



Appeal Decision

Site visit made on 11 February 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/Q1445/C/19/3234194

29 Hollingdean Terrace, Brighton BN1 7HB

- 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 Mrs Jane Harrison against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 13 June 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission the material change of use of the property from a dwelling house (Use Class C3) to a 3 bedroom House in Multiple Occupation (C4).
 - The requirement of the notice is:
Cease the use of the property as a House in Multiple Occupation (HMO).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. In the appellant's statement it is stated that the appeal building is a single dwellinghouse. I have therefore sought clarification as to whether ground (b) is pleaded (that the breach of planning control alleged in the notice has not, in fact, occurred). The appellant has confirmed ground (b) is not pursued as there is no suggestion that the alleged material change of use has not occurred. I have determined the appeal on this basis.

Reasons

The appeal on ground (d)

3. The argument is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The appellant maintains that the alleged breach of planning control is immune from enforcement action due to the passage of time. Both appeal parties agree that the appeal property has changed use from a single dwellinghouse to a House in Multiple Occupation and that is a material change in the use of No 29. The appeal parties disagree as to which immunity period specified in section 171B(2) and (3) is relevant.
4. Section 171B(2) of the above Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the

- period of four years beginning with the date of the breach. Section 171B(3) of the same Act states that in the case of **any other** breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (my emphasis).
5. On 5 April 2013 the Council introduced an Article 4 Direction removing a permitted development right for a dwellinghouse to change to a House in Multiple Occupation in specified parts of the city, including the appeal site.
 6. The enforcement notice states that the use of the appeal property has changed from a dwellinghouse to a 3 bedroom House in Multiple Occupation (HMO), which falls within the scope of section 55(1) of the above Act. The notice identifies this change as being from Use Class C3 to C4 of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order).
 7. The building contains 3 rooms used as bedrooms and all occupants of the property share the use of the property's only kitchen, bathroom, toilet and living room. The evidence presented shows that the breach of planning control began on 2 September 2014 which is just over 4 years and 9 months before the enforcement notice was issued.
 8. It is important to focus on the description of the alleged breach of planning control. The material change in the use of No 29 alleged is stated as a change of use of the property from a dwelling house to a 3 bedroom House in Multiple Occupation. The allegation does not allege 'use as a single dwellinghouse' and so section 171B(2) is not applicable and the relevant immunity period is ten years.
 9. In reaching this view I have taken into account the definition of Class C4, stated in the Use Classes Order, which is: *"Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*". With the immunity period being ten years, the evidence presented clearly shows that the unauthorised use is not immune from enforcement action.
 10. The appellant refers to an advice note produced by The Planning Inspectorate, which is dated 15 January 2014. This advises that Houses in Multiple Occupation can benefit from permitted development rights granted to dwellinghouses, and, it is evident that the Council has granted Lawful Development Certificates reflecting that advice. Be that as it may, there is a distinction to be drawn between a building **being** a dwellinghouse and a building being **used as** a dwellinghouse. The evidence shows that the property is not being used as a single dwellinghouse and is actually used as a House in Multiple Occupation. I have seen nothing to confirm, just because the latter may benefit from permitted development rights, that the four year immunity period automatically applies.
 11. I appreciate that section 171B of the above Act pre-dates the creation of the C4 Use Class. But this does not change my conclusion on this ground of appeal. Considering all of the above points the appeal on ground (d) fails.

The appeal on ground (g)

12. The current tenancy agreement for the property ends on 15 September 2020 and the appellant seeks a longer period of compliance to coincide with this date so as not to leave the current occupiers without a home. Occupants of the

property should have time to look for alternative accommodation. However, based on the information provided, the period sought by the appellant far exceeds what I consider to be reasonable in the circumstances, given the planning harm identified in the notice and given the notice does not require any physical alterations to be made to the property. As such the appeal on ground (g) fails.

Other Matters

13. I appreciate the appeal site may have convenient access via public transport and bicycle to the city centre and two universities and that it may provide good-quality shared accommodation. But as there is no ground (a) appeal before me in this case, planning merits such as these cannot be considered.

Conclusion

14. For the reasons given above the appeal does not succeed.

L Perkins

INSPECTOR