
Appeal Decision

Site visit made on 20 November 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/Q1445/W/19/3235929
26 Brentwood Crescent, Brighton BN1 7EU

- 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 G Birtwell (Rivers Birtwell) against the decision of Brighton & Hove City Council.
 - The application, Ref BH2019/01050, dated 5 April 2019, was refused by notice dated 16 August 2019.
 - The development proposed is change of use of a C3 dwellinghouse to C4 small house in multiple occupation, including the provision of secure cycle storage.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of a C3 dwellinghouse to C4 small house in multiple occupation, including the provision of secure cycle storage, at 26 Brentwood Crescent, Brighton BN1 7EU, in accordance with the terms of application Ref BH2019/01050, dated 5 April 2019, and the plan submitted with it, as subsequently revised, subject to the attached schedule of conditions.

Procedural Matters

2. Notwithstanding that the decision notice and appeal form refer to different plan reference numbers, both parties have confirmed that the refused plan, which is the subject of the appeal, is drawing Ref 0151 01.B Rev B, which incorporates updates to the cycle storage dated 30 June 2019. Accordingly, I have dealt with the appeal on the basis of this drawing.
3. During my site inspection, I found that the appeal property had already been converted into a 6-bedroom house in multiple occupation (HMO) and residents were in occupation. I have dealt with the appeal accordingly.

Main Issue

4. The main issue is the impact on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

5. The appeal property is a 3-bedroom, two-storey, semi-detached house located on the southern side of Brentwood Crescent, within a post-war residential area to the north of the city centre. It was constructed as part of a self-build development in the 1960s. It has a single storey rear conservatory and a

private enclosed rear garden. There is a single garage, which is attached to the neighbouring garage at No.24 and accessed via a driveway which is shared by both properties. The appeal scheme is for the use of the property as a small HMO, with 6 single-occupancy bedrooms, two on the ground floor and four on the first floor, a communal kitchen/dining/living room on the ground floor and a shower room on each floor.

6. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling house as a HMO by not more than 6 residents; that is, up to 6 unrelated individuals who share basic amenities.
7. Although the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission under Class L for a change of use from Use Class C3 (use as a dwelling house for up to 6 people living as a single household) to Use Class C4, the Council has put in force a Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA), that removes this permitted development right within the Hollingdean and Stanmer ward where the appeal property is located.
8. The supporting text to Policy CP21 of the Brighton and Hove City Plan Part One 2016 (City Plan) acknowledges that the city has a high number of HMOs, partly as the supply of purpose-built accommodation has not matched the expansion of the student population, and partly due to housing prices and availability within the city. Policy CP21 confirms that Article 4 Directions were made with respect to five wards, having regard to an over-concentration of HMOs in certain parts of Brighton and Hove, as expressed through the Council's Student Housing Strategy which identified a number of key issues associated with the large student population.
9. City Plan Policy CP21 seeks to address the potential impact of concentrations of HMOs upon their surroundings, and to ensure that healthy and inclusive communities are maintained across the city. Accordingly, Policy CP21 states that applications for the change of use to a Class C4 HMO use will not be permitted where more than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use.
10. The Council has confirmed that the appeal HMO does not result in the 10 per cent HMO 'allowance' of Policy CP21 being exceeded. It has confirmed that, in making that assessment, it has investigated the planning history and Council records in respect of a number of properties within the Policy CP21 50 metre radius that neighbours consider to be occupied as HMOs, and found no HMO Licence, planning history or enforcement history for any of the properties identified.
11. I acknowledge the neighbour concerns regarding the loss of a family dwellinghouse, the insufficient need for additional student accommodation in the city, and the impact of the appeal HMO on the character of the area. I have also had regard to the planning history of the appeal property and the planning conditions attached thereto. However, notwithstanding that the Council's refusal reason refers to Policy CP21 of the City Plan, I find no reason to disagree with the Council's assessment that the appeal scheme accords with the aforementioned aims of the Article 4 Direction and City Plan Policy CP21 to maintain a balance of housing types. HMOs can provide an important source of

housing for various community groups, including students, young professional sharers and those on lower incomes and vulnerable households. Therefore, although I recognise the self-build origins of the appeal property and its neighbours, and the local community spirit which has evolved from this, the appeal scheme, nonetheless, accords with advice in Chapter 5 of the National Planning Policy Framework (the Framework), which encourages the provision of a mix of housing types to satisfy the needs of various community groups.

Living conditions

12. The Council's reason for refusal relates to increased noise disturbance and nuisance that would harm the living conditions of neighbouring occupiers. With 6 tenants coming and going, there would likely to be general noise and disturbance. Whilst I accept that some properties in the street may be occupied by elderly persons, most of the housing tends to be of the family type. Indeed, the loss of family housing has been raised as a concern by neighbours. I consider that the noise and disturbance from the occupants of the HMO coming and going would not be significantly different to that from a large family where there would potentially be journeys to work, school and social events. There is only one on-site garage parking space, accessed via a shared driveway, over which there is a restrictive covenant controlling access. Furthermore, the entrance door to the HMO is at the front of the building, so that occupants do not need to traverse the shared driveway to gain access to the property. As such, I do not find that there would be undue noise and disturbance to the neighbouring occupants arising from car or pedestrian movements to and from the site. Given the low number of other HMOs within the surrounding area, I do not consider that there would be a cumulatively harmful impact on neighbouring living conditions by virtue of noise and disturbance, arising from the comings and goings associated with the HMO use of the property.
13. I have acknowledged the instances of noise disturbance experienced by the occupants of No.28 since the HMO use of the appeal site has commenced, including noise emanating from the conservatory. I have also taken account of the neighbour concerns in respect of specific health-related impacts of noise disturbance. However, I consider that potential forms of noise and disturbance such as the playing of loud music, partying, or social activity in the garden would not necessarily be any more likely to cause harm to neighbouring residents than would be the case with a large family, which could easily be accommodated within the property. In making this assessment I have had regard to the aforementioned Class L of the GPDO which allows, in principle, for a change of use from C3 dwelling houses to C4 HMOs for not more than 6 residents, regardless of whether the property is detached or attached to other residential properties, thereby acknowledging that a small HMO use would not be expected to have a more detrimental impact on the living conditions of the occupiers of neighbouring properties than a C3 dwelling house.
14. Furthermore, having regard to the impact on the adjacent dwelling house at No.28, the internal room arrangement of the HMO replaces part of the existing kitchen/living room space at ground floor with a bedroom and retains two bedrooms at first floor, alongside the common wall with No.28, in addition to including soundproofing to the party walls. Accordingly, the room layout and soundproofing measures would mitigate against noise transference to the adjacent dwelling.

15. The appellant has advised that the property is managed by a pro-active landlord and professional managing agent, thereby providing an additional level of protection against harm to neighbouring living conditions. Whilst occupiers' tenancy agreements may contain clauses which prohibit noisy activities, such agreements can only be enforced by the landlord, and are outside of the planning regime. However, the appellant has suggested a condition requiring a Management Plan to address noise concerns. Having regard to the incidents of noise disturbance that have already occurred, the communal use of the conservatory, and the neighbours' health-related concerns, I consider that such a condition would provide an effective means of ensuring that there would not be significant noise and disturbance over and above that generated by the occupation of the property as a family dwellinghouse, and that it meets the six tests for conditions set out in Paragraph 55 of the Framework. For the same reasons, I also propose to impose planning conditions to ensure that the number of residents does not exceed 6 persons at any one time and to remove permitted development rights.
16. Therefore, based on the information before me, and for the reasons set out above, I find that, subject to conditions, the use of the appeal property as a small HMO would not result in material harm to the living conditions of the occupiers of neighbouring properties in terms of noise disturbance and nuisance. The appeal scheme therefore accords with retained Policy QD27 of the Brighton and Hove Local Plan 2005, in so far as it aims to ensure that development does not cause material nuisance and loss of amenity to residents.

Other Matters

17. I have taken account of the neighbour concerns in respect of increased traffic and inadequate on-site parking for the development. This has not been raised as a matter of concern by the Council. There is an existing garage, accessed via a shared driveway with No. 24, which is not of sufficient width to allow cars to pass. The evidence before me is that there is a restrictive covenant which stipulates that the driveway can only be used for vehicles to pass and that no parking is permitted on the driveway. I have no detailed evidence of the levels of existing on-street parking or any parking surveys to confirm that there is an existing issue. During my site inspection I found that there is unrestricted on-street parking within the vicinity of the appeal site, and I did not witness any localised parking problems, parking congestion or impeded access to the highway network. However, I acknowledge that this was only a snapshot during the day, and there may well be more on-street parking at other times including the evening.
18. The appeal site is in an accessible location in relation to retail and community facilities and services and public transport bus and train routes. This is not, therefore, a location where the occupants need to be reliant on a private car for their day to day requirements. Therefore, given the nature of the appeal scheme, which in the absence of an Article 4 Direction, would not require planning permission, the location of the appeal site in relation to public transport routes and community facilities and services, and the lack of compelling evidence of parking stress arising from the development, I conclude that the existing on-site parking is adequate for the proposal, having regard to the transport needs of the property. I am imposing a condition to ensure that the existing garage parking is retained. I have noted the neighbour concerns

regarding parking that has taken place on the shared driveway. However, this is a matter that is capable of being controlled through the restrictive covenant and I am not, therefore, imposing a condition in this respect.

19. I acknowledge concerns from neighbours in respect of the living conditions of the occupiers of the appeal scheme, in particular, having regard to the internal layout of the HMO and the provision of kitchen and bathroom space. The Council has not referred to the living conditions of the occupiers of the HMO in the refusal reason and the officer report confirms that the Council consider that the proposed layout provides an acceptable level of accommodation, noting that the bedrooms comply with the Nationally Described Space Standards. I do not disagree, and, during my site inspection, I found the property to be well presented and maintained, with a large living, dining, kitchen area and conservatory providing sufficient communal accommodation for 6 residents, together with a shower room on each floor and a private rear garden providing external amenity area. Accordingly, I am satisfied that the HMO provides a satisfactory standard of accommodation for the future occupants.
20. I have had regard to the neighbour concerns regarding potential run-down appearance and siting of rubbish around HMO properties. At the time of my visit, there was no obvious difference between the standard of maintenance of the appeal property and others in the area, whether HMOs or not. Notwithstanding this, I am imposing a condition to ensure the provision of appropriate bin storage facilities, noting that those shown on the planning application drawing are not practical, as they would impede vehicular access to the garage.
21. My attention has been drawn to other HMOs within Brighton and Hove which are operated by the appellant, and to the appellant's business model. However, I must determine this appeal based on the specific circumstances of the appeal site and the individual planning merits of the appeal scheme.
22. Concerns have been raised about a potential reduction in property values. Planning Practice Guidance states that the Courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property is not a material consideration.

Conditions

23. In the event that the appeal was allowed, the Council has suggested a number of conditions. I have considered these in the light of the tests set out in Paragraph 55 of the Framework and the National Planning Practice Guidance (PPG) and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision. Given that the HMO use has already started, I do not consider a condition setting a timescale for the commencement of the approved development to meet the conditions set out in the Framework. It is necessary to define the plans for certainty. A condition is required to ensure that the communal kitchen, dining room and living room area on the ground floor is retained as communal living space to ensure appropriate living conditions for the occupiers of the HMO. A condition to ensure the provision of secure on-site cycle parking is justified in the interests of promoting sustainable travel in the city. I have amended the Council's suggested wording, having regard to the development that has already been carried out.

24. In addition to the conditions suggested by the Council, I consider that, in the interests of clarity, and ensuring appropriate living conditions for future occupants of the HMO and the occupiers of neighbouring properties, a condition is necessary to limit the number of residents to 6 at any one time. That accords with the details of the planning application, and is necessary, since, whilst I have found that number of residents not to be harmful, any increase above this would need to be assessed against relevant development plan policies.
25. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. However, in this case, in order to protect the living conditions of neighbours, I am satisfied that removal of permitted development rights is justified. I have also imposed conditions to ensure the provision of adequate on-site car parking and refuse storage facilities.
26. The purpose of conditions 7 and 8 is to require the appellant to comply with a strict timetable for dealing with noise mitigation and bin storage, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters, because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

27. For the above reasons, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Annex A

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Existing and Proposed Plans 0151 01.B rev B, except in respect of the location of the refuse and recycling bins shown on the plan.
- 2) The ground floor room annotated as 'living space' as set out on drawing Ref 0151 01.B rev B shall be retained as communal space at all times and shall not be used for any other purposes.
- 3) The cycle parking facilities shown on drawing Ref 0151 01.B rev B shall be kept available at all times for the storage of cycles by the occupants of the HMO hereby permitted and their visitors and for no other purpose.

- 4) The garage shown on drawing Ref 0151 01.B rev B shall be kept available at all times for the parking of motor vehicles by the occupants of the HMO hereby permitted and their visitors and for no other purpose.
- 5) The occupation of the HMO hereby permitted shall be limited to a maximum of 6 persons at any one time.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no extension, enlargement, alteration or provision within the curtilage of the dwelling house as provided for within Schedule 2, Part 1 Classes A-E shall be carried out without planning permission obtained from the local planning authority.
- 7) Unless within 2 months of the date of this decision a Noise Management Plan (NMP), which includes details of management measures to minimise the potential for noise disturbance arising from the use of the communal living space and residential accommodation, together with a timetable for implementation, is submitted in writing to the local planning authority for approval, and unless the approved NMP is implemented within one month of the local planning authority's approval, the use of the site as a small HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a NMP is approved and implemented.

Upon implementation of the approved NMP in this condition, that NMP shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) Unless within 2 months of the date of this decision a scheme for bin storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the site as a small HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved bin storage provision in this condition, that provision shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*****End of Conditions*****