can be addressed in part through other legislation administered by the Council, albeit in a reactive rather than proactive way. More pertinent for the purposes of my decision is the extent to which noise is an inevitable consequence of intensity of occupation and communal living arrangements and thus a consideration to be weighed when balancing planning merits.

10. In the absence of technical evidence from either party quantifying relative levels of activity, I have drawn on my own judgment and experience in considering this. Substantial weight must also be given to the lawful fallback position of re-establishing a single dwellinghouse that could be occupied by a large family and a comparison drawn between noise and disturbance likely to be generated by the two different uses.

11. I consider it highly probable that even as few as six unrelated individuals occupying this type of accommodation, together with their visitors, would generate a significantly higher level of pedestrian and vehicular traffic in terms of people entering and leaving the property and associated vehicular activity than would generally be associated with a single household. It follows that the level of noise and disturbance generated by comings and goings would also be greater.

12. The accommodation provided in this case is best suited to residents who are young, single and/or transient. In such circumstances the trip pattern generated will, in all likelihood, be markedly different to that associated with a family dwelling of the kind predominant in the locality. Each room would effectively generate its own work, shopping and social trips at different times. This would amount to a significantly higher level of activity than would usually be associated with a single family.

13. Moreover, the likely profile of the occupiers is such that activity of this kind would be more likely to encroach into unsociable hours. By contrast, comings and goings associated with a family are often made jointly, such that the overall rate of trip generation per person is lower. The adverse effects of one HMO considered in isolation may be limited in this regard. Nonetheless, they can contribute incrementally to a gradual erosion of character and amenity and, this being so, such impacts are more properly considered cumulatively. Indeed, this is the principle which underpins CP Policy CP21.

14. I have noted the Appellant's contention that activity within No 21 has not caused material harm to the living conditions of adjacent occupiers since use as a HMO commenced in 2013. However, even if this is so it must be borne in mind that occupancy turnover within accommodation of this kind is generally high and that the impact of a different set of tenants may well be different. In any event, such claims are contradicted by the objection of a neighbouring resident, albeit anecdotally.

15. I conclude that the subject use is likely to generate levels of noise and disturbance, in terms of comings and goings and associated external activity,

over and above those associated with the lawful fallback position. This would have an unacceptable additional adverse impact on the character and amenity of the area. The appeal scheme is therefore contrary to the objectives of saved LP Policy QD27 and the relevant provisions of the Framework.

Community balance

16. CP Policy CP21 advises that in order to support mixed and balanced communities and to ensure that a range of housing needs continues to be accommodated throughout the city, changes of use to HMOs will not be permitted where more than 10% of dwellings within a radius of 50 metres are already in use for such purposes. The Council calculates that in this case 23.9% of properties within the relevant zone are licensed HMOs, whilst the Appellant places the figure at 22.8%. The difference is neither here nor there for the purposes of my decision. Either way, it is clear that the policy threshold is far exceeded.

17. The premise that underpins the policy is sound, having been recently endorsed through the development plan process. Over-abundance of one particular type of accommodation within a confined locale can unbalance a community in a manner which has adverse consequences for the character of an area and the amenity of local residents. In particular, a grouping of HMOs can cause various problems arising from heavy concentrations of people living within a small geographical area, as set out in the supporting text to saved LP Policy HO14 and addressed above when assessing the impact of the appeal scheme on character and amenity.

18. The Appellant challenges the validity of the 10% HMO threshold set out in CP Policy CP21 as a determinant of an acceptable community balance. However, there is no reason to disregard this as a reliable measure of harm in circumstances where it has been found to be sound during the course of the Secretary of State's examination. Moreover, no considerations specific to the appeal scheme sufficient to justify an exemption from the strict terms of the policy have been brought to my attention.

19. I conclude, in the absence of cogent evidence to the contrary, that the subject development has unbalanced the local community to an unacceptable degree. It is therefore contrary to CP Policies CP19 and CP21 and the relevant provisions of the Framework.

Other matters

20. I have considered all the other matters raised. Having regard to the three dimensions of sustainable development set out in paragraph 7 of the Framework, I acknowledge that the appeal property occupies a sustainable location. Moreover, the subject use has some social and economic benefits arising from the provision of accommodation for single people of limited means and the student economy. However, these factors are outweighed by the social and environmental detriment that is likely to contribute to, stemming from imbalance within the community and intensified activity. The appeal scheme does not therefore amount to sustainable development so as to accord with CP Policy SS1.

21. I have already addressed the implications of a shortfall in general housing land supply in the context of this case under the planning policy heading. Focussing

more specifically on student need, I note that the Appellant perceives a shortage of suitable accommodation which the subject HMO helps to meet. However, the extent of such need has not been quantified, there is no five year supply target for that particular category and, in any event, nothing in local or national policy suggests that considerations of this kind should outweigh concerns of character and amenity or community balance.

22. Nothing before me leads me to question the adequacy of the shared accommodation within No 21 for those who occupy it. However, neither this nor any other matter is of such significance as to outweigh the considerations that have led to my conclusions on the main issues. Accordingly, the appeal on ground (a) fails.

The appeal on ground (g)

23. The Appellant contends that the three month compliance period specified in the enforcement notice is too short by reason of the fact that the property is let on an assured shorthold tenancy (AST) agreement which expires on 14 August 2016. He seeks an extension to either 1 September 2016 or six months from the date of my decision, whichever is the later. I give little weight to the inconvenience and potential legal complexities associated with early termination of an AST agreement, as these would arise from a situation of the Appellant's own making. In any event, that agreement will have expired by the date that the enforcement notice takes effect.

24. This being so, I see no grounds for extending the compliance period to 1 September, let alone for a further six months. No case is made to the effect that any existing occupier is likely to require a period extending beyond the termination of the tenancy in which to find alternative accommodation. I conclude that the period specified for compliance in the notice as issued is not too short. Accordingly, the appeal on ground (g) fails. It remains within the Council's power to further extend the period under section 173A(1)(b) of the 1990 Act as amended in the event that this proves to be necessary.

Conclusion

25. For the reasons given above I conclude that the appeal should fail. I will uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal decision

26. The enforcement notice is corrected by:
    (i) in section 3, the insertion of the word 'material' before the word 'change';
    (ii) in section 4, the deletion of the word 'four' and the substitution therefor of the word 'ten'.

27. Subject to the above corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Alan Woolnough

INSPECTOR