



Appeal Decision

Site visit made on 9 September 2019

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2019

Appeal Ref: APP/Q1445/W/19/3232403

9 Coronation Street, Brighton, BN2 3AQ

- 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 Marchant against the decision of Brighton & Hove City Council.
 - The application Ref: BH2018/01623 dated 21 May 2018, was refused by notice dated 10 January 2019.
 - The development proposed is change of use from C3 to C4 dwelling – revised application following refusal of BH2017/02666.
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Decision

1. The appeal is allowed, and planning permission is granted for a change of use from C3 to C4 dwelling at 9 Coronation Street, Brighton, BN2 3AQ in accordance with the terms of the application Ref: BH2018/01623 dated 21 May 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 008/2018 and location plan dated 22 May 2018.
 - 3) The lounge and kitchen/dining room as set out on drawing 008/2018 received 22 May 2018 shall be retained as communal space and shall not be used as bedrooms at any time.

Procedural Matters

2. The application form describes the existing use of the site as a sui generis large house in multiple occupation (HMO) without planning permission and its previous use as a C3 dwelling. The proposed development seeks a change of use from a C3 use to a small HMO (C4) and I have proceeded to consider the appeal on that basis.
3. One of the reasons for refusal given on the Decision Notice relates to the dormer extension at the appeal property. The lawfulness or otherwise of this structure is a matter of dispute between the parties. I note that this was also a reason for refusal given for a previous application¹, subsequently dismissed on

¹ BH2017/02666

appeal². The Inspector for that appeal concluded that matters relating to the character and appearance of the dormer were not relevant to a consideration of the appeal scheme as applied for and did not consider them further. Since that appeal, a lawful development certificate³ was issued in relation to the dormer which confirms that the dormer and rooflights are permitted development in relation to the lawful use as a single dwelling/house (C3).

4. I have taken into account the lawful development certificate and the Council's view that the dormer is an integral element of the change of use. However, I have no firm evidence before me what use the property was in at the time when the dormer was constructed and therefore whether it would have been permitted development at that time. Furthermore, whilst both main parties have commented on the dormer window, I have no evidence before me that third parties have had that same opportunity. I am therefore not satisfied that no injustice would occur if I were to make a determination on the dormer window.
5. It is clear from the material submitted with the application including the lack of any elevational drawings, and the description of development given on the application form, which is reproduced in the banner heading above, that the appellant did not apply for this development. Consequently, I find no reason to take a different approach to the Inspector for the previous appeal on this site. I have therefore assessed the appeal on the basis of what was applied for. In arriving at this view, I am mindful of the court judgement⁴ cited by the Council, and the recent appeal decisions⁵, copies of which were supplied by the Council.
6. I have omitted the words 'revised application following refusal of BH2017/02666' included in the banner heading above from my formal decision as these are not a description of development.

Main Issue

7. The main issue in this appeal is the effect of the proposed development on the provision of a mixed and balanced community, with particular regard to the number of HMOs in the area.

Reasons

8. There are two universities and a number of other educational establishments within the Council's area which has given rise to a need to provide housing to accommodate students. This has resulted in a high number of HMOs arising from the conversion of family dwelling/houses, particularly in areas close to the universities. In April 2013, the Council confirmed an Article 4 Direction covering the Hanover and Elm Grove Ward, in which the appeal site is located, and other parts of the city removing the permitted development right to change from a dwelling/house in Class C3 to a small HMO in Class C4.
9. In order to provide mixed and balanced communities and thus avoid the over concentration of HMOs that might affect the residential character of the parts of the Council's area nearest to the universities, part (ii) of Policy CP21 of the

² APP/Q1445/W/18/3194945

³ BH2018/02472

⁴ *Kestrel Hydro v Secretary of State for Communities and Local Government & Spelthorne Borough Council* [2015] EWHC 1654 (Admin)

⁵ APP/Q1445/W/17/3183594, APP/Q1445/W/17/3184207, APP/Q1445/W/17/3166975, APP/Q1445/W/17/3180711, APP/Q1445/W/17/3184922 & APP/Q1445/W/17/3184918

Brighton and Hove City Plan Part One of 2016 (the City Plan) addresses the provision of HMOs. Policy CP21 states that new or expanded HMOs will not be permitted where more than 10% of the dwellings within a 50 metre radius of application properties are already occupied as HMOs.

10. The parties do not agree on the number of HMOs within 50 metres of the appeal site and therefore disagree as to whether the threshold in the policy is breached. The Council considers that the threshold has already been breached, with 12 out of 103 properties (11.65%) based on a combination of HMO Licensing Register and Council Tax records within a 50 metre radius are in use as HMOs. The Council acknowledges that this figure has increased from 7.8% to 11.65% since the previous application for a sui generis HMO was refused in 2017 due to the way Council tax data was classified and being mapped. The appellant contends that there are 9 properties out of 101 (8.9%).
11. Even if the threshold has been breached, by the Council's own calculations this is a minor breach amounting to one or two per cent. The figures in themselves provide no indication of actual occupancy levels. In the absence of conclusive evidence on the number of HMOs within the area, I return to the purpose of the policy which is to support a balanced community by addressing the potential impact of concentrations of HMOs upon their surroundings.
12. I have been provided with no evidence demonstrating that the use of No. 9 as an HMO and the loss of a family house has had any adverse effect on the residential character of the area or that the impact on living conditions of nearby occupiers are not less than significant, as found by the Inspector in respect of the previous appeal. I have noted a concern raised by a neighbour about the potential for increased noise levels. However, given the property is already being used as a larger HMO than the appeal proposal and has been for some years, and prior to this the property was previously occupied by a large family household of nine people, I do not consider the change of use will lead to a material increase in noise levels within the area.
13. Consequently, this leads me to conclude that the proposed development would not harm the provision of a mixed and balanced community, with particular regard to the number of HMOs in the area. It therefore accords with Policy CP21 of the City Plan, as referred to above.

Other Matters

14. I have noted the concerns of neighbours about the management of the property, especially in respect of the provision of bins. However, the management of the property falls outside the scope of planning and is a matter for the Council. I note however that a refuse bin is being provided for the property.

Conditions

15. The Council has proposed conditions should the appeal be allowed. I have considered these and imposed them where they meet the tests set out in Paragraph 55 of the National Planning Policy Framework, amending where necessary for the sake of simplicity, clarity and precision.
16. I have imposed a condition requiring the development is carried out in accordance with the approved plans. This is in the interests of certainty. In

order to protect the living conditions of occupants, I have imposed a condition requiring the retention of the shared living area as communal space.

17. I have not imposed a condition requiring the provision of cycle parking. Due to the arrangement of the property and access to secure space within the rear garden, the provision of cycle parking would be impractical. While there would be some conflict with Policy TR14 of the Brighton and Hove Local Plan 2005 which requires the provision of cycle storage, the broader objective of this policy is to encourage alternative means of travel which have a less harmful environmental impact. The property is located within a few minutes' walk of shops, services and bus stops and the proposed development would therefore accord with these objectives. In these circumstances and given the site constraints, I consider a condition requiring cycle parking would be unnecessary and unreasonable.

Conclusions

18. For the reasons given above I conclude that the appeal should be allowed.

Rachael Pipkin

Inspector