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## 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: 18 November 2019**

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**Appeal Ref : APP/Q1445/C/18/3193154**

**Land at 44 Roedale Road, Brighton, BN1 7GB**

- 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 James Ford against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 29 November 2017 .
- The breach of planning control as alleged in the notice is without planning permission material change of use from Dwelling House (Use Class C3) to 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) (c) of the Town and Country Planning Act 1990 as amended.

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

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### Ground (c) appeal

1. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55 of the 1990 Act (as amended) and includes the making of any material change in the use of any buildings or other land.
2. Permitted development rights grant planning permission for certain specified changes of use subject to certain conditions and limitations. These rights may be removed by an Article 4 Direction.
3. The appeal site is a two storey, plus loft conversion, residential building in a residential area. The site is located within a ward covered by an Article 4 Direction (the Direction) which removes permitted development rights for the change of use of a building from Use Class C3 (dwelling) to use within Use Class C4 (HMO). The Direction came into force on 5 April 2013.
4. This appeal turns on whether the change of use of the appeal site from Use Class C3 to C4 occurred before the Direction came into effect, ie before 5 April 2013. If it did then permitted development rights apply and there is no unauthorised development. If it did not then permitted development rights do not apply and there is a breach of planning control. The onus of proof

rests on the Appellant and the test of evidence is the balance of probabilities.

5. I am provided with a copy of an HMO licence application for the appeal site which is dated 16 March 2013 (before the relevant date). The Council has date stamped the application on 8 April 2013 and this date also appears on the receipt for the accompanying cheque. The Appellant says that he made the application because of the coming into effect of the Direction as the property was occupied by four unrelated persons at that time and within Use Class C4.
6. The Appellant's version of events does not need to be independently corroborated in order to be relied upon but it does need to be sufficiently precise and unambiguous.
7. The Council draw to my attention Council tax records that refer to 2 occupants between 28 April 2011 and 12 June 2014. They draw to my attention an email from the Appellant dated 23 February 2017 which states that the occupiers are two women in a relationship, their 2 sons and a girlfriend of one of the sons. They also refer me to building control drawings submitted in relation to a loft conversion dated 8 July 2014 which show the existing layout as including 3 bedrooms. There is no dispute that the property was in use as a 7 person HMO from September 2014 after conversion works were complete and there is a copy of a tenancy agreement before me dated 2017 signed by 6 tenants.
8. None of the evidence before me is conclusive as to use of the property on the date the Direction came into effect. I do not consider that the date of an HMO application made under a separate legislative regime is conclusive as to actual use and the Council's evidence casts doubt on the Appellant's version of events. I have no evidence before me to support the claim that at the relevant date the property was occupied by four unrelated persons other than the date of the HMO application. The building control records after the relevant date appear consistent with the Appellant's description of occupation in 2017 and that description suggests use as a single household. Taking all of the evidence before me into account I consider that it was more likely than not that the property was in use as a single dwellinghouse at the time the Direction came into effect and therefore it does not benefit from permitted development rights.
9. I conclude on the evidence before me that the Appellant has not discharged the burden of proof that rests upon him in this appeal. The matters alleged constitute a breach of planning control without the required planning permission.
10. For the reasons given above, this ground of appeal does not succeed.

### **Formal Decision**

11. The appeal is dismissed and the enforcement notice is upheld.

*S. Prail*

**Inspector**