



Appeal Decision

Site visit made on 18 December 2018

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

an Inspector appointed by the Secretary of State

Decision date: 4 February 2019

Appeal Ref: APP/Q1445/W/18/3212326 166 Heath Hill Avenue, Brighton BN2 4LS

- 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 BH2018/02316 was refused by notice dated 12 September 2018.
 - The application sought planning permission for the removal of condition 5 of BH2018/00095 (change of use from dwelling house (C3) to six bedroom small house in multiple occupation (C4) incorporating conversion of garage into habitable space) relating to removal of permitted development rights, dated 11 June 2018.
 - 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 BH2018/02316 {Change of use from dwelling house (C3) to six bedroom small house in multiple occupation (C4) incorporating conversion of garage into habitable space} relating to removal of permitted development rights} at 166 Heath Hill Avenue, Brighton BN2 4LS in accordance with application Ref BH2018/02316 without compliance with condition no 5 previously imposed on planning permission BH2018/00095, dated 11 June 2018, but subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 11 June 2021.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos COU.01 and 01 (Location Plan).

- 3) The layout of the kitchen/dining/living room as shown on Drawing No COU.01 shall be retained as communal space at all times and shall not be used as bedroom space.
- 4) The development hereby approved shall be occupied by a maximum of six persons.
- 5) Prior to any occupation of the development hereby permitted full details of secure cycle storage facilities shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to first occupation of the property and shall be 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. The planning permission granted involved the conversion of the garage into a large kitchen/dining/living area, along with a layout comprising two ground floor bedrooms and four bedrooms at first floor level.
5. The dwelling's building lines are flush with that of No 164 and their rear gardens slope upwards with the properties beyond set at a higher level.
6. The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C4 as the use of a dwellinghouse by 3-6 residents as a house in multiple occupation. The residents would likely be 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. In contrast to the Class C4 use Class C3 'Dwellinghouses' can include not more than six residents living together as a single household, where no care is provided to residents. The Use Classes Order allows for a permitted change between Classes C3 and C4 and planning permission is only necessary in this instance due to a prohibitive local Article 4 Direction being in place.
8. 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.
9. 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.
 10. 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.
 11. In assessing the proposal to remove the condition the Council says that the removal of permitted development rights is considered necessary to ensure that the development is retained, unless planning permission is granted for further additions/alterations. It continues, commenting that the condition is necessary to ensure the acceptability of the scheme. It is not clear to me what is meant by these points, as it implies that PD rights carried out on Class C4 dwellings would be potentially harmful, at least more so than alterations or extensions to those within Class C3.
 12. Control over the form of householder extensions permissible under PD rights is unrelated to the fact that the creation of additional bedrooms with an associated increase in occupancy would take the use outside the parameters of Class C4. Further, it would also be contrary to the condition imposed on permission ref BH2018/00095 which restricts the occupancy to a maximum of six persons. Accordingly, planning permission for such would thereby be required.
 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. 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. Given the scope of Class C3 the number of comings and goings, as referred to by the Council, would be potentially equal to that arising from a C4 use. The effects on neighbours' living conditions and also on the character of the area would be the same in either case. I have therefore 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.
 15. 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.

16. 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. References are made that extensions would allow for increased occupation, but I have already mentioned that should this occur and the degree of occupancy exceeds six persons this would amount to a breach of planning control for which the Council holds remedial enforcement powers.
17. 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.
18. 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. The condition relating to the maximum number of occupants is re-imposed, and 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.
19. A condition was previously imposed relating to the submission of details as to cycle storage facilities. I acknowledge the need for such 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.
20. For the above reasons, and having had regard to all matters raised, the appeal succeeds.

Timothy C King

INSPECTOR