
Appeal Decision

Site visit made on 9 May 2017

by Rory MacLeod BA MRTPI

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

Decision date: 13th June 2017

Appeal Ref: APP/Q1445/W/17/3167805
25 Wheatfield Way, Brighton BN2 4RQ

- 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 Rivers Birtwell against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/02768, dated 25 July 2016, was refused by notice dated 9 January 2017.
 - The development proposed is change of use of an existing C4 house in multiple occupation to a Sui Generis large house in multiple occupation.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the change of use on the living conditions of the occupiers of nearby properties, particularly in relation to noise and disturbance.

Reasons

3. The appeal site is a semi-detached chalet bungalow paired with 27 Wheatfield Way close to the end of a cul-de-sac. Land levels fall steeply from the road to the building enabling the provision of a basement at the rear. There is a driveway at the side of the building adjacent to the driveway for 23 Wheatfield Way leading to a garage in the rear part of the back garden. The property has been enlarged through the construction of a hip to gable extension, a rear dormer and front rooflights, enabling the provision of additional bedrooms at first floor level.
4. The property has been used as a small house in multiple occupation (HMO) within use class C4 since 2012 according to the appellant, prior to implementation of the recent roof alterations. The issue of a Lawful Development Certificate has confirmed the lawful nature of the use of the site as a class C4 small HMO. The property is currently in use as a 9 bedroom 'Sui Generis' large HMO. The change of use proposed therefore has already taken place.
5. Policy CP21 of the Brighton and Hove City Plan Part One 2016 supports the aim of providing mixed and balanced communities including accommodation for students. It seeks to limit the concentration of HMOs by not permitting new HMOs where more than 10 per cent of dwellings within a radius of 50 metres of

the application site are already in use as a HMO. Evidence from the appeal parties confirms that 25 Wheatfield Way passes this test, as the concentration of HMOs in the immediate area is relatively low. However, the lawful use of the property as a class C4 HMO has been confirmed by the issue of a lawful development certificate for this use. Thus it would not result in an additional HMO.

6. Nevertheless, whilst up to 6 residents could occupy the building as a class C4 HMO, the occupation by up to 9 residents would result in an increase in noise and general disturbance for the occupiers of nearby properties through an increase in the comings and goings of the additional residents. The property has been used as student accommodation and evidence from the appellant indicates that it is likely to continue to be used this way in the future given the proximity of universities and the demand for student accommodation. Whilst there may be some truth in the argument that occupation by students is likely to involve a greater element of inter-dependent living than by 9 unconnected tenants, the circumstances of individual students will change over time. Moreover, the property may not always be occupied by students.
7. In addition, the effect of past use of the property as a HMO by students, on the living conditions of occupiers of adjoining properties, is one indication of how noise and disturbance may arise from the proposed more intensive use. To that end there have been many objections from local residents and elected members, and whilst some refer to problems experienced in relation to HMOs in general, other representations point to issues of noise and disturbance at the site itself.
8. Furthermore this part of Wheatfield Way has a quiet character being close to the end of a cul-de-sac with relatively little traffic compared to some roads nearby. The bungalows on this side of the road are generally modest in size and have small back gardens. The intensity of occupation and use of the appeal site by up to 9 unconnected persons would be at variance with the occupancy levels and patterns of activity generally in the area. Use of the back garden by occupiers of the HMO in the past would appear to have resulted in some problems of noise and disturbance, including for the occupiers of dwellings to the rear in Birdham Road. Occupiers of the attached dwelling would be vulnerable to any problems of noise and disturbance arising from the use of the communal living and kitchen area by large number of occupiers as this adjoins the party wall.
9. Policy QD27 of the Brighton and Hove Local Plan 2005 (saved policies) states that planning permission will not normally be granted for a change of use where it would cause material nuisance and loss of amenity to adjacent occupiers. Policy SU10 of the same plan document seeks to guide development in relation noise nuisance. Notwithstanding the lawful use of the property as a HMO, the proposals would result in a 50% increase in the number of occupiers from 6 to 9. Having regard to the site circumstances referred to above, I conclude that the increase in noise and general disturbance arising from the occupation by a maximum of 3 additional tenants would lead to significant harm. As such I find conflict with the provisions of this the development plan.

Other Matters

10. I acknowledge that the room sizes to all 9 bedrooms are of an adequate size and shape to provide a good standard of accommodation and that there would

be a large communal area on the ground floor, useful for future occupiers. Furthermore, it is apparent that the use of the property as a HMO will continue regardless of the decision on this appeal. However, these factors do not outweigh the harm that I have identified in relation to living conditions for the occupiers of nearby dwellings likely to arise from the appeal proposals.

11. Some local residents and elected representatives have objected to the rear dormer and to the retrospective nature of the proposals. The alterations to the roof of the appeal building were carried out by the appellant in exercising permitted development allowances and are not a matter for my consideration. I acknowledge the frustration of some residents in relation to the retrospective nature of the appeal proposals, but the development nonetheless has to be considered on its planning merits.

Conclusion

12. For the reasons given above, I conclude that the development would be likely to have a significant adverse effect on the living conditions of the occupiers of nearby properties, particularly in relation to noise and disturbance, and that the appeal should be dismissed.

Rory Macleod

INSPECTOR