



---

## Appeal Decisions

Site visit made on 10 April 2018

by **Stephen Hawkins MA MRTPI**

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

Decision date: 09 May 2018

---

**Appeal A Ref: APP/Q1445/C/17/3177383**

**Appeal B Ref: APP/Q1445/C/17/3177384**

**Land at 6 Nyetimber Hill, Brighton BN2 4TL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr David Humphrey (Appeal A) and Mrs Sue Humphrey (Appeal B) against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice was issued on 3 May 2017.
- The breach of planning control as alleged in the notice is without planning permission a material change of use from a House In Multiple Occupation (C4) to a 7 bedroom large House in Multiple Occupation (Sui Generis).
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation (Sui Generis).
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) (Appeal A only) and (g) (Appeals A & B) of the Town and Country Planning Act 1990 as amended.

**Summary of Decisions: Appeal A is allowed, the enforcement notice as corrected is quashed and planning permission is granted in the terms set out below in the Formal Decision. It is not necessary to consider Appeal B.**

---

### Procedural Matter

1. The plan attached to the enforcement notice is incorrect as the property shown edged in red is 8 Nyetimber Hill. Regulation 4 (c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires an enforcement notice to specify the precise boundaries of the land to which the notice relates, by reference to a plan or otherwise. Therefore, there is no statutory requirement to identify the property to which an enforcement notice relates by reference to a plan. The notice specifies the correct address. Accordingly, I shall correct the notice by deleting reference to the attached plan. In doing so, I am satisfied that no injustice would be caused to either the appellant or the Council as it is clear that the main parties were in no doubt about which property the notice relates to.

### Appeal A-Ground (a)

#### Main Issues

2. The main issues are:
  - Whether use of the appeal property as a 7 bedroom large House in Multiple Occupation supports a mixed and balanced community.

- Whether suitable living conditions are provided for the existing and future occupiers of the appeal property, having regard to communal living space.
- The effect of the use on the living conditions of occupiers of adjoining residential properties, having regard to noise and disturbance.

## **Reasons**

### *Community mix and balance*

3. The appeal property is situated in the middle of a terrace between 4 and 8 Nyetimber Hill (Nos 4 and 8) and is located in a predominantly suburban area. In April 2013, the Council confirmed an Article 4 Direction covering this and other parts of the city removing the permitted development right to change from a dwelling house in Class C3 to a small House in Multiple Occupation (HMO) in Class C4. However, there is no dispute that the lawful use of the property is an HMO within Class C4.
4. The objective of Policy CP21 (ii) of the Brighton and Hove City Plan Part One is to support mixed and balanced communities by ensuring that a range of housing needs continue to be accommodated throughout the city. In order to do so, Policy CP21 (ii) resists the change of use to an HMO where more than 10% of dwellings within a 50 metre radius are already in such use. The Council's mapping exercise indicates that in excess of 30% of residences within a 50 metre radius of the property are in use as HMOs. This figure has not been disputed. Therefore, the concentration of HMOs in the surrounding area is well above the 10% threshold in Policy CP21 (ii).
5. Nevertheless, the property already has a lawful HMO use. As a result, its change of use to a large HMO has not altered the number and percentage of properties in use as HMOs in the area. Nor has there been any reduction in the housing available for families in the area, as the property had previously been lawfully used as a Class C4 HMO. Consequently, the range of housing types in the area including the number of HMOs has been unaffected by the change of use. The additional occupier has marginally increased the intensity of the occupation of the property compared with a Class C4 use. However, there is no substantive evidence before me to suggest that this has materially affected the concentration of HMOs in the area or the balance of HMOs with other types of housing.
6. Therefore, as there has been no adverse effect on the mix and balance of the community in the area surrounding the property the change of use accords with Policy CP21 (ii).

### *Living conditions of existing and future occupiers*

7. The ground floor of the property has a communal kitchen which also provides access to a communal dining area and lounge. According to the Council, the kitchen has a floor area of around 6.5m<sup>2</sup>, whilst the dining area and lounge has a floor area of around 15.5m<sup>2</sup>. Neither of these figures has been challenged.
8. The kitchen is unlikely to be able to easily accommodate more than two or three people at a time, having regard to its limited size. Even so, the nature of an HMO, in particular one that as in this case is occupied by students attending nearby universities, is that some of the occupiers will be coming and going at

different times of day due to different study timetables, patterns of working and leisure pursuits. Therefore, the occupiers are likely to be taking their meals at varying times and they will not all be trying to use the kitchen at once. Given these factors, the size of the kitchen is not particularly cramped or constrained and it is adequate for the occupiers.

9. Based on the arrangements observed during my visit, around six people could eat in the dining area at any one time. Together, the dining area and lounge are of a size capable of easily accommodating around nine or ten people. The floorspace provided by these areas is therefore adequate for the occupiers and any guests. Whilst the ground floor WC and the rear garden are also accessed from the dining area and lounge, such an arrangement is not untypical of a dwellinghouse occupied by a single family. Therefore, it is unlikely that the occupiers experience appreciably greater disturbance than might reasonably be expected in the dining area and lounge.
10. Consequently, the kitchen, dining area and lounge are of an adequate size and provide a reasonably pleasant living environment in which the occupiers can prepare meals, eat and undertake communal leisure activities. Whilst some occupiers might spend considerable periods of time in their own rooms, in my view this would be largely due to reasons of personal choice or for private study rather than inadequate communal space.
11. Moreover, the total floorspace provided by the above communal spaces is substantially larger than the 14m<sup>2</sup> required under the Council's HMO licencing standards for a seven person kitchen and dining area. The Council has granted an HMO licence for occupation of the property by seven people. Policy HO14 of the Brighton and Hove Local Plan (LP) references the standards set out in the Housing Act for HMOs. No other internal space standards have been adopted by the Council. Compliance with the licencing standards therefore reinforces my findings on the acceptability of the communal living spaces.
12. Consequently, the change of use has not resulted in an unsuitable living environment for the occupiers of the property. It therefore follows that the change of use accords with LP Policy QD27, as there has been no loss of amenity to the existing and future occupiers.

#### *Living conditions of neighbouring occupiers*

13. Class C4 provides for occupation of the property by up to six unrelated individuals as their only or main residence sharing basic amenities such as a kitchen or bathroom. Whilst occupancy levels of the property might previously have been lower, I understand that in 2015 and 2016 the property was occupied by six people.
14. I have taken account of the Council's background information regarding HMOs including the harmful individual and cumulative impacts on surrounding neighbourhoods of associated anti-social behaviour, noise and nuisance. The change of use is likely to have resulted in some increase in the activity at the property and in the frequency of comings and goings. Nevertheless, the effect of the change of use on its surroundings has to be assessed by reference to the lawful Class C4 use as opposed to comparison with occupation of the property by a single family.

15. The change of use has not altered the communal kitchen and dining and lounge areas, which are the more likely sources of noise and disturbance from activity and congregations of occupiers within the property. Therefore, any increase in activity within the property is unlikely to have resulted in the occupiers of Nos 4 and 8 being affected by noise and disturbance in parts of their properties where it would not previously have been experienced. Moreover, given the above the one additional occupier of the property is unlikely to have had an appreciable effect on Nos 4 and 8 in terms of additional noise and disturbance from activity within the property.
16. As in the case of the current occupiers, it is likely that future occupiers of the property in the foreseeable future will be students. Therefore, whilst some or all of the occupiers might initially be unconnected they are likely to have some patterns of behaviour, lifestyle factors and leisure interests in common. Some occupiers are likely to form friendships and travel to university, work, go on leisure outings or undertake other activities such as shopping together. The preponderance for such shared trips is likely to significantly offset the minimal increase in the frequency of any individual comings and goings to the property arising from the additional occupier. Therefore, the change of use is unlikely to have led to any appreciable extra noise and disturbance from comings and goings to the property being experienced by Nos 4 and 8 or by other residential properties in the locality.
17. I also note that no neighbouring residents have objected to the change of use on grounds of additional noise and disturbance and the Council has not produced evidence of complaints regarding noise in relation to the property. Whilst the absence of any objections and complaints is not conclusive, it does serve to reinforce my findings regarding the absence of unacceptable harm in this respect.
18. Consequently, the minimal increase in the intensity of the use of the property over and above that associated with the lawful Class C4 use has not significantly increased levels of activity and noise and disturbance and it has not caused unacceptable harm to the living conditions enjoyed by the adjoining residential occupiers.
19. Therefore, the change of use accords with LP Policy QD27 as there has been no loss of amenity to adjacent residents. Moreover, the change of use accords with LP Policy SU10 as the impact of noise on the occupiers of neighbouring properties has been minimised.

### *Conclusion*

20. The change of use supports a mixed and balanced community, it provides suitable living conditions for the existing and future occupiers and it does not cause unacceptable harm to the living conditions of occupiers of the adjoining residential properties. Consequently, the change of use accords with the Development Plan. Therefore, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

### **Conditions**

21. I have imposed a condition restricting occupation of the property to no more than seven persons. This is necessary in order to protect the living conditions of the occupiers of the property and those of the occupiers of adjoining

residential properties. Additionally, I have imposed a condition requiring retention of the existing layout including the communal kitchen, dining and lounge areas. This is to ensure that a satisfactory standard of accommodation is retained for occupiers of the property.

22. I have also imposed a condition requiring the provision of secure cycle parking facilities, in order to encourage the use of alternative means of transport to the private car. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the cycle parking because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use authorised by the grant of planning permission may only remain if the appellant complies with its requirements.
23. However, I have not imposed a condition removing 'permitted development' rights to enlarge, improve or alter the property or erect ancillary buildings within the curtilage under Schedule 2, Part 1, Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Planning Practice Guidance advises that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances<sup>1</sup>. The Council has not explained why, exceptionally in this case, such a condition should be imposed and in my view it is unnecessary.

### **Appeals A & B-Ground (g)**

24. In the light of my decision to allow the ground (a) appeal, the enforcement notice will be quashed and it is unnecessary for me to consider whether the ground (g) appeals should succeed. Therefore, I shall take no further action on this ground of appeal.

### **Formal Decisions**

25. Appeal A-it is directed that the enforcement notice be corrected by the deletion of the words "as shown edged red on the attached plan ("the Land")" in paragraph 2. Subject to this correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use as a 7 bedroom large House in Multiple Occupation (Sui Generis) referred to in the notice, subject to the conditions in the Schedule at the end of this Decision.
26. Appeal B-I take no further action in respect of this appeal.

*Stephen Hawkins*

INSPECTOR

---

<sup>1</sup> Paragraph: 017 Reference ID: 21a-017-20140306.

### **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall not be occupied by more than seven persons.
2. The development hereby permitted, including the communal ground floor areas annotated as Kitchen and Living Room, shall be retained in accordance with the layout shown on drawing no 1142 02.
3. Unless within 3 months of the date of this decision a scheme for secure cycle parking is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 3 months of the Local Planning Authority's approval, the use of the site use as a 7 bedroom large House in Multiple Occupation shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site as a 7 bedroom large House in Multiple Occupation shall cease until such time as a scheme approved by the Local Planning Authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.