
Appeal Decisions

Site visit made on 15 January 2021

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 February 2021

Appeal A: APP/Z0116/C/20/3257976

Appeal B: APP/Z0116/C/20/3257977

24 Cotham Vale, Bristol BS6 6HR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act).
 - The appeals are made by Mr Matthew Tobutt (Appeal A) and Ms Xiaohui Yang (Appeal B) against an enforcement notice issued by Bristol City Council.
 - The enforcement notice was issued on 23 July 2020.
 - The breach of planning control as alleged in the notice is: *Without the grant of planning permission the change of use to a House in Multiple Occupation Use Class C4.*
 - The requirements of the notice are: *Cease the use of the property as a House in Multiple Occupation Use Class C4.*
 - The period for compliance with the requirements is 10 (Ten) Months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act also falls to be considered.
 - Appeal B is proceeding on the ground set out in section 174(2)(c) of the 1990 Act.
-

Decision

1. The appeals are 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.

Preliminary Matters

2. Class C4¹ was introduced by amendment to the Town and Country Planning (Use Classes) Order 1987 (the UCO) in April 2010. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) was amended in April and November 2010 so as to grant planning permission initially for a change of use from C4 to C3², 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 Schedule 2, Part 3, Class L of the GPDO as amended.

¹ The term 'C4' refers to Class C4 or the use of a dwelling by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987.

² The term 'C3' refers to Class C3 or the Use as a dwellinghouse (whether or not as a sole or main residence) by— (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987.

3. The appeal building lies within an area that is subject to an 'Article 4 Direction' which came into force on 11 December 2011. 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.

Background

4. According to the information provided by the appellant, the appeal property was in use as an HMO between September 2007 and summer 2015 when the property was bought by the appellant. The use of the property as an HMO (Class C4) for up to 6 people who do not form a single household would not have required planning permission prior to the adoption of the Article 4 Direction.
5. Once purchased, the appellant commenced renovation work to the property in August 2015 and these works continued until December 2017. During this period the appellant resided at the property. Between December 2017 and April 2019, the property was let to a single tenant. During this period, the appellant resided elsewhere and has supplied bills which show Council Tax for a property in the London Borough of Camden between January 2018 and April 2019. Further to this, and once the tenant vacated the property in April 2019, final works were undertaken to enable the house to be rented to four new tenants in June 2019.

Appeals A and B on Ground (c)

6. This legal ground of appeal is that the matters alleged do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellants, and the test of the evidence is on the balance of probability.
7. The appellant argues that the appeal property is and has been used as an HMO for several years and that there has been no material change of use. The Council's case rests on the fact that the use of the property has changed from that of a single dwelling house (Class C3) to an HMO (Class C4).
8. In this case, to establish whether a material change of use of the property has occurred and was occurring at the date of the Notice, I need to understand how the property was being used. From the information provided by the appellant, it is likely that the property was in use as an HMO between 2004 and 2015. However, in the summer of 2015 that use ceased until the property was let to tenants in June 2019.
9. From the evidence before me, it appears that during these intervening years, a material change of use of the property occurred; being occupied as a single dwelling house by the appellant, Mr Matthew Tobutt as his sole residence whilst undertaking renovations, and then by a single tenant. Even if it was the appellants' intention to recommence the rental of the property as an HMO, on the balance of probability, the use of the property had materially changed from that as an HMO to being occupied as a single dwelling house.
10. Consequently, the resumption of the use of the property in June 2019 as an HMO in a C4 use amounts to a material change of use within s.55 of the 1990 Act for which there was no planning permission and for which express planning permission would be required, due to the Article 4 Direction being in place.
11. For these reasons, the appeals on ground (c) do not succeed.

Appeal A on Ground (a) and the deemed planning application

Main Issues

12. These are i.) whether the development would result in a harmful concentration of HMOs and the effect of the development on the choice of housing within the locality and ii.) the impact of the use of the property as an HMO on neighbour amenity and the appearance of the area by reason of inadequate provision of bin storage.

Reasons

Harmful concentration/choice of housing

13. The appeal property is located to the north of the city. It is a mid-terraced two-storey residential property with 5 bedrooms located on the south side of Cotham Vale. The area surrounding the site is predominately residential. The road consists of a mix of residential dwellings and HMOs (Class C4) and large HMOs (Sui Generis use). The site is situated within the Cotham and Redland Conservation Area and as noted above, within the Lawrence Hill, Ashley, Cabot, Cotham and Clifton East HMO Article 4 Direction.
14. Policy DM2 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014) (the SADMP) provides that the Council aims for a broad housing mix within the city. Whilst recognising that the supply of shared housing provides an important contribution to people's housing choice, the policy aims to ensure that such development also preserves the residential amenity and character of an area and that harmful concentrations³ do not arise.
15. The Council's recently adopted Supplementary Planning Document (SPD) 'Managing the development of houses in multiple occupation', is aimed at providing further guidance on implementing Policy DM2 in relation to houses in multiple occupation. Amongst other things, the SPD identifies situations where harmful HMO concentrations are likely to arise. These include the 'sandwiching'⁴ of residential properties and areas where more than 10% of dwellings are occupied as HMOs. The SPD advises that the tipping point between a balanced and imbalanced community is stated to occur when HMOs exceed 10% of the properties within an area.
16. Concerns have been raised by the Council and local residents about the overconcentration of HMOs within the local area, which impact upon the quality of life through noise, litter and congestion. The Council's officer report provides that within Cotham Ward there are 327 licenced HMOs equating to 6.42% of the overall housing stock. Furthermore it says there are 15 licensed HMOs in Cotham Vale including 16,18, 20, 26 and 28. With the use of the appeal property as an HMO, a 'sandwiching' effect would be created leaving No 22 as the only non-HMO in a run of six. Further evidence in the form of an extract from the Council's Property Licence Register⁵ has been supplied by the Redland and Cotham Amenities Society which lists additional HMOs within the street.

³ Described as a worsening of existing harmful conditions or a change to the housing mix that reduces housing choice.

⁴ Proposals for the introduction of new HMOs resulting in an existing residential property or properties (Use Class C3) being sandwiched by HMOs on both sides.

⁵ Dated 22 November 2020

From this it is suggested that approximately 21% of the properties in Cotham Vale are HMO.

17. Given the level of HMOs within the local area and the high percentage of existing HMOs within Cotham Vale, it is considered that the addition of the appeal property would add to the already large concentration. Allowing another HMO in this location would impact on the choice of housing by further reducing the stock of existing family homes which in turn would affect the character of the area. Overall, this would be contrary to the aims of Policy DM2 of the SADMP and the Council's SPD to support the protection of residential communities from harmful concentrations of HMOs and provide a choice of housing providing for the needs of different groups within the community.

Provision of waste storage at the property

18. The Council considers that the insufficient details for bin storage coupled with the number of existing HMOs along the street exacerbate the existing issues with rubbish on the street. The property sits in an elevated position with steps leading from the pavement to the front door. There is an area at the bottom of the steps that provides a space for waste storage. Although the space is limited, it is similar in size to that provided by other properties in the road. Furthermore, I have no details as to what amount of space would be required for an HMO of this size. As such, I consider that the provision of this space is acceptable for the size of the property and there is no conflict with Policy DM2 of the SADMP, Policy BCS21 and Policy BCS15⁶ of the Bristol Development Framework Core Strategy (2011) which, amongst other matters, outlines that all new development should provide bin storage facilities fit for the nature of development, with adequate capacity for the proposed development, in a location which is safe and accessible for all users and safeguards the amenity of existing development.

Other matters

19. As previously referred to, the use of the property as an HMO (Class C4) is one that is occupied by not more than six unrelated residents, who share basic amenities, with the same meaning as in section 254 of the Housing Act 2004. There is no distinction between whether the property is occupied by students or professionals and how an HMO is occupied cannot be controlled by planning conditions.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

S A Hanson

INSPECTOR

⁶ Policy BCS23 of the CS was referred to in the reason for issuing the Notice, however, Policy BCS15 as reference in the officer's report is considered more pertinent to the issue of the storage of refuse.