



Appeal Decisions

Site visit made on 16 July 2019

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal A Ref: APP/Q1445/W/19/3228520 126 Wolseley Road, Brighton BN1 9ET

- 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 Mr Thomas Booker against Brighton & Hove City Council.
 - The application Ref BH2019/00315, is dated 5 February 2019.
 - The development proposed is described as 'change of use from dwelling house (C3) to house in multiple occupation (C4)'
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Appeal B Ref: APP/Q1445/W/19/3228521 126 Wolseley Road, Brighton BN1 9ET

- 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 Mr Thomas Booker against Brighton & Hove City Council.
 - The application Ref BH2019/00029, is dated 4 January 2019.
 - The development proposed is described as 'change of use from dwelling house (C3) to house in multiple occupation (C4)'
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the change of use from existing single dwelling (C3) to a six bedroom small house in multiple occupation (C4) including raised decking with balustrade & cycle store to rear at 126 Wolseley Road, Brighton BN1 9ET in accordance with the terms of the application, Ref BH2019/00315, dated 5 February 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PP/010; PP/020; PP/110; and PP/120.
 - 3) The areas identified on drawing No PP/110 as kitchen, lounge/dining and store shall be permanently retained as communal space for use by the occupants of the property.
 - 4) The development hereby permitted shall be occupied by a maximum of 6 persons.

Appeal B

2. The appeal is allowed and planning permission is granted for the change of use from existing single dwelling (C3) to a seven bedroom large house in multiple occupation (sui generis) including raised decking with balustrade & cycle store to rear at 126 Wolseley Road, Brighton BN1 9ET in accordance with the terms of the application, Ref BH2019/00029, dated 4 January 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PP/010; PP/020; PP/110; and PP/120.
 - 3) The areas identified on drawing No PP/110 as kitchen and lounge/dining shall be permanently retained as communal space for use by the occupants of the property.
 - 4) The development hereby permitted shall be occupied by a maximum of 7 persons.

Procedural Matters

3. The planning application form for Appeal B cited the proposed house in multiple occupation as being 'C4', however the proposed floor plan shows 7 bedrooms, which falls within the Sui Generis use class. The description of development contained within the appeal forms is more precise than shown on the planning application forms and I have determined the appeals on this basis. Furthermore, the plans show that the bedrooms would have single beds and I have determined the appeals on the basis that Appeal A would provide accommodation for 6 people and Appeal B would provide accommodation for 7 people.
4. During my site visit I observed that raised decking to the rear of the dwelling has been constructed. I cannot be certain that what I have seen on site is exactly the same as that shown on the plans before me. Neither party has confirmed this to be the case. As I cannot be certain that the decking has been constructed in accordance with the plans, I have considered the proposal as presented upon the plans that are the subject of the appeal and not in regard to what I observed at my site visit.
5. The property has had a loft conversion that comprises a rear dormer and front rooflights. A front porch has also been added. There is a lawful development certificate in place for these developments (Ref BH2018/00705). The Council states that the property was in C3 use at the time of the officer's visit and a loft conversion had taken place that includes a rear dormer and rooflights, as well as a porch extension. There is no substantive reason before me that would indicate that these works have not been lawfully undertaken in relation to the property being a dwellinghouse. As such, I have considered the proposal on the basis that the dormer, rooflights and porch have taken place.

Background to Main Issue

6. The Council did not make a decision on either of the planning applications within the statutory period and this has taken the jurisdiction to determine the applications away from the Council. However, the Council has provided statements that set out those issues to be of concern and give a reason for refusal in each case had it been in a position to determine the applications.
7. The Council is concerned that the proposed change of use to an HMO would harm the living conditions of surrounding properties with particular regard to noise, disturbance and increased parking pressure. The Council considers that the proposals conflict with Policy CP9 of the Brighton & Hove City Plan Part One 2016 and saved Policies SU10 and QD27 of the Brighton and Hove Local Plan 2005.

Main Issue

8. In light of the above, I consider that the main issue in these appeals is:
 - The effect of the proposed development on the living conditions of neighbouring properties, with particular regard to noise, disturbance and parking.

Reasons

9. Policy CP21 of the Brighton & Hove City Plan Part One 2016 ("City Plan") states "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". Section ii) of Policy CP21 relates to HMO's and states "In order to support mixed and balanced communities and to ensure that a range of housing needs continue to be accommodated throughout the city, applications for new build HMO, and applications for the change of use to a Class C4 (Houses in Multiple Occupation) use, a mixed C3/C4 use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where more than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use".
10. The Council states that the percentage of neighbouring properties in HMO use within a 50 metres radius is currently 5.8%. As such, the appeal schemes comply with Policy CP21 of the City Plan and are therefore acceptable in principle.
11. The Council and interested parties raise concerns about the effect of the appeal schemes on the living conditions of the occupants of surrounding residential properties, particularly 124 and 128 Wolseley Road. The Council comments that the level of activity that would occur from unconnected adults living together would be more intensive when compared to a typical family and has referred to factors such as "more frequent comings and goings" and "different patterns of behaviour". However, the appeal schemes, whether a 6-person or 7-person HMO, would not, in my view, cause a significant increase in the number of movements in to and out of the property. Any residential use, including a single dwellinghouse within Use Class C3, has the potential to create noise and disturbance and there is no substantive evidence before me to

suggest that future occupants of the proposed 6-person/7-person HMO would have a material impact on the living conditions of neighbouring properties. The ground floor communal space is of a good size and layout and so it is likely that future occupants of the HMO would spend a large proportion of their time in the ground floor living space rather than being confined to their bedrooms, which is in keeping with the typical pattern of living in a family household.

12. Furthermore, bearing in mind that the appeal site is located close to bus stops in Hawkhurst Road and that the appeal schemes would not generate any additional floorspace, I find that there would not be a significant increase in parking pressure in the surrounding area. The Council acknowledges that the overall proportion of HMO's in the vicinity of the appeal site is low and, to my mind, the appeal schemes would support mixed and balanced communities and would not create an overconcentration of HMO's in the area.
13. Having regard to the above considerations, I find that the appeal schemes would cause no significant harm to the living conditions of neighbouring properties through noise, disturbance or parking pressure. The proposed developments therefore comply with saved Policies SU10 and QD27 of the Brighton and Hove Local Plan 2005, which, among other things, requires that new development does not result in material nuisance or loss of amenity to existing residents. The proposed developments also accord with Policy CP9 of the City Plan, which, among other things, seeks to encourage the use of sustainable forms of transport.

Other Matters

14. The proposed raised decking would be sited between existing single storey extensions to each side and so it would not enable direct views into the ground floor rear windows and main outdoor amenity areas of the neighbouring dwellings at Nos 124 and 128. Furthermore, the proposed decking would not cause a significant increase in overlooking into the first floor rear windows of the neighbouring properties given that there are already mutual views of first floor rear windows from gardens. The decking would afford oblique views across the gardens of neighbouring properties, however the appeal site is located in an urban area where there is already mutual overlooking of gardens. As such, the proposed decking would not cause a significant loss of privacy to neighbouring properties.
15. The Government report of September 2008 (now archived), which the Council has referred to, is the report of a study that was commissioned. The Council has not given the document its full title, which is "Evidence Gathering – Housing in Multiple Occupation and possible planning responses". Its findings and recommendations are those of its authors, ECOTEC Research & Consulting Limited, and do not necessarily represent the views of the then Government (see the preface to the report on page 2). The Council states that anti-social behaviour and noise disturbance was specifically identified in the report as a potential harmful impact of HMO's on surrounding neighbourhoods, however, paragraph 1.2 of the report only provides a summary of the views put forward in lobbying and correspondence that prompted the commissioning of the study. The report is outdated and contains little evidence that is relevant to the appeals. I have therefore afforded the document minimal weight.
16. I have had regard to the representations from the occupiers of neighbouring properties, which, in addition to the matters above, raise issues relating to

anti-social behaviour; litter problems; too many HMO's in the area; area needs more family homes; extra strain on services; impact on property values; and plans inadequate for a HMO. There is no substantive evidence that the appeal schemes would cause anti-social behaviour or litter problems. Evidence from the Council shows that there would not be an overconcentration of HMO's in the area and the appeal schemes would provide a mix of accommodation. The appeal schemes would not generate any additional floorspace and there is no substantive evidence before me to indicate that the appeal schemes would place significant strain on local services. In relation to property values, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. Furthermore, the living areas and bedrooms would provide an adequate amount of living space, which would be provided with good levels of natural light and outlook.

Conditions

17. I have imposed the standard timeframe for implementation condition to each case because I cannot be certain that the development that has taken place accords with the plans before me. I have also attached a condition to require the proposed development to be carried out in accordance with the approved plans. This is in the interests of certainty. The Council has suggested conditions to ensure that the layout of the HMO is provided in accordance with the approved plans and to limit the maximum occupancy of the HMO, which I have considered against the guidance in the Planning Practice Guidance. I have imposed a condition to require the ground floor communal areas to be retained in order to ensure that a satisfactory standard of living accommodation is provided. Furthermore, I have attached a condition to require that Appeal A is limited to a maximum occupancy of 6 persons and that Appeal B is limited to a maximum occupancy of 7 persons in the interests of providing acceptable living conditions for future occupants.

Conclusion

18. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeals should be allowed.

C Osgathorp

INSPECTOR