



Appeal Decision

Site visit made on 7 August 2019

by L Crouch BA (Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 29th August 2019

Appeal Ref: APP/Q1445/W/19/3229965

97 Whippingham Road, Brighton BN2 3PF

- 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 Allium Investments against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/01402, dated 24 April 2017, was refused by notice dated 4 December 2018.
 - The development proposed is described as "Change of use - C4 House in Multiple Occupation (3-6 occupants) to a Sui Generis large House in multiple Occupation (seven occupants). Retrospective".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The dormer window on the rear roof slope and the rear extension of the appeal property has already been erected. The use of the building as described within the application has also already commenced and retrospective permission is being sought. Elevational details of the dormer and extension have not been submitted as part of this appeal. However, it is evident on the floorplans, and from what I saw on my site visit, that these additions are required for the ongoing operation of the Sui Generis house in multiple occupation (HMO). The appellant states that they were constructed as permitted development (PD) before the change of use occurred. This is contended by the Council. I have not been convinced by the submitted evidence in support of the appellant's position. I have covered this issue in more detail below.
3. Consequently, I am more persuaded by the Council's position that the dormer window and rear extension forms part of the development. I am therefore considering the appeal on this basis. Both main parties have provided significant comments on the matter and I have taken these into consideration when reaching my decision.

Main Issues

4. The main issues are:
 - whether or not the development provides acceptable living conditions for its occupiers; and

- the effect of the development on the character and appearance of the property and area; and
- the effect of the development on the mix and balance of the community in the area.

Reasons

Living Conditions

5. 97 Whippingham Road is a two storey terraced house in a road of similar properties. It is set back from the road behind a small front garden and a boundary wall along the frontage. There is a contained courtyard garden to the rear. The appellant states that the property has been used since 2011 as an HMO with seven bedrooms where previously it was a five bedroom small HMO (C4). The subject of this appeal is the retrospective change of use to a seven bedroom HMO.
6. The space standard adopted by the Council in 2012 for HMO licencing purposes seeks to secure minimum standards and access to basic facilities such as a kitchen, bathroom and toilet. The Council has granted an HMO licence for occupation of the property for seven people. The licencing criteria are separate to that of the planning system which has other controls.
7. Whilst the back bedroom on the first floor just meets the licence standard which is set out as 6.5m² for a single bedroom, this is a minimum standard, and I was able to see from my site visit that it was a particularly cramped space with limited room for an adequate desk and the majority of the room was taken up by the bed. This leaves little room for an occupier to acceptably reside in this room and does not provide suitable living accommodation.
8. The appellant states that the front bedroom on the second floor has a floor space of approximately 10m², and that the sloping roof results in around 7.3m² of the room being 1.5m or over. The 10m² is disputed by the Council, but given the layout of this room, which I saw on my site visit, this did not have a cramped feel and there was adequate circulation space to be able to move around the room with a view from the roof light. I conclude that this room did have an acceptable quality of accommodation and there would not be loss of amenity to the occupier.
9. The Council does not have any adopted space standards for HMOs for planning purposes but has regard to the 'Technical Housing Standards – National Described Space Standards' 2015. These standards relate to new dwellings rather than HMOs, but this guidance is helpful for comparisons and states that for a single bedroom it should be at least 7.5m² in size and 2.15m in width. All the bedrooms within the property, apart from the back bedroom on the first floor, meet this standard and I saw on my site visit that these bedrooms provide an acceptable standard of amenity for their occupants.
10. The existing kitchen and dining room area provides a communal area of approximately 22.9m². From my site visit I was able to see that the kitchen and dining area is sufficiently designed, laid out and of a scale to allow for suitable circulation space with an adequate separate area to sit and eat away from the kitchen. This would provide an appropriate area for occupiers of the property to reside away from their bedrooms if they wish.

11. The outdoor garden area is limited in size due to the rear extension, but I was able to see from my site visit that it could be used to dry clothes and sit outside if desired. Given the lack of convenient direct rear access it would be unlikely to be required for substantial outdoor storage. When this outdoor space is combined with the indoor amenity space of the kitchen, dining area and bedrooms, notwithstanding the first floor back bedroom, a suitable level of amenity space is available to occupiers overall. As such I conclude that there is an acceptable outdoor area for the occupiers of the property and it protects their amenity.
12. For the reasons above I conclude that although the communal areas and the majority of the bedrooms do protect the amenity of occupiers in-line with Policy QD27 of the Brighton and Hove Local Plan 2005 (LP), the development does not provide acceptable living conditions for the occupier of the rear bedroom on the first floor. This is important and therefore the development does not comply with Policy QD27 of the LP, which seeks to protect the amenity of occupiers.

Character and Appearance

13. The appellant has questioned the need for planning permission. Whether or not planning permission is required is not a matter for me to determine in the context of an appeal made under Section 78 of the above Act. It is open to the appellant to seek a determination under S191 of the Act in relation to this matter. My decision on this appeal under Section 78 of the Act does not affect the issuing of a determination under Section 191 of the same Act.
14. From my site visit I was able to see that the dormer window is very similar in scale, form, design and materials to other rear dormer windows on numerous nearby properties. These other dormers can be compared directly with the dormer window on the appeal property. The Council's Design Guide for Extensions and Alterations Supplementary Planning Document 12, 2013 (SPD) seeks good design for dormer windows, amongst others, through in-keeping materials, minimising bulk and sensitive positioning on the roof slope.
15. The dormer window although sitting on the eaves, being clad on the face and sides, and its scale, does take into account the existing character of the area to the rear and does have a consistent relationship with neighbouring properties due to its in-keeping appearance. As such I find that the dormer window in this case does not harm the character and appearance of the property, or the area, and is therefore acceptable given the proliferation of other similar dormers in the immediate vicinity.
16. I conclude that the development preserves the character and appearance of the area and complies with Policy QD14 and HO5 of the LP. Taken together these seek to ensure that extensions and alterations are designed, sited and detailed to take into account the property, adjoining property and the surrounding area.

Mix and Balance of the Community

17. The Council state that the development is contrary to Policy CP21 of the Brighton and Hove City Plan Part One 2016 (the City Plan). This policy seeks to support mixed and balanced communities across the City and to ensure that a range of housing needs continue to be met. Applications for the chance of use

to an HMO will be resisted where there are more than 10% of dwellings within 50m which are already in HMO use.

18. There is no dispute between the parties that the proportion of dwellings within 50m of the appeal site in HMO use is above the 10% policy limit and stands at 22.5%. The appeal property already has a lawful HMO use and as such this percentage would not alter if the appeal is allowed. This is therefore in compliance with Policy CP21 of the City Plan. The development does increase the number of occupants within this specific HMO from five to seven. However, there is no change to the number of HMOs, nor to the range of housing types, in the area.
19. I have had regard to the increase in numbers of occupiers within this HMO, and to the potential different patterns of living, and the possible impact on the neighbourhood with regard to parking, noise, recycling and waste. However, it is a small impact when seen within the area as a whole. Subsequently, it is considered that any effects arising from two extra people living in the appeal property is not going to be significant, or on the amenity of the area, and is in-line with Policy QD27 of the LP.
20. For these reasons I conclude in this case that the development does not significantly affect the mix or balance of the community in the area and is in compliance with Policy CP21 of the City Plan. The development also accords with Policy QD27 of the LP, which seeks to avoid material nuisance and loss of amenity to existing and future occupiers and adjacent residents and occupiers.

Other Matters

21. The appellant has identified that the National Planning Policy Framework 2019 (the Framework) supports 'sustainable development' such as the proposal and this would be achieved socially, economically and environmentally. However, given the harm that I have found on living conditions, and having regard to the Framework's clear emphasis on achieving a high standard of amenity, I do not consider the development acceptable overall.
22. In reaching this decision I have taken into account the other matters raised by the appellant and the Council. This includes references to case law, relevant local and national policies and other appeal decisions. I have also taken into consideration the matters set out within the submitted statements and other representations. However, they are not of such importance to change my conclusion nor is any issue of such significance to change my decision.

Conclusion

23. I have concluded that there would be harm to the living conditions of the occupiers of the first floor rear bedroom which would be significant and long lasting. I have also found that the development is acceptable in relation to the mix and balance of the community and to the character and appearance of the property and area. However, this does not outweigh the harm that I have identified and therefore for the reasons above the appeal is dismissed.

L Crouch

INSPECTOR