



Appeal Decision

Site visit made on 16 October 2019

by L Crouch BA (Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 13th November 2019

Appeal Ref: APP/Q1445/W/19/3223833

12 Rushlake Road, Brighton BN1 9AD

- 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 Blackburn-Panteli against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02940, dated 11 September 2018, was refused by notice dated 10 January 2019.
 - The development proposed is 'change of use from House in Multiple Occupation (C4) to a Large House in Multiple Occupation (Sui Generis) for up to seven persons'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether or not the proposed development would provide acceptable living conditions for future and neighbouring occupiers, in relation to the use of the outbuilding; and
 - the effect of the proposed development on the mix and balance of the community in the area.

Reasons

Living Conditions – neighbouring occupiers

3. The appeal site comprises a two storey semi-detached house in a road of similar properties, with gardens to the rear. It is used as a House in Multiple Occupation (HMO). To the rear of the house is a single storey detached, ancillary outbuilding, which has its own side external security gate. This access is separate from the main HMO building and leads to a paved patio area to the side and rear of the outbuilding. The main house has a separate garden area from the outbuilding, which is fenced off by close-boarded fencing. The ancillary use of the outbuilding received permission at appeal¹ and is to be used in association with the main residential use of the dwelling.
4. The proposal is for the ancillary outbuilding to be used as a seventh bedroom in connection with the HMO use at the appeal site in order to become a large HMO. I saw from my site visit that the outbuilding contains a bedroom,

¹ Appeal ref: APP/Q115/D/18/3198273

kitchen/dining and living area and a shower room and had its own front door and side access. The outbuilding could therefore be used by an occupier to live independently from the main house as a self-contained unit, with no particular need to access, share or interact with the main house or its occupiers. There is also a visual separation with the erection of the fencing around the garden of the main house and the security gate to the outbuilding. This creates a visual, physical boundary between the main house and the outbuilding.

5. Whilst intended to form part of the wider HMO use at the appeal site, the extent and nature of the facilities provided within the outbuilding, along with its physical separation and independent access, would give rise to a more intensive and focussed level of activity to the rear garden. This completely separated use would direct general activity from comings and goings of its own to an area very close to the rear garden of No 14 Rushlake Road, accordingly increasing the noise users thereof would experience. This would, in my view, lead to an unacceptable level of disturbance in what would otherwise be a peaceful area to the rear of No 14. The use of the outbuilding would be wholly distinct from the main house, the other HMO uses associated with which are contained completely within it. This is therefore quite different from the existing and approved ancillary use of the outbuilding which would, by its nature, have to have a degree of reliance on or be incidental to the enjoyment of the existing dwelling.
6. I am therefore of the view that the proposed development would not protect the amenity of neighbouring occupiers in accordance with Policies QD27 and SU10 of the Brighton and Hove Local Plan 2005 (LP), which seeks to do just that, including limiting noise nuisance.

Living Conditions – future occupiers

7. The Council does not have any adopted space standards for HMOs for planning purposes but has regard to the 'Technical Housing Standards – National Described Space Standards' 2015. These relate to new dwellings rather than HMOs, but this guidance can be helpful for comparisons and states that a unit occupied by a single occupant should have a minimum floor space of 37m² and a minimum bedroom size of 7.5m².
8. The bedroom within the outbuilding measures approximately 9.7m² with the floorspace around 31.3m². Therefore, the bedroom meets this standard and has suitable circulation space around the bed with good access to natural light and air. Additionally, I was able to see on my site visit that the kitchen and dining area was sufficiently designed, laid out and of a scale to include an area for a table, chairs and a sofa. There was also suitable circulation space around the room, with standard furniture in the room installed, and with an adequate separate area to sit and eat away from the kitchen and a living area despite the overall floorspace figure being lower than the guidance. There was an acceptable standard of accommodation for the future occupants, which would not provide a cramped or poor standard of accommodation.
9. The outbuilding would therefore protect the amenity of future occupiers in-line with Policy QD27 of the LP, which has this as one of its objectives.

Mix and Balance of the Community

10. The Council state that the development is contrary to Policy CP21 of the Brighton and Hove City Plan Part One 2016 (the City Plan). This policy seeks to support mixed and balanced communities across the City and to ensure that a range of housing needs continue to be met. Applications for the change of use to an HMO will be resisted where there are more than 10% of dwellings within 50m which are already in HMO use.
11. The Council states that the proportion of dwellings within 50m of the appeal site in HMO use is above the 10% policy limit and stands at 12.5%. The appeal property already has a lawful HMO use and as such this percentage would not alter if the appeal is allowed. This is therefore in compliance with Policy CP21 of the City Plan. The proposed development would increase the number of occupants within this specific HMO from six to seven. However, there is no change to the number of HMOs, nor to the range of housing types, in the area.
12. For these reasons I conclude in this case that the proposed development would not significantly affect the mix or balance of the community in the area and is thus in compliance with Policy CP21 of the City Plan.

Other Matters

13. The appellant has confirmed that separate Council Tax is no longer paid from the outbuilding, and that the site is no longer registered as a separate address. It is explained that this was a hangover from when the Council enforced against the use of the outbuilding as a separate dwelling. The appellant states that a condition could be utilised to prevent the outbuilding being used as a separate dwelling. The appellant also sets out that the Council could enforce against the outbuilding if it were used as a separate dwelling. It seems the appeal scheme does not propose to use the outbuilding separately and occupants could access the main dwelling and its communal facilities. There is suggestion that it could be used as a 'party room'.
14. Be these as they may, I have assessed the appeal scheme on the basis of the information presented to me which includes a site, building and situation that would provide for a wholly independent unit of accommodation in close proximity to a neighbouring private garden. In any event, and with regard to the use of conditions, it seems to me that this would not be sufficient to reduce the effect of the use of the building as what it clearly appears to be.

Conclusion

15. Whilst the appeal scheme would not give rise to harm in respect of future occupiers or the mix and balance of the community, this would not be sufficient to reduce its effect on the living conditions of existing neighbours in the manner I have described it. It is for this reason that the appeal is dismissed.

L Crouch

INSPECTOR