
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: 25th April 2017

Appeal Ref: APP/Q1445/W/17/3167367
122 The Avenue, Brighton BN2 4FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Rivers Birtwell against Brighton & Hove City Council.
 - The application Ref BH2016/05918, is dated 1 November 2016.
 - The development proposed is a change of use of existing C4 small house in multiple occupation to Sui Generis large house in multiple occupation.
-

Decision

1. The appeal is allowed and planning permission is granted for a change of use of existing C4 house in multiple occupation to Sui Generis large house in multiple occupation at 122 The Avenue, Brighton BN2 4FD, in accordance with the application Ref: BH2016/05918, dated 1 November 2016, subject to the attached schedule of conditions.

Preliminary Matters

2. No 122 The Avenue is a semi-detached, two-storey property located within a well-established residential estate. Plans of the "existing" layout of the building showed there to be a kitchen, a living room and two bedrooms on the ground floor and three bedrooms, a bathroom and separate WC on the first floor.
 3. There is no dispute between the parties that the property has been in use as a small House in Multiple Occupation (HMO) (Class C4). Although the number of occupants in a C4 dwelling could be as many as six, the evidence suggested that it had previously been occupied by four unrelated tenants. This use was established prior to the introduction of an Article 4 Direction in 2013, which removed the permitted development right for a change of use from a single dwelling (Class C3) to an HMO (Class C4) in certain parts of the city.
 4. A Certificate of Lawful Development was issued on 11 August 2016 in relation to a loft conversion and rear extension, as these were assessed to be permitted development in connection with the use of the property as a dwellinghouse, Ref: BH2016/02354. These works have been implemented. The proposal seeks approval to further internal alterations to permit the house to be occupied by up to nine individuals.
 5. At the time of my site visit the house had not only been enlarged but also extensively refurbished. The ground floor comprised a kitchen/dining/living area, one bedroom and a shower room. The other room on the ground floor
-

was being used as a shared living room, but the proposal would sub-divide it to provide two additional bedrooms. The first floor had three bedrooms and a shower room. The proposal would sub-divide the largest of the bedrooms into two separate rooms. The loft conversion has added two further bedrooms and a third shower room to the property.

Main Issues

6. If the Council had determined the application, it indicated that it would have done so for three reasons. These related to the concentration of HMOs in the area, the standard of residential accommodation and the design of the dormer window. I therefore consider the main issues in the appeal are:
 - a) the effect of the proposed change of use on the concentration of Houses in Multiple Occupation (HMOs) in the surrounding area and the living conditions of occupants of neighbouring properties;
 - b) whether or not the proposal would provide satisfactory living conditions for future occupants;
 - c) the effect of the dormer window on the character and appearance of the host property and the surrounding area.

Reasons

Concentration of HMOs and living conditions of neighbours

7. Policy CP21 of the Brighton & Hove City Plan Part One (the City Plan) seeks to actively manage the location of new HMOs as part of its approach to providing for the demand for student accommodation whilst also ensuring 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.
8. In this case just over 47% of properties within 50m of the appeal site are already HMOs. This figure has not been disputed. It is therefore in an area any new HMO would be resisted as it would be in direct conflict with Policy CP21. However, No 122 has already been used as an HMO; increasing its size and the number of occupants would not change the proportion of HMOs in the vicinity. Neither would the proposed change of use result in the loss of a family home, nor would it alter the range of housing types in the area. I therefore cannot agree with the Council's contention that there can be an objection in principle to the change of use from a small HMO (C4) to a larger one (Sui Generis).
9. The proposal would increase the number of occupants in the house from six to nine. The Council is concerned that incremental intensification of use arising from the change of a small HMO to a large one will add to the cumulative harm associated with the high proportion of HMOs already in the area. In this regard, I have been referred to various appeal decisions¹ in other parts of Brighton in which Inspectors reached different conclusions about the additional noise and disturbance that can be caused and its effects. However, in each of those cases the Inspectors assessed the proposals taking the site specific issues into account as I have done here.

¹ APP/Q1445/W/16/3150798, APP/Q1445/W/15/3139159, APP/Q1445/W/16/3162725, APP/Q1445/W/16/3140843 and APP/Q1445/W/15/3140558

10. Whilst I appreciate the concerns raised by the Council and some local residents relating to noise, refuse and parking, there was no definitive evidence presented with the appeal relating to problems that have been experienced either as a result of this or other HMOs in the vicinity of the appeal site. The site, including the boundary hedges and the building, appear to be well maintained following the completion of the recent building works. The area is not subject to parking controls and at the time of my site visit there was a plentiful supply of on-street parking. The Universities are within easy reach of the appeal site either by walking, cycling or using public transport. As parking at the Universities is strictly controlled, there is nothing to suggest that car ownership amongst students is likely to be high.
11. There would be an increase in the number of comings and goings from a property occupied by nine individuals. However, these cannot be directly compared with the use of No 122 as a family home, as it has not been used as one for several years. Furthermore, there was no substantiated evidence to suggest that its use by between four and six individuals had resulted in unacceptable noise and disturbance for nearby neighbours, including the occupants of the adjoining dwelling at No 124. I am therefore not persuaded that an additional three people in this particular house would result in a significant deterioration in the amenity of the neighbourhood as a whole which would justify withholding planning permission.
12. Taking all these factors into account, I conclude that the development would not result in an over-concentration of HMOs in the area or cause significant harm to the living conditions of occupants of neighbouring properties. It would therefore comply with Policy CP21 of the City Plan and saved Policy QD27 of the Brighton & Hove Local Plan (Local Plan), the latter of which seeks to protect the amenity of neighbours.

Standard of accommodation

13. The house has been recently enlarged and renovated, following the grant of the Certificate of Lawful Development. The rear extension has enabled the creation of a large living/kitchen/dining area, which provides about 30sqm of usable space and appears to be well equipped. Whilst it would feel somewhat cramped if all nine occupants chose to occupy the room at the same time, I consider this to be an unlikely scenario. However, it would provide a flexible space where tenants could cook, eat meals either together or in small groups, whilst also providing a comfortable sitting area in which others could relax.
14. The bedrooms would vary in size, shape and amounts of usable floor space. However, from what I saw of the rooms that are currently occupied, all are well-equipped with a bed, desk and some storage space. All the rooms are light, have a reasonable outlook and enough space in which to work and watch TV. They had clearly been arranged specifically to meet the needs and expectations of students. The bedrooms within the loft conversion are more restricted due to the lack of headroom. However, furniture has been arranged to make best use of the space and provide an adequate area in which to study. It seems to me that the layout of the house as a whole would provide a reasonable balance between individual and communal areas.
15. I therefore conclude that the proposal would provide satisfactory living conditions for future occupants in compliance with saved Policy QD27 of the Local Plan, which seeks to protect residential amenity.

Character and appearance

16. The Council issued a Certificate of Lawful Development for the extension and loft conversion on the basis that it was permitted development under Schedule 2, Part 1 Classes A, B, C and G of the Town and Country Planning (General Permitted Development) (England) Order 2015. The works began after the certificate had been issued, although I have no details of when they were completed. However, there is no evidence to suggest that the alterations to the roof have been done in any way other than in compliance with the approved plans and conditions. The dormer window is therefore a lawful structure. No further alterations to it form part of the proposal before me. Consequently, the proposed change of use would not result in any change to the character and appearance of the host property or the surrounding area.
17. For this reason I conclude that the proposal would not be harmful to the character and appearance of the area. There would therefore be no conflict with saved Policy QD14 of the Local Plan or the guidance set out in the Council's Supplementary Planning Document: *Design Guide for Extensions and Alterations* (SPD12), which seek development that respects its setting.

Conditions

18. In the event that the appeal was allowed the Council has suggested a number of conditions. I have considered these in the light of the tests set out in paragraph 206 of the National Planning Policy Framework and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision.
19. A condition specifying the plans is required in the interests of certainty. However, I have not referred to the other maps, tables or statements included in the Council's list of suggested documents as I do not consider them to be illustrative of the scheme before me. Conditions restricting the number of occupants to nine and ensuring retention of the communal kitchen/living/dining area are necessary to safeguard the living conditions of future tenants.
20. A condition to secure implementation of secure cycle parking is justified in the interests of promoting sustainable travel in the city. However, I have simplified it to require a scheme to be agreed and implemented prior to the increase in the number of occupants from the existing C4 use to the nine associated with the Sui Generis use.
21. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. However, in this case in order to protect the character and appearance of the area and the living conditions of neighbours, I am satisfied that removal of permitted development rights is justified.

Conclusion

22. For the reasons set out above, and having regard to all other relevant matters raised, I conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1468/E.01 and 1468/SG.01
- 2) The development hereby permitted shall not be occupied by more than nine persons.
- 3) The kitchen/dining/living area detailed on drawing No 1468/SG.01 shall be retained as communal space at all times and shall not be used for any other purposes.
- 4) The Sui Generis HMO shall not be occupied until secure, covered cycle storage facilities have been installed in accordance with details which have first been approved by the local planning authority. The cycle storage facilities shall be retained thereafter at all times for use by the occupants of, and visitors to, No 122.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no extension, enlargement, alteration or provision within the curtilage of the dwelling house as provided for within Schedule 2, Part 1 Classes A-E shall be carried out without planning permission obtained from the local planning authority.

End of Schedule of conditions