
Appeal Decision

Site visit made on 23 March 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/Q1445/W/16/3165693

17 Nyetimber Hill, Brighton, BN2 4TL

- 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 Sue Trinder against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/05129, dated 26 August 2016, was refused by notice dated 21 November 2016.
 - The development proposed is change of use of an existing C4 small house in multiple occupation to a sui generis large house in multiple occupation.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of an existing C4 small house in multiple occupation to a sui generis large house in multiple occupation at 17 Nyetimber Hill, Brighton, BN2 4TL in accordance with the terms of the application, Ref BH2016/05129, dated 26 August 2016.

Procedural Matters

2. I saw on my site inspection that the development has already taken place and is occupied. The Council describe the proposal as retrospective. I also note that the Council do not consider the physical works to be addressed by an existing certificate of lawfulness¹. The appeal scheme description does not include the physical works and the term retrospective is not an act of development. I have dealt with the appeal on the basis that planning permission is sought for change of use of an existing C4 small house in multiple occupation to a sui generis large house in multiple occupation.

Main Issues

3. The main issues are:
 - The effect of the development on (a) the character of the surrounding community and (b) the living conditions of the occupiers of existing properties, with particular regard to noise and disturbance and (c) whether the development would provide acceptable living conditions for future occupiers, with particular regard to the size of accommodation.

Reasons

Community Balance

¹ LPA ref BH2015/04255

4. No 17 Nyetimber Hill is situated in an area with an existing high concentration of Houses in Multiple Occupation (HMO). The character of the road is generally residential, although there is a variation in the type of residential use. The Council has identified that within a 50m radius of the site that around 37.5% of properties are in HMO use. The Council has an Article 4 Direction in force. This removes national permitted development rights for change of use from C3 (dwellinghouse) to C4 (small HMO). I acknowledge that this is not directly linked to this case given the existing use. Nevertheless it is an indication of the Council's concerns regarding the over concentration of HMOs.
5. The use of No 17 is already established as an HMO for up to six occupants and this is not a matter in dispute. As a result of the alterations undertaken it remains an HMO but the occupation has increased. The property is licenced by the Council under separate provisions as a HMO for up to nine occupants. This would be an increase of three. There is no dispute that a change of use has taken place. However, this is from one classification of HMO to another. In this regard the overall mix of housing provided would not change as a result of the scheme, in particular the proportion of HMOs in the area.
6. Policy CP21 of the Brighton and Hove City Plan (CP) sets out that a change of use to an HMO would not be permitted where more than 10% of dwellings within a 50m radius of any application site are already in such use. This is in order to ensure that a suitable range of housing types remains available in the area to maintain mixed and balanced communities. This is reinforced by paragraph 50 of the National Planning Policy Framework (the Framework) which promotes a mix of housing types to suit local demand.
7. I appreciate that the Council have applied policy CP21 to this scheme and consider that it should be applied to any change to any type of HMO. In this regard the increase in HMO use at the site would be in conflict with the policy. However, the stated purpose of the policy is to address the impact that a concentration of such properties would have on the surrounding and to maintain a mixed and balanced community across Brighton. In this case there would be no change in the number or concentration of HMOs. Therefore whilst there is some conflict with policy CP21 the impacts resulting from the increase in occupation require consideration to justify resisting the scheme.

Living conditions of existing occupiers

8. The Council's concerns relate to noise and disturbance that would result from the increase in occupation of the property. In this case the increase is three occupants, from six to nine, which the Council point out in a 50% increase.
9. There would be some additional activity associated with three more occupants at No 17. I also appreciate that the behaviour and patterns would be different to that of typical occupants of a family dwelling. However, the occupation as a small HMO would have marked the initial change in the use of the property. There may be more comings and goings from the property. However, overall I do not consider that the effect of this increase would be significant within the overall character of the area. In addition noise arising from daytime or night time living activity from three additional occupants over and above the existing small HMO would not be substantial. As such it follows that the additional bedrooms would not lead to additional noise and disturbance emanating from the property which overall appears to be well managed and maintained.

10. I therefore conclude that the scheme would not have a harmful effect on the living conditions of the occupiers of existing properties, with particular regard to noise and disturbance. There would not be conflict with Policy QD27 of the Brighton and Hove Local Plan (LP) is saved which sets out that planning permission will not be granted for development that would cause a material nuisance and loss of amenity to adjacent occupiers and existing residents and policy SU10 which requires new development to minimise the impact of noise on neighbouring properties and the surrounding environments.

Living conditions of future occupiers

11. To create the new bedrooms at ground floor level the living room has been converted into two bedrooms. A bedroom at first floor has also been subdivided into two. In addition the loft extension provides a further three bedrooms. Therefore the only communal area is a kitchen/diner area. There is an outside shed for storage and a dedicated bin storage area to the front of the property.
12. I was able to view the communal area as part of my site inspection. It comprises a kitchen facility with a range of storage and appliances. The room is roughly oblong in shape. At one end there is space to accommodate the table and nine dining chairs for the occupants. Circulation space remains at the other end with access to the garden and storage building. Overall the room is well lit and would be functional and generally pleasant to use.
13. The decision notice highlights the five bedrooms created by the change from a small to large HMO being those that are 'inappropriately small'. The appellant points out that the Council does not have any published space standards for HMOs and that all the rooms exceed the 6.5m² requirement of the HMO licensing regime. The Council is relying on the *Technical housing standards - nationally described space standard*. This sets out that a single bedspace should be provided in a room with a floor area of at least 7.5m² with a width of at least 2.15m. I have not been provided with the sizes of the rooms in dispute. Therefore, I have carefully considered the layout and function of the rooms, all of which I was able to see as part of my site inspection.
14. All the rooms are reasonably regular in shape. They have been furnished and storage has been built in. As a result the rooms make the best use of the limited floor area. Each room has a bed, desk, hanging area and drawers. Secure and dry storage is available in the garden outbuilding. All of the rooms have a well proportioned window, roof light or both. Overall, for these reasons the accommodation is acceptable.
15. I therefore conclude that the development would provide acceptable living conditions for future occupiers. It would not be in conflict with policies CP19 and QD27 of the LP which amongst other things seek to achieve a good choice and mix of housing.

Other matters

16. Whilst not reasons for refusal I have carefully considered the additional issues raised by interested parties. In particular matters relating to impact on local schools and doctors, traffic congestion, refuse and precedent. There is no evidence that an increase in occupation at the appeal premises would adversely impact on the provision of schools or health facilities in the area. In addition I

have no information that there would be a significant increase in traffic directly resulting from the scheme. The site has a refuse storage area provided and fenced off to manage the provision. On the matter of precedent there is nothing within this decision that would prevent the council resisting inappropriate development elsewhere.

17. I have been referred to a number of other appeal decisions². I do not have all the detailed information for these cases. However, of these decisions some relate to the change from a C3 dwelling rather than from a small HMO and in several cases the conflict with CP21 with not the sole determinative issue. I have in any event judged the appeal before me on its merits.

Conditions and Conclusion

18. The Council has suggested a number of conditions. I have considered these against paragraph 206 of the National Planning Policy Framework. The development has been carried out so the condition regarding the plans is not necessary. To ensure that there is adequate space to park bicycles details of cycle storage are necessary. To protect the living conditions of future occupants it would also be reasonable to limit the number of occupants and retain the communal area. It is also reasonable to limit the future occupancy by restricting further additions.

19. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

² APP/Q1445/W/15/3139159; APP/Q1445/W/16/3149843; APP/Q1445/W/15/3140558; APP/Q1445/W/16/3157915

Annex A

- 1) Within 3 months of the date of this decision a scheme for secure cycle parking facilities shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition shall thereafter remain in use.
- 2) The kitchen/dining area shown on drawing no SG03 received on 26 August 2016 shall be retained as a communal space at all times and shall not be used as a bedroom.
- 3) The development hereby approved shall only be occupied by a maximum of nine (9) persons.
- 4) 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, alteration of provision within the curtilage of the dwelling house within classes A-E shall be carried out without a further planning permission being obtained from the Local Planning Authority.