

Appeal Decision

Site visit made on 28 February 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 23 March 2017

Appeal Ref: APP/Q1445/W/16/3162725

18 Colbourne Avenue, Brighton BN2 4GE

- 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 Oliver Dorman of Rivers Birtwell against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/02705, dated 19 July 2016, was refused by notice dated 26 September 2016.
 - The development proposed is described as "change of use of C4 HMO to Sui Generis large HMO".
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Decision

1. The appeal is allowed and planning permission is granted for change of use of C4 House in Multiple Occupation (HMO) to Sui Generis large HMO at 18 Colbourne Avenue, Brighton BN2 4GE in accordance with the terms of the application, Ref BH2016/02705, dated 19 July 2016, subject to the following conditions: -
 - 1) The development hereby permitted shall be carried out in accordance with approved plan SG02 and shall retain those areas of communal space within the internal layout.
 - 2) The development hereby permitted shall only be occupied by a maximum of eight persons.
 - 3) Prior to the occupation of the Sui Generis House in Multiple Occupation development hereby permitted details of secure cycle parking facilities shall be submitted to and approved in writing by the local planning authority. The secure cycle parking facilities shall be carried out in accordance with the approved details prior to the occupation of the Sui Generis House in Multiple Occupation development hereby permitted and shall thereafter be retained for cycle parking.

Main Issue

2. The main issue is whether the proposed change of use would intensify the occupation of the property and imbalance the mix of the community in the area.
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Reasons

3. The appeal site is a mid-terraced, two-storey property with additional accommodation in the extended loft and ground floor addition to the rear. The property is located in a residential area north of Brighton city centre and is in close proximity to the two large universities in the City.
4. The appellant indicates that the property has been rented to groups of at least four unrelated tenants since 2010, pre-dating the Article 4 Direction that came into place in 2013. I accept that this claim has not been verified. However, the Council has accepted the description of the proposal provided by the applicant and has acknowledged the current use of the appeal property is as a C4 HMO in their statement. I have no reason to come to a different view.
5. A certificate of lawfulness for a retrospective single storey rear extension and loft conversion incorporating front rooflights and rear dormer has been approved in September (LPA ref BH2016/02667). The appellant has advised that the property has been rented to six tenants. The proposed development would change the use to a large HMO (Use Class Sui Generis) and would allow occupation by more than six unrelated individuals who would share a kitchen and bathrooms.
6. Policy CP21 of the Brighton and Hove City Plan deals with the issue of change of use to HMOs, including the change the use to a large Sui Generis HMO, as proposed here. This policy states that applications for the change of use to a Class C4 use, a mixed C3/C4 use or to a sui generis HMO use (more than six people sharing) will not be permitted where more than 10% of dwelling within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use. Policy CP21 has been reinforced by an Article 4 Direction, which requires such proposals to obtain planning permission. This applies to the appeal site. Both Policy CP21 and the Article 4 Direction are aimed at securing balanced communities and together their objective is to locate student housing in those areas of the city which are the most suitable places in terms of accessibility and impacts on the amenity of surrounding areas.
7. The Council has conducted a survey and found that of the 19 properties within a 50m radius of the appeal property, 26.3% of neighbouring properties are in HMO use within the radius area. This is not in dispute.
8. As noted above, the Council acknowledges that the current use of the appeal property is as a C4 HMO. It is concerned that the incremental intensification of use at the appeal site and others nearby through the changes of use from C4 to sui generis HMO adds to the cumulative harm of HMO over-concentration in this part of the City. The Council argues that it is this type of incremental intensification and over-concentration of HMOs in geographically focused area that has consequential impact upon the character and appearance of these areas. These changes include the increased activity by groups of unconnected adults, associated problems with different patterns of behaviour, noise and disturbance and greater pressure on parking and refuse collection, amongst other matters. Policy QD27 of the Local Plan also sets out criteria in which proposals must be assessed and these latter issues relate to this policy.
9. However, the appeal property has already been used for C4 HMO purposes. The development would not affect the range of housing types in the area, nor

the number of HMO's. It would increase the number of occupants within this particular HMO. Although the number of residents would increase from six to seven or eight, this would only be a marginal increase within the neighbourhood as a whole and any effects arising from one or two extra people living at No 18 are unlikely to be significant.

10. At the time of the site visit the property appeared managed with the front garden well maintained. There was no obvious difference between the standard of maintenance of the property and others in the area, whether HMOs or not.
11. For these reasons I conclude that the development would not significantly affect the mix or balance of the community in the area in compliance with Policy 21 of the City Plan, nor cause significant harm to the living conditions of nearby occupiers in accordance with Policy QD27 of the Local Plan. The latter seeks to prevent material nuisance and loss of amenity to adjacent residents.

Conditions

12. The Council has suggested four conditions should the appeal be allowed. I have considered the planning conditions suggested by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. It is necessary to define the plans which have been approved in the interest of certainty. It is also necessary to restrict the occupancy of the building to no more than eight persons and retain communal space in order to ensure satisfactory living conditions for the occupiers. Finally, it is necessary to ensure secure cycle storage facilities are provided to encourage sustainable travel.
13. The Council considers that the removal of Class A to Class E of Schedule 2 Part 1 of the Town and Country (General Permitted development) Order 2015 permitted development rights would be appropriate. I refer to the advice in the Planning Practice Guidance which state that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here.

Conclusions

14. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR