



Appeal Decision

Site visit made on 28 August 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Appeal Ref: APP/Q1445/W/19/3231901

Fairhaven, 17 Park Road, Brighton, BN1 9AA

- 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 Oliver Dorman against the decision of Brighton & Hove City Council.
 - The application Ref: BH2018/03683 dated 28 November 2018, was refused by notice dated 9 April 2019.
 - The development proposed is the change of use of six-bedroom small house in multiple occupation (C4) to a seven-bedroom large house in multiple occupation (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of six-bedroom small house in multiple occupation (C4) to a seven-bedroom large house in multiple occupation (sui generis) at Fairhaven, 17 Park Road, Brighton, BN1 9AA in accordance with the terms of the application Ref: BH2018/03683 dated 28 November 2018, subject to the following conditions:
 - 1) The development hereby permitted shall be commenced within 3 years of the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawing 2068 01 Existing and proposed plans and elevations and shall be retained as such thereafter.
 - 3) The rooms labelled "Living Room" and "Kitchen/Living" on the approved drawing 2068 01 Existing and proposed plans and elevations shall be retained as communal space at all times and shall not be used as bedrooms.
 - 4) The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for such use at all times.
 - 5) The development hereby permitted shall be occupied by a maximum of seven occupants.

Main Issue

2. The main issue is the effect of the proposed change of use on the mix and balance of the community in the area.

Reasons

3. Park Road is an established residential area located within Coldean in the Hollingdean and Stanmer ward of Brighton. As one of the five wards closest to the University of Brighton and University of Sussex campuses, it is a popular location for student accommodation in the form of Houses in Multiple Occupation (HMO). The Council is concerned that a concentration of such premises causes an imbalance in the communities of these wards.
4. Policy CP21 of the Brighton and Hove City Plan Part One (BHCP) accordingly seeks to address this perceived imbalance by bringing forward new purpose-built student accommodation whilst also restricting the expansion of HMOs in the areas where concentrations of HMOs are greatest. Part (ii) of Policy CP21 specifically states that planning permission for the change of use to a Class C4 use, a mixed C3/C4 use or to a sui generis HMO will not be permitted where more than 10% of the dwellings within a radius of 50 metres (m) from the application site are already in use as C4, mixed C3/C4 or other types of HMO in sui generis use.
5. The Council has provided mapping evidence based on its database of all HMOs within the City which it contends demonstrates that 12% of dwellings within 50 metres of the appeal property are already in some form of HMO use. The appellant, however, has provided his own diagram which shows that No. 2 Coldean Lane, an existing HMO (erroneously referred to by the appellant as No 3 Coldean Lane), is outside the 50 m radius. The appellant therefore suggests that the proportion of neighbouring properties to the appeal property in some form of HMO use is only 8.6%.
6. The Council's response is that the appellant's 50 m radius circle is not centred on the centre of the front curtilage of the appeal property as required by paragraph 4.237 of the BHCP and that a circle centred on this point 'makes contact with' the HMO at No. 2. However, even if the Council is correct, paragraph 4.237 refers to residential properties 'partly or wholly within' a 50 m radius circle. Based on the Council's diagram and description of the relationship of the circle to No. 2, I do not consider that No. 2 falls partly or wholly within the circle. Accordingly, the evidence before me indicates that only 2 properties partly or wholly within a 50 m radius circle centred on the centre of the front curtilage of the appeal property are in some form of HMO use ie less than 10%.
7. I am aware that the Inspector who dismissed a previous appeal for the change of use of the appeal property from a 4-bedroom HMO to a 9-bedroom HMO accepted the Council's 12% figure¹. I do not have the full details of the evidence that was before that Inspector and on which the decision was based. However, I note the representation from a local councillor in respect of this current appeal that the 12% figure was not challenged by the appellant for the previous appeal. In which case, it is likely that unlike this appeal, that Inspector did not have the extent of evidence that is before me on this matter as it was not in dispute between the parties in that instance.
8. The Council's reason for refusal reflects one of the two stated purposes of Policy CP21 ie to support mixed and balanced communities. However, I conclude above that the concentration of HMOs within 50 m of the appeal

¹ APP/Q1445/W/17/3183901

property is not as high as the Council contends. Furthermore, whilst the one additional bedroom / occupier would intensify the use of the appeal property to a limited extent, the property is already in use as an HMO and thus the proposed development would not increase the number of HMOs in the area. I therefore do not agree with the Council's assertion as expressed in the reason for refusal that the proposed development would result in a further imbalance of uses to the detriment of mixed and balanced communities.

9. Accordingly, I conclude that the proposed development does not conflict with either the purpose of Policy CP21 or the wording of part ii) of the policy.

Other matters

10. I have been referred by both parties to a number of other appeal decisions regarding changes of use to HMOs in this local authority area². I do not have all the detailed information for these other appeals, but I note that in each one the Inspector made a decision using their planning judgement based on the specific circumstances of the case and the evidence before them. I have done the same.
11. In respect of the previous appeal relating to the appeal property to which I have referred above, the proposed development before the Inspector for that appeal was the change of use from a 4-bedroom HMO to a 9-bedroom HMO. I consider that development to be materially different to the development the subject of this appeal. I also note that conflict with Policy CP21 was not the sole reason for the dismissal of that appeal.
12. I have noted the representations submitted by a local Councillor and the occupier of the neighbouring dwelling. I accept that the number of occupiers of the property has increased from 4 to 6 but this increase has taken place within the lawful use of the property as a C4 HMO. The appeal before me relates to an increase in bedrooms from 6 to 7, and I do not consider that one additional occupier would result in materially greater rubbish, noise or other forms of disturbance to the occupiers of neighbouring properties. I note that the effect of the proposed development on the living conditions of the occupiers of neighbouring properties did not form a reason for the refusal of the proposed development.

Conditions and Conclusion

13. I have based the conditions on those suggested by the Council, with the exception of a condition restricting national permitted development rights for the extension, enlargement or other alteration of the property as I do not consider this to be necessary or reasonable given the development proposed and the restriction on the number of occupiers I impose in Condition 5. Such a condition would therefore fail to comply with the National Planning Policy Framework in respect of the use of conditions.
14. I have combined the Council's suggested conditions requiring the implementation of the proposed development in accordance with the approved plan to avoid unnecessary repetition. Otherwise, Conditions 1 and 2 are necessary in the interests of certainty. Condition 3 is necessary to ensure a suitable standard of accommodation for occupiers, as is Condition 5. I noted

² APP/Q1445/W/18/3211788, APP/Q1445/C/18/3199392, APP/Q1445/W/16/3165693, APP/Q1445/W/17/3184174, APP/Q1445/C/17/3170152, APP/Q1445/W/18/3208339 and APP/Q1445/W/18/3204022.

the cycle stands in the front garden of the property when I conducted my site visit but I am not persuaded that these are either secure or sufficient for the proposed number of occupiers and potential visitors to the property. I therefore consider Condition 4 is necessary to encourage travel by means other than the private car.

15. For the reasons give above, and having regard to the other matters raised, I conclude that the appeal should be allowed subject to conditions.

Martin Small

INSPECTOR