



Appeal Decision

Site visit made on 15 October 2019

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/Q1445/W/19/3233608
60 & 62 Davigdor Road, Hove BN3 1RF

- 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 Dean Golding against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/00992, dated 1 April 2019, was refused by notice dated 29 May 2019.
 - The development proposed is demolition of 2no existing small houses in multiple occupation (C4) and erection of part four, part three storey building and basement level to create 17 bedroom large house in multiple occupation (Sui Generis) including solar panels to the roof and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of 2no existing small houses in multiple occupation (C4) and erection of part four, part three storey building and basement level to create 17 bedroom large house in multiple occupation (Sui Generis) including solar panels to the roof and associated works at 60 & 62 Davigdor Road, Hove BN3 1RF in accordance with the terms of the application, Ref BH2019/00992, dated 1 April 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have used the site address and description of proposed development shown on the Council's decision notice and the appellant's appeal form because they are more precise than the details shown on the planning application form.

Main Issues

3. The main issues are (i) whether the proposed development would provide an acceptable standard of accommodation for future occupiers; and (ii) the effect of the proposed development on existing trees.

Reasons

Standard of accommodation

4. The Council is concerned that the proposed HMO would not include communal lounge areas and it states that it would normally be expected that an HMO would include lounge(s) to allow for relaxation/socialising away from the proposed kitchen/diner. The Council comments that this is of particular concern given the number of bedrooms and the potential number of occupants proposed.

5. However, there are no development plan policies that relate specifically to internal space standards of HMO accommodation. The Council has referenced the Government publication "Technical housing standards - nationally described space standard" (March 2015) when assessing the internal areas in the HMO, but this publication makes it clear that the standards in these respects are only relevant to "new dwellings and have no other statutory meaning or use" (paragraph 2). The Government also indicated in March 2015 that these standards were not intended to be applied in the absence of an adopted planning policy.
6. The Council does not dispute the appellant's statement that the Council's HMO licensing standards do not require the provision of a separate lounge. However, it states that HMO licensing is primarily a means of securing minimum standards of accommodation and the planning system has wider responsibilities for ensuring that the quality of accommodation provides a good standard of amenity for occupants. Nevertheless, there is no substantive evidence before me to demonstrate that there is sufficient justification for applying different internal space standards for planning purposes.
7. The floor area of the single bedrooms would be approximately 15sqm and the double bedrooms would range from 20sqm – 27sqm, which would be of a good size. The proposed layout would include 3 communal kitchen/dining rooms on separate floors, ranging in size from 20.5sqm – 27.3sqm, which would provide sufficient space for cooking, dining and socialising. The bedrooms and communal areas would have good levels of natural light and outlook due to the provision of large windows. Given the generous size of the bedrooms and the communal kitchen/dining rooms, I do not consider that a requirement for a separate lounge(s) would be justified.
8. A communal garden area would be provided to the rear of the proposed building, which would be adequate given that the appeal site is close to a park.
9. For the above reasons, I conclude that the proposed development would provide an acceptable standard of accommodation for future occupiers. The proposal would therefore comply with saved Policy QD27 of the Brighton and Hove Local Plan 2005, which states that planning permission for any development will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. The appeal scheme would also accord with paragraph 127 of the National Planning Policy Framework, which, amongst other things, seeks the creation of places with a high standard of amenity for existing and future users.

Existing trees

10. The appellant has submitted an arboricultural impact assessment¹ with the appeal. The Council is satisfied that the previous arboricultural concerns and the second reason for refusal have been addressed in full and I agree. The proposed development would therefore accord with saved Policy QD16 of the Brighton and Hove Local Plan 2005, which, amongst other things, seeks adequate provision for the protection of existing trees.

¹ Arboricultural Assessment prepared by Nicholas Jones Consultants Limited Ref NJCL 399 dated 2 July 2019

Other Matters

11. I have had regard to the representations from local residents which raise concerns including: overdevelopment; poor design; building too high; too many flats in the area; increased traffic; parking issues; noise; overshadowing; overlooking; litter; and impact on property prices. These matters were considered in the officer's report.
12. The height of the proposed building would be acceptable given the context of the site which includes a nearby tall church building. The stepping of the building height would provide an appropriate transition to the lower building at No 64. There are a variety of architectural styles in the area and the contemporary design of the proposed building would achieve a good quality appearance.
13. Evidence from the Council shows that there would not be an overconcentration of HMO's in the area. There is no substantive evidence before me to show that the appeal scheme would cause anti-social behaviour or litter problems.
14. The appellant has stated that the proposed development would be 'car free', which, taking into account the location of the appeal site close to passenger transport facilities, is acceptable. The appellant has agreed to a condition to require the submission of a scheme to the Council for approval to provide that residents of the development, other than those residents with disabilities who are blue badge holders, would have no entitlement to a resident's parking permit. This would prevent overspill parking on surrounding roads and ensure that the proposed development would not cause a significant increase in vehicle trip generation.
15. The proposed development would be occupied for residential purposes and there is no substantive evidence before me to suggest that future occupants would cause a material increase in noise and disturbance in the area. Furthermore, the proposed building would maintain sizeable distances to neighbouring properties and therefore it would not cause harm to the living conditions of the occupiers of neighbouring properties by virtue of a loss of light or privacy.
16. In relation to property values, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

17. The Council has suggested 10 conditions which I have considered against the Framework and the advice in Planning Practice Guidance, amending where necessary in the interests of clarity and precision.
18. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
19. Conditions dealing with the materials to be used in the external surfaces of the development; the further approval and implementation of a landscaping scheme; and the implementation of bin and cycle storage are necessary to

- maintain the character and appearance of the area. Furthermore, the cycle storage provision is necessary to encourage alternative sustainable transport choices. I do not consider that it is necessary to require details of the cycle storage facilities to be submitted to the Council for approval because it is clearly shown on drawing No 18041-P-110 Rev B.
20. A condition in relation to the drainage of the hard surfacing is required to ensure that the proposed development would not increase surface water run-off. This is in the interests of minimising flood risk.
21. Conditions limiting the maximum occupancy of the HMO to 25 persons and requiring the communal areas shown on the plans to be retained for communal space for future occupants are necessary in the interests of providing acceptable living conditions for future occupants.
22. A condition to require the submission to the Council for approval of a scheme to provide that the residents of the proposed development, other than those residents with disabilities who are blue badge holders, have no entitlement to a resident's parking permit is necessary. The proposal is a car-free development and in view of the likely number of future occupants, the absence of a scheme to remove permit entitlement would be likely to cause overspill parking in surrounding roads.
23. The Council has suggested a condition to require the vehicular crossover outside the site in Davigdor Road to be reinstated back to a footway by raising the existing kerb and footway. However, there is no evidence before me to demonstrate that this would be necessary or reasonable given that the vehicular crossover also serves the adjacent church.
24. The Council states that it would normally recommend a condition to limit permitted development rights to minimise potential visual and amenity impacts, however it does not consider that the proposed development would benefit from permitted development rights. I agree that the proposed development would not benefit from the permitted development rights granted to dwelling houses by the Town and Country Planning (General Permitted Development) (England) Order 2015. This is because the proposed HMO would be within the Sui Generis use class and its size and layout, which includes 3 communal kitchen/dining rooms on separate floors, would not be characteristic of a "dwelling house". As such, it is not necessary to impose a condition to address the matters raised by the Council.

Conclusion

25. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR

Schedule of conditions

1. The development to which this permission relates shall be begun within a period of three years commencing on the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:-

18041-P-001 Rev A; 18041-P-002 Rev A; 18041-P-010 Rev B; 18041-P-101 Rev A; 18041-P-102 Rev A; 18041-P-103 Rev A; 18041-P-110 Rev B; 18041-P-111 Rev B; 18041-P-112 Rev B; 18041-P-113 Rev B; 18041-P-114 Rev A; 18041-P-120 Rev A; and 18041-P-121 Rev A.
3. No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - a) samples of all brick, render and tiling (including details of the colour of render/paintwork to be used)
 - b) samples of all cladding to be used, including details of their treatment to protect against weathering
 - c) samples of all hard surfacing materials
 - d) details of the proposed window, door and balcony treatments
 - e) samples of all other materials to be used externally

The development shall be carried out in accordance with the approved details.
4. The hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
5. Prior to occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
 - a. details of all hard and soft surfacing to include type, position, design, dimensions and materials and any sustainable drainage system used;
 - b. a schedule detailing sizes and numbers/densities of all proposed trees/plants including details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period;
 - c. details of all boundary treatments to include type, position, design, dimensions and materials.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

6. The development hereby approved shall not be occupied until the bin and cycle storage facilities shown on the approved plans have been fully implemented in accordance with the approved plans and made available for use. These facilities shall thereafter be retained for use at all times.
7. Within 6 months of commencement of the development hereby permitted or prior to occupation, whichever is the sooner, a scheme shall be submitted to the Local Planning Authority for approval in writing to provide that the residents of the development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit. The approved scheme shall be implemented before occupation.
8. The communal areas as detailed on drawings 18041-P-110 Rev B and 18041-P-111 Rev B shall be retained as communal space at all times and shall not be used as bedroom accommodation.
9. The development hereby approved shall only be occupied by a maximum of 25 (twenty five) persons.