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## Appeal Decision

Site visit made on 9 August 2018

by **Timothy C King BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 October 2018

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### **Appeal Ref: APP/Q1445/W/18/3197045 110 Auckland Drive, Brighton BN2 4JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Rivers Birtwell against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/04133 was refused by notice dated 13 February 2018.
  - The application sought planning permission for a change of use of single dwelling (C3) to small house in multiple occupation (C4) without complying with a condition attached to planning permission Ref BH2017/02434, dated 15 November 2017.
  - The condition in dispute is No 5 which states that: *'No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.'*
  - The reason given for the condition is: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the removal of condition 5 of application BH2017/02434 {Change of use from three bedroom single dwelling (C3) to six bedroom small house in multiple occupation (C4) with alterations to existing side extension and creation of cycle storage} at 110 Auckland Drive, Brighton BN2 4JG in accordance with application Ref BH2017/04133 without compliance with condition no 5 previously imposed on planning permission BH2017/02434, dated 15 November 2017, but subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 15 November 2020.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos COU.01, 01, and LP.01 (Location and Block Plan).

- 3) Prior to any occupation of the development hereby permitted full details of cycle storage facilities shall be submitted to and approved in writing by the local planning authority. The submitted details should include the method for supporting the cycles, the base, material of the store, how the store is secured, the dimensions, lighting the area around the store and the path leading to and from the store. Development shall be carried out in accordance with these details.
- 4) The kitchen/dining/living areas as detailed on Drawing No COU.01 shall be retained as communal space at all times and shall not be used as a bedroom.
- 5) Sound insulation as detailed in the 'Soundproofing Scheme' submitted to the local planning authority on 17 July 2017 shall be installed along the party wall of the host property, and retained thereafter.

### **Background and Main Issue**

2. The planning permission for the change of use to a House in Multiple Occupation (HMO) includes a condition removing the permitted development (PD) rights for extensions, roof alterations and outbuildings, namely Classes A-E, at the site.
3. Taking the above background into account the main issue is whether the removal of Classes A-E PD rights is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers and in safeguarding the character of the area.

### **Reasons**

4. The appeal site comprises a semi-detached, two-storey dwelling with front and rear garden areas. It is unextended save for a small, single-storey side addition. At the time of my site visit it appeared that the property was vacant and some landscaping works were being carried out within its front curtilage.
5. The dwelling's rear building line is flush with that of No 108, its immediate neighbour, and its flank walls are set in from the common boundary with No 112 on the opposite side. Beyond the rear boundary lies open land.
6. The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C4 as small, shared houses occupied by between three and six unrelated individuals who share basic amenities such as a kitchen or bathroom. Commonly referred to as small HMOs they are categorised separately from properties known as large HMOs which are those with more than six persons sharing. Further, HMOs falling into the latter category are unclassified by the Use Classes Order, and are therefore considered to be sui generis.
7. Paragraph 55 of the National Planning Policy Framework says that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable. The Planning Practice Guidance (PPG) says that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. It comments that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

8. PD rights are development which is considered to be acceptable in the normal course of events. All are subject to certain limitations, with Class A covering the enlargement or improvement of a dwellinghouse, Classes B and C concerned with additions or alterations to a dwelling's roof, Class D covering the erection of entrance porches outside a dwelling's external door and Class E involving outbuildings that might be erected in the property's rear garden.
9. In its case report relating to the application by which planning permission was granted, despite recommending that the condition at issue be imposed, the Council makes no mention of the need for the condition in granting planning permission, nor why exceptional circumstances exist that would justify the removal of PD rights across the whole spectrum of Classes A-E.
10. Subsequently, in assessing the proposal to remove the condition, the Council, although acknowledging that additional bedrooms would likely lead to a material change of use requiring planning permission, mentions that there is potential for additional impact arising from extensions and alterations to enlarge the dwelling. Further, the Council indicates that utilising PD rights in the circumstances could cause significant harm to the living conditions of neighbouring occupiers by way of increased overlooking and a resultant overbearing impact.
11. The Use Classes Order allows freedom of movement between Classes C3 and C4 and planning permission was only required in this instance due to a local Article 4 Direction being in place whose purpose is to prohibit this entitlement. Given the physical relationship between the appeal property and its neighbours I have seen nothing persuasive in this particular instance to suggest that the property's use for C4 purposes would have any different effect on nearby occupiers than if it was in use as a single household which falls within Class C3.
12. The Council also appears concerned that PD rights might allow for alterations to be made to the approved internal layout, enlarging the accommodation but without increasing the number of occupants. The fact that the Council approved the proposed layout does not mean that, should alterations be made in the future, a revised schedule of accommodation would not be similarly acceptable.
13. The Council, in support of its case, has cited three recent appeal decisions concerning HMO uses whereby, in allowing the appeals and permitting the properties' use for such, the respective Inspectors all imposed a condition which restricted householder PD rights. However, all these cases concerned the larger sui generis HMOs for which, unlike a Class C4 use, there is no defined restriction on the number of occupants.
14. In instances such as those above the imposition of a condition which allows the Council control over any future extensions, alterations or outbuildings can be necessary in order to restrict the level of occupancy, so as to protect neighbours' living conditions and also safeguard local character. In contrast, the current appeal relates to a small HMO, the approved layout for which shows six bedrooms, and where the creation of additional bedrooms with an associated increase in occupancy would take the use outside the parameters of Class C4. Planning permission for such would thereby be required.
15. I find that even when considering the full scope of householder PD rights there are no compelling reasons why, in this particular case, a distinction should be

- drawn between whether implementing PD rights would be more harmful for a C4 use as opposed to that of a C3 dwelling. I consider that the effects on neighbours' living conditions and also the character of the area would be the same in either case.
16. Accordingly, I find that there are no exceptional circumstances to justify the imposition of Condition no 5. Further, in the circumstances, removing this condition would not conflict with the objectives of either policy QD14 or QD27 of the Brighton & Hove Local Plan, both of which were cited in the reason for imposing the condition on the original decision notice.
  17. I have had regard to the representations received from interested parties who object to the proposal. The comments made largely relate to the HMO use itself and an indication that there are a number of such properties in the local area. However, in this case, planning permission has already been granted for the Class C4 use, and the actual change of use is not the issue involved.
  18. The Council has also made reference to previous local unauthorised developments carried out in relationship to HMOs. Nonetheless, I attach little weight to this as each case must be determined in accordance with its planning merits and impacts and the individual circumstances involved. The Council holds enforcement powers in instances where unauthorised development is considered to have occurred and may take remedial action as it sees fit.
  19. I therefore conclude that Condition no 5 does not serve a particular planning purpose and that removing Classes A-E PD rights is neither reasonable nor necessary in serving the interests of protecting the living conditions of neighbouring occupiers or in safeguarding the character of the area.
  20. In the interests of certainty I have imposed a condition requiring that the development be carried out in accordance with the approved plans. In addition, to ensure a satisfactory standard of accommodation, a condition is imposed requiring that the section of the ground floor proposed as a kitchen/dining/living area shall be retained as such and shall not be used as an additional bedroom. I have also adjusted the time limit period to accord with that of the original planning permission as is required in instances of S73 applications.
  21. Conditions were previously also imposed relating to the submission of details as to cycle storage facilities and also sound insulation measures to be incorporated. I acknowledge the need for cycle facilities at the site in order to encourage travel by means other than private motor vehicles and include a concisely worded condition to this effect. I have transposed the sound insulation condition to safeguard the living conditions of the occupiers of No 108.
  22. For the above reasons, and having had regard to all matters raised, the appeal succeeds.

*Timothy C King*

INSPECTOR