



Appeal Decision

Site visit made on 25 February 2018

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/Q1445/W/18/3217216
28 Roedale Road, Brighton, BN1 7GB

- 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 Andrew Kinnear against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/00453, dated 8 February 2017, was refused by notice dated 19 November 2018.
 - The development proposed is described as change of use from C4 small HMO (3-6 bedroom) to sui generis large HMO (seven-bedroom). Retrospective.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal is retrospective. I saw on my visit that the development had taken place in accordance with the plans and my assessment of it is described accordingly.
3. The Council has raised concern as to what they see as the unacceptability of a rear dormer at the property. This concern formed the basis for the third reason for refusing planning permission. The rear dormer does not form part of the description of the development as set out on the planning application form. The plans show that the amount of space provided at 'roof level' is the same in the existing and proposed scenarios. Therefore, I am satisfied that it does not form part of the appeal before me and I consider it no further.
4. Whether or not the rear dormer is lawful or not is a matter for the main parties to resolve. The Council has referred me to a decision of another Inspector¹ which they say supports their suggestion that the rear dormer is 'intrinsic' to the change of use, but that decision relates to a Certificate of Lawfulness appeal where the description of development did include the works to the roof.

Main Issues

5. The main issues are:
 - Whether the quality of accommodation provided is acceptable, with regards to the size of communal living space and bedrooms;

¹ APP/Q1445/X/18/3196462

- Whether the occupants of 26 and 30 Roedale Road would have acceptable living conditions, with regards to noise and disturbance; and
- Whether the use of the site as a large HMO would achieve the objective to create mixed and balanced communities.

Reasons

Quality of accommodation

6. The appeal site is a mid-terrace, two-storey property with an extended and converted roof space. It is currently being used as a large House in Multiple Occupation (HMO) by seven people. Whilst the appeal development has taken place, an 'existing' set of plans has been provided and this shows that that it is two ground floor rooms (previously used as a lounge and a dining room) that have been converted to the additional bedrooms.
7. Two of the bedrooms are in the converted roof space. I agree with the Council that they are small, particularly the room at the front of the house, where a reduced ceiling height significantly limits the amount of usable space. Once space for a bed has been allowed for, there is little room for other furniture and the occupier of that room in particular are likely to rely on space outside of their room for many of their day-to-day needs. However, the existing plans show the roof already used as two bedrooms. The Council does not dispute the accuracy of those plans and I have no reason to do so.
8. On that basis, the appeal scheme would not appear to change how those two top rooms are used. That said, the small size of those bedrooms makes it more important that enough communal space is provided at the property to meet the day-to-day needs of occupiers. The two 'new' bedrooms, at ground floor level would be of an acceptable size and layout but are provided at the expense of a living room and a dining room that would have previously made a significant contribution towards the total amount of communal space at the property.
9. The appellant says that the Council should not have based its assessment on the likely furniture needs of occupants necessarily being students, but they have themselves described that the current occupiers are students and have promoted the benefits of providing student accommodation in an area where there is demand for it.
10. The communal space in the property comprises of a kitchen area, with a dining table and a lounge area accessed from the kitchen. With seven people using this space at any one time for cooking and eating, it would, at certain times of the day likely be a very active environment. The lounge is open to the kitchen, and so activity there would impact on its tranquillity.
11. The appellant describes that people living in a HMO are less likely to want to dine and socialise together, but I do not think that is necessarily the case, particularly in the case of student sharers.
12. In the context of the small size of the upper floor bedrooms, and the additional demands that this would place on communal areas to meet day-to-day needs of occupiers of them, including quiet study in the case of students, I do not consider that enough communal space is provided at the property. That is particularly the case given the open nature of the kitchen and lounge, with no

opportunity to avoid activity associated with what will be heavy use of the kitchen at certain points during the day.

13. The appellant has described that the Council does not have specific internal space standards and that the communal space provided would exceed the HMO licensing standards. Be that as it may, in the context of the circumstances of this case, and given the additional reliance on communal space that I consider would be generated by the size of the second floor bedrooms, I consider that a greater provision of communal space than that provided is required.
14. The appellant has directed me to towards a local appeal decision² where the appropriateness of relying on licencing internal space standards was considered. I do not depart from the Inspector's findings in that case, that compliance or otherwise with licensing standards may reinforce overall findings on the acceptability of living space. That is different, though, to relying on them as the sole factor in reaching a conclusion, and I note that in that case (and whilst I do not have full details before me) that Inspector did not appear concerned that the layout of the remainder of the property could increase the need for communal space. That is not the situation in the case of this appeal.
15. Whilst I do not have policy HO14 of the Local Plan before me, the appellant describes that it seeks to protect HMO uses where the minimum licensing internal space standards are met. That is different, though, to regarding compliance with those standards as acceptable for new development.
16. The National Planning Policy Framework requires a high standard of amenity for existing and future users (paragraph 127 (f)). That would not be provided here for the reasons that I have described. I attribute greater weight to the need to meet that requirement than complying with minimum licensing standards.
17. Reference is also made by the appellant to an appeal³ where an Inspector found the amount of internal space provided in a scheme for a new dwelling to be acceptable. In that case, that Inspector appears to have made an holistic assessment of the quality of accommodation provided and found it to be sound. In the absence of detailed internal space standards set out in policy, I have taken a similar approach, but have reached a different conclusion as to the acceptability of the scheme in this case to that Inspector.
18. The appellant has identified a number of examples where they say that the Council has accepted similar amounts of communal space. Limited detail is provided in four of the cases. Reference is also made to details of a scheme at 9 Baywood Gardens being provided as an appendix, but that is not before me. As such, I cannot be sure that these examples are directly comparable to the appeal scheme, and I afford them little weight.
19. A comparison floorplan has been provided by the appellant showing the communal areas at the appeal site and 62 Bernard Road. The amount of communal space appears very similar and I note from the officer's report in that case that there were also concerns relating to the size of upper floor bedrooms. I attach positive weight in favour of the proposal to that decision. Consistency in decision making is a material consideration and on the face of it, the Council has reached quite different conclusions when presented with

² APP/Q1445/C/17/3177383 and APP/Q1445/C/17/3177384

³ APP/Q1445/W/18/3208116

apparently similar scenarios. However, that weight does not outweigh the harm that I have identified.

20. Even if the appeal property may only be used during term time, I do not consider that this should influence my assessment of its overall quality given the large number of weeks per year that occupiers would be living there. Whilst potential future occupiers may be aware of how the property was used and the facilities that it would provide before moving in, that does not justify what I consider to be an overall poor standard of accommodation. I note that the appellant describes that there have been no complaints from occupiers, but that does not mean that the standard of accommodation is acceptable.
21. The property is served by a small garden, but that could not replicate the function of internal communal space throughout the year. There is no firm evidence before me to substantiate the appellant's suggestion that a larger provision of communal space could result in late night parties that could disturb neighbours.
22. Overall, I conclude that the appeal scheme does conflict with Policy QD27 of the Brighton and Hove Local Plan (adopted 2005) (Local Plan), which seeks to ensure that the amenity of existing and future occupants of developments is protected.

Living conditions of neighbouring occupants

23. The description of development describes that the property has been used as a HMO for up to six people. The Council does not dispute this. The 'existing' floor plans show that there were only five bedrooms at that time, but it could have been six.
24. On that basis, the appeal proposal would allow for one additional person to live at the property than the previous maximum. Whilst that could result in a degree of additional activity at and outside the building, it is unlikely I think, to result in significant additional noise and disturbance.
25. That said, I recognise the concerns raised by various residents about amenity impacts associated with the use of the site as a HMO. It is not clear whether these are as a result of the increase in the number of rooms to seven, or whether they did, or would likely have occurred, when five rooms were occupied.
26. Overall, there is nothing substantive before me to lead me to a conclusion on this issue that the addition of an extra occupier at the property has or would cause the types of serious harm to living conditions of occupiers at Nos 26 and 30, with regards to noise and disturbance. Therefore, I find that the proposal is in accordance with saved Policy QD27 of the Local Plan, in so far as it seeks to protect living conditions of neighbours.
27. I note concerns relating to refuse storage and on-street car parking but neither of these matters appeared particularly problematic to me on my site visit and there is no firm evidence before me to demonstrate that planning permission should be withheld for those reasons.

The use of the site as a large HMO

28. I note the appellant's point about the Council's stance in respect of Policy CP21 of the Brighton and Hove City Plan Part One, and whilst the Council did not refuse planning permission on this basis I have had regard to their concerns, which the appellant has taken the opportunity to respond to, in reaching my decision.
29. In general terms, Policy CP21 seeks to ensure that communities are mixed and balanced, and that the overconcentration of HMOs are avoided. In order to achieve this objective, section B(ii) of the policy states that 'applications for a change of use to a...sui generis House in Multiple Occupation use...will not be permitted where more than 10% of dwellings within a radius of 50 metres of the application site are already' in a HMO use.
30. The Council's officer report describes that a mapping exercise has been undertaken which demonstrates that nine properties within the relevant radius are used as HMOs. This represents 10% of the total unit numbers. They concluded, therefore, at that time, that the relevant requirement of the policy was met.
31. A different position is advanced by the Council in their Statement, where they say that in fact, the change of use of the appeal property would add to the total number of HMOs within the 50 metre radius, and so the threshold would be breached. They reference a local appeal decision⁴ to support this approach, although I note that in that case, 20.92% of properties were used as HMOs, which is more than double the situation in this case.
32. My finding on this matter goes to the wording of the policy, which on plain reading is only engaged where *more than* 10% of dwellings are *already* in use as HMOs (my emphasis). The Council describes that precisely 10%, not more than 10% of properties are already in use in that way, and so I conclude that the proposal would be consistent with the requirements of Policy CP21.

Other Matters

33. Whilst I attach positive weight to the benefits associated with using the site efficiently, providing housing in a sustainable location to meet high local demand and the proposal's contribution towards the 'student economy', these matters do not outweigh my concerns regarding the quality of the accommodation at the property. Nor do I consider any of the suggested planning conditions to overcome the harm that I have identified.

Conclusion

34. Whilst I have found no evidence to lead me to conclude that the proposal causes harm to living conditions for neighbours, and I am satisfied that the development would not undermine the Council's objective to achieve mixed and balanced communities, these factors do not outweigh the harm that I have found in respect of the communal amenity space at the property.
35. Accordingly, I conclude that the appeal should be dismissed.

⁴ APP/Q1445/W/16/3157915

N Smith

INSPECTOR