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## Appeal Decision

Site visit made on 11 May 2016

**by Diane Fleming BA (Hons) MRTPI**

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

**Decision date: 05 July 2016**

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**Appeal Ref: APP/Q1445/C/16/3145546**

**Land at 45 Newmarket Road, Brighton BN2 3QG**

- 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 Ahmed Mohammed Abbas against an enforcement notice issued by Brighton & Hove City Council.
  - The notice was issued on 15 February 2016.
  - The breach of planning control as alleged in the notice is without planning permission, change of use of the property from a dwelling house (C3) to use as a house in multiple occupation (HMO).
  - The requirements of the notice are 1. Cease the use of the property as a house in multiple occupation ('HMO').
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. 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.

### Procedural Matter

2. The first reason for issuing the enforcement notice is that it appears the breach of planning control has occurred within the last four years. In this respect the Council are mistaken. Only a material change of use to a single dwelling house is immune from action after four years (section 171 of the Act) and a HMO is not a single dwelling house. The appellant has not submitted a ground (d) appeal and states that the use has only taken place since August 2015. I therefore consider that there is no injustice caused to the appellant by this mistake.

### The ground (a) appeal and the deemed planning application

#### Main Issues

3. The main issues are the effect of the development on i) the character and appearance of the street and the surrounding area; and ii) the living conditions of local residents, having regard to noise and disturbance.
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## Reasons

### *Character and appearance*

4. The appeal site is a two storey, mid terrace, Victorian property with basement accommodation and an extended loft area. It is currently used as a six bedroom HMO laid out with two bedrooms per floor and a shared kitchen/diner in the basement. Both sides of Newmarket Road contain similar, attractive, terraced housing but at the junction with the main road, which leads into the centre of Brighton, there is a recent development of purpose-built, student flats. Whilst the character of Newmarket Road is residential, the nature of the residential use varies.
5. Newmarket Road is situated in one of the city's wards covered by an Article 4 Direction that came into effect on 5 April 2013. The Council made the Direction to remove the permitted change from a use falling in Class C3 (dwelling houses) to Class C4 (HMOs) given by the Town and Country Planning (General Permitted Development) Order 1995.<sup>1</sup> As a result, planning permission is now required for this development. The Direction was made in response to complaints and representations from the public about concentrations of HMOs and the changes that brought to local populations, housing markets and residential environments. In part, the expansion of HMOs has been driven by the purpose-built student accommodation not keeping up with the growth in the higher education sector.
6. The Council has also developed Policy CP21 of the Brighton and Hove City Plan Part One (BHCP), which at the time the notice was issued was in draft form but has since been adopted on 24 March 2016. This policy has specifically been written to set out the Council's approach to proposals for new student accommodation and HMOs. As the policy has recently been adopted, it is likely that it is based on up to date evidence and the appellant's initial questioning of the policy has now changed to full acceptance of it.
7. The policy states, in part, that the Council will seek to develop mixed, balanced and inclusive communities and will actively manage the location of new HMOs. Proposals for new HMOs will not be permitted where more than 10% of residences within a radius of 50m of the application site are already in use as HMOs or other types of HMO in a sui generis use.
8. The approach taken by the Council is because previous experience has shown that concentrations of HMOs can lead to increased noise, disturbance, refuse, litter and fly tipping. Concentrations can also lead to higher crime rates, loss of family and community facilities and changes to the retail offer in an area. In addition, there is often a proliferation of 'To let' boards and poorer upkeep of garden areas.
9. Both the Council and appellant have carried out the mapping exercise set out in the policy and have found different numbers of HMOs. The Council conducted its exercise before the service of the notice and found that 28.57% of the properties within the 50m radius were in HMO use. The appellant carried out his assessment after the service of the notice and found that the concentration of HMOs was 36.48%. Either way I consider the concentration of HMOs is well past the 10% threshold identified in the Policy.

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<sup>1</sup> Now replaced by the 2015 Order

10. In addition, I find the location of the appeal site interrupts a continuous run of single family dwellings located towards the eastern end of the street. Here the disposition of HMOs on both sides of the road means that, if the appeal were allowed, of the 53 dwellings within the 50m radius identified by the appellant, only two would then not be next to a HMO. I consider the appellant's use of the property has reinforced the change to the character of the eastern end of the street so that it is no longer predominantly occupied as single family residences.
11. At my site visit I saw that the concentration of HMOs within the 50m radius has manifested itself in a cluster of 'To Let' boards. In addition, I also saw a discarded mattress and beer bottles at the end of Newmarket Road adjacent to two commercial refuse bins, which appeared to have been placed there by the Council. In the adjacent road I saw a front door painted in pop art style and just off the main road a retail shed advertised as 'Shabitat' selling second hand furniture. Whilst it is not known whether these are directly attributable to a concentration of HMO uses, it is my view that they are suggestive of the changes and harm that is caused to the character and appearance of the area where there is a poor mix and balance of HMO uses to single family dwellings.
12. I find there is no disagreement between the appellant and the Council on the standard of accommodation that is provided in the HMO or that HMOs are needed to meet a growing demand for additional facilities. Furthermore the appeal site is well located for public transport including cycle routes and the appearance of the building is currently attractive following its recent refurbishment.
13. However, I conclude that the siting of HMOs in Newmarket Road is not well balanced with existing single family dwellings. The addition of the appeal site to the mixture reinforces the current imbalance which in turn detracts from the character and appearance of the street. The development therefore does not accord with Policy CP21.

*Living conditions*

14. The appellant submits that the Council have not identified any genuine harm caused by the development and the existing concentration of HMOs. I find though that the Council have referred to this in their Statement of Case. In particular, there were complaints about noise, rubbish and lack of parking. The appellant describes these complaints as anecdotal. However, four of the residents who occupy the continuous run of single family dwellings I identified previously have responded to the appeal consultation, together with a local councillor, and have listed various objections to the use. They illustrate some of the changes that use of this HMO has brought to the area such as noise and disturbance from late night parties, slamming of doors and smoking in the garden late at night.
15. Policy QD27 of the Council's Local Plan<sup>2</sup> seeks to ensure that new development does not cause material nuisance and loss of amenity to local residents. Whilst this policy was adopted some time ago, I find its intention is consistent with the National Planning Policy Framework (the Framework). One of the Core Principles of the Framework is to ensure a good standard of amenity for all

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<sup>2</sup> Brighton and Hove Local Plan Adopted 2005, saved 2007 and subsequently saved again in 2016 following the adoption of the BHCP

existing and future occupiers of land and buildings; consequently I give the policy substantial weight.

16. For the reasons given, I conclude that the development has resulted in material harm to the living conditions of local residents, having regard to noise and disturbance. As a result the development does not accord with Policy QD27. It also falls short of the requirements of the Framework.

17. Overall I therefore conclude that the appeal on ground (a) fails.

### **The ground (g) appeal**

18. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short and the appellant requests that the three month time period be increased to six months or 1 September 2016, whichever is the later. At the time the appeal was submitted the three month compliance period appeared to be too short and the appellant was concerned that complying with the notice would disrupt the students' examinations. However most higher education institutions have now finished their summer terms and I therefore consider the three month period is sufficient time to comply with the notice. The appeal on ground (g) therefore fails.

### **Conclusion**

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

*D Fleming*

INSPECTOR