
Appeal Decision

Site visit made on 19 August 2019 by Mariam Noorgat BSc (Hons)

Decision by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/Q1445/W/19/3227936

41 Bevendean Crescent, Brighton BN2 4RB

- The appeal is made under section 78 of the Town Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Shirley White against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/02893, dated 13 September 2017, was refused by notice dated 27 November 2018.
 - The development is the change of use from C3 to C4, residential to HMO.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

3. At the time of my site visit, the property was vacant, however as all parties accept the property has already been in use as a House in Multiple Occupation (HMO), I have considered the appeal on a retrospective basis.

Main Issues

4. The main issues are
 - The effect of the development on the character of the area;
 - The effect of the development on the living conditions of the occupiers of immediate neighbouring properties, with particular regard to noise and disturbance; and
 - Whether the development provides acceptable living conditions for its occupiers in respect of internal living space.

Reasons

Character of the Area

5. The appeal site is a two-storey semi-detached property set within a well-established residential area. An Article 4 Direction withdraws the permitted

development right for properties in the area for changes of use from a C3 to C4 use class.

6. Policy CP21 (ii) of the Brighton and Hove City Plan Part One, March 2016, (City Plan), seeks to address the potential impact of HMOs upon their surroundings due to concerns about the over-concentration of HMOs in certain parts of Brighton and Hove. It further seeks to ensure inclusive communities are maintained across the city. As such, this policy does not permit a change of use from a C3 use to a C4 use where 'more than 10 per cent of dwellings within a radius of 50 meters of the application site are already in use as Class C4...'. The Council confirm that 27% of the properties within the 50m radius are used as HMOs. There is no dispute between the parties that this change of use would be in breach of the 10% policy requirement.
7. The appellant states a deviation from the aforementioned policy could be justified due to the interpretation of that policy within appeal decision Ref: APP/Q1445/W/17/3186174, where it was stated that the harm from HMOs would derive mainly from those used as student accommodation and so, as in that decision the appellant's stated proposal was not for student accommodation, the appeal was allowed. This differs from the scheme before me where there is no similar suggestion, and indeed it is apparent from the appellant's statement of case that when No.41 was occupied, three of the four occupants were students. Furthermore, no mechanism to prevent student occupation has been put forward. Notwithstanding this, although the introduction of the Article 4 Direction may have stemmed from the Student Housing Strategy, part (ii) of policy CP21 does not differentiate between student or non-student HMOs and the impact both these uses have on the balance of the community.
8. As the development clearly goes beyond the maximum allowance of 10%, it contributes to an unbalanced community and so has an unacceptable impact on the character of the area. I therefore find conflict with Policy CP21 (ii) of the City Plan.

Living Conditions of Neighbouring Occupiers

9. Saved Policy QD27 of the Brighton and Hove Local Plan, 2005, (Local Plan), seeks to protect the amenity of an area, its users, occupiers and residents from various forms of disturbance. Saved Policy SU10 of the Local Plan seeks to protect neighbouring occupiers from noise nuisance and applies to all types of development, including changes of use.
10. The appellant states that there is no specific evidence to indicate that the development would lead to any direct identifiable impacts on the occupiers of neighbouring properties and that there could be a similar number of people, and level of noise, in both C3 and C4 uses. Whilst I accept this could be the case, I consider that the pattern of movement would be significantly different in a family dwelling to that arising from unrelated occupiers, who may be in a variety of different occupations with different shift patterns or academic schedules. It is also reasonable to consider unrelated individuals could well each have their own guests and visitors when compared with a family home. Therefore, when occupied, I consider there would be an intensification, and irregular pattern, of activity which would result in increased levels of noise and disturbance and would be to the detriment of the living conditions of the occupiers of neighbouring properties.

11. The appellant states that it would be ensured that the occupiers will be respectful to neighbouring properties. However, this is something which cannot be guaranteed and as such, it would not address the concerns regarding the living conditions of neighbouring occupiers. Furthermore, the lack of registered complaints to date would not be a reason to disregard potential harmful impacts, and notwithstanding this, I note a comment from the adjacent occupier regarding noise when the property was occupied as an HMO.
12. The appellant refers to an appeal (Ref: APP/Q1445/W/17/3167367) which related to a change of use from an existing C4 use class occupied by six persons to a Sui Generis large HMO. The Inspector stated "There would be an increase in the number of comings and goings from a property occupied by nine individuals. However, these cannot be directly compared with the use of No 122 as a family home, as it has not been used as one for several years". As the proposal before me relates to a change of use from C3, this appeal decision cannot be directly comparable to the scheme before me.
13. I conclude that the development harms the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance. I therefore find conflict with Saved Policies QD27 and SU10 of the Local Plan, as described above.

Living Conditions of Occupiers of the development

14. Saved Policy QD27 of the Local Plan also seeks to secure a good standard of living accommodation for current and future occupiers.
15. The house in general is in good condition and the communal areas such as the kitchen and dining area seemed spacious, taking into account the unlikely scenario of all occupiers utilising this area at the same time. In the unlikely event that this would occur, I do not deem the communal area to be cramped as the kitchen is quite large and there is sufficient seating space around the dining table and sofa to accommodate all occupants.
16. My site visit established the smallest bedroom on the first floor was unfurnished and felt very confined. If this room includes necessities such as a bed and storage space, it would further exacerbate the confined feeling. The Council state this room measures 4.7m² and the appellant states 5m²; either way the room would fall significantly below the Nationally Described Space Standards of 7.5m² which I have used as a guide. Taking all the above into consideration, the room would be extremely cramped, and I fail to see how this could provide an acceptable standard of accommodation for an adult. It is understood HMOs would be occupied by adults, whereas under a C3 use the options regarding this space could be varied i.e. child's bedroom or storage. Irrespective of the use of this space within a C3 use class, the change of use should seek to ensure a good standard of accommodation as per Saved Policy QD27, which it fails to do so.
17. The appellant states a room of this size would provide an affordable and useable bedroom, however, an acceptable standard of accommodation should still be provided.
18. On balance, although the communal areas are deemed sufficient, the smallest first-floor bedroom is cramped and so would fail to provide sufficient living space for the occupiers. Therefore, the development does not provide

acceptable living conditions for its occupiers. I therefore find conflict with Saved Policy QD27 of the Local Plan, as described above.

Conclusion

19. For the reasons set out above, I conclude that the appeal should be dismissed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

20. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Andrew Owen

INSPECTOR