



Appeal Decisions

Site visit made on 1 August 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal A Ref: APP/Z0116/C/22/3312417

Appeal B Ref: APP/Z0116/C/22/3312418

Ground, First and Second Floor, 71 Arley Hill, Cotham, Bristol BS6 5PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Benjamin Marcus Dembo and Appeal B is made by Ms Ruth Allyson Dembo, against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 22 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission the change of use to a large House in Multiple Occupation (Sui Generis).
 - The requirement of the notice is to:
Cease the use of the property as a large House in Multiple Occupation (Sui Generis) and return to Use Class C4.
 - The period for compliance with the requirement is:
10 months after the notice takes effect.
 - The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/Z0116/W/22/3312416

71 Arley Hill, Cotham, Bristol BS6 5PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs B Dembo against the decision of Bristol City Council.
 - The application Ref 21/03029/F, dated 28 May 2021, was refused by notice dated 22 September 2022.
 - The development proposed is the change of use of the upper floors residential unit from small HMO C4 to large HMO (Sui Generis Use) for 8 bedrooms
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by substituting the postcode at paragraph 2 for "BS6 5PJ".
2. Subject to this correction, the appeals are allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use to a large House in Multiple Occupation (Sui Generis) at Ground, First and Second Floor, 71 Arley Hill, Cotham, Bristol BS6 5PJ as shown on the plan attached to the notice and subject to the conditions set out in the attached Schedule.

Appeal C

3. The appeal is allowed and planning permission is granted for the change of use of the upper floors residential unit from small HMO C4 to large HMO (Sui Generis Use) for 8 bedrooms at 71 Arley Hill, Cotham, Bristol BS6 5PJ in accordance with the terms of the application, Ref 21/03029/F, dated 28 May 2021, subject to the conditions set out in the attached Schedule.

Preliminary Matters

4. The appeals relate to an enforcement notice and the refusal of an application for planning permission. While there is some difference in the descriptions between the appeals, I am satisfied that the development is the same in each and I have proceeded on this basis.
5. The Enforcement Notice refers to the appeal sites postcode as BS6 5PT, whereas the appellant refers to BS6 5PJ. All other documents, including the planning application form, appeal forms and Council's decision notice for the planning application all refer to the latter. I have therefore used this in my decision. I will correct the notice accordingly.

Ground (a) – the deemed planning application, and Appeal C

Main issue

6. The main issue to consider is whether the proposal would lead to a harmful concentration of houses in multiple occupation in the local area.

Reasons

7. Policy DM2 of the Bristol Local Plan – Site Allocations and Development Management Policies (2014) (the DM Policies) sets out the circumstances where the “intensification” of a house in multiple occupation (HMO) will not be permitted. These include where the development would result in a harmful concentration of such uses, resulting from:
 - i) levels of activity that cause excessive noise and disturbance to residents, or
 - ii) levels of on-street parking that cannot be reasonably accommodated or regulated through parking control measures, or
 - iii) cumulative detrimental impact of physical alterations to buildings and structures, or
 - iv) inadequate storage for recycling/refuse and cycles.
8. Further guidance is contained within the Supplementary Planning Document – Managing the development of houses in multiple occupation (2020) (the SPD). With relevance to this appeal, it states that proposals for additional bed spaces within an existing HMO, where 10% or more of the total housing stock within a 100-metre radius of the property are occupied as HMO's, will be unlikely to be consistent with Local Plan policy.
9. The Council set out that within a 100-metre radius of the appeal property there are 193 residential properties, of which 26 are HMO's, this equates to over 13%. As such, the “desirable” 10% threshold within the SPD has been

exceeded. However, the SPD further states that such proposals are unlikely to be consistent with Local Plan policy, not that they are automatically contrary to it. Accordingly, an assessment of each scheme is required, considering those specific matters listed in policy DM2.

10. In respect of levels of activity that may result in excessive noise and disturbance to residents, I am conscious that the property is currently authorised to be used as a 6-bed HMO, with an additional 2-bedspaces having now been created. There would already be a degree of activity associated with the property, in terms of general comings and goings, as well as the use of the garden areas. In my view, given the size of the property, together with that of the associated garden area, the layout and positioning of the building in relation to neighbouring properties, considered with the location which already accommodates existing residential development to a reasonably high density, I consider that the addition of two bedspaces would not result in an increase in noise and disturbance that would unacceptably affect neighbouring residents, over and above that which would already exist.
11. In reaching this finding, I am also conscious of the contents of the Council's Delegated Report in respect of the refusal of planning permission, where it was concluded that there was insufficient evidence to warrant refusing planning permission on the issue of the impact on the amenity of surrounding properties.
12. Similarly, the Delegated report raises no objection to the scheme on the grounds of levels of on-street parking not being able to be reasonably accommodated or regulated through parking control measures, the cumulative detrimental impact of physical alterations to buildings and structures, or any concern over inadequate storage for recycling/refuse and cycles. There is no substantive evidence that would lead me to conclude that harm results in respect of these issues. As such, I find no reason to object to the development on these matters. The SPD refers to the potential for exceedance of the 10% threshold to result in a reduction or weakening of social cohesion. There is no cogent evidence before me that shows that the development has an adverse effect on social cohesion in the local community.
13. My findings in this regard have also been made in recognition of the level of activity that is likely to occur within the surrounding area, as well as comments made by interested parties at the time of the planning application that there is already a level of noise within the street. In my view, the additional two bedspaces at this one property within the area would not of itself materially exacerbate the existing situation.
14. I am also mindful that the appeal property is semi-detached, with the attached property being a residential dwelling. The internal reconfiguration of the appeal property has resulted in a kitchen/dining/living room being located to the first floor, against the party wall and alongside a bedroom within the neighbouring property. The appellant has offered to relocate this living space to the ground floor, replacing it with a bedroom. While the Council raise no concern in this respect, in my view, this would safeguard against any unacceptable noise impact on the attached property and thus a planning condition could be used to ensure this takes place. Moreover, while not a matter raised between the main parties, this would also go some way to alleviating the concerns of the

neighbouring occupiers, in terms of overlooking from this first floor living space.

15. For the reasons above, I find good reason for departing from the general guidance of the SPD and I find that the development does not lead to a harmful concentration of houses in multiple occupation in the local area. Accordingly, there is no conflict with policy DM2 of the DM Policies.
16. The appeals on ground (a), as well as against the refusal of planning permission, therefore succeed.

Other Matters

17. Interested parties have raised issues in respect of physical alterations to the exterior of the building and the appeal site. These are not matters which are before me, as the appeals are concerned only with the change of use of the property. I note that the Council asserts that these matters are dealt with by way of a separate investigation and planning application. I need not consider this any further.
18. There is reference to the potential for "sandwiching" to have occurred, i.e., existing properties are sandwiched between HMO's. However, the property is an existing HMO and as such this matter is not relevant to the development I am considering.
19. Instances have also been raised where interested parties contend that disturbances and nuisances have been caused by residents at the property. Little information has been submitted in regard to these occurrences and there is nothing to convince me that they are matters that are not capable of occurring at any residential property in the area. Moreover, there is no persuasive evidence that convinces me that two further occupants would exacerbate the situation. Thus, these matters do little to dissuade me of my findings above.
20. I note concern in respect of the potential for overlooking from the second-floor kitchen area, which was formerly an area of landing. However, this is a small kitchen, with no facility to sit within it and thus I find it unlikely that occupants would spend extended periods here. Furthermore, any views out of this room to the neighbouring property are at an angle and not direct views. Consequently, I do not consider that there would be any unacceptable overlooking resulting from the positioning of this room.
21. There is also some concern from interested parties that the occupancy of the property is exceeding, or could exceed, the permitted 8 individuals. However, I note that a copy of the HMO licence has been submitted which limits occupation to 8 persons. As such, there is control in this respect through separate legislation.
22. Information has been submitted regarding complaints made to the Council in respect of its procedures, as well as possible non-compliance with HMO licence conditions. These are matters between the Council and the complainant, and not matters that I have considered when making my decisions.

Conditions

23. The Council has not suggested any planning conditions that should be imposed should the appeals be allowed.
24. As the development has already been undertaken, the standard time limit regarding commencement is not required. I have however imposed a plans condition to define the scope of the permissions that are granted. As mentioned above, in the interests of safeguarding the living conditions of neighbouring occupiers, I have also included a condition requiring the relocation of the kitchen/dining/living area to the ground floor and bedroom to the first floor.

Conclusion

25. For the reasons given above I conclude that the appeals should succeed in respect of ground (a), and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended. The notice, as corrected, shall be quashed. I shall also allow the appeal, made under section 78, against the refusal of planning permission.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS – APPEALS A, B and C

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site location plan dated 14/05/21.
 - Existing plans and elevations dated 15/06/21.
 - Proposed plans and elevations dated 15/06/21.
- 2) Within 6 months of the date of this decision, the kitchen/dining/living room to the first floor shall be relocated to the ground floor in place of Bedroom 6, and vice versa. Written confirmation of this relocation shall be provided to the Local Planning Authority within one month of the works being undertaken.