
Appeal Decision

Site visit made on 23 October 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref : APP/Q1445/C/18/3219747

Land at 10 Southmount, Brighton, BN1 7BD

- 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 Bruce Dickinson against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 3 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use from dwellinghouse (Use Class C3) to 4 bedroom House in Multiple Occupation (C4).
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation (HMO).
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Ground (e)

1. This ground of appeal is that copies of the notice were not served as required by s172 of the 1990 Act (as amended). The Appellant's criticism is that his agent, as the company submitting the application, was not served with a copy of the notice.
2. There is no requirement for an enforcement notice to be served on an agent. I share the Council's view that the Appellant's agent is not someone who is materially affected by the notice. The agent would receive the notice from the client and there is no dispute concerning correct service on the Appellant.
3. Even if I am wrong and there has been incorrect service section 176(5) of the Act gives me the power to disregard incorrect service where those who should have been served have not been substantially prejudiced. There is no suggestion in this case that the Appellant or his agent have been prejudiced in the appeal proceedings. I find there to be no substantial prejudice and any incorrect service is disregarded.
4. For the reasons given above the ground (e) appeal fails.

Ground (a) appeal and deemed application

Main Issue

5. The main issue in the determination of this appeal is the effect of the development on the living conditions of current and future occupiers with regard to the adequacy of the accommodation.
6. The appeal site is located in a primarily residential area. It is located in a ward covered by an Article Four Direction which removes permitted development rights to change use from Use Class C3 to Use Class C4. The unauthorised development is a material change of use from a single dwelling (C3) to a four bedroom small house in multiple occupation.
7. The development plan (including the Brighton and Hove City plan Part One and saved policies in the Brighton and Hove Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development provides a suitable standard of accommodation. Policy QD27 of the Local Plan provides that permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
8. The layout of the property includes a kitchen and a small dining table but no living room. Residents do not have the option of relaxing and eating together. This encourages greater time to be spent in bedrooms and one of the bedrooms is very small with inadequate circulation and storage space for day to day living. I share the Council's concerns and agree with the comments of an objector who says that the property is too cramped for 5 people. The Appellant refers me to the retrospective application for planning permission which refers to four occupiers. But this appeal concerns an enforcement notice and the property comprises a double bedroom and three single bedrooms which could accommodate 5 people. The poor standard of communal facilities coupled with the size of one of the bedrooms leads to a loss of amenity for current and future occupiers and causes undue harm to their living conditions contrary to policy QD27 of the Local Plan.
9. I have taken into account the demand for housing in the local area but this does not outweigh my concerns. The Appellant draws attention to the fact that the property has an HMO licence and that the small bedroom satisfies HMO licensing requirements. But HMO licensing is the subject of a separate legislative regime that seeks to secure minimum standards of accommodation for human habitation. The test for planning purposes is whether the quality of accommodation secures an adequate standard of amenity for future occupiers and in this case I find that it does not. Whilst the Appellant might not have been aware of the need for planning permission this is not a ground of appeal and not a matter to which I have accorded weight.
10. The development causes undue harm to the living conditions of current and future occupiers by virtue of its inadequate standard of accommodation and is contrary to relevant policies in the development plan (including policy QD27 of the Local Plan) and the Framework.
11. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and I have considered

the conditions proposed by the Council in the event that the appeal is allowed. But no conditions could overcome my concerns. I do not consider that a condition restricting the number of occupiers is reasonable and it would be difficult to monitor and enforce.

12. For the reasons given I conclude that this ground of appeal should not succeed and planning permission should not be granted on the deemed application.

Ground (g) appeal

13. This ground of appeal is that the time period for compliance is unreasonably short. The notice provides for a three month compliance period.
14. The Appellant argues that 12 months would be a reasonable period as the works required are complex but no supporting detail is provided. No details concerning individual tenancies are before me other than a reference to an agreement that has expired.
15. The rights of an individual to a home must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interest. I have balanced the private interests of the Appellant and occupants and the public interest in bringing the identified harm to an end without unnecessary delay. I consider that a period of three months would be a reasonable time in which to expect the requirements to be undertaken. It would strike an appropriate balance so as not to violate individual rights and take appropriate account of the particular circumstances in this case.
16. For the reasons given I conclude that a reasonable period for compliance would be three months and I am upholding the enforcement notice accordingly.
17. For the reasons given above the appeal under ground (g) fails.

Formal Decision

18. 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.

S. Prail

Inspector