
Appeal Decisions

Site visit made on 20 May 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2019

Appeal A Ref: APP/Q1445/W/18/3216926

111 Holland Road, Hove BN3 1JP

- 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 MHLI2 Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/04241, dated 22 December 2017, was refused by notice dated 24 May 2018.
 - The development proposed is subdivision of the existing C3 dwelling into 5 x self-contained flats.
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Appeal B Ref: APP/Q1445/W/18/3216927

111 Holland Road, Hove BN3 1JP

- 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 MHLI2 Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/04242, dated 22 December 2017, was refused by notice dated 24 May 2018.
 - The development proposed is conversion of the existing C3 dwelling to a sui generis HMO for occupation by up to 15 individuals.
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Appeal C Ref: APP/Q1445/W/18/3224570

111 Holland Road, Hove BN3 1JP

- 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.
 - The appeal is made by MHLI2 Ltd against Brighton & Hove City Council.
 - The application Ref BH2018/03715, is dated 29 November 2018.
 - The development proposed is conversion of the existing C3 dwelling to a sui generis HMO for occupation by up to 12 individuals.
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Appeal D Ref: APP/Q1445/W/18/3224572

111 Holland Road, Hove BN3 1JP

- 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.
 - The appeal is made by MHLI2 Ltd against Brighton & Hove City Council.
 - The application Ref BH2018/03058, is dated 03 October 2018.
 - The development proposed is subdivision of the existing C3 dwelling into 5 x self-contained flats.
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Decisions

1. **Appeal A:** the appeal is dismissed.
2. **Appeal B:** the appeal is dismissed.
3. **Appeal C:** the appeal is dismissed.
4. **Appeal D:** the appeal is dismissed.

Procedural Matters

5. As set out above, there are four appeals on this site. The proposals differ primarily in so far as Appeals A and D relate to the conversion of the property into 5 self-contained flats, whereas Appeals B and C seek to change the use of the property to a large HMO (sui-generis use) for 15 and 12 individuals respectively. Furthermore, for Appeals A, B and D it is proposed to install two balconies at (raised) ground floor level. I have considered each proposal on its individual merits, however, to avoid duplication I have dealt with the four together, except where otherwise indicated.
6. I note that the application form lists the applicant as 'HLI2 Ltd' where as both the appeal form and appellant's statement states that the applicant/appellant name is 'MHLI2 Ltd'. I have therefore applied the name of the appellant from the appeal form which appears to be the correct name.
7. The description of development in Appeal A, B, C and D has been changed on the appellant's appeal statements from that given in the original application forms and, as it more accurately describes the proposal, I have taken it into account in my decision.
8. The Council dispute the lawfulness of the existing rear dormer in all four decisions, stating that the submission of the planning applications for the change of use of the property (the subject of these appeals) makes it clear that the works were not part of the refurbishment / enlargement of a single dwelling, and therefore such works would not constitute permitted development. In support of their decision, the Council have referred to two appeal decisions at 15 Gladys Road¹ and 26 May Road².
9. However, the dormer has been implemented and was completed in January 2018³. The appellant states that at the time of completion, and since that time, the property has either been in Class C3 dwellinghouse or Class C4 small HMO use (which both benefit from permitted development rights), and there is no substantive evidence to the contrary. In this case a Certificate of Lawfulness has been granted for the rear dormer⁴, and the Council have not stated that the physical works are not in accordance with the approved drawings. As such, from the evidence before me, I have no grounds to consider that the existing dormer as unlawful. Furthermore, I note that the appellant has not applied for planning permission for the rear dormer and therefore I have considered the appeal based on the description of development before me for each appeal.

¹ Appeal ref: APP/Q1445/W/17/3189350

² Appeal Ref: APP/Q1445/W/17/3166975

³ Dates provided by the Council in its appeal statement.

⁴ Council Ref: BH2017/00985

10. Therefore, as the existing dormer is not considered as unlawful, the effect of this on the character and appearance of the area is not determinative in my decisions. I also note that in the case for 15 Gladys Road and 26 May Road, the dormers did not benefit from an approved Certificate of Lawfulness application.
11. It has also been put to me that Appeals A and D do not meet the Government's Nationally Described Space Standards. However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current local plan policy. In this case there is no relevant current local plan policy and consequently, the Nationally Described Space Standards is not a matter which in itself carries any significant weight against the proposal. Any assessment of the size of the proposed flats is therefore a matter of judgment.

Main Issues

12. Having regard to all the representations received I consider the main issue in all four appeals is the effect of the use of the property on the living conditions of neighbouring occupiers, particularly with respect to noise and disturbance.
13. With regard to Appeals A, B and D there are also additional main issues:
 - the effect of balconies on the living conditions of neighbouring occupiers, particularly in respect of privacy; and
 - whether the proposed development would provide suitable living conditions for future occupiers with respect to living space and, for Appeal A, with respect to private amenity space for the three bedroom units.

Reasons

14. The property relates to a two-storey semi-detached dwellinghouse on Holland Road with a single storey rear extension and a rear dormer roof extension. The appellant states that property has been used previously as either a small HMO under Class C4 by up to 6 persons or as a Class C3 dwellinghouse, which could be occupied by 9 individuals⁵.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance.

15. With respect to Appeals A and D, the proposals are for the conversion of the property to five self-contained flats. For Appeal A the appellant states that the property would be occupied by no more than 15 occupants and 10 occupants for Appeal D. However, no control on the occupancy of the property is proposed in either appeal, and 18 bed spaces are shown on the floor plans for Appeal A, with 14 bed spaces shown on the plans for Appeal D. It seems to me therefore, that the property could be occupied by up to 18 and 14 persons respectively. This would represent a significant intensification of the use of the property compared with its use as either a small HMO or a single family dwelling. This could be expected to result in a greatly increased number of comings and goings associated with the five self-contained flats and relatively high activity within the part of the rear garden to which occupiers of the flats would have communal access.

⁵ Number taken from the appellant's appeal statement.

16. With respect to Appeals B and C, the proposals are for the change of use of the property to a large HMO, a 'sui generis' use, for 15 and 12 individuals respectively. Having regard also to the likely transient nature of the occupation of the property (recognised in the appellant's statement⁶), this could be expected to result in a greatly increased number of comings and goings.
17. Whilst there are other apartment buildings nearby on the opposite side of the road, during my site visit I observed that this part of Holland Road has a fairly quiet residential character, with predominantly single family dwellings which are spaced fairly close together. I consider that the introduction of the proposed five self-contained flats or a large HMO with either 12 or 15 individuals within the existing building with associated increased vehicular and pedestrian activity during different times of the day and night, would be likely to lead to levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers.
18. Furthermore, I do not consider that the enhanced acoustic attenuation between the appeal property and the adjoining semi-detached property, nor the management plan, would overcome this harm from the increased activity associated with the proposals. This would derive from noise generated from 'comings and goings' outside of the building, increased vehicular and pedestrian movements and the use of the part of the garden for communal use.

Living Conditions of Neighbouring Occupiers - Privacy

19. With regard to Appeals A, B and D in respect of privacy, the proposed balconies and stairs would be in close proximity to the adjacent raised terraces at ground floor level and rear gardens of both adjoining properties at Nos 109 and 113 Holland Road. I acknowledge that there is currently a view of the neighbouring rear gardens from the upper floor windows of the appeal property. Notwithstanding this, the occupation of the balconies would increase the degree of overlooking of the gardens immediately adjacent to the appeal site. This would be detrimental to the privacy of the occupiers of these neighbouring properties.
20. Whilst I appreciate that the existing raised ground floor terraces at Nos 109 and 113 overlook the rear elevation of No 111 and parts of its rear garden, I do not have full details and backgrounds of these existing terraces. As such I do not consider that their existence provides support for the proposals before me which must be assessed on its own merits.
21. I acknowledge that appropriate screening could be installed which could mitigate the harm to the living conditions of both adjoining occupiers in this respect. The details of that screening could be required by a planning condition and it may be possible to consult third parties on those details.
22. However, the Planning Practice Guidance on the use of planning conditions⁷ states that *"If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes, this may result in the need for a fresh planning application"*. It goes

⁶ Paragraph 10.13 of the appellant's statement for Appeal B Ref: APP/Q1445/W/18/3216927

⁷ Paragraph: 012 Reference ID: 21a-012-20140306

onto state that "*a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used*".

23. I consider that to ensure sufficient screening of views at all times of the year are maintained that a physical boundary treatment rather than landscaping, would be required. That screening could modify the development substantially from that shown on the submitted drawings with regard to the character and appearance of the property and its impact the living conditions of the adjoining occupiers. As such, I consider that a condition requiring those details would not be reasonable in this case.
24. Consequently, with respect to Appeals A, B and D, without sufficient screening, I conclude that the proposed development would have a harmful effect on the living conditions of the occupiers of neighbouring occupiers at Nos 109 and 113 with regards to privacy.

Living Conditions of Neighbouring Occupiers - Conclusions

25. I conclude that in respect of Appeals A, B, C and D, the introduction of the proposed five self-contained flats or a large HMO with either 12 or 15 individuals would be likely to lead to levels of noise and disturbance which would adversely affect the living conditions of neighbouring occupiers.
26. I also conclude that the proposals in respect Appeals A, B and D would have a harmful effect on the living conditions of the occupiers of neighbouring occupiers at Nos 109 and 113 with regards to privacy.
27. They are the prevailing considerations in this instance and, as a consequence, I find the proposals in Appeals A, B, C and D, would conflict with Policy QD27 of the Brighton and Hove Local Plan, 2005 (LP), which 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. In addition, all appeal proposals would also conflict with LP Policy SU10, which amongst other things states that proposals for new development will be required to minimise the impact of noise on the occupiers of proposed buildings, neighbouring properties and the surrounding environment.
28. Finally, all four appeals would also conflict with paragraph 127 of the National Planning Policy Framework (Framework), which states that development should ensure high standards of amenity are created for future as well as existing users.

Living Conditions of Future Occupiers - Living Space

29. With regard to Appeal A the Council have raised an objection that the proposed three bedroom units at ground and first floor level (units 3 and 4) would result in a cramped and substandard level of accommodation for future occupiers by reason of lack of sufficient internal and private amenity space. The three bedroom units are family sized units and need to be assessed accordingly. Both three bedroom units would benefit from being dual aspect, facing both east and west, and each flat would contain a reasonably well-proportioned open plan kitchen/living/dining room. I also note that each flat would have sufficient room for storage which includes a separate built in storage cupboard in the hall.

30. However, unit 3 includes two private balconies in total measuring 12m² in area, whereas unit 4 would have no private outside amenity space. These would be far from ideal for family units where there would be insufficient outdoor space for children to play outside, and for occupiers of unit 4 there would be no external space or break out space for occupiers to sit outside. This would feel oppressive for future occupiers of these family units and would not be a pleasant environment for children. Whilst the property is in proximity to nearby open space, I do not consider that this would compensate for the lack of sufficient on-site private amenity space for these family sized units.
31. I also note that the appellant states that the scheme provides for communal access to the most easterly part of the garden. However, no communal garden space is specifically shown on the proposed lower ground floor plan and therefore it has not been demonstrated that this would provide sufficient private amenity space for these family-sized units.
32. With regard to Appeal D, the Council has raised an objection to the size of the proposed one bedroom flats at ground and first floor level. Whilst the appellant states these flats would be one person units, I note that each of the proposed units shows 2 bed spaces and therefore each flat could be occupied by up to 2 persons. Furthermore, no control on the occupancy of the flats has been proposed. Therefore, I have determined this appeal on the basis that these units could be occupied by 2 persons.
33. From my observations the living/kitchen areas for units F2 and F4 would both have modest and awkward layouts, as these would be too small to accommodate a table / dining space for future occupiers. There also appears to be a lack of sufficient space within these rooms for storage or circulation space for ordinary use and for socialising. The bedrooms for units F3 and F4 would also fail to provide sufficient storage and circulation space. This would provide a highly unsatisfactory living space for its intended occupiers. As such, Appeal D fails to provide sufficient useable floor space for future occupiers of the one bedroom units.
34. In respect of Appeal B, the proposed HMO for 15 individuals would have 15 bedrooms. The communal space to be provided would be in the form of three kitchen / dining areas at lower ground floor (28.3m²), ground floor (11m²) and first floor level (10.8m²), and these contain sinks, storage area and cookers, and a dining space. The space to be provided within most of the individual rooms are reasonably well proportioned, ranging from 8.4m² to 16.2m² and all have an ensuite. Whilst some of the rooms could also provide an element of living space, it is clear from the size of the rooms, with ensuite bathrooms removing part of the useable floor space, that most would not.
35. Whilst I note that the Council has no adopted space standard for HMOs and that the sizes of the proposed kitchen / diner would appear to be in line with the Council's licensing scheme for HMOs, this particular proposal seeks permission for a large HMO for 15 rooms for 15 individuals. As such, in my opinion, given the relatively high number of individuals that would be residing within this building, it is important that the proposal provides satisfactory communal living area for all future occupiers to be able to socialise, relax or study in away from their rooms and kitchen areas. As no communal living space is proposed I conclude that proposal would not provide future occupiers with satisfactory living conditions.

36. The appellant highlights a number of appeal decisions⁸ where Inspectors have reached a different conclusion when assessing communal living space within HMOs in Brighton. However, I note that those cases were for HMOs with either seven or eight bedrooms and therefore was not as large as the HMO before me which is for 15 bedrooms. Furthermore, I do not have the full circumstances of those cases. As such I cannot be certain that those schemes are directly comparable to the appeal proposal before me which must be considered on its own merits.
37. Consequently, Appeals B and D would both result in a cramped and claustrophobic environment to the detriment of the living conditions of future occupiers, and Appeal A would have insufficient outdoor space for the three bedroom family units which would not be a pleasant environment for families to use and enjoy.
38. Therefore, in respect of Appeal A, B and D, I find that these elements of the development would therefore be harmful to the living conditions of future occupiers. These schemes would therefore be contrary to LP Policies QD27 and HO5, which amongst other things state that planning permission will not be granted where it would cause material nuisance and loss of amenity to the proposed occupiers, and that the planning authority will require the provision of private useable amenity space in new residential development where appropriate to the scale and character of the development. The proposal would also conflict with paragraph 127 of the Framework, which states that development should ensure high standards of amenity are created for future as well as existing users.

Planning Balance and Conclusions

39. The Council accepts a five year housing land supply cannot be demonstrated and states this to be for 4.5 years. The presumption in favour of sustainable development as set out in paragraph 11 of the Framework is a material consideration. Where development plan policies are out of date in respect of housing supply this means my giving weight to granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
40. In environmental terms, I acknowledge that the site is in an accessible location close to a wide range of services and facilities, which can be reached on foot, by bike or by using public transport. I have also borne in mind that there is a need to make effective and efficient use of previously developed land especially in urban areas such as Hove, which would help protect valuable open space. This is a matter which attracts moderate weight.
41. The proposal would create economic benefits in the some short-term through construction related employment, and investment in the local economy following its occupation. However, given the scale of the proposals, this attracts little weight in my assessment of benefits arising from the appeal proposal.
42. In social terms the proposed conversion of the property, in Appeals A and D, would result in a net addition of 4 units of accommodation. This would make a

⁸ Appeal References: APP/Q1445/W/15/3140528, APP/Q1445/W/16/3154954 and APP/Q1445/W/16/3154217

small contribution to the city's housing need and the government's aim to significantly boost housing. This is a factor to which I attach moderate weight. However, weighed against this is the harm that would arise from the creation of poor quality accommodation that would be cramped, with regards to Appeals B and D, and unsuited to meeting the need for family housing for Appeal A. In addition, all four appeals would result in harm to the living conditions of neighbouring occupiers with regards to noise and disturbance, and privacy in respect of Appeals A, B and D. These are matters to which I attach significant importance and weight.

43. Overall, I find that all four appeals would be contrary to the development plan and the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
44. For the reasons given above, and having regard to all other matters raised, I conclude that all four appeals should be dismissed.

Rajeevan Satheesan

INSPECTOR