The Planning Inspectorate

Appeal Decision

Site visit made on 18 April 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 24th April 2017

Appeal Ref: APP/Q1445/W/17/3168211
139 Lewes Road, Brighton BN2 3LG

- 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 Mrs Laura Dwyer-Smith against the decision of Brighton & Hove City Council.
- The application Ref BH2016/05800, dated 20 October 2016, was refused by notice dated 15 December 2016.
- The development proposed is change of use of C3 dwelling house to C4 small house in multiple occupation.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   a) Whether or not the conversion would provide satisfactory living conditions for future occupants;

   b) The effect of the conversion on the living conditions of occupants of the immediately adjoining properties in relation noise and disturbance.

Reasons

Standard of accommodation

3. At the time of my site visit the house was being used as a House in Multiple Occupation (HMO) with accommodation on three floors serving a total of six people. The basement had a bedroom, living room and shower room. The ground floor had two bedrooms, a kitchen and WC and the first floor had three further bedrooms and a WC/shower room.

4. The bedroom on the lower ground floor is a reasonable size. However, it has one window that looks out on the wall of a lightwell, which is approximately 1m from the window. It therefore has no outlook and feels very dark and enclosed, particularly as the window faces north and there is therefore no access to sunlight. An occupant would be reliant on artificial light at all times to enable them to undertake day-to-day activities.

5. The shared living room in the basement is also gloomy and enclosed, notwithstanding its size. It has a single window which is at one end of the south facing wall, but it only looks out on another similar lightwell. A mirror has been placed on the east facing wall to reflect light and some sunshine into the room. However, this does not provide the room as a whole with sufficient light; neither

does it compensate for the lack of outlook. I have no doubt that the lack of light and outlook would discourage use of the room during the day and for much of the time occupants would rely on artificial lighting.

6. The kitchen is small and from my examination of the drawings appears to be closer in floor area to the Council's estimate of 7.02sqm than the appellant's estimate of 9.98sqm. In my view it could not be used effectively by more than two people at a time. It has limited areas for food preparation and storage and nowhere to sit and eat a meal. Its usable space is further restricted by the need to use the kitchen as a passageway to the WC at the rear of the building, which is also partially blocked by a fridge-freezer. These factors demonstrate that this communal space is completely inadequate to serve the needs of six individuals. Furthermore, its separation from the only other communal space on the lower ground floor compounds these shortcomings. To use the shared living room as a dining area would involve taking food up and down a flight of stairs. It is therefore not an attractive or convenient place in which to eat meals.

7. There is a difference of view between the parties regarding the size of the bedroom on the first floor above the kitchen. Regardless of the precise measurements, I consider it to be a small room. Its usable space is reduced by the presence of two small alcoves. This makes it difficult to accommodate furniture and reduces the amount of circulation space. In addition, the only window looks directly towards the rear of the dwellings in Connaught Mews. The proximity of the rear windows in these houses to this bedroom window results in inter-visibility between the rooms, adversely affecting the privacy of the occupants of both. These factors combine to create a poor standard of accommodation for the occupant.

8. I note that the Council has issued an HMO license for the property. It therefore meets the minimum standards of accommodation fit for human habitation relating to fire safety and access to the basic facilities of a kitchen, bathroom and toilet. However, the planning system has a wider responsibility for ensuring that the quality of accommodation provides more than the bare minimum. My assessment is therefore not confined to issues such as the size of the rooms, but also the extent to which the accommodation provides a suitable environment in which to undertake a range of day-to-day activities. In this case I find the kitchen is cramped; the first floor bedroom is small and lacks privacy, and both rooms on the lower ground floor are dark and enclosed.

9. For these reasons I conclude that the house provides a poor standard of accommodation which is harmful to the living conditions of the occupants. In this respect the change of use is contrary to saved Policy QD27 of the Brighton & Hove Local Plan, which seeks to protect residential amenity.

10. In coming to this view I have had regard to other appeal decisions[1] that have been brought to my attention. However, although I do not have full details of those proposals, it is apparent from the Inspectors' decisions that site specific issues of each case have been taken into account when reaching their conclusions. They are therefore not directly comparable with the appeal proposal, which I have determined on its individual planning merits.

Living conditions of neighbours

11. The appeal site lies within the Hanover and Elm Grove ward, part of the city which is subject to an Article 4 Direction removing permitted development rights to change the use of a dwellinghouse (Class C3) to an HMO (Class C4). Policy CP21

[1] APP/Q1445/A/14/2214317, APP/Q1445/W/16/3146828 and APP/V2004/A/14/2228463

of the Brighton & Hove City Plan Part 1 (the City Plan) seeks to actively manage the location of new HMOs in order to ensure mixed, healthy and inclusive communities. Consequently, applications for changes of use to an HMO will not be permitted where more than 10% of dwellings within 50m of the application site are already in HMO use.

12. In this case the number of HMOs within a 50m radius is 8.96%, according to the Council and 9.47% according to the appellant. There can be, therefore, no objection in principle to the change of use even if the unauthorised use at No 139 began after the introduction of the Article 4 Direction. Nevertheless, the Council contends that whilst the amenity of the wider area may not be harmed the impact on the amenity of immediate neighbours may remain.

13. I accept that the use of the property as a six bedroom HMO would be likely to result in additional comings and goings, and a more intensive use than as a family home. However, other than anecdotal evidence about noise, anti-social behaviour and a photograph of recycling and refuse boxes outside the front door, there was nothing to convince me that the use of this house as an HMO has led to an unacceptable deterioration in residential amenity for occupants of the adjoining properties.

14. The appellant provided extracts from various appeal decisions[2] in support of her application. I do not have sufficient details of any of those schemes to make meaningful comparisons with the appeal proposal. Nevertheless, I accept that in order for a scheme to fail there must be sufficient supporting evidence to support the reason for refusal. In these other cases the Inspectors concluded that such evidence was not presented. Similarly in this case, in the absence of definitive evidence, I am not persuaded that the use of the house as a small HMO has resulted in material harm to the living conditions of neighbours.

15. I conclude that the change of use has not resulted in unacceptable noise and disturbance for neighbours and in this respect the proposal would comply with saved Policies QD27 and SU10 of the Local Plan, which seek to protect residential amenity and minimise noise nuisance. In addition there is no conflict with Policy CP21 of the City Plan.

Conclusions

16. The proposal would not result in an over-concentration of HMOs in the Hanover and Elm Grove ward of Brighton. There is therefore no objection in principle to the use of the property as an HMO and I am satisfied that its use by six occupants would not result in material harm to the living conditions of neighbours. However, the absence of harm is not a positive factor in favour of the development.

17. On the other hand I have concluded that the use of the house as an HMO results in a poor standard of accommodation which is harmful to the living conditions of the occupants. For this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

[2] APP/Q1445/A/14/2214205; Extracts from 2116026, 2164766, 2167184 and 2143903 (full appeal references were not provided)