



Appeal Decision

Site visit made on 15 January 2018

by Nicola Davies BA DipTP MRTPI

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

Decision date: 30th January 2018

Appeal Ref: APP/Q1445/W/17/3179993 9 Shoreham Road, Brighton BN1 5DQ

- 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 Sir John Wigram against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/05641, dated 11 October 2016, was refused by notice dated 23 May 2017.
 - The development proposed is the change of use from dwelling house (C3) to large HMO (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. My site visit included an inspection of the interior of the property and its rear yard. It was clear that the property is already in use as a HMO (House in Multiple Occupation) providing seven bedrooms. The application seeks to retain this use, which is classed as sui generis due to the number of persons occupying the property.

Main Issues

3. The main issues raised in respect of the appeal are: -
 - (a) Whether or not the HMO provides satisfactory living conditions for its occupants;
 - (b) Whether the continued use of the appeal property as an HMO supports the objectives of creating a mixed and balanced community; and
 - (c) The effect of the conversion on the living conditions of occupants of the immediately adjoining properties in relation to noise and disturbance.

Reasons

4. The appeal site is a mid-terraced, two-storey property with basement accommodation and an extended loft area and has seven bedrooms. The property is located in an area comprising a mix of family dwelling houses and HMOs. It is situated within walking distance of local shops and food outlets and in a location where there is a convenient bus service to the universities.

Accommodation standards

5. Accommodation is over four floors. The basement has a living/dining room and bedroom. The ground floor comprises a kitchen and two bedrooms. The first floor has two bedrooms and two bathrooms and there are two further bedrooms within the second floor extended roof space.
6. The kitchen, although long, is extremely narrow. It hosts two hobs, ovens, sinks/drainers, fridge freezers and a bar bench style seating/eating area for two persons. In my view it could not be used effectively by more than four occupants at any one time. Whilst there are cupboards and work surfaces, overall the usable floorspace is restricted by the extremely narrow nature of the kitchen. This communal kitchen space is inadequate to serve the needs of seven individuals, although I accept it is unlikely that all seven individuals would use the kitchen at the same time.
7. The shared living/dining room in the basement has one window that is served by a small pavement lightwell that provides a narrow strip of outlook at the top of the window over the public pavement. This room therefore has extremely limited outlook and feels very dark and enclosed, particularly as the window faces north and there is therefore no access to direct sunlight. This shared living space is gloomy and the window does not provide the room with sufficient light and outlook. Occupants would be reliant on artificial light at all times to enable them to undertake day-to-day activities. I have no doubt that the lack of light and outlook would discourage use of this communal room.
8. Further to the above, I saw that this living/dining room contained a dining table surrounded by six chairs and two sofas and an armchair. Indeed to accommodate the sofas, armchair and circulation space, the dining table had been pushed against a wall. Whilst there would be seating for seven persons within this room, the overall size of the room would not readily provide sufficient room for all seven occupants to sit in it at the same time. Although it could accommodate a smaller group, this communal living space is limited and would not provide a comfortable living space even for a smaller group. I consider it is likely that occupants would spend a lot of time in their own rooms.
9. In addition, the shared living/dining room's separation from the kitchen compounds my concerns in respect of the limitations of the accommodation. To use it would involve taking food and crockery up and down a flight of stairs. The basement living space is not, in my opinion, a convenient or an attractive place in which to eat meals.
10. I turn to the concerns of the accommodation provided in the two bedrooms in the roof space on the top floor. I observed that the rear (southerly) bedroom comprises a reasonable sized space with scope for a bed and other furniture. In contrast, the floor space relating to the front (northerly) bedroom is constrained by the roof slope that dominates this room. Although this room hosts a wardrobe and a desk, the bed occupies almost half of the floorspace within this room. The circulation and usable space is extremely cramped and standing head height is almost fully compromised by the low height of the sloping roof. I do not consider this room achieves an acceptable standard of bedroom accommodation.

11. The appellant has referred me to several appeal decisions¹ in which the Inspectors considered the Council's Housing HMO licensing regime to set a parallel control relating to standards of accommodation. In those other cases highlighted by the appellant I have not been provided with the full circumstances relating to those cases such as to enable me to judge whether they are directly comparable to this case. In any event, this development is a different proposal and therefore can and should be considered on its own merits.
12. Notwithstanding the above, I note that the Council has issued a HMO licence for the property. This ensures that the HMO meets the minimum standards of accommodation fit for human habitation relating to fire safety and access to the basic facilities, such as, kitchen, bathroom and toilet. Nevertheless, the planning system has a wider responsibility for ensuring that the quality of accommodation provides more than the bare minimum.
13. The appellant highlights that the Council in assessing room sizes has relied upon the Governments 'Nationally Described Space Standards' that relate to size criteria for new build housing development. Whilst this may be so, my assessment is not confined to issues such as size of rooms, but extends to consideration of the acceptability of the accommodation in respect of day-to-day living.
14. I find that the communal living space of the property for seven occupants is very limited and of poor habitable standard and the front bedroom accommodation on the top floor is extremely poor. These factors combine to create a poor living environment for the occupants. Whilst the Council's Sustainable Transport Department has not raised an objection in respect of parking and highway matters this does not overcome the harm that I have identified or justify the proposal.
15. For these above reasons, I conclude that the proposed development would not provide satisfactory living conditions for its occupants. As such, the proposal is contrary to Policy QD27 of the Brighton and Hove Local Plan (the Local Plan) that seeks to ensure adequate living conditions for occupiers of properties.

Community balance and living conditions of the adjoining occupants

16. The appellant indicates that the property has been rented as a sui-generis HMO since 2014, pre-dating the Policy CP21 of the Brighton & Hove City Plan Part One (the City Plan) that came in to place in March 2016. The proposal would allow the on-going occupation of the property by seven unrelated individuals.
17. Policy CP21 of the City Plan deals with the issue of change of use to HMOs, including the change of use to a large Sui Generis HMO, as retrospectively proposed here. This policy states that applications for the change of use to a Class C4 use, a mixed C3/C4 use or to a sui generis HMO use (more than six people sharing) will not be permitted where more than 10% of existing dwellings within a radius of fifty metres of the application site fall into these categories. Policy CP21 has been reinforced by an Article 4 Direction, which requires such proposals to obtain planning permission.

¹ Appeals at 53 Hollingbury Road (Appeal Ref: APP/Q1445/A/14/2214317), 41 The Crestway (Appeal Ref: APP/Q1445/A/16/3146828) & 11 Cross Street (Appeal Ref: APP/Q1445/A/17/3169810).

18. Unlike other wards in the Brighton and Hove area this ward is not, however, covered by an Article 4 Direction. As such the property could be occupied by up to six unrelated individuals as a C4 Use Class. Notwithstanding this, Policy CP21 aims to secure balanced communities and its objective is to locate HMOs in those areas of the city which are the most suitable places in terms of accessibility and impacts on the amenity of surrounding areas.
19. The Council has conducted a mapping exercise and found that of the fifty two properties within a fifty metres radius of the appeal property, eleven of the neighbouring properties are in HMO use within the radius area. This equates to 21.15%. This is not in dispute.
20. The Council seeks to ensure that healthy communities are maintained across the city. The Council is concerned that the incremental intensification of use at the appeal site and others nearby through the changes of use to a sui generis HMO adds to the cumulative harm of HMO over-concentration in this part of the city. It is argued that it is this type of incremental intensification and over-concentration of HMOs in geographically focused areas that has consequential impact upon the character and appearance of these areas. These changes include the increased activity by groups of unconnected adults, associated problems with different patterns of behaviour and comings and goings, noise and disturbance, and greater pressure on parking and refuse collection, amongst other matters. Policy QD27 of the Local Plan also sets out criteria in which proposals must be assessed and these latter nuisance and amenity issues relate to this policy.
21. Whilst the proposal is for a large sui generis HMO the occupation by seven individuals would only be a marginal increase over and above that of a permitted C4 use of the property. I therefore consider that any effects arising from a single additional occupant living at the property would not likely be significant.
22. At the time of my site visit the property appeared managed and was well maintained and decorated internally and externally. There was no obvious difference between the standard of maintenance of the property and others in the area, whether HMOs or not. There was no clear proliferation of 'To Let' boards along the terrace or in the wider area. Likewise, there was no noticeable over-spill of refuse and litter.
23. The Council considers that the conversion of the appeal property to a HMO would result in a material increase in noise and disturbance for neighbouring residents, particularly in relation to Nos 7 and 11 Shoreham Road that share party walls with the appeal property. It is also contended that the lack of satisfactory communal living space would increase the time occupants would spend in their rooms. As such, the use of the building would be more intensive compared to that of a typical family. However, the Council has provided no substantive evidence to support their noise and disturbance assertions. This is despite the use being in existence, although without planning permission, for approximately three years prior to the appeal being lodged. I have not been directed to any record of complaints. Furthermore, there is a lack of any local objection to the application or appeal.
24. Based upon the evidence before me and what I saw at my visit I am not persuaded that the large (sui generis) HMO use of the property would be detrimental to the character and appearance of the area. In addition, I am not

persuaded that the use would unacceptably impact upon the living conditions of adjoining occupiers.

25. For these reasons I conclude that the development would not significantly affect the mix or balance of the community in the area. Nor would it cause significant harm to the living conditions of adjoining occupants. I therefore consider that the proposed development would not materially conflict with Policy CP21 of the City Plan or Policy QD27 of the Local Plan. The latter seeks to prevent material nuisance and loss of amenity to adjacent residents.

Other Matters

26. Some concern has been raised about the contradictory text between the Council's decision notice and the Officer's Delegated Report. However, the Council's Statement of Case amplifies and substantiates the Council's reasons for refusal as set out in the decision notice. This is a matter that, if necessary, should be raised with the Council away from this appeal. In any event, these concerns would not lead me to alter my findings above.

Conclusion

27. Whilst I have found in favour of the appellant in terms of the effect on community balance and living conditions of the adjoining occupants, this does not overcome the identified harm in relation to the standard of the accommodation. For the reasons given above, and having taken consideration of all matters raised, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR