p

The Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2019

by C J Leigh BSc(Hons) MPhil MRTPI

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

Decision date: 15th February 2019

Appeal Ref: APP/Q1445/W/18/3211788
46 Newmarket Road, Brighton, BN2 3QF

- 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 Standing against the decision of Brighton & Hove City Council.
- The application Ref BH2018/00123, dated 15 January 2018, was refused by notice dated 11 June 2018.
- The development proposed is the change of use of a 6-bedroom small house in multiple occupation to a seven bedroom house in multiple occupation.

Preliminary matters

1. The application made to the Council was refused for two reasons, as set out on the Decision Notice. In the Council's Final Comments reference is made to works at the roof. The application made to the Council did not make any reference to seeking permission for any such works, and it is evident from the Delegated Report and the Decision Notice that no consideration was given to any matters regarding the roof. I have therefore not considered this matter, which has been raised at a very late stage in the proceedings.

Decision

2. The appeal is allowed and planning permission is granted for the change of use of a 6-bedroom small house in multiple occupation to a seven bedroom house in multiple occupation at 46 Newmarket Road, Brighton, BN2 3QF in accordance with the terms of the application Ref BH2018/00123, dated 15 January 2018, subject to the following conditions:
    1) The development hereby permitted shall begin not later than three years from the date of this decision.
    2) The development hereby approved shall only be occupied by a maximum of seven persons.
    3) The communal areas as detailed on the approved drawing 3565.PL.09 Rev G shall be retained as communal space at all times and shall not be used as bedroom accommodation.
    4) The development hereby permitted shall be carried out in accordance with the approved plans 3565.PL.09 Rev G & 3565.PL.10.

Main issues

3. The first two main issues in this appeal are the effect of the proposed development on the mix of housing in the community, and on the living

conditions of adjoining residents. A further main issue is whether the proposed development would provide satisfactory living standards for future occupants.

Reasons

Mix of housing

4. Policy CP21 of the Brighton & Hove City Plan (2016) sets out that *'to meet increasing accommodation demands from students and to create mixed, healthy and inclusive communities, the Council will support the provision of additional purpose built accommodation and actively manage the location of new Houses in Multiple Occupation'*. Part ii) of the Policy states that applications for changes of use to an HMO will not be permitted where more than 10% of dwellings within a radius of 50m of the application site are already in an HMO use.

5. It is common ground that the existing property lies in an area where there is already over 10% of housing used as an HMO, and that the property itself is already lawfully used as an HMO. I have been referred by both main parties to a number of appeal decisions that have considered whether the provisions of Part ii) of Policy CP21 should apply to a change of use from an existing small HMO falling within Use Class C4 to a large HMO (sui generis). It appears from these decisions, and from a plain reading of the Policy, that Part ii) would apply to any change to a sui generis House in Multiple Occupation irrespective of the lawful base use from which the change is made. This would lead to the proposed development being technically contrary to Policy CP21. However, the consistent theme in these decisions where a similar proposal has been considered is the consequence of the proposed use on the balance of the community, and that is a matter of planning judgment based on the facts of the case.

6. In the current appeal it is therefore necessary to have regard to the Council's specific objections to the proposed use. That is expressed in their first reason for refusal, namely that *'the proposed intensification of the use of this property as a large House in Multiple Occupation (sui generis) in a location with a high concentration of existing HMOs and student housing would further reduce the proportion of family homes in the area'*.

7. Increasing the number of occupants would not change the proportion of HMOs in the area, nor lead to the loss of a family house, nor would it alter the range of housing types in the area. I therefore do not agree with the Council in this case that the proposed change of use would further reduce the proportion of family homes in the area, nor with their statement in the Delegated Report that *'the further intensification of use through the change of use to sui generis HMO would add to the concentrations of HMOs in this area of the City'*; the appeal property is an HMO, and it will continue as an HMO.

8. Therefore, although Part ii) of Policy CP21 may apply to the proposed change of use and there is a technical breach of that Policy, I cannot conclude there would be any effect on the mix of housing in the community as expressed by the Council in this case. Thus, there would not be any change to the mix of housing in the community and so no conflict with the overarching objectives of the Policy in seeking mixed, healthy and inclusive communities. No conflict therefore arises on the first main issue.

Living conditions

9. The Council consider the increased occupancy of the property would lead to an increase in noise and disturbance, to the detriment of neighbouring residents and a healthy and inclusive community.

10. I note that third parties have raised concerns with noise and disturbance that exists already. It is evident that some of this concern stems from wider objections to the effect of student housing in the vicinity and not just from the appeal property. Nevertheless, I acknowledge that the proposed development would provide an additional bedroom space in the property and area.

11. The additional occupant would be accommodated within an existing room of the property that is currently not used as a bedroom. This is in the main body of the house, and the new resident would use the existing facilities of the house and same access as current residents. On the balance of the evidence presented to me, and seen at my site visit, I cannot see that one further person at this property, in these circumstances, would lead to a material change to the level of noise and disturbance arising from the property to neighbours or to the wider area; it would be a minimal change to the property.

12. On the second issue it is therefore concluded that the proposed development would not be harmful to the living conditions of adjoining residents, and so there would not be any conflict with Policy CP21 of the City Plan in this regard or Policy QD27 of the Brighton & Hove Local Plan 2005, which seek to protect the amenity of residents.

Standard of accommodation

13. The Council's concern on this matter stems from the use of 'Bedroom 5', which is in the roofspace. The Council state the size of this room is 6.1 sq m (above 1.5 sq m headheight), whilst the appellant states it is 6.6 sq m (above 1.5 sq m headheight). Either measure is short of the Government's *Technical Housing Standards – Nationally described space standard* (2015). I am not aware that these Standards are part of the adopted development plan but, as a Government standard, I consider them a material consideration of significant weight.

14. The appellant has drawn my attention to the Council's published Standards for Licensable Houses in Multiple Occupation (2012). This states that a single bedroom (as is Bedroom 5) should have a minimum size of 6.5 sq m. I recognise that the planning system may look at wider factors in assessing the size of rooms, but as a published standard by the Council this is a further material consideration of significant weight. The bedroom therefore would comply with that standard under the appellant's measurement, and be just short under the Council's measurement.

15. In light of these two conflicting material considerations I concur with the appellant that an on-site inspection of the quality of the living accommodation is the soundest way to determine the adequacy of Bedroom 5 to provide satisfactory space, since the room in question exists at present. I saw at my site visit that the room was well-lit, and that the area of restricted headroom could accommodate bed and furniture whilst leaving sufficient room for other furniture and circulation. My judgement is therefore that the size of Bedroom 5 provides satisfactory living space.

16. I also note that – as pointed out by the appellant – the appeal relates to the creation of a new 'Bedroom 7' in the property. That room would be of good size and outlook.

17. The existing communal kitchen, eating area and utility room for the property would be used by the additional resident. This would be 17.8 sq m, which the Council state is too small to be used by the 7 residents. The appellant states that this is in excess of the 14 sq m set out in the Council's Standards for HMOs (2012), and again this is a material consideration of significant weight.

18. As with the issue of Bedroom 5, I consider that an on-site inspection was the best way to determine the adequacy of this room. I noted that the space and layout of the room would provide for 7 residents to cook and socialise, with sufficient space to access facilities and the garden.

19. On the third issue it is therefore concluded that the proposed development would provide satisfactory living standards for future occupants, and so be consistent with the objectives of Policy QD27 of the Local Plan.

Conclusions and conditions

20. The appeal is therefore allowed. I have attached conditions specifying the relevant drawings, use of the rooms, and the occupation of the property, as these provide clarity and certainty; they are reasonable and necessary in order to regulate the use of the property and the layout. I do not, though, consider the Council to have demonstrated the necessary exceptional circumstances to remove permitted development rights, as the property is within a residential area of similar houses, and the normal permitted development tolerances are designed to avoid harm to neighbouring residents or the surrounding area.

C J Leigh

INSPECTOR