
Appeal Decision

Site visit made on 20 August 2019

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 7th October 2019.

Appeal Ref: APP/Q1445/W/19/3229776

4 Baxter Street, Brighton BN2 9XP

- 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 Mahendra Gudka against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/03173, dated 15 October 2018, was refused by notice dated 28 November 2018.
 - The development proposed is Change of Use from a C3 residential dwelling to a C4 small HMO for occupation by up to 5 occupants.
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Decision

1. The appeal is allowed and planning permission is granted for Change of Use from a C3 residential dwelling to a C4 small HMO for occupation by up to 5 occupants at 4 Baxter Street, Brighton BN2 9XP in accordance with the terms of the application, Ref BH2018/03173, dated 15 October 2018, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The property has had a loft conversion comprising a rear dormer and front rooflights, providing an additional bedroom. The Council contends that the change of use to a House in Multiple Occupation (HMO) has already taken place and that the development as a whole required planning permission. The appellant contends that the property remains a dwellinghouse and the dormer benefitted from permitted development rights.
3. It is not for me, in determining an appeal under section 78 of the Act¹, to determine whether development has taken place that required express planning permission from the Council. My determination of this appeal under s78 does not affect the application for a determination under s191/192 of the Act regardless of the outcome of this appeal. It is however necessary to set out the basis on which I am considering this appeal.
4. At the time of my site visit the property was laid out largely as shown on the submitted plans and the 5 bedrooms all appeared to be occupied. I have no information before me about the current occupants and whether they are a single household. It is unclear on what basis the property is currently being occupied and accordingly, I have no conclusive evidence that there has been a

¹ Town and Country Planning Act 1990 (as amended)

material change of use. I will therefore consider the appeal on the basis that the proposed change of use has not yet occurred.

5. It is however evident that the dormer is necessary to achieve the use as a 5 bedroom HMO proposed in this appeal. Consequently, I am inclined towards the Council's view that the dormer is part and parcel of the development as proposed. I have therefore considered the appeal on the basis that the dormer is part of the proposed development before me. The main parties have had the opportunity to comment on the merits of both the dormer and the change of use and I am therefore satisfied that no prejudice would occur from this approach.
6. The Council has withdrawn its objection to part of its first reason for refusal, which refers to the proposed development failing to support a mixed and balanced community. As interested parties have also raised this issue however, I have dealt with it in my reasoning below.

Main Issues

7. In light of the above, I consider that the main issues in this appeal are:
 - a) whether the appeal property is an appropriate location for an HMO having regard to the Council's aim to secure a mixed and balanced community;
 - b) the effect of the proposed development on the living conditions of neighbouring occupiers in respect of noise and disturbance;
 - c) whether the proposed development would provide appropriate living conditions for future occupiers of the HMO in respect of the size of accommodation and circulation space available; and
 - d) the effect of the proposed dormer on the character and appearance of the host property and surrounding area.

Reasons

Mixed and balanced community

8. Policy CP21 of the Brighton and Hove City Plan Part 1 2016 (CPP1) precludes further HMO uses where more than 10% of dwellings within a 50 metre radius are already in a use falling within Use Class C4 (Houses in Multiple Occupation) of the Use Classes Order 1987 (as amended), or a mixed use falling within Use Classes C3 (Dwellinghouses) and C4 (HMO), or other types of HMO.
9. The appellant in their appeal statement identifies an error in the Council's arithmetic when calculating this percentage. The Council has since acknowledged this and updated their figure. While there are slight differences between the appellant's calculation and the Council's revised figure, both parties now agree that fewer than 10% of dwellings within 50m of the appeal site are in HMO use. Accordingly, the proposed development would not undermine the Council's aim to secure a mixed and balanced community and I find no conflict with policy CP21 of the CPP1. I note that the Council has withdrawn its objection in relation to that policy.

Living conditions of neighbouring occupiers

10. The appeal site is part of a long terrace of two storey properties which extend up Baxter Street, a narrow sloping street. The surrounding roads are of similar character and appearance.
11. The proposal is for an HMO to be occupied by a maximum of 5 people. It seems to me that the size of the property, even before the loft conversion, could have accommodated a single household of up to 5 people. As such, the level of occupancy and intensity of use of the property as a 5 person HMO would not be materially different to that of a single household dwelling.
12. Although the pattern of movement of 5 unrelated adults could well involve different shift patterns, term times or academic schedules, the same could also be true of a single household with a variety of employment and study schedules. I have no compelling evidence to suggest that occupancy by 5 unrelated adults would result in more frequent comings and goings or a materially different pattern of movements compared to use as a Use Class C3 dwelling.
13. Interested parties raise concerns about the effect of an HMO use on noise and anti-social behaviour, particularly at night, and cite existing issues with sleep disturbance. A party is also specifically mentioned which led to complaints. Such disturbance could however also occur from a Use Class C3 dwelling and there is no convincing evidence before me that the proposed use as an HMO would increase the likelihood of disturbance from such events.
14. It is now agreed between the main parties that the proposal would fall under the threshold for HMO uses in the local area set by policy CP21 of the CPP1. Given the limited evidence of harm arising to date from the current use and the maximum number of occupants proposed, I have no substantive evidence to demonstrate that the proposed use would result in any material increase in noise and general disturbance or any material impact on the living conditions of neighbours.
15. Accordingly, I find that the proposed development would not result in significant harm to the living conditions of neighbouring occupiers in respect of noise and disturbance. I therefore find no conflict with saved Policy QD27 of the Brighton and Hove Local Plan 2005 (LP) insofar as it seeks to prevent loss of amenity to adjacent residents and occupiers.

Living conditions of future occupiers

16. The proposed communal space would consist of the existing kitchen and a living/dining area adjacent, with the wall between what were the living and dining rooms reinstated. The kitchen is already in place and is equipped with the usual cooking facilities, fridge/freezer, washing machine and storage. While it is relatively narrow, the kitchen is quite long and is laid out with several different areas of work surface. The layout would therefore allow for several people to use it at the same time.
17. I saw at my visit that the proposed living/dining room was also in place, laid out with a TV and sofas. While the amount of seating suggested on the submitted plans would be difficult to accommodate, a combination of seating and a smaller eating area could be achieved. Equally, the room could be used solely as a dining area or as a seating area. The rear garden can be accessed

through a door in the kitchen, so it is not essential that the French doors are accessible. I am satisfied that the living/dining room would be of sufficient size to seat all occupants comfortably.

18. The living/dining room is to one side of the corridor and there is no need to walk through it to reach the kitchen. Both rooms are well lit by the existing windows and French doors. Therefore, while the proposed communal space is relatively small, it is not significantly constrained by the open plan layout and central corridor space. The size and shape are flexible enough to meet future occupants' needs for cooking, eating and social space, such that they would not be confined to their bedrooms.
19. The area of the first floor rear bedroom in the outrigger is stated on the submitted plan to be 7m². I saw on my site visit that the room contained a double bed, wardrobe, desk and chair in a different layout to that indicated on the plan. With a double bed, there was very little circulation space, but I note that this is proposed to be a single room, which would allow for more space. I am satisfied that although relatively tight, the room could accommodate adequate space for a bed, storage, desk and circulation space. Furthermore, there is a large window to the rear providing a good level of natural light. As such, although it is small, I consider that this bedroom would not be unacceptably cramped and would provide a satisfactory standard of accommodation for a future occupant.
20. I observed at my site visit that all of the other bedrooms were of a reasonable size and provided a satisfactory standard of accommodation. Consequently, I find that the proposed development would provide appropriate living conditions for future occupiers of the HMO in respect of the size of accommodation and circulation space available. As such, I find no conflict with saved Policy QD27 of the LP insofar as it seeks to resist development which would cause loss of amenity for proposed residents. Furthermore, I find no conflict with paragraph 127 of the Framework which seeks to achieve a high standard of amenity for existing and future users.
21. It has been put to me that the bedroom in the outrigger would not meet the Government's Nationally Described Space Standards (NDSS). The National Planning Policy Guidance (PPG) makes it clear that such standards can only be applied where there is a relevant local plan policy. In this case there is no such current adopted policy, however the Council sets out that draft policy in the Brighton and Hove City Plan Part 2 proposes to adopt the NDSS and indicates a direction of travel. Consequently, while the NDSS is a consideration to which I have regard, it is one to which I can attach only limited weight at this time. In this case while one bedroom is slightly below the NDSS minimum standard, I have found no conflict with the development plan in respect of the accommodation the proposed development would provide.
22. I note that an HMO licence has been granted for the property and that the stated floor areas exceed the minimum requirements of the Council's 'Standards for Licensable Houses in Multiple Occupation' from 2012, which sets lower space requirements than the NDSS. There is however no evidence before me that the HMO Standards are adopted policy for the purposes of determining planning proposals.
23. Both parties have directed me to a number of different appeal decisions which give varying weight to the HMO Standards and whether an HMO licence has

been granted. These HMO Standards have been issued for the purposes of the Housing Act and not the Planning Act. They set out the minimum standard of accommodation required to be fit for human habitation. It seems to me that this does not go as far as the aims of the planning system which, as evidenced by paragraph 127 of the National Planning Policy Framework (the Framework), seek to achieve a high standard of amenity for future residents. As such, I have given limited weight to the HMO Standards and the issue of an HMO licence in the planning considerations of this case.

Character and appearance of the area

24. I have not been provided with elevations of the dormer however the floor plan shows its extent and I was able to see it at my site visit. Standing in the rear garden of the appeal property, I saw that the dormer occupies the majority of the rear roof slope and has a flat roofed design with tile hanging and relatively small windows.
25. The dormer is not visible from Baxter Street and only a small corner is visible in a gap between properties on Lynton Street to the rear. Consequently, it has very little impact on the street scene. At my site visit I saw that there are several other dormers of very similar scale and design on the rear of nearby properties in this terrace and several more on the rear of properties in Lynton Street behind the appeal site. Large dormers therefore already form part of the character of the residential area.
26. Although not mentioned in the reason for refusal, the Council's officer report and appeal statement refer to SPD12: Design guide for extensions and alterations 2013 (SPD) and I have been provided with that document. The SPD seeks to avoid inappropriate roof alterations that add significant and visually harmful bulk to the building and wider street scene. It also suggests that there should be no large areas of cladding around windows. Whilst the dormer does have relatively small windows in relation to the area of cladding, this is very similar to the others in the street. It does add to the bulk of the roof but this is not readily appreciated from within or outside the site. As such the dormer does not significantly detract from the appearance of the building or the street scene.
27. Consequently, while I have found that the design of the dormer does not fully accord with the guidance in the SPD, in this context it is in keeping with its surroundings and the host property. I therefore conclude that it does not result in material harm to the character and appearance of the host property or the surrounding area. Accordingly, I find no conflict with saved Policy QD14 of the LP, which seeks, amongst other things, to ensure that extensions or alterations are well designed in relation to the property to be extended and the surrounding area.

Conditions

28. I have considered the suggested conditions put forward by the Council and the appellant in relation to the tests in the Framework and the guidance in the PPG and have updated them to accord with these. I have also clarified the triggers for provision from those suggested by the Council.
29. A condition requiring compliance with the submitted plans is necessary for the avoidance of doubt and in the interests of certainty. Conditions to require the

communal accommodation to be retained and to limit the maximum number of occupiers to 5 would ensure that a satisfactory standard of accommodation is retained at the property.

30. Provision for refuse and recycling storage within the site is needed in the interests of the character of the area. Cycle storage is necessary to promote sustainable transport. I saw on site that both bicycles and refuse bins were already being stored in the rear garden and am therefore satisfied that such provision is achievable. However, I see no need for the Council to have to approve the full details of the arrangements.
31. The Council suggests that permitted development rights for extensions and alterations to the property be removed. The occupancy of the proposed HMO would be restricted to 5 people and the Council has not demonstrated why it would be necessary to restrict permitted development rights. Therefore, I am not convinced that there are exceptional circumstances that would justify such a condition.
32. The Highway Authority recommends that the development is made car free due to the potential highway safety impact of increased demand for on-street parking. Given that I am imposing a condition limiting the occupancy of the property, I have no evidence that such an increase would occur. I note also that the Council do not consider that the proposed use is likely to result in any significant uplift in trips or on-street parking compared to the use as a Use Class C3 dwelling. I have not therefore considered it necessary to attach such a condition.

Conclusion

33. For the reasons given above I conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

L McKay

INSPECTOR

Schedule of Conditions

- 1) The use 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 plans: COU.01
- 3) The development hereby approved shall not be occupied by more than five persons at any one time.
- 4) The property shall not be occupied for the use hereby permitted unless the communal areas detailed on drawing COU.01 are available for use. Thereafter these areas shall be retained for communal use and shall not at any time be used as bedroom accommodation.
- 5) The property shall not be occupied for the use hereby permitted unless provision has been made within the site for the storage of refuse and recycling. The refuse and recycling storage facilities shall thereafter be retained and available for use at all times.
- 6) The property shall not be occupied for the use hereby permitted unless facilities for the secure parking of 3 cycles have been fully implemented and made available for use. Such facilities shall thereafter be retained and available for use at all times.