The Planning Inspectorate

Appeal Decision

Site visit made on 3 June 2016

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

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

Decision date: 30 June 2016

Appeal Ref : APP/Q1445/C/15/3139949
Land at 69 Ewhurst Road, Brighton, BN2 4AL.

- 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 Glynn John Parsons against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 3 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 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) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (a) appeal and deemed application

Main issues

1. The main issues in the determination of this appeal are the effect of the development on (1) the Council's aim to ensure a suitable range of housing types and maintain mixed and balanced communities and (2) the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

Housing mix

2. The appeal site is a mid-terrace two storey property located in a residential area. It is well served by public transport and close to local facilities. The surrounding area is a mix of family dwellinghouses and houses in multiple occupation (HMOs). It contains six bedrooms and shared kitchen and bathroom facilities. It is close to local universities and accommodation in the surrounding area caters for students.

3. The Council has adopted an Article Four Direction (the Direction). Its aim it to prevent the unrestricted change of use under permitted development rights of dwellinghouses to HMOs falling under class C4 of the Use Classes Order. The appeal site falls within the area covered by the Direction.

4. The development plan comprises the Brighton & Hove Local Plan. Policy HO14 notes the demand for HMO accommodation but provides that to be acceptable it must be to an acceptable standard. Policy QD27 seeks to protect residential amenities of nearby occupants where a change of use to an HMO is proposed.

5. The Local Plan is in the process of being replaced by the Brighton City Plan. The Brighton City Plan does not currently form part of the statutory development plan. It is understood that the emerging plan has been the subject of an examination in public but not yet adopted.

6. The Council seeks to rely on emerging policy CP21 part (ii) (Houses in Multiple Occupation) which provides that a change of use to Class C4 will not be permitted where more than 10% of dwellings within a radius of 50 metres of the site are already in use as C4, mixed C3/C4 or other types of HMO or sui generis use. The aim of the policy is to ensure that a suitable range of housing types remains available and to maintain mixed and balanced communities. The Council indicates that no objections have been raised to CP21 (ii).

7. The National Planning Policy Framework (the Framework) provides that the weight to be attached to an emerging plan is dependent on its stage of preparation, the extent to which there are unresolved objections in relation to relevant policies and the degree of consistency of relevant policies in the emerging plan to the policies in the Framework. Taking into account that the emerging plan is at an advanced stage of preparation, that no objections relate to that part of the policy relied on by the Council in this appeal and its aim of delivering a mix of housing types to suit local demand is consistent with the Framework I consider that in this case it should be afforded significant weight. My attention is drawn by the parties to other appeal decisions which address the weight to be attached the emerging plan. I have determined this appeal on is particular facts and the examples before me do not alter my overall conclusions on the case before me.

8. There is no dispute between the parties that the 10% threshold in the emerging policy is exceeded. The Appellant's survey evidence concludes that excluding the appeal site 24% of the properties in the immediate locality are in HMO use. The Council cite 26%. Further, the existence of the Direction recognises concerns over over-concentration of HMOs in parts of the city, including the appeal site and its surrounding area.

9. I am concerned that to allow the conversion would undermine the Council's objective of maintaining a balanced supply of family dwellings and HMOs contrary to the emerging plan and have a cumulative effect increasing the imbalance in the mix of available housing types.

Living conditions

10. The development plan mirrors the Framework in seeking to protect the amenities of neighbours from undue disturbance. Local Plan saved policy QD27 provides that planning permission for any change of use will not be granted when it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

11. The level of activity from a group of six unconnected people is likely to result in more frequent comings and goings and different patterns of behaviour than a

typical family. Local residents have objected and describe noise and disturbance at the appeal site that disrupts their daily activities. I have no reason to doubt the level of disturbance described by neighbours which disrupts their day to day activities.

12. The Appellant suggests that the correct regime to address any noise or disturbance is through noise abatement legislation. But the impact of noise and disturbance on neighbours is expressly covered in the development plan and in any event is a material planning consideration in the determination of this appeal. The application of alternative legislation does not change that position.

13. I conclude that the development causes undue harm to the living conditions of nearby properties with particular regard to noise and disturbance and is contrary to the development plan, including Policy QD27 of the Local Plan, and the Framework.

Other matters

14. Objectors raise various issues including parking, refuse and recycling. But I do not find these to be main issues in this appeal.

Conclusion

15. I have taken into account that the property appears well maintained, its sustainable location, layout and standard of accommodation, the potential positive impact of students on the local economy and the demand for shared housing in this locality. But the balance rests in favour of preventing the identified harm to the Council's aims for balanced housing types and protecting the living conditions of neighbours.

16. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I have considered the conditions suggested by the Council concerning refuse, recycling and cycling provision but these would not overcome the harm to the living conditions of nearby residents by virtue of noise and disturbance. I conclude that no conditions could overcome the identified harm.

17. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and planning permission should not be granted. I shall uphold the enforcement notice.

Ground (g) appeal

18. This ground of appeal is that the period for compliance with the notice falls short of what is reasonable.

19. The compliance period in the notice is three months. The Appellant says that the property is let and occupied on an assured short hold tenancy. He argues that three months does not allow reasonable time to make arrangements for current tenants to be re-housed part way through the academic year. He requests that the period be varied to six months or 1 September 2016 whichever is the later. The Council says that the Appellant has been aware of the Council's concerns for some time and that three months is reasonable.

20. Having regard to their need for term time accommodation for a limited period I do not consider that my decision would be an infringement of the human rights of the student occupiers. But nevertheless I recognise that tenancy

arrangements might need to be terminated and that this decision will be issued near to the end of the academic year.

21. On balance I conclude that six months is a reasonable period for compliance and very the notice accordingly. The appeal under ground (g) succeeds to that extent.

Formal Decision

22. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the substitution of six months as the period for compliance. Subject to this variation 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.

S.Prail

Inspector