



Appeal Decision

Site visit carried out on 24 June 2019

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/Q1445/W/19/3224669

57 Preston Road, Brighton BN1 4QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Ms S Welland against the decision of Brighton & Hove City Council.
- The application Ref BH2018/03450 is dated 22 October 2018.
- The application sought planning permission for the conversion of existing six bedroom dwelling (C3) into 2 no three bedroom maisonettes (C3) with associated fenestration alterations without complying with conditions attached to planning permission Ref BH2018/01319, dated 13 July 2018.
- The conditions in dispute are Nos 3 and 4 which state:
Condition 3: Within 6 months of commencement of the development hereby permitted or prior to occupation, whichever is the sooner, a scheme shall be submitted to the Local Planning Authority for approval to provide that the residents of the development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit. The approved scheme shall be implemented before occupation.
Condition 4: The basement/ground floor maisonette hereby permitted shall be used as a dwellinghouse (Use Class C3) only and for no other purpose. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use including a change of use to Class C4 shall occur without planning permission obtained from the Local Planning Authority.
- The reasons given for the conditions are:
Condition 3: This condition is imposed in order to allow the Traffic Regulation Order to be amended in a timely manner prior to first occupation to ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One and SPD14: Parking Standards.
Condition 4: The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the supply of accommodation suitable for family occupation in the city, to comply with policy CP1 of Brighton & Hove City Plan Part One and policy HO9 of the Brighton and Hove Local Plan.

Decision

1. The appeal is dismissed.

Main Issues

2. Permission was granted in 2018 for conversion of the six bedroom house into two, three bedroom maisonettes. The application that is the subject of this appeal seeks the removal of conditions 3 and 4. Condition 3 prevents future residents of the proposed maisonettes from applying for, or obtaining, a resident's parking permit. Condition 4 removes permitted development rights that would otherwise allow the lower maisonette to change use, including to a house in multiple occupation.
3. If the Council had been able to determine the application it would have refused it for the reasons given in the officer report it has submitted. In relation to condition 3, the officer report only refers to one of the three policies cited in the reason for the condition given on the planning permission. However, given that the policy common to both, policy CP9 of the Brighton & Hove City Plan Part One, seeks to provide a sustainable transport system to realise benefits which include improved safety and quality of life, the same issues are raised and covered by policy CP9 at appeal stage as are covered by the policies cited in the original reason for the condition.
4. The main issues in this appeal therefore are:
 - whether condition 3 is reasonable and necessary having regard to the provision of a sustainable transport system, highway safety and residential amenity; and,
 - whether condition 4 is reasonable and necessary having regard to the supply of family housing in the city.

Reasons

Sustainable transport, highway safety and the amenity of residents

5. 57 Preston Road is a mid-terraced four storey house close to the centre of Brighton. In keeping with the rest of the long terrace it has no off road parking provision. It is located within a Controlled Parking Zone (CPZ).
6. The Brighton & Hove City Plan Part One was adopted in 2016. Policy CP9 of the document seeks to deliver sustainable transport and the benefits that this brings in terms of reduced congestion, improved health, safety and quality of life by providing measures to transfer people onto sustainable forms of transport. Amongst other measures, this includes establishing clear criteria for car-free housing. Detail in this regard is provided in the supplementary planning document 'Parking Standards' (SPD) which was also adopted in 2016.
7. I saw during the Monday morning site visit, when many residents could reasonably be expected to be out, that Preston Road and surrounding streets were heavily parked. As a result, in the evenings and at weekends when people are at home it is likely that there would be strong competition for on road parking spaces. Such competition would adversely affect residential amenity by making parking more difficult. Furthermore, the resulting combination of circulating traffic and overspill parking would increase vehicle movements along local roads, reduce intervisibility and harm highway safety.
8. In order to help deliver the benefits of sustainable transport, the SPD establishes criteria for car-free housing in CPZs. The provision of two maisonettes is small scale development. However, as both would have three

bedrooms it is likely that they would generate some demand for on road parking and thus demand for residents parking permits. Notwithstanding that there is apparently no waiting list for parking permits within the CPZ, the high level of permit uptake indicates that the CPZ is likely to be over capacity and no on-street parking survey has been submitted, as required by the SPD, that demonstrates otherwise.

9. In relation to the final criteria, there is a wide range of services and facilities within easy walking and cycling distance of the property, very good access to public transport and, as I have already noted, heavy on street parking.
10. For the reasons given above, I therefore find on the basis of the evidence before me that when assessed against the criteria of the SPD car free housing is a necessary and reasonable requirement for this development to avoid it contributing to the problems described.
11. The house could be occupied by a single household or converted into a Class C4 house in multiple occupation (HMO) using permitted development rights with occupants eligible to apply for residential parking permits. However, on the basis of the submitted evidence it seems unlikely that it would be occupied by a single household or that it would be converted in this way. Moreover, even if it was, based upon the parking standards in the SPD, it is clear that it is anticipated that such developments would generate a lower demand for parking than its conversion into a pair of three bedroom maisonettes. As a result, I attach little weight to this consideration in favour of the appeal.
12. An allowed appeal in Brighton issued in 2016¹ where the Inspector decided not to attach a condition similar to condition 3 has been cited in support of the appeal. However, I have been provided with no further information regarding this appeal and it is unclear from the reasoning within the decision whether the CPZ in which that property was located was likely to be over capacity. Moreover, unlike in the case before me, there is no indication that problems associated with the extent of on-road parking were noted during the site visit. As a result, I am not persuaded that the circumstances are sufficiently similar to alter my assessment of this issue.
13. In relation to the paragraphs of Planning Practice Guidance² (PPG) quoted in the appeal decision referred to, condition 3 does limit the benefit of the permission in terms of residents parking permits to disabled person badge holders. However, given the mobility needs of this group of people, such a restriction is appropriate. If the provision of car free housing in the appeal before me could not be secured by condition the harm that would occur to the provision of a sustainable transport system, highway safety and residential amenity could not be controlled and the delivery of the scheme's family sized housing, for which there is a significant demand over the plan period, would be put at risk. In my judgement, having regard to the quoted paragraphs of PPG, circumstances therefore exist in this case that warrant use of condition 3 to ensure that the housing development is car free.

¹ Ref APP/Q1445/W/16/3149109

² Paragraph: 015 Reference ID: 21a-015-20140306 *'Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?'*

Paragraph: 010 Reference ID: 21a-010-20140306 *'Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?'*

14. Taking all these matters into account, I therefore conclude that deleting condition 3 and allowing the change of use of the would harm the provision of a sustainable transport system. It would also increase the risk of circulating vehicles and overspill parking on nearby streets to the detriment of highway safety which, due to the increased competition for on street parking spaces, would also be harmful to the amenity of residents. This would be contrary to policy CP9 of the Brighton & Hove City Plan Part One and the SPD. Condition 3 is therefore reasonable and necessary.

Family housing

15. In order to address the significant need over the plan period for more family sized housing in the city policy CP19 of the Brighton & Hove City Plan Part One, amongst other matters, seeks to make best use of the existing housing stock.
16. As the lower maisonette has three bedrooms and access to the rear garden it would provide family accommodation. Preston Road is a busy road and in combination with the steps down to the front door this may mean that the lower maisonette is less attractive to families with young children. However, such factors would not undermine the suitability of the maisonette for families with older children.
17. Policy HO9 of the Brighton and Hove Local Plan would prevent sub-division of the lower maisonette into smaller units of accommodation. The appeal property though is approximately 100m from the edge of the St Peter's and North Laine Ward which has particularly high concentrations of HMOs. An Article 4 Direction has removed permitted development rights within this ward that allow the change of use of a dwellinghouse occupied by a single household (Class C3) to a HMO (Class C4). As a result, the creation of further HMOs within this ward is strictly controlled by policy CP21 of the Brighton & Hove City Plan Part One. However, no such Direction applies to the ward in which the appeal property is located. As a consequence, the lower maisonette which is suitable for a family could change use to a HMO.
18. The policy emphasis of the development plan includes the provision of family sized housing and the maintenance of mixed and sustainable communities. Given this policy context and the high levels of HMOs within 50m of the property, I am therefore satisfied that the change of use of the lower maisonette to a HMO would undermine the provision of family housing, contribute towards an unbalanced community and would not make best use of the housing stock. PPG advises that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. For the reasons given such circumstances exist in this case. As a result, the removal of permitted development rights in this instance is reasonable and necessary in order to comply with the housing strategy of the development plan.
19. Taking all these matters into account, I therefore conclude that deleting condition 4, which would allow the lower maisonette to change use, would harm the supply of family sized housing in the city which is the type of housing for which there is greatest demand in the city. This would be contrary to policies CP1, CP19 and CP21 of the Brighton and Hove City Plan Part One. Policy CP1 of the Brighton & Hove City Plan Part One promotes the creation of new homes in the city and, amongst other matters, seeks to ensure that all

new housing development contributes to the creation and / or maintenance of mixed and sustainable communities.

20. Reference has been made to the Council's intention to consult on the introduction of a citywide article 4 direction removing Class C3 to Class C4 permitted development rights across the city and that the enforcement of such a policy change prior to the completion of consultation is legally flawed. However, there is no indication from the Council that its justification for condition 4 is based on the blanket application of such a policy. I have assessed this appeal against the development based upon its site specific circumstances, which includes the concentration of HMOs in its immediate vicinity, and found for the reasons that I have given that condition 4 is reasonable and necessary.

Conclusion

21. The contested conditions comply with the remaining tests of paragraph 55 of the National Planning Policy Framework and the advice in PPG on the use of conditions. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector