
Appeal Decision

Site visit made on 14 March 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/Q1445/C/16/3162527
37 Southall Avenue, Brighton BN2 4BA

- 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 Mr Lachlan Jai Mallet against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 18 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, a change of use from a single dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4).
 - The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
 - 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.
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Decision

1. It is directed that the enforcement notice is corrected by the insertion of the word 'material' prior to the word 'change' in paragraph 3 of the notice. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. 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 material change of use from a single dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4), subject to the following condition:

The occupation of the dwelling shall be limited to no more than four persons.

The ground (a) appeal and the deemed planning application

Main Issue

2. The main issue is the effect of the development on the character and appearance of the street and the surrounding area.

Reasons

3. The appeal site is a two storey, semi-detached property set partly below the level of the road behind a low brick wall. It is currently used as a four person, small HMO with three bedrooms on the first floor and one on the ground floor. Southall Avenue is a long, narrow road with similar properties that runs parallel to Lewes Road, one of the main roads into Brighton. It has a residential character and at its northern end it leads onto a small commercial area and at its southern end it opens onto university buildings and a large car park. There
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is a traffic regulation order along one side of the road which prohibits on street parking on Mondays to Saturdays between the hours of 0900-1800.

4. Southall Avenue is situated in one of the city's wards covered by an Article 4 Direction that came into effect on 5 April 2013. The Council made the Direction to remove the permitted change from a use falling in Class C3 (dwelling houses) to Class C4 (HMOs) given by the Town and Country Planning (General Permitted Development) Order 1995.¹ As a result, planning permission is now required for this development. The Direction was made in response to complaints and representations from the public about concentrations of HMOs and the changes that brought to local populations, housing markets and residential environments. In part, the expansion of HMOs has been driven by the purpose-built student accommodation not keeping up with the growth in the higher education sector.
5. The Council has also developed Policy CP21 of the Brighton and Hove City Plan Part One (BHCP), which was adopted on 24 March 2016. This policy has specifically been written to set out the Council's approach to proposals for new student accommodation and HMOs. The policy states, in part, that the Council will seek to develop mixed, balanced and inclusive communities and will actively manage the location of new HMOs. Proposals for new HMOs will not be permitted where more than 10% of residences within a radius of 50m of the application site are already in use as HMOs or other types of HMO in a sui generis use.
6. The approach taken by the Council is because previous experience has shown that concentrations of HMOs can lead to increased noise, disturbance, refuse, litter and fly tipping. Concentrations can also lead to higher crime rates, loss of family and community facilities and changes to the retail offer in an area. In addition, there is often a proliferation of 'To let' boards and poorer upkeep of garden areas.
7. The Council has carried out the mapping exercise set out in the policy and finds that there are 29 properties within a 50m radius of the appeal site of which 12 are registered as C4 dwellings or HMOs, giving a concentration of 41.4%. The appellant does not disagree with this figure. As such, the concentration of HMOs is well past the 10% threshold identified in the policy and the development therefore conflicts with it.
8. The Council's objections relate to the concentration of student housing provided through HMOs in this locality. However, no specific objections have been raised to the suitability of the property in practical terms, or indeed any visual impact of the use such as bin storage or the proliferation of 'To Let' boards. Whilst the Council have referred to Policy QD27², which seeks to protect the residential amenity of an area, no evidence has been put forward, to demonstrate any harmful effects of the use on the local area.
9. At my site visit I saw that a number of dwellings occupied by families still remain along the road and some off-street parking has been created in front garden areas. It seems to me that the comings and goings from a four bedroom, small HMO is not appreciably greater than for other dwellings in the road occupied by families, which might include for instance, older,

¹ Now replaced by the 2015 Order

² Brighton and Hove Local Plan 2005

independent, children. There is also no evidence before me such as incidences of anti-social behaviour along the road, to suggest that the HMO use has resulted in significant disturbance. I also note that it is not disputed that the use has been in operation since at least September 2013 without apparently any record of noise complaint. In any event excessive noise from residences is a matter which can be dealt with through other means.

10. In terms of parking, I saw that on-street parking is well used. Moreover, there is no evidence before me to suggest parking demand has reached an unacceptable level within the immediate area. Whilst it is possible that all occupiers of the HMO might own a car, students are less likely to and with the proximity of university facilities within walking distance and others within cycling distance this reduces the demand for a private car. Furthermore regular public transport is also available along Lewes Road.
11. Although concentrations of HMO uses can affect the retail offer in an area it seems to me that in this instance the prevalence of HMOs supports the operation of a local supermarket as well as a dentist and pharmacy. Taken together I find that these are material considerations to which I attach significant weight in the circumstances of this particular appeal.
12. The Council refer to an appeal at Bernard Road³ to support their case. That development was in relation to a large HMO and the Inspector found that there was not only conflict with the aims and objectives of Policy CP21 but also took into account a number of complaints from local residents about the effect of the use on the character of the area. As such, it is different from the case before me now which I have dealt with on its own merits.
13. I have found that the principle of the development is contrary to the development plan in that it exceeds the threshold set out in Policy CP21. However, the operation of the use does not have an adverse effect on the character and appearance of the street or the surrounding area. This is a material consideration which on balance outweighs my finding in respect of the development plan. For these reasons and in these particular circumstances I conclude that the development does not harm the objectives of Policy CP21. The development also does not conflict with Policy QD27. As such, the appeal succeeds on ground (a) and planning permission will be granted.

Conditions

14. The appellant has suggested one condition in the event of planning permission being granted. The Council have made no comments in this respect. I have considered the condition against the requirements of the Planning Practice Guidance and find limiting the occupation of the property to no more than four residents is necessary. This is because the property could be extended by exercising permitted development rights to accommodate more occupiers which could affect the manor of occupation and the character of the area. The condition is therefore imposed to protect the living conditions of nearby neighbours and the character and appearance of the area.

Conclusion

15. It is clear that the description of development in the enforcement notice is incorrect in that the allegation does not allege that there has been a material

³ Ref: APP/Q1445/C/14/2225896 & 2225897 dated 26 May 2015

change of use. It is open to me to correct the allegation in the notice. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in this respect, in order to clarify the terms of the deemed planning application under section 177(5) of the 1990 Act, as amended.

16. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

D Fleming

INSPECTOR