The Planning Inspectorate

Appeal Decision

Site visit made on 28 January 2019

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2019

Appeal Ref: APP/Q1445/C/18/3195793
3 Bristol Street, Brighton BN2 5JT

- 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 Dr C Shulman against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice was issued on 9 January 2018.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use from a dwelling house (C3)/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 3 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.

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.

Preliminary Matters

2. No 3 Bristol Street is a mid-terrace property. It adjoins No 1 Bristol Street where the Council have also issued a notice alleging a material change of use to a large HMO. An appeal[1] has been made in respect of this notice which is the subject of a separate decision.

3. At the site visit I saw that there were seven bedrooms within the building, all of which appeared to be occupied. There were also three shower rooms and an open plan kitchen and lounge area that included two sofas, two fridge freezers, a boiler, a coffee table as well as kitchen fittings.

The ground (a) appeal and the deemed planning application

Main Issues

4. The main issues are the effects of the use on i) the living conditions of existing and future occupiers, having regard to the standard of accommodation; and ii) the living conditions of neighbouring occupiers, having regard to noise and disturbance.

[1] Ref APP/Q1445/C/18/3195789

Reasons

Standard of accommodation

5. The property is laid out over three floors with two bedrooms within an extended loft area. The principal point at issue in respect of the layout of the large HMO is the size of the communal space on the ground floor.

6. The appellant submits that the size of this area is sufficient. There are no planning standards published by the Council for either the size of communal living space in HMOs or space standards for any other residential use. This matter has been dealt with by two previous Inspectors[2] in respect of similar properties in Brighton and the appellant relies on their conclusions. These are that the property is aimed at the short term rental market rather than longer term occupiers where higher standards might be necessary and the issue of a HMO licence indicates that the accommodation is suitable, albeit that is in respect of the Housing Act 2004.

7. The Council submit that the Technical housing standards – nationally described space standard (NDSS) can be used for comparative purposes in the absence of any other planning standards for HMO use. However, standards for HMO licences serve a different purpose, namely ensuring accommodation meets a minimum standard for human habitation whereas planning space standards for dwellings were created to ensure that new homes are of a high quality, accessible and sustainable. These aspirations accord with the National Planning Policy Framework (the Framework) requirement for a high standard of amenity for existing and future occupiers.

8. The plans prepared by the appellant to accompany a planning application[3] to change the use of the property from a five bedroom small HMO (Use Class C4[4]) to a seven bedroom large HMO sui generis use show the communal space as "kitchen/dining 15.6 sqm". However, at the site visit I saw that the kitchen units are laid out in a "U" shape within a recent extension to the two storey, half width, rear projection. They contain all the necessary fittings, including a hob, two ovens, washing machine, tumble dryer, units and worktops. However, there is insufficient space for the required two fridge freezers as these are placed within the adjacent ground floor area, which presumably used to house the kitchen before the extension and has now been left as an open plan lounge area.

9. Within this area there is also a boiler in a cupboard, the door to the rear garden and 2 No, two seater sofas placed either side of the doorway into the communal space from the hallway. There was no dining table and furthermore, there appeared to be very little room for a dining table even if the sofas were removed. This is due in part to the positions of the doorway into the area from the hall, the doorway into the garden and the siting of the fridge freezers in proximity to the cooking area. The Council are concerned that the available space would not be sufficient for seven residents to cook, consume food and to relax. However, it is unlikely that seven residents would carry out these activities at the same time.

[2] Appeal references: APP/Q1445/W/16/3150798 and APP/Q1445/W/15/3140528
[3] Reference BH2016/06221
[4] Town and Country Planning (Use Classes) Order 1987 as amended

10. There is no minimum space standard for kitchens within the NDSS but the minimum space required for a HMO licence for seven occupiers is 9 sqm for a kitchen without dining facilities and an additional 10 sqm for a separate dining area. Although there are no requirements for a lounge the available communal space in this case falls short of these requirements by 3.4 sqm on the basis that the open plan lounge area is the dining space. I consider this to be significant especially as the required standards are minimum standards.

11. The previous appeal decisions relied upon by the appellant to support his case can be distinguished from the current appeal in that they were made before the current version of the Framework. In addition, in each HMO in those cases, for seven and eight persons, each was provided with a kitchen and dining area amounting to 20 sqm. It is my view that the communal space at the appeal site falls below minimum standards as set out in the HMO licensing requirements and the expectations in the Framework. This results in a poor standard of accommodation and as currently laid out is rather cramped. It is therefore harmful to existing and future occupiers.

12. The appellant relies on the fact that the property is aimed at the short term student market rather than longer term occupiers. Whilst there is no guarantee that the manner of the HMO use would remain as a student let, the appellant's position fails to take into account the latest guidance in the Framework. This is that decisions should ensure developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. For these reasons it is concluded that the development causes harm to the living conditions of existing and future occupiers, having regard to the standard of accommodation. It is therefore contrary to Policy QD27 of the saved Brighton & Hove Local Plan 2005, Retained Policies 2016 (LP) which states that planning permission for development will not be granted where it would cause loss of amenity.

Noise and disturbance

13. It appears that the property has been occupied as a small HMO since 2007 when the first HMO licence was issued and occupation was limited to a maximum of five people. Use as a large HMO appears to have begun in September 2016. The appellant submits that the additional two occupiers have not resulted in an unacceptable increase in noise and disturbance and relies on five appeal decisions[5] to support his case.

14. Two of these five appeal properties lie within the City's Article 4 Direction Area, where the Council seeks to exercise more control over developments for HMO use as the residential balance of the neighbourhoods has changed. It is not known whether the other three appeal properties are within the Article 4 Area but what is clear from all these decisions is that the number of HMOs within a 50m radius of each appeal site varied between 26% and 37%. This is significantly higher than the 3.7% found near the current appeal site[6] and I consider that this indicates a material difference in the character of these areas compared to the current appeal. As such, these decisions can be distinguished from the current appeal, where there are still a significant number of family

[5] References: APP/Q1445/W/16/3150798, APP/Q1445/W/15/3140528, APP/Q1445/W/16/3142291, APP/!1445/W/16/3162725 and APP/Q1445/W/6/3165693
[6] The Council's mapping exercise found 108 properties within a 50m radius of the appeal site of which 3.7% were in use as either a small or large HMO.

houses in the immediate area, and which is described by neighbours as being quiet, at some distance from the busy main road.

15. The initial change to a small HMO would have altered the character of this area with more comings and goings from the property and patterns of behaviour different from typical occupants of a family dwelling. That change may have been minimal in terms of its impact or more significant but over time, this change to the character of the area has been absorbed. However, it is my view that use by an additional two occupiers, whilst on paper appears insignificant, has had an unduly harmful effect on the living conditions of neighbouring occupiers, having regard to noise and disturbance. This is because in part the predominant character of the area in the vicinity of the appeal site remains as family housing and the terraced layout of the buildings with small front gardens means that activities associated with the large HMO use are more noticeable. These have been particularly apparent to the occupiers of the neighbouring family property at No 5 and include at all hours the comings and goings by taxi, frequent food deliveries, doors slamming and anti-social behaviour. I consider these activities arising at day and night time from two additional occupiers over and above the existing small HMO use to be more than significant.

16. Third parties have raised other objections including excessive internal noise, excessive rubbish and the loss of family housing. However, the first two matters are dealt with through other means and there is no loss of family housing as the property was already in use as a small HMO.

17. The appellant submits that the property could be occupied by up to six unrelated individuals as a small HMO and therefore what should be taken into account is the effect of just one additional occupier. However, I give only limited weight to this submission as it could be repeated in respect of several HMOs, as indeed it has been in relation to No 1 Bristol Street. This creeping and incremental change would result in harm to the living conditions of neighbouring occupiers.

18. In conclusion, detailed evidence has been put forward to demonstrate the harmful effects of a large HMO use on the living conditions of third parties who all live in close proximity to the site. Whilst it is not known whether all the evidence is directly attributable to the change of use that has occurred at the appeal site, as opposed to No 1 Bristol Street, it is my view that it warrants considerable weight given the location of the third parties, the particular details of the evidence and the character of this residential area. For these reasons I find the development results in harm and is therefore contrary to Policy QD27 of the LP. The appeal on ground (a) fails.

The ground (g) appeal

19. 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 period be increased to allow for the expiration of the tenancy agreement. 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 not allow for the appropriate notice period and rehousing of the tenants. However, most higher education institutions will have finished their summer terms by the time this decision is issued and the three month

compliance period expires. I therefore consider three months is a reasonable time to comply with the notice. The appeal on ground (g) therefore fails.

Conclusion

20. 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