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# Appeal Decision

Site visit made on 3 June 2016

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 30 June 2016**

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**Appeal Ref : APP/T1410/C/15/3133906**

**93 Royal Parade, Eastbourne, East Sussex, BN22 7AE.**

- 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 Paul Vander against an enforcement notice issued by Eastbourne Borough Council.
- The notice was issued on 4 August 2015.
- The breach of planning control as alleged in the notice is without planning permission, a change of use from that of a Bed & Breakfast/Guest House, operating under Class C1, to that of a House of Multiple Occupation (HMO) with 6 bedrooms to accommodate up to 12 people, operating under a Sui Generis Class.
- The requirement of the notice is that use of the property as an HMO cease and it be returned to the previous authorised use as that of a Guest House.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

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

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## **Preliminary Matter**

1. The requirements of a notice should remedy the alleged breach of planning control. In this case, the alleged breach of planning control is a material change of use to a large House in Multiple Occupation (HMO). In addition to requiring cessation of the unauthorised use, the notice requires that the property return to its previous authorised use as that of a guest house. But a notice cannot require that a former use be revived as that goes beyond what is required to remedy the alleged breach. I do not consider that deletion of the requirement to revert to a previous use would cause injustice to either party and therefore, if appropriate, I will amend the notice accordingly.

## **Ground (a) appeal and deemed application**

### **Main issues**

2. The main issues in the determination of this appeal are the effect of the development on (i) tourist accommodation, (ii) the living conditions of occupiers of nearby property with particular regard to noise and disturbance (iii) the living conditions of current and future occupiers in terms of the adequacy of space and (iv) highway safety.

## **Tourist Accommodation**

3. The appeal site is a mid-terrace property with accommodation over three floors including the roof space. It faces a busy main road. The surrounding area is predominantly residential comprising a mixture of family dwellinghouses, flats and guest houses. Tourist facilities exist nearby.
4. The development plan (including the Eastbourne Borough Plan and the Eastbourne Core Strategy Local Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to maintain a balanced supply of housing, including where appropriate tourist accommodation.
5. Saved policy HO14 of the Eastbourne Borough Plan provides that HMOs will not be permitted in the Tourist Accommodation Area (TAA) defined in Policy TO1. There is no dispute that the site is currently within the TAA. Policy TO1 provides that planning permission will be refused for proposals which are incompatible with tourist accommodation use. Relevant considerations are stated to include the effect on residential and visual amenity, likely hours of operation, safety and security implications. Policy TO2 states that only in exceptional circumstances will permission be granted for any other use and that such circumstances must demonstrate that continued use for tourism is not viable.
6. The Council is currently preparing a Seafront Plan. This emerging plan is at issues and options stage. Whilst I note that an independently commissioned tourist accommodation study published in 2014 includes recommendations to review the TAA and reduce its current area and that this is part of the evidence base for the emerging plan neither the study nor the emerging Seafront Plan form part of the statutory development plan.
7. The Framework provides that the weight to be attached to an emerging plan is dependent on its stage of preparation, extent to which there are unresolved objections relating to the relevant policies and the degree of consistency with the Framework. The early stage of development of the Emerging Seafront Plan limits the weight that I can attach to it. I cannot be confident at this stage that policy TO1 or TO2 will be amended.
8. I have taken into account that there is a lapsed planning permission for change of use of the site from a guest house (Use Class C1) to use as a single private dwelling (Use Class C3). In granting that permission the Council took into account evidence of viability to justify an exception to policy TO1. There is little evidence before me to enable me to conclude whether or not planning permission would be granted in the same terms today. Whilst I acknowledge that there has been no change in policy since that time in the absence of up-to-date evidence of viability I cannot conclude with any certainty that the same decision would be made now. This therefore limits the weight I can attach to the permission as a fallback position.
9. My attention is also drawn to the fact that neighbouring properties have been granted certificates of lawful use for non-tourist related use. These decisions did not turn on planning merits but were granted due to immunity against enforcement action. I also note the permission to convert 89-90 Royal Parade into flats. But these decisions do not provide sufficient justification to set aside

the development plan policies which seek to retain tourist accommodation in this location.

10. My attention is drawn to the absence of response by the Council's Tourism Manager. I am asked to infer that this is because planning permission should be granted. But there is no supporting evidence before me to justify such an assumption and I cannot draw any inference about this matter.
11. My attention is drawn to appeal decisions concerning the loss of hotel or guest accommodation in other parts of the country. But I do not know the circumstances of these cases and determine this appeal based on its own particular facts.
12. Policy HO14 of the Borough Plan supports a balanced mix of housing types to meet local need and recognises the contribution that HMOs can play. I have taken into account the small contribution that this site makes to satisfying housing demand in the area but the balance rests in favour of not undermining the development plan objective of maintaining tourist accommodation in this location.
13. For the reasons given above, the development does not accord with policies HO14, TO1 and TO2 of the Borough Plan. I am concerned that to allow the conversion would undermine the Council's objective of maintaining tourist accommodation and be contrary to the development plan. None of the material considerations before me is of sufficient weight to warrant setting aside the development plan policies in this case.

### **Living conditions – neighbours**

14. The development plan mirrors the Framework in seeking to protect the amenities of neighbours from undue disturbance. Policy HO14 provides that proposals for HMOs must comply with residential, visual and environmental amenity considerations set out in policies HO20, UHT4 and NE28. Policy HO20 states that proposals will be refused unless they can demonstrate that they do not cause unacceptable noise or general disturbance.
15. I am informed that the guest house when fully occupied comprised 15-16 people. The deemed application the subject of this appeal is for up to 12 people in a six bedroom HMO. The Appellant says that he intends for three of the rooms to be for single occupancy and to limit the number of occupants to 9. But I must determine the deemed application before me and that is for occupation by up to 12 people.
16. The Council argues that the comings and goings of occupiers of an HMO are likely to be different from holidaymakers in a guest house. I agree. The pattern of movement is likely to be more sporadic and the incidence of visitors higher. The likely pattern of movements has the potential for increased noise and disturbance. I acknowledge that the objections of local people do not universally describe noise and disturbance since the HMO use began but this is not conclusive as to the absence of future harm.
17. I conclude that the continued use as an HMO is likely to cause undue harm to the living condition of neighbours with regard to noise and disturbance, contrary to the development plan, including policy HO14 of the Borough Plan.

### **Living conditions – occupants**

18. The property has six bedrooms each with its own bathroom facilities. There is a shared kitchen and living accommodation.
19. Saved policy HO9 of the Borough Plan identifies the importance of conversions providing acceptable standards of accommodation.
20. Whilst I note that each bedroom has ensuite facilities I saw from my site visit that some individual rooms are small with limited storage space. Bedrooms are likely to be used as living space as well as for sleeping creating cramped conditions for current and future occupiers. This intensity of use of bedrooms could also result in disturbance for other occupiers and neighbours. I do not consider that a condition restricting number of occupants would remedy the identified harm.
21. I conclude that the continued use as an HMO is likely to cause undue harm to the living conditions of current and future occupiers with particular regard to adequacy of space contrary to the development plan, including policy HO9 of the Borough Plan.

### **Highway safety**

22. The appeal site is close to busy main roads. It faces onto the B2126 which is one of the main routes into and out of Eastbourne. Parking restrictions are in place directly outside the site and nearby. Surroundings residential streets are unclassified and have no parking controls. The site is well served by public transport and close to local facilities.
23. Policy HO9 provides that conversions should provide satisfactory access from the public highway and adequate car parking.
24. I note the objection from the highways authority. They have applied a local calculation tool that assesses potential site specific parking demand by considering factors including location, property type, size and expected levels of car ownership. The closest match in this tool to the development is six one bedroom flats which is assessed as creating a likely demand of 10 spaces compared to guest house demand for 6/7 spaces.
25. Whilst I recognise this tool as a useful guide it is not determinative and is not based on data relating to use as an HMO. There is no evidence that the unauthorised use has given risk to highway safety or parking problems nor that occupiers of HMOs are likely to have greater parking needs than holidaymakers. There is insufficient evidence before me to conclude that the development will result in congestion on the public highway causing interference with the free flow and safety of traffic on the B2126 and surrounding streets.
26. For the reasons given I conclude that the development does not give rise to increased parking demand which causes undue harm to highway safety and accords with the development plan.

### **Other matters**

27. I note the concerns raised by the Council and local people about the potential for undue pressure on refuse and recycling facilities and the absence of cycling provision. In the event that no other harm was identified I consider that these issues could be controlled by condition.
28. Local people raise concerns which include fear of increased crime and anti-social behaviour but there is nothing to link use as an HMO with such concerns.
29. I note that the appeal site is located within the Town Centre and Seafront Conservation Area but this is not a main issue between the parties. The identified harm has the potential to effect the character and appearance of the area and therefore fail to conserve or enhance the character and appearance of the Conservation Area.

### **Conclusion**

30. I have balanced the need for a range of housing types in creating a balanced and sustainable housing market that meets local need. Whilst I recognise the demand for HMO accommodation the balance rests in favour of preventing harm to the Council's tourism strategy and protecting the living conditions of occupiers and neighbours.
31. The harm to the Council's tourism strategy and the living conditions of occupiers and neighbours are significant and indicate that planning permission should not be granted despite my conclusion that the development does not cause harm to highway safety.
32. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I do not consider that conditions could overcome the identified harm.
33. For the reasons given above I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Formal Decision**

34. It is directed that the enforcement notice be corrected by deletion of the requirement to return the property to its previous use as a guest house. Subject to that correction the appeal is 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.

*S. Prail*

**Inspector**