
Appeal Decision

Site visit made on 20 December 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 2 February 2017

Appeal Ref: APP/Q1445/W/16/3157915

53 Stanley Road, Brighton, Brighton & Hove BN1 4NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Yasir Rana against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/03272, dated 9 September 2015, was refused by notice dated 21 March 2016.
 - The development proposed is described on the application form as 'change of use from a 6 bedroom House in Multiple Occupation (C4) to a 7 bedroom House in Multiple Occupation (sui generis), erection of rear ground floor single storey extension to create extra living space, second floor rear extension and roof conversion to create additional bedroom'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Yasir Rana against Brighton & Hove City Council, which is the subject of a separate decision.

Main Issues

3. The main issues are:
 - 1) whether or not the proposal would provide for appropriate living conditions for an additional occupant,
 - 2) whether or not the proposal would be appropriate with reference to the surrounding community, with particular regard to community balance and noise, and
 - 3) the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

4. No 53 is a three storey mid-terrace property, the established use of which is as a house in multiple occupation ('HMO') with 6 occupants, use class 'C4'.¹ This appeal seeks permission for physical changes to the property which would enable the occupation thereof by 7 individuals, a *sui generis* use. It is the intention that accommodation for the additional occupant would be provided via conversion of the loft of the property into a bedroom (hereafter referred to as the 'seventh bedroom').
5. Saved policy QD27 'protection of amenity' of the Brighton & Hove Local Plan adopted originally in 2005 (the 'Local Plan') seeks to ensure appropriate living conditions for future occupants of buildings. Whilst of some vintage, the approach in saved policy QD27 is nevertheless consistent with that of the National Planning Policy Framework (the 'Framework'), which sets out that planning should always seek to ensure a good standard of amenity for all existing and future occupants of buildings. I therefore accord saved policy QD27 substantial weight in this decision.²
6. The Council's officer report associated with the application sets out that only approximately 3.7 square metres of the seventh bedroom would benefit from an internal ceiling height exceeding 1.8 metres owing to the pitch of the roof. Whilst no specific development plan policies relating to internal space have been brought to my attention, the Council aver that such limited internal space falls significantly below that recommended in the Government's Technical housing standards: nationally described space standard published in March 2015 (the 'space standards').
7. Whilst the space standards do not apply directly in this instance,³ the appellant has set out his view with reference to the approach therein. Thus both main parties have addressed the space standards for illustrative purposes alone, and therefore it is reasonable for me to consider this matter. The appellant contends that the functional floorspace achieved within the seventh bedroom would be approximately 9.7 square metres, exceeding the minimum 7.5 square metres advocated in paragraph 10.c. of the space standards.
8. However there is no indication before me that the minimum floor to ceiling height would be 2.3 metres or greater for at least 75 per cent of the gross internal area of the proposed seventh bedroom, as is the recommended level set in paragraph 10.i. of the space standards. Moreover the appellant appears not to specifically dispute the Council's calculations as set out in paragraph 6 above, which stand irrespective of the approach in the space standards.
9. Although I was not able to inspect the loft space of the property internally, the access apparently painted shut, irrespective of floorspace calculations it nevertheless appears from the information before me that the headroom that would be achieved within the seventh bedroom would be extremely limited. This limitation would be particularly acute when accessing the seventh bedroom via the new staircase proposed, which is not set centrally within the proposed room at the point where greatest ceiling height would be achieved. In my view

¹ With reference to The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010.

² With reference to paragraph 215 of the Framework.

³ By virtue of the absence of an associated development plan policy, and as the introduction to the space standards explains that they applies to 'internal space within new dwellings'.

the limited headroom would result in highly cramped and unsatisfactory living conditions for prospective occupants with limited functional circulation space.

10. Therefore on the basis of the information before me I cannot conclude other than the proposed seventh bedroom would provide for significantly substandard living accommodation for its intended future occupants. The proposal therefore conflicts with the relevant provisions of saved policy QD27 of the Local Plan and with relevant elements of the Framework.

Community balance

11. Policy CP21 'Student Accommodation and Houses in Multiple Occupation' of the Brighton & Hove City Plan Part One adopted on 24 March 2016 (the 'City Plan') establishes how the Council will actively manage the location of HMOs with the aim of created mixed communities.
12. The appellant avers, however, that policy CP21 'relates specifically to changes of use between use classes C3 [dwellinghouses] and C4 [small HMOs]' rather than the proposal here where the property is in extant C4 use. I accept that policy CP21 makes reference to the Council actively managing 'the location of new Houses in Multiple Occupation'.
13. However the wording of section ii) of this policy is that 'applications for new build HMO, and applications for the change of use to a Class C4 (Houses in multiple occupation) use, a mixed C3/C4 use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where [certain criteria apply]...'.
14. Therefore section ii) of policy CP21 specifies only the control that will be exercised by the Council in respect of HMO proposals with reference to what the change of use is to, rather than with reference to the extant use of the property. The proposal before me is for change of use to a sui generis HMO and therefore in my view the provisions of policy CP21 apply.
15. Paragraph 50 of the Framework similarly explains how local planning authorities should plan for mixed communities, and clearly the intensification of an established HMO use will inevitably affect the community balance of an area. I therefore now turn to the detailed criteria of section ii) of policy CP21, and whether the effect of the development proposed in respect of community balance would be appropriate.
16. The Council set out in their officer report associated with the application, and the appellant does not dispute, that 20.92 per cent of the properties within a 50 metre radius of No 53 are in HMO use. This substantially exceeds the 10 per cent threshold limit set within policy CP21.
17. I accept that the additional effect of one additional occupant will be modest in the context of the concentration of HMO uses in the area, however it is axiomatic that there will be some degree of effect. This finding is consistent

with that of the inspector in relation to appeal Ref APP/Q1445/W/16/3149843, which has been brought to my attention by the Council in this context.⁴

18. I note that permission was granted at appeal for the change of use from a 6 bedroom HMO to 7 bedroom HMO, Ref APP/Q1445/W/16/3154217, which the appellant has brought to my attention. However in that case the prevalence of HMOs within the immediate area of that appeal site was approximately 60 per cent, substantially greater than is the case in this appeal. Moreover in that appeal the living conditions provided by the additional accommodation proposed were found by the inspector to be appropriate.
19. Consequently the circumstances relevant to that appeal are not directly comparable with those which apply in this instance and as such I can only accord that decision very limited weight here. There are furthermore no specific benefits of the proposal that the appellant has robustly evidenced that would justify a departure from the approach in policy CP21 in this instance.
20. Policy QD27 'Protection of amenity' of the Local Plan sets out that planning permission will be refused where development would cause 'material nuance and loss of amenity', which may include noise.⁵ The use of No 53 by 7 rather than 6 occupants is likely to result in some degree of additional noise given that it represents a more intense use of the property internally and as it is would result in an increase in comings and goings.
21. However, notwithstanding the sound insulation properties of party walls which have been raised by the occupants of a neighbouring property,⁶ all relevant building works must comply with the requirements of Building Regulations in respect of resistance to the passage of sound. Provisions exist outwith planning to address noise amounting to a statutory nuisance. In my view the increase in noise resulting from the proposal is therefore likely to be limited.
22. Therefore I conclude that the proposal would result in some degree of additional community imbalance in the area and result in a level of additional noise and disturbance, bringing the proposal into conflict with the relevant provisions of policy CP21 of the City Plan and those of policy QD27 of the Local Plan.
23. However given the fractional increase in the number of occupants of HMOs in the area that would result, and on account of the requirements outside of planning that relate to noise, the harm arising from the proposal in respect of this main issue would be limited. Consequently, this harm is not determinative in itself but rather carries commensurate limited weight against the proposal.

Character and appearance

⁴ For the avoidance of doubt I do not consider that planning appeal Ref APP/Q1445/C/16/3145546, which has also been brought to my attention, is directly comparable with the circumstances relevant to this appeal as it relates to the change of use from a dwellinghouse to an HMO which is clearly different to the development proposed here.

⁵ The weight accorded to policy QD27 having been established previously in this decision.

⁶ Resulting from their construction of 'Bungaroosh' (of which there appear to be various spellings owing to this material being a colloquialism). This is a building material used during the rapid Regency growth of Brighton and Hove, of which the appeal property appears to be part, where walls were constructed of a mixture of shuttered lime and aggregates available at the time.

24. No 53 is a traditional three-storey mid-terrace property falling within an area of the City characterised by rows of similar terraces which face a broadly rectilinear network of carriageways. The ground floor of the property leads out level with a rear courtyard, with the rear garden itself being at a significantly higher ground level.⁷ The boundaries of the plots of properties nearby are variously demarcated by walls, fences and established planting.
25. On account of the pattern of development in the area and presence of substantial boundary features there are few public vantage points from which the rear of No 53 is visible. Partial views are present above the boundary walls of No 61 Stanley Road near the junction with Shaftesbury Road, however from this vantage point the rear extension to neighbouring No 51 is visible,⁸ as are a number of other rear extensions.
26. Saved policy QD14 'Extensions and alterations' of the Local Plan requires that residential extensions are designed appropriately with reference to their surroundings. The Councils' Design guide for extensions and alterations supplementary planning document, adopted on 20 June 2013 (the 'SPD'), provides further guidance as to how such development can be designed to integrate appropriately with the surrounding environment.
27. The Framework sets out that planning should always seek to secure high quality design, and that it is proper to seek to promote or reinforce local distinctiveness. The Planning Practice Guidance (the 'Guidance') further explains that the design of proposals should ensure that new and existing buildings relate well to each other based on an understanding of the prevailing pattern of development.⁹
28. Therefore saved policy QD14 is nevertheless consistent with the approach in the Framework and the Guidance. Consequently I accord substantial weight to it in this decision.¹⁰ Notwithstanding that it does not form part of the development plan, the approach in the SPD appears to be similarly in line with that of the Framework and the Guidance. Accordingly, I accord the SPD moderate weight.
29. The proposal is for a three storey flat-roofed rear extension which would extend to part of the width of the property, a full-width ground floor extension, and two roof lights within the rear roof slope. The roof lights proposed and the single storey extension would be barely apparent given their modest scale and on account of the ground levels of the rear plot of the property and surrounding boundary features respectively.
30. The additional bulk resulting from the rear extension proposed would be modest compared with the existing two storey rear extension and would be comparable with that of neighbouring No 51. It would therefore not appear incongruous or harmful, particularly when viewed from vantage points around

⁷ This changing ground level accounts for the description of the extension proposed given in the banner heading above as a two storey extension, whereas plan 09/1507621 illustrates that the proposal would accommodate internal floorspace arranged over three storeys.

⁸ Notwithstanding the absence of planning history with regard to this extension as noted by the Council.

⁹ In particular reference ID: 26-024-20140306.

¹⁰ With reference to paragraph 215 of the Framework.

the junction of Stanley Road and Shaftesbury Road in conjunction with the various extensions to surrounding properties.

31. Consequently I conclude that the proposal would not be unacceptable in respect of character and appearance and therefore that no conflict arises with the relevant provisions of policy QD14 of the Local Plan, or with relevant elements of the SPD or the Framework. My conclusion in this respect is reinforced by the relatively minor difference in overall bulk between the proposal here and that which was granted planning permission by the Council in 2009.¹¹
32. However that the proposal would not be unacceptable in respect of character and appearance does not outweigh the significant harm that I have identified that would result in respect of the first main issue combined with the limited harm that I have found would result in respect of the second main issue.

Other Matter

33. I have noted the representations made by the occupants of Nos 51 and 53 in respect of overshadowing that may result from the proposal. However given the modest increase in bulk of the proposal compared to the existing situation and the dense residential nature of the area it does not appear to me that effects in this respect would be unacceptable. This finding accords with that of the Council, who do not object to the proposal in this regard. Nevertheless that the proposal would not be unacceptable in respect of this matter does not alter my conclusions in respect of the main issues in this appeal.

Conclusion

34. For the above reasons, and having taking all other matters raised into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

¹¹ Planning permission Ref BH2008/03735.