Appeal Decisions

Site visit made on 9 May 2019

by Jean Russell MA MRTPI

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

Decision date: 12 September 2019

Appeal A: APP/Q1455/W/18/3196083
72 Brading Road, Brighton, BN2 3PD

- Appeal A is made by Mr Andrew Kinnear under section 78 of the Town and Country Planning Act 1990 against the decision of Brighton and Hove City Council to refuse an application to grant planning permission for development.
- The application ref: BH2017/00146, dated 16 January 2017, was refused by notice dated 7 February 2018.
- The development proposed is the change of use from a five-bedroom dwelling (C3) to a seven-bedroom house in multiple occupation (Sui Generis) (Retrospective).

Summary of decision: Appeal A is dismissed.

Appeal B: APP/Q1455/C/18/3199388
Land at 72 Brading Road, Brighton, BN2 3PD

- Appeal B is made by Mr Andrew Kinnear o/b Lurbeck Properties Ltd under section 174 of the Town and Country Planning Act 1990 against an enforcement notice issued by Brighton and Hove City Council on 13 February 2018.
- The breach of planning control as alleged in the enforcement notice is: *without planning permission the material change of use from a dwellinghouse (C3) to a 7 bedroom House in Multiple Occupation (HMO) (Sui Generis) and the construction of a dormer to the roof slope at the rear of the property to facilitate the unauthorised change of use to HMO (Sui Generis)*.
- The requirements of the notices and periods for compliance with the requirements are: *Cease the use of the property as a House in Multiple Occupation – within 3 months. Remove the dormer to the rear roof slope – within 6 months.*
- Appeal B is proceeding on the grounds set out under section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990.

Summary of decision: Appeal B is dismissed, and the enforcement notice is upheld with variations as set out in the Decision below.

PRELIMINARY MATTERS

1. Like the parties, I shall refer to a 'house in multiple occupation' by the acronym 'HMO'. Other terms in this decision include:

   - 'TCPA90' means the Town and Country Planning Act 1990 (as amended).
   - 'GPDO 1995' and 'GPDO 2015' mean the *Town & Country Planning (General Permitted Development) Order 1995* and *Town & Country Planning (General Permitted Development) (England) Order 2015*.
   - 'UCO' means the Town and Country Planning (Use Classes) Order 1987.
   - 'C3' means 'use class C3' or use as a dwellinghouse as set out in the Schedule to the UCO.

- Class ‘C4’ is use of a dwellinghouse by not more than six residents as a HMO as set out in the Schedule to the UCO.
- ‘Sui generis’ denotes a use which falls outside of any class as set out in the Schedule to the UCO – such as an HMO with more than six residents.
- ‘The Framework’ means the National Planning Policy Framework 2019.
- ‘PPG’ means Planning Practice Guidance.

2. Class C4 was introduced by amendment to the UCO in April 2010. The GPDO 1995 was amended in April and November 2010 so as to grant planning permission initially for a change of use from C4 to C3, and then from C3 to C4 under Article 3 and Schedule 2, Part 3, Class I. Both changes of use remain ‘permitted development’ (PD) under the GPDO 2015 as amended.
3. The appeal building lies within an area that is subject to an ‘Article 4 Direction’ which came into force on 5 April 2013. The Article 4 Direction withdraws PD rights for a change of use from C3 to C4, meaning that express planning permission must be granted on application for such development.
4. The Council refused the application subject to Appeal A with reference to the Framework as originally issued in 2012. The Framework was revised in July 2018 and February 2019; the parties have had opportunities to comment on changes to it through the appeal process.

THE CHANGE OF USE AND DORMER – LIMITS TO APPEALS A AND B

5. The appellant has given evidence to the effect that the existing use of the building as a small HMO is lawful[1]. He has also questioned whether planning permission is required for the proposed change of use. I cannot those questions under Appeal A because my remit is limited to deciding whether planning permission ought to be granted for the development applied for.
6. It is not possible for me to determine the lawful use under Appeal B, because the appellant has only pleaded grounds (c) and (d) in relation to the dormer – and the alleged breach of planning control does not in any event refer to use as a small HMO. If the appellant wishes to ascertain whether a specified existing use is lawful, he would need to apply, without prejudice, for a lawful development certificate under s191(1)(a) of the TCPA90.
7. As implied above, the difference between C4 and sui generis HMO uses depends on the number of occupiers not bedrooms. For the avoidance of doubt, the reference to seven bedrooms does not render the notice defective since it is clear that the alleged use is as a sui generis HMO.
8. I am unable to consider whether to permit the dormer under Appeal A because it is not mentioned in the description of development for which permission is sought – and it is shown on the ‘previous plan’ (no. 637/01 Rev A) as well as ‘existing plan’ (no. 637/02) submitted with the application. The appellant has commented on the lawfulness but not merits of the dormer; he has made no formal or informal request for express planning permission for the structure.

[1] The appellant specifically states that the building was used as a shared student house under the ownership and management of the University of Sussex between 1993 and 2008. Those facts are not disputed, but I cannot comment on whether the previous use would have fallen into Class C3(b) as the UCO was then, or whether it would be described under C3(c) or C4 now.

9. The Council has referred to appeal decisions where the Inspectors considered the effects of existing built structures despite the proposed development being described only as a change of use[2]. I am not aware of the circumstances or plans in those cases, and they do not alter my view that the dormer is outside of my remit for Appeal A. My approach is consistent with that of the Inspector who determined the 'Fairhaven' appeals cited by the appellant[3].

10. The appellant has argued that a rooflight on the appeal building is lawful, but it is not subject to the notice, planning application or, therefore, either appeal.

APPEAL A – THE PLANNING APPEAL

Main Issues

11. With regard to the Council's reasons for refusing the application and issuing the notice subject to Appeal B, I consider that the main issues are: the effect of the proposed change of use on the balance of housing uses in the community; the effect of the HMO use on the living conditions of nearby occupiers; and whether occupiers of the HMO have adequate living conditions.

Reasons

Balance of Housing Uses

12. Policy CP21 of the *Brighton and Hove City Plan Part 1 2016* (CP) explains that, in order to meet increasing accommodation demands from students *and* create mixed, healthy and inclusive communities, the Council will actively manage the location of new HMOs. In order to support mixed and balanced communities and ensure that a range of housing needs continue to be accommodated, applications for the change of use to Class C4 use, mixed C3/C4 use[4] or sui generis HMO use will not be permitted where more than 10% of dwellings within a radius of 50m of the site are already in such uses.

13. The Council argues that the change of use conflicts with Policy CP1 because a) the building stands in an area where the 10% threshold is exceeded; and b) the lawful use of the building falls under class C3. The appellant does not dispute the first point – but argues that because the building was used as a shared student house with up to five occupiers from 1993-2008, allowing the use as an HMO with seven occupiers would not actually alter the balance of shared and family dwellings in the area.

14. I support the reasoning by other Inspectors to the effect that Policy CP21 restricts changes of use to any kind of HMO regardless of the existing use[5]. A further difficulty for the appellant is that permission is sought for '*the change of use from a five-bedroom dwelling (C3) to a seven-bedroom house in multiple occupation (Sui Generis)*'. Even if I could ignore the reference to C3, neither the term 'five-bedroom dwelling' nor the evidence of past use shows that there is a lawful small HMO use. The proposal is plainly to create a 'new' HMO.

15. The Council officer's report refers to a 'mapping exercise' which showed that some 46.5% properties within a 50m radius of the site are in HMO use;

[2] Appeal refs: APP/Q1445/W/17/3166975, /3180711, /3184922, /3183594, /3184207, and /3189350
[3] Appeal refs: APP/Q1445/C/17/3174393 and APP/Q1445/W/17/3183901
[4] Mixed uses are in fact normally outside of any use class, although one qualified exception to that rule is specified in Article 3(4) of the UCO: use for purposes consisting of or including purposes falling within classes B1 and B2.
[5] Appeal refs: APP/Q1445/W/16/3157915 and APP/Q1445/W/16/3149843.

research carried out by the appellant in December 2017 produced a similar finding that 43.8% of dwellings within a 50m radius of the site are licensed HMOs, excluding the appeal property. The 10% limit has been exceeded by a significant margin; allowing the change of use would exacerbate the loss of family homes and over-concentration of HMOs that the policy seeks to stem.

16. Moreover, the Council's objection is that the change of use fails to support a mixed and balanced community. The Council suggests that HMOs generate more activity (such as more frequent comings and goings) compared to 'typical family' homes, even if there is a similar number of occupiers in each case. It is said that each additional occupier of an HMO will increase the level of activity in the area, and so the intensification of existing HMOs (as well as creation of new ones) causes acute cumulative impacts such as disturbance.

17. As discussed below, at least some local residents share the Council's concerns. I also note the appeal HMO has been and would likely continue to be occupied by students – who can be expected to live in accommodation such as this for just one or two years and be relatively transient members of the community. It is not unusual for young adults to have highly active and/or late lifestyles.

18. I find that the proportion of HMOs in this area has resulted in there being a disproportionate number of student residents, with the imbalance manifest in dissonance between the activities and needs of students with those of other occupiers. In this situation, allowing the proposed sui generis HMO use would not have a neutral or indiscernible effect but exacerbate an imbalance of housing uses within the community.

19. The site is within the 'Lewes Road Area' or 'academic corridor' where the Council seeks to 'promote and enhance the role…for higher education' through CP Policy DA3. That policy does not contain any exemption from CP21 – and it would be surprising if it did, given the co-existence of the Article 4 Direction. The priorities set out under DA3 include delivering appropriate accommodation for students *and* housing…to meet other needs of local communities.

20. In response to other points raised by the appellant, Saved Policy HO14 of the *Brighton and Hove Local Plan 2005* (LP) resists the net loss of residential units that are not self-contained, such as HMOs – but the proposal before me is expressly for a change of use from a dwelling. If I uphold the notice subject to Appeal B, there may be a loss of an HMO but Policy HO14 cannot be construed as protecting unlawful and unacceptable uses.

21. I do not doubt that the area is popular with students because it is 'lively, vibrant…and reasonably close to the city centre' with good access to public transport, shops and services as well as academic institutions. However, the appellant has not shown that the neighbourhood is not equally popular with persons who require family homes. By contrast, he has rightly characterised the area as including a mix of residential uses.

22. The proposed HMO could not make more than a minor contribution to the 'student economy' – especially if occupation would only increase by one as the appellant suggests. The same can be said of the contribution to student housing needs, which fall to be considered under Policies CP21 and DA3 in any event. There would be economic and social benefits of the use, but they would not justify a grant of permission.

23. I conclude that the appeal change of use exacerbates an imbalance of housing uses within the community in conflict with CP Policy CP21. The considerations raised in support of the case would not, individually or collectively, justify a grant of permission contrary to the development plan.

Living Conditions: Nearby Occupiers

24. The Council's first reason for refusing the planning application indicated that the change of use is detrimental to local amenity – and that concern was expanded upon in the reasons for issuing the enforcement notice, which included that increased occupancy of the appeal building has led to complaints of noise disturbance and excess rubbish.

25. Two occupiers of houses on Brading Road objected to the planning application on the basis that they 'frequently get disturbed at night' with this having a negative impact on children. Two occupiers of properties in nearby streets have also objected on this ground, with one describing noise travelling along the backs of terraces in this densely built up area, and other referring to 'awful problems' experienced by people living on Brading Road. Local residents have further objected on the grounds of 'overflowing bins' outside of HMOs.

26. In my view, the representations from the Council and others are generalised and do not demonstrate that allowing the appeal HMO on its own would cause unacceptable harm to the living conditions of nearby occupiers. However, that is a moot point given the number of other HMOs within a 50m radius. I am persuaded that existing HMOs are collectively generating activities with such frequency and at such times as to cause nearby occupiers, particularly children, unacceptable cumulative disturbance.

27. In this context, and since the appellant has not shown otherwise, I find that allowing the appeal would be likely to increase the occurrences or intensity of episodes of noise disturbance. Moreover, the application form states that the storage and collection of waste will be 'as existing' but the appellant has not addressed whether that would suffice for the occupation proposed when wheelie bins seem to be stored out of necessity on the pavement.

28. While I have no reason to find that occupiers of the building engage in anti-social behaviour, I find that allowing the appeal would be likely to increase occurrences of noise and disturbance so as to cause unacceptable harm to the living conditions of adjacent occupiers. The appellant has not shown that such effects could or would be mitigated; imposing a condition to limit the number of occupiers of the HMO to seven would not overcome the harm.

29. A grant of permission would thereby conflict with Saved LP Policies QD27 and SU10, which resist any change of use that would cause material nuisance and loss of amenity to existing or adjacent occupiers and require developments to minimise the impact of noise. It would also conflict with the Framework, which seeks to ensure that development provides a high standard of amenity for existing users and avoids noise giving rise to significant adverse impacts on health and the quality of life.

Living Conditions: Occupiers of the Appeal HMO

30. The Council's reasons for issuing the notice included that the second floor bedrooms in the HMO provide substandard accommodation. I cannot consider

the merits of the dormer as a structure, but the layout of the HMO and the living conditions it affords are before me.

31. The planning application was not refused on this basis and the Council's report infers that, given nationally described space standards (NDSS), the bedrooms would only provide unacceptable living conditions if occupied by more than one person – as they normally should be[6]. I consider that the rear-facing second floor bedroom is reasonably large and comfortable to be in.

32. However, I am concerned at the size of the front-facing second floor bedroom. It has more than $7.5m^2$ floorspace in accordance with the NDSS but not much more than that, and it is restricted by being partially set under the roof slope. A bed, desk and chair plus a low clothes rail are fitted under the eaves, while in the remainder of the bedroom, there is a wardrobe, chest of drawers and mirror. I saw little usable space for circulation or relaxation.

33. The NDSS require that any area with a headroom of less than 1.5m is not counted within the Gross Internal Area unless used solely for storage; any other area that is used solely for storage and has a headroom of 900-1500mm is counted at 50% of its floor area; and any area lower than 900mm is not counted at all. The appellant has not shown that the front-facing second floor bedroom would have a floorspace of $7.5m^2$ if properly assessed.

34. The appellant has shown that both second floor bedrooms comply with local HMO licencing standards – and that is important because planning permission is not necessarily required for internal works of 'subdivision' or increasing HMO occupation by having two or more persons sleeping in any bedroom. However, by the fact that they are set out under housing legislation, compliance with licensing standards cannot be taken as compliance with planning policy.

35. The NDSS are not referenced in any adopted development plan policy, but they are endorsed in the Framework and PPG which post-date the CP and LP. For that reason and since the front-facing second floor bedroom is unacceptably cramped, I attach significant weight to the NDSS as a material consideration.

36. I conclude that, although the application was not refused on this basis, the front-facing second floor bedroom provides unacceptable living conditions for its occupiers, in conflict again with Saved LP Policy QD27 and the Framework.

Other Matters and Conclusion

37. The appellant does not claim that the change of use has any environmental benefits; an absence of unacceptable visual harm is not a positive factor which could tip the balance in favour of the appeal. I conclude that the change of use exacerbates an imbalance of housing uses within the community and is liable to cause unacceptable harm to the living conditions of nearby occupiers and the occupiers of the front-facing second floor bedroom in the building.

38. The presumption in favour of sustainable development as set out in paragraph 11 of the Framework means that development proposals which accord with an up-to-date development plan should be approved without delay. Where there are no relevant development plan policies or the policies that are most

[6] Set out in the Government's 'Technical housing standards – nationally described space standard' document as referenced in paragraph 127 and footnote 46 of the Framework, and also referenced in and linked to PPG paragraph ref ID: 56-004-20150327.

important are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

39. I have found that the development does not accord with CP Policy CP21 or Saved LP Policies QD27 and SU10. There may be a shortfall in the delivery and supply of land for homes to meet recognised needs 'for all types of housing' in Brighton, but the appellant has not shown that the policies relevant to this decision are out of date. The Framework would not justify a grant of permission, and nor would CP Policy SS1 which seeks to secure development that improves social as well as economic and environmental conditions.

40. The appellant has referred to his right to peaceful enjoyment of his property under Article 1 of the First Protocol (A1FP) of the Human Rights Act 1998 (HRA98). While he focussed on the dormer that is not subject to Appeal A, it should be accepted that a refusal of permission for the use would interfere with his rights under A1FP – and with the rights of occupiers of the HMO under Article 8(1) to private and family life, home and correspondence.

41. However, A1FP and Article 8 rights are qualified; interference may be justified where in accordance with the law and the public interest. HMOs are typically subject to relatively short-term lets, and I can consider what would be a reasonable period for tenants to look for alternative accommodation when considering Appeal B on ground (g).

42. With regard to the legitimate planning policy aims to manage housing uses in the interests of the community, and protect residential living conditions, I find that a refusal of permission would be proportionate and necessary. It would not unacceptably violate the occupiers' rights under Article 8 or the appellant's rights under A1FP; the protection of the public interest cannot be achieved by means that are less interfering with those rights.

43. Whether Policy CP21 unlawfully discriminates against young people contrary to Article 14 of the HRA98 is a question outside of my remit. For the reasons given and with regard to all other matters raised, I conclude that Appeal A should be dismissed.

APPEAL B – THE ENFORCEMENT APPEAL

Appeal B on Ground (c)

44. Ground (c) is that what is alleged by the enforcement notice does not amount to a breach of planning control. The onus is on the appellant to make their case for ground (c) and indeed ground (d) on the balance of probabilities. As noted above, the appellant has pleaded ground (c) only in relation to the dormer; his claim is that it was constructed as PD under Article 3 and Schedule 2, Part 1, Class B of the GPDO 1995.

45. The appellant's undisputed claim is that he began a scheme of renovation works, which included the construction of the dormer, in June 2008. It is also common ground that Article 3 and Schedule 2, Part 1, Class B of the GPDO 1995, as in force in June 2008, permitted the 'enlargement of a dwellinghouse consisting of an addition…to its roof'. The appeal dormer did not breach any of the limitations to PD under Class B at that time; the determinative issue is whether the dormer was built as an 'enlargement of a [lawful] dwellinghouse'.

46. The answer to that question will bear not only on whether the dormer was PD but also whether the allegation set out in the notice is correct – in the sense that the breach of planning control is essentially said to be the unauthorised change of use; the extension and dormer are enforced against on the basis that they facilitated the unlawful use.

47. The Council has referred to judgments which established or applied the principle that, if an enforcement notice is directed at a change of use, and operational development took place to facilitate the unauthorised use, the notice may enforce against the works as well as use[7]. The principle was applied in *Bowring v SSCLG* [2015] EWHC 1027 (Admin) as cited by the appellant.

48. As the appellant has noted, the timeline is crucial to establishing whether the dormer was PD[8]. He contends that the use of the building as a shared student house between 1993 and 2008 would have been classed as C3(b) under the UCO before it was amended in 2010 – and so the dormer was an enlargement to a dwellinghouse. A Council officer visited the site when the works were taking place and accepted that the dormer was for a C3 use.

49. However, there is no dispute that the previous use was not taking place when the dormer was being constructed. The appellant has shown that it was built between June and September 2008, and the property was uninhabited and uninhabitable when the works were taking place.[9] An inventory completed on 13 September 2008 shows that the property had seven furnished bedrooms, including two in the roof space, clearly as a result of the works. And while seven bedrooms are not strictly needed for a sui generis HMO use, a tenancy agreement was signed by seven occupiers on 13 September 2008.

50. The appellant suggests that a change of use occurs when occupation changes or a new use is introduced – but that is not always the case, and occupation is not the same thing as use. When dating a change of use, it is necessary to consider the situation in the round and take account of any relevant physical changes as well as changes to activity or occupation. It cannot be assumed that operations must take place later to be part and parcel of a change of use.

51. The evidence submitted does not show that the construction of the dormer was 'undertaken for a…lawful use' as described in *Bowring* [2015] or as a separate act of development to the alleged change of use. The timeline here shows such a close association that I find, on the balance of probabilities, that the dormer was built to facilitate the alleged change of use. My approach is consistent with that of an Inspector who found that a dormer on another alleged HMO was PD, although it was found on the timeline in that case that the dormer was PD.[10]

52. PD rights set out under Part 1 of the GPDO 1995 were not limited to C3 or any particular type of dwellinghouse(s). However, I do not need to assess whether the alleged HMO is a 'dwellinghouse' in the sense of affording to those who use it the facilities required for private domestic existence. The appellant has not shown that the change of use to a large HMO was lawful, and it follows that the construction of dormer to facilitate the use could not have been PD, because

[7] *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598; *Somak Travel Ltd v SSE & Brent LBC* [1987] JPL 630; *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin); and *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784
[8] *Makanjuola v SSCLG* [2013] EWHC 3528 (Admin)
[9] Paragraph 3.34 of the Grounds of Appeal – and as confirmed by Council Tax records
[10] Appeal ref: APP/Q1445/C/18/3199391

Article 3(5)(b) of the GPDO 1995 provided that any permission granted in connection with an existing use would not apply if that use is unlawful.

53. The Inspector in the Hartington Road appeal found that a dormer was PD, but it was alleged to be in breach of planning control in its own right[11]; there was no question of whether the works had facilitated any unauthorised change of use. In this case, I conclude that the dormer was probably constructed to facilitate a change of use to a sui generis HMO use and not as PD under Article 3 and Schedule 2, Part 1, Class B of the GPDO 1995. There has been a breach of planning control as alleged. Appeal B fails on ground (c).

Appeal B on Ground (d)

54. Ground (d) is that it was too late for the Council to take enforcement action on the date that the notice was issued. The appellant's case is that the dormer is immune from enforcement action under s171B(1) of the TCPA90 because it was substantially completed in or by September 2008, more than four years before the notice was issued.

55. However, a change of use of a building to use as an HMO becomes immune from enforcement action after ten years under s171B(3). The appellant makes no claim that it was too late for the Council to enforce against the alleged change of use, and I have found that it was facilitated by the construction of the dormer. In accordance with *Bowring* [2015] and the judgments cited by the Council, the notice may enforce against the dormer – and whether or not it should do so is a question to be considered through ground (f).

56. I find that it was not too late for the Council to take enforcement action against the alleged dormer. The appeal fails on ground (d).

Appeal B on Ground (f)

57. As set out under s174(2)(f) of the TCPA90, this ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

58. The notice alleges that there has been a change of use and requires the unauthorised use to cease. The notice does not 'under-enforce' and so its purpose is to remedy the breach rather than injury to amenity. That being the case, the appellant must show that the requirements of the notice are excessive to remedy the breach and lesser steps would achieve the same end.

59. I accept the appellant's contention that it is excessive for the notice to require cessation of any 'HMO' use. I cannot determine whether the lawful use of the building is as a small HMO or not, but that is not the question here. The requirements of the notice should be square with the allegation, and it would not prejudice any future proceedings for me to vary the notice so that it requires the cessation of the 'sui generis' HMO use which is alleged[12].

[11] Appeal ref: APP/Q1445/C/18/3198449
[12] The appellant is also correct that the notice cannot require resumption of the lawful use – but it does not do so. It simply requires that the unauthorised use is ceased, and I shall uphold that step with the clarification described.

60. However, and from grounds (c) and (d), it is not excessive for the notice to require the removal of the dormer. It has been held in the courts that an enforcement notice may require the removal of works that were integral to the change of use so that the property is returned to the condition it was in before the breach took place. I have found, no matter that the works predated occupation, the dormer was built to enable and as part and parcel of a change of use to a sui generis HMO use.

61. The appellant has not shown that, if he did not succeed on grounds (c) or (d), the breach could be remedied without removal of the dormer. It is not enough that the structure could possibly be utilised if the building was returned to its lawful use, whether that is C3 or C4 use. In order to remedy the breach, I find that it is not excessive to require that the dormer which facilitated the unauthorised change of use is removed.

62. *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 concerned the proper weight to be given to relevant PD rights as a 'fallback' position when considering a planning application for development, not an appeal on ground (f). Whether the dormer could be reconstructed under PD rights will depend on the lawful and actual use of the building when such works take place. S57(4) of the TCPA90 provides that where an enforcement notice has been issued in respect of development, planning permission is not required to return the land to its lawful use. It does not follow that the lawful use here will be resumed.

63. The appellant argues that upholding the requirement to remove the dormer would represent a disproportionate interference with his rights under A1FP. The question in ground (f) is whether the requirements of the notice exceed what is necessary *to remedy the breach*; human rights are not engaged.

64. I conclude that, for the notice to achieve the purpose of remedying the breach, it is not excessive but necessary to require the removal of the dormer. Thus, ground (f) succeeds in part and I shall vary the notice simply to clarify that it is the sui generis HMO use which must cease.

Appeal B on Ground (g)

65. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant requests that the period for compliance with the requirement to cease the use is extended from three to six months, so that neither he nor the occupiers are disadvantaged by enforced early termination of tenancy agreements.

66. Bearing in mind the rights of the appellant and his occupiers under A1FP and Article 8, I agree that it would be proportionate and reasonable to allow six months for cessation of the use. While the appellant has not specifically requested this, I shall also extend the period for compliance with the requirement to remove the dormer from six to nine months. This will ensure that the appellant still has the extra time currently afforded by the notice to undertake the works after the use has ceased.

67. It follows that Appeal B succeeds on ground (g). I am mindful that the date of this decision will be such that the use is required to cease during the academic year – but there is no evidence for me to extend the period by longer than requested. If necessary and without prejudice, the appellant may ask the

Council to exercise its discretionary power under s173(1)(b) of the TCPA90 to extend any period for compliance with an enforcement notice.

OVERALL CONCLUSION

68. For the reasons given, and with regard to all other matters raised, I conclude that Appeal A should be dismissed, and planning permission should not be granted for the use of the building as a seven bedroom HMO. Appeal B should succeed in part, and I shall vary the enforcement notice prior to upholding it.

DECISIONS

Appeal A: APP/Q1455/W/18/3196083

69. Appeal A is dismissed.

Appeal B: APP/Q1455/C/18/3199388

70. It is directed that the enforcement notice is varied by:

- Inserting the text '(Sui Generis)' at the end of the requirement to 'Cease the use of the property as a House in Multiple Occupation' in paragraph 5.
- Deleting three months and substituting six months as the period for compliance with the requirement to cease the use of the property as a House in Multiple Occupation (Sui Generis).
- Deleting six months and substituting nine months as the period for compliance to remove the dormer to the rear roof slope.

71. Subject to the variations, Appeal B is dismissed, and the notice is upheld.

Jean Russell

INSPECTOR