The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/Q1445/C/20/3265388
26 Bevendean Crescent, Brighton BN2 4RA

- 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 George Birtwell against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice was issued on 11 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from a dwelling house (use class C3) 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 (HMO).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matter

2. Both parties consider the appeal is suitable to be determined by the written procedure. That being so, I do not consider that injustice or prejudice to a party arises.

The Enforcement Notice

3. The alleged breach of planning control relates to a House in Multiple Occupation (use class C4). That being so, the requirement of the notice should mirror the allegation, but as this only necessitates a minor correction, I do not consider that injustice to the parties will arise.

The ground (c) appeal

4. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

5. The site consists of an extended end of terrace property. The parties accept the property was occupied as a House in Multiple Occupation (small C4 HMO), when the notice was issued.

6. The appellant purchased the property in the summer of 2014 and it is said that it was occupied by a group of atleast 4 unrelated people at that time. The property was then re-occupied as a small C4 HMO by 6 unrelated people. There was then a period where a seventh tenant occupied the property, and this resulted in a material change of use to a sui generis or large HMO.

7. An enforcement notice was subsequently issued and appeal dismissed[1]. The appellant then ceased that use and reverted the property to what he considered to be the previous lawful use as a small C4 HMO, and which has remained the case to date. This results in the enforcement notice before me as the Council considers the lawful use to be that of a C3 dwellinghouse (C3).

8. The appellant contends the property has been used as a small C4 HMO since 2012 at the latest. This is relevant as an Article 4 Direction (the A4D) came into effect on 5 April 2013 which removed the ability to change between the C3 and small C4 HMO use classes without the need for planning permission. The lawful use of the property on this date is therefore critical (the critical date).

9. In support of this contention the principal evidence advanced by the appellant is that of two statutory declarations. Reference has also been made to a letter from an estate agent, but as this is not before me, I am unable to consider it specifically.

10. The 2017 declaration of a Sue Markwick is therefore before me. She lived opposite the property and asserts that she has therefore seen how it has been tenanted. She says that she believes the property was bought in 2006 as a rental property and that it was let to a *'number of sharers through the years.'* It is then said from *'approximately 2011/12 there was a group of at least 3 individual Polish men and a women living there.'*

11. The 2017 declaration from a Darren Edwards is also before me. He lived next door to the property and believed it *'…was let to a variety of sharers.'* He says that *'…in early 2014 there was a group of 4 Polish men and women living there who, I think, were additionally sub-letting to some other individuals.'*

12. I am first struck by the similarities between the two statutory declarations, which are otherwise produced by different individuals and sworn on different dates. These similarities relate to the layout of the declarations in that they both comprise three paragraphs consisting of the same content, namely: 1.) where they reside; 2.) reference to the same *'sharers'* term and 3.) a very brief paragraph about occupation. These similarities cast some doubt in my mind as to the contents and voracity of these declarations.

13. Even if I am wrong, these declarations are extremely brief. They do no purport to be based on any documentary or written evidence pertaining to the use of the property, nor any internal visits or inspection. They are therefore ambiguous as opposed compelling. Neither do they provide any precision in terms of dates or description of first-hand events to demonstrate how the property was actually being occupied and so, for example, whether the tenants were unrelated or not. Moreover, the only dates cited are those of from

[1] APP/Q1445/C/17/3174940

approximately 2011/12 and then early 2014 and so do not precisely and unambiguously demonstrate the actual occupation on the critical date. Even in combination, they are vague and do not demonstrate on the balance of probabilities the occupation and with-it use of the property on the critical date.

14. The appellant also says the use is supported by the issue of HMO licenses by the Council. However, the first of these was not issued until June 2014 and so does not demonstrate on the balance of probabilities the use of the property on the critical date.

15. The Council advances that the Council Tax records for the property show only 2 people were in occupation between July 2011 and May 2014. However, these records do not demonstrate on the balance of probabilities the actual physical occupation of the property and so I afford this only limited weight.

16. The Council also advances that in July 2018 the property was leased to Sussex University and this occupation fell within the C3 use class. That being so, any subsequent use as a small C4 HMO use would require planning permission owing to the A4D. However, the Council provides no documentary evidence to support that claim and the appellant says the headlease to the University related to the large HMO use that took place between September 2016 and May 2018. In the absence of documentary evidence from either party, I can only afford neutral weight to this matter. However, considering my above findings, I do not find it to be determinative in any event.

17. It therefore remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate on the balance of probabilities that there has not been a breach of planning control.

18. The appeal on ground (c) therefore fails.

The ground (g) appeal

19. The appellant contends that a 3-month compliance period would prejudice a tenancy agreement which runs until 5 September 2021 and that if the appeal is dismissed the period for compliance should be extended until this time. I am however not convinced that such matters demonstrate that the period in which to comply with the notice is too short.

20. That date has however since passed. There is then very little evidence that 3 months is too short to re-house any subsequent occupiers that may reside in the property on an HMO basis.

21. The appeal on ground (g) therefore fails.

Overall Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

23. It is directed that the enforcement notice be corrected by:

    - substituting the words '*Cease the use of the Property as a House in Multiple Occupation (use class C4).'* for those at paragraph 5. of the notice.

24. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR