



Appeal Decision

Site visit made on 27 August 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2019

Appeal Ref: APP/Q1445/W/19/3230525 25 Wheatfield Way, Brighton BN2 4RQ

- 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 George Birtwell of Rivers Birtwell against Brighton & Hove City Council.
 - The application Ref BH2018/03257, is dated 23 October 2018.
 - The development proposed is change of use of a (C3c) dwelling occupied by six students to a (C4) small house in multiple occupation with six-bedrooms.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of a (C3c) dwelling occupied by six students to a (C4) small house in multiple occupation with six-bedrooms at 25 Wheatfield Way, Brighton BN2 4RQ in accordance with the terms of the application, Ref BH2018/03257, dated 23 October 2018, and the plans submitted with it, 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: 2047.01 (Existing plans, section and elevations including location plan) and 2047.02 (Proposed plans, section and elevations including block plan).
 - 3) The development hereby approved shall only be occupied by a maximum of six (6) persons.

Procedural Matter

2. The appeal is against the non-determination of the planning application as submitted. The Council has not provided a Statement of Case or any submission which would identify any main issue.

Main Issue

3. Given that the Council has not provided any reasons for refusal of planning permission, the main issue is whether there are any other considerations that might indicate that the appeal should be dismissed.

Reasons

4. The proposal is for the change of use of a dwelling occupied by six students to a small house in multiple occupation (HMO) with six bedrooms. The building is an existing shared house, which is semi-detached and set within a residential area.
5. The appellant has identified that the proposal accords with development plan policy and that as a current shared accommodation there would be no discernible difference to the use proposed, which was also its former use. A recent enforcement appeal decision¹ has also been supplied which concludes that a shared student house with the University of Brighton as lessee would be considered 'sui generis' rather than a C3c residential use as the sharers would not be considered a 'single household'. Therefore, the appellant considers planning permission would have been required for C3c (now sui generis) use so the proposal to revert back to C4 would remain the lawful use of the property. I consider the appellants points in turn.
6. Policy CP21 of the Brighton and Hove City Plan Part One (2016) (CP) states that changes of use to HMO use classes will not be permitted where more than 10% of dwellings within a radius of 50m of the application site are already in such uses. The appellant has provided analysis of a 50m radius and concludes that there are 9.5% already in HMO use (2 units from 21 dwellings). I have no evidence to the contrary and saw on my site visit that the area appeared to mostly comprise households. Therefore, I do not consider that the proposal would conflict with this policy.
7. The appeal site was previously a small HMO (C4) before being rented to 6 students with the University as the head lessee (C3c). Whilst an appeal decision has been provided concluding in those recent considerations that shared use under a University lessee would be 'sui generis', either way permission is being sought for reversion to the previous small HMO use and I place significant weight on this previous use. The use by 6 unrelated individuals appears to have been established through the rental to the University and the acceptance within a previous appeal on site² by the Council and (same) appellant that the property is a 6-bedroom, semi-detached house occupied by 6 students. The main issues within that appeal related to the effects of the proposed increase in occupancy from 6. Given this acceptance I attribute weight to the occupancy by 6 individuals and consider that the proposal, which, as set out in its accompanying documents, is for 6 bedrooms of single occupancy, would not have a materially greater effect.
8. The appeal to increase the use from 6 to 8 occupiers was dismissed due to the effects on the living conditions of neighbouring occupiers. A previous appeal³ seeking to establish 9 occupiers was also dismissed for similar reasons. There have been a number of third party representations relating to issues of neighbouring living conditions, as well as other matters which I address below. I am therefore aware that whilst I do not consider the proposal to result in a materially greater effect than previously accepted by the two main parties, this is a sensitive relationship and any further occupancy is likely to require detailed

¹ Appeal Ref APP/Q1445/C/18/3209774

² Appeal Ref APP/Q1445/W/17/3191860

³ Appeal Ref APP/Q1445/W/17/3167805

consideration. However, the 6 bedroom single room occupancy as proposed can be controlled via condition.

9. I recognise that there are concerns from residents in relation to the changing character of the area. However, an HMO use is established and matters of previous appeals were focused on the effects on noise and disturbance, accepting a variance of forms of housing despite the predominately family character of the area. I have seen nothing to lead me to a different conclusion and in any event I recognise that policy CP21 of the CP seeks to restrict the percentage of HMOs within the locality for such purposes. I consider that the proposal complies with this policy.
10. I recognise that there are also concerns relating to an increase in vehicle movements, parking pressure and public services, including bins. However, I do not consider that the proposal would materially increase the usage and therefore I do not consider that the proposal would result in additional harm in this regard.
11. The existing extensions appear to benefit from a certificate of lawfulness establishing that they were permitted development so these, and the relationships established, are also outside the scope of this appeal.
12. Therefore, I consider that the proposal would not exceed the percentage of 10% of HMOs within the area and would not result in a significant additional material nuisance and loss of amenity on adjacent occupiers. Consequently, it would not be contrary to Policy CP21 of the CP or saved Policy QD27 of the Brighton and Hove Local Plan (2005).
13. I have also found that there would not be any other considerations that might indicate that the appeal should be dismissed.

Conditions

14. In addition to the standard time limit condition, a condition requiring compliance with the approved plans is also required in the interests of certainty.
15. As set out above, it is necessary to restrict the occupation of the building to 6 occupiers to ensure that the proposal will not result in harm to the living conditions of neighbouring occupiers.

Conclusion

16. For the reasons given above, I conclude that the appeal is allowed and permission is granted subject to conditions.

Tim Crouch

INSPECTOR