The Planning Inspectorate

Appeal Decision

Site visit made on 18 July 2017

by J Ayres BA Hons, Solicitor

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

Decision date: 8 August 2017

Appeal Ref: APP/Q1445/W/17/3173693
16 Upper Lewes Road, Brighton BN2 3FJ

- 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 Mukherjee of M&G Properties (Sussex) Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2016/05542, dated 4 October 2016, was refused by notice dated 28 February 2017.
- The development proposed is extensions to the rear and refurbishment of existing outbuilding to create additional student accommodation units.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are;

   - the effect of the proposal on the character and appearance of the property,
   - the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to those at Nos 15 and 17 Upper Lewes Road, and
   - whether the proposal would support a mixed and balanced community.

Reasons

Character and appearance

3. The appeal site hosts a three storey property on Upper Lewes Road, and is currently used as a nine bedroom House in Multiple Occupation (HMO). The surrounding area presents a mix of residential properties, some being used for residential (C3) use, and others being occupied as HMOs. The properties generally front directly onto the road, with a small space to the front elevation.

4. The rear gardens of the houses on Lewes Road are modest in size, and due to the topography of the area the gardens slope steeply upwards away from the properties towards Wakefield Road. The rear garden of the appeal site has been landscaped to create a raised area which slopes upwards, accessed via steps from the ground floor. At the very back of the garden is an ancillary outbuilding which extends the width of the garden of the appeal site and the neighbouring property at No 17. At present there is a relatively low wall along

the boundary with No 15, the garden of which also slopes upwards away from the property.

5. The extension to link the main building with the outbuilding would be in excess of two metres in height and would result in a structure of significant height and scale protruding from the property, running along the side boundary with No 15, and linking to the structure running the length of the rear boundary. The ground floor element of the proposal would infill the plot further, reducing the outdoor space and contributing to the overall excessive mass and bulk of the property. These extensions, particularly the glazed corridor and conversion of the outbuilding, would significantly increase the footprint of the building, sprawling along the boundaries of the site, and resulting in an incongruous form of development which would not relate in a coherent way to the main building.

6. The appellant has referred me to the Lodge, at 18/19 Upper Lewes Road to demonstrate that the built form varies. I accept that the design of the properties is varied in places along Upper Lewes Road. However, that does not mean that any form of extension is acceptable, each proposal must be considered on its own merits.

7. Accordingly, I find that the height, scale, mass, positioning and footprint and protruding nature of the proposal would harm the character and appearance of the property. It would therefore conflict with Policy QD14 of the Brighton and Hove Local Plan (BHLP) with regards to is design and situation. It would also conflict with SPD12: Design guide for extensions and alterations insofar as the SPD seeks to ensure high quality design.

Living conditions

8. The outbuilding can currently be used for ancillary uses and in my view such ancillary domestic uses rarely cause harm to the living conditions of neighbours. In contrast the proposal would introduce a residential use which would increase comings and goings to these parts of the site. I do not agree with the appellant's assertion that the use of these rooms would have less impact than use of the existing rooms within the property. The windows of the two rooms in the converted outbuilding would look towards the rear of Nos 15 and 17.

9. The rear gardens are modest in size and there are no substantial distances between the properties and the proposed extensions. The increased use of these parts of the site following the construction of the extensions through the daily comings and goings, the lighting of these additional rooms and glazed corridor, and the occupation and associated residential noise would result in a harmful level of disturbance to those residing in Nos 15 and 17.

10. I noted on my site visit that at present the boundary wall between Nos 15 and 16 is of a height that allows views into either garden when standing adjacent to it. The garden of No 15 slopes up towards the rear at a similar gradient to the appeal site. I saw nothing to suggest that No 15 is sited significantly higher than No 16, as depicted in the application plans and appellant's evidence. Therefore, as a result of the proposal the occupiers of No 15 would have a flank wall, which at parts would be in excess of two metres, extending the full length of the boundary.

11. I accept that due to the topography of the site the height of the corridor element would not be in excess of two metres for the full length of the boundary. However, in my view the overall depth, bulk and scale of the proposal, and the positioning of the corridor on the boundary, would result in an overbearing and dominating form of development which would have a detrimental impact on the living conditions of the occupiers of No 15.

12. Consequently, I find that the proposal would result in harmful levels of noise and disturbance to the occupiers of Nos 15 and 17 Upper Lewes Road. The proposal would result in a development that would have an overbearing effect on the occupiers of No 15 Lewes Road. As such it conflicts with Policies QD14 and QD27 of the BHLP with regards to its impact on the living conditions of neighbouring occupiers. It conflicts with SPD12: Design guide for extensions and alterations insofar as the SPD seeks to protect the living conditions of neighbouring occupiers.

Supporting a mixed and balanced community

13. It is not in dispute that the property has a lawful use as a Sui generis HMO. The Council is concerned that the incremental intensification of the use of the appeal site adds to the cumulative harm of HMO over-concentration in this part of the City. The Council has carried out a mapping exercise which indicates that 29 of the 83 residential properties within a 50m radius of the appeal site are identifies as being in HMO use, and that the proposal conflicts with Policy CP21 which seeks to secure a balanced community.

14. The Appellant has referred me to two appeal decisions[i] in support of their appeal. I accept that there are similarities between the appeals, and I agree with the appellant that as the appeal site is already used as an HMO, the proposal would not affect the range of housing types in the area, nor the number of HMOs.

15. However neither appeal that I have been referred to related to additional extensions to the properties as part of the proposal being determined by the Inspector. The extensions at 18 Colbourne Avenue had been previously approved, and No 9 The Crescent was a change of use of the existing property. Therefore the circumstances are materially different to the appeal before me, for which the intensification in use requires the building to be substantially extended. In any case, I have determined this appeal on its own merits.

16. Therefore, with regards to the application of Policy QD27 I accept that the property is already being used as an HMO and an increase in occupants would be unlikely to have an effect on the amenity of those living in the area in general terms. However, Policy QD27 specifically restricts development where it would result in a loss of amenity to proposed, existing and/or adjacent users, residents or occupiers. I have found that the proposed extensions that would facilitate the increased occupation would have a significantly detrimental impact on the amenity of the neighbouring occupiers.

17. Accordingly, I find that due to the current use of the property the proposal would not conflict with Policy 21 (ii) of the Brighton and Hove City Plan Part One 2016. However I find that the proposal would cause significant harm to the living conditions of nearby occupiers and would therefore conflict with Policy QD27 of the BHLP insofar as it seeks to protect residential amenity.

Other Matters

18. The appellant has asserted that the proposal represents sustainable development. The three roles of sustainable development are mutually dependent. Paragraphs 6-9 of the National Planning Policy Framework indicate that 'sustainability' should not be interpreted narrowly. Elements of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. Sustainable development also includes 'seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life'. For the reasons given, I conclude that the harm identified to the living conditions of the occupiers of the neighbouring properties conflicts with the social role of sustainable development. Therefore notwithstanding the benefits of the proposal in respect of its location and transport links, it does not constitute sustainable development taken as a whole.

Conclusion

19. I have found that the proposal would not have a detrimental impact in respect of providing a balanced and mixed community. However, this is significantly outweighed by the harm that I have identified in regards to the effect of the proposal on the character and appearance of the property, and the harm that the proposal would cause to the living conditions of neighbouring occupiers. For the reasons above and taking account of all other matters raised, I conclude that the appeal should be dismissed.

J Ayres

INSPECTOR

[i] APP/Q1445/W/16/3162725 and APP/Q1445/W/15/3140528