
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/19/3235954
5 Steine Street, Brighton BN2 1TE

- 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 Thurst and Fritz against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02916, dated 19 September 2018, was refused by notice dated 3 July 2019.
 - The development proposed is change of use from C3 residential to C4 HMO.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from C3 residential to C4 HMO, at 5 Steine Street, Brighton BN2 1TE, in accordance with the terms of application Ref BH2018/02916, dated 19 September 2018, and the plan submitted with it, as subsequently revised, subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether the appeal proposal would provide appropriate living conditions for future occupants with particular reference to outlook, natural light and air.

Reasons

Background

3. The appeal property is a three-storey over basement, three-bedroom, terraced dwellinghouse, located on the west side of Steine Street, near Brighton city centre. The Council has confirmed that the dwelling was completed in September 2017, following planning permission Ref BH2016/00332, as amended by BH2016/06249. Neighbours have stated that the property has been used as a 'party house'. During my site inspection, I observed a number of beds within the property, in excess of that normally associated with the use as a single dwellinghouse. Notwithstanding this, the Council has determined the application on the basis of the use of the property as a C3 dwellinghouse, and I have dealt with the appeal accordingly, having regard to the aforementioned planning permissions.
4. The appeal scheme is for the use of the property as a small HMO with 3 double-occupancy bedrooms on the first and second floors, two with en-suite facilities, and one with a private external terrace. In addition, there would be a

bathroom on the first floor, communal ground floor lounge and w.c, and basement kitchen/dining room, utility room and bike store. No internal or external alterations are proposed to the property. The appellant states that the target market for the HMO would be young professionals.

5. 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.
6. 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 area where the appeal property is located.
7. 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.
8. 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. The appellant submitted a Policy CP21 Assessment with the planning application, and the Council has confirmed that, based upon the existing percentage of neighbouring properties in HMO use, which is less than 10%, the appeal proposal would be in accordance with Policy CP21.

Living Conditions

9. The Council's reason for refusal relates to concerns that the proposed accommodation would not provide adequate outlook and access to natural light and air, in particular in respect of the rooms at the rear of the property, which face out onto a lightwell and are served by frosted windows. In addition, the Council is concerned about the outlook to the second-floor bedroom, which, although receiving natural light, would front onto an enclosed terrace.
10. The appeal proposal does not include any physical alterations to the existing approved internal layout of the property, which was considered by the Council to provide acceptable living conditions for future occupants under planning permission Ref BH2016/00332. I acknowledge that this permission related to a single dwelling, where occupiers can move freely throughout the whole property, whereas, occupiers in a HMO are more likely to spend a significant

amount of time in their individual bedrooms, so that natural light and outlook to the bedrooms may be considered to be of increased importance.

11. During my site inspection, notwithstanding the obscure glazing to the rear windows, I found that, internally, the property was well-lit by artificial illumination, including ceiling spotlights and stair and alcove lighting. In addition, the open gallery arrangement, whereby the ground floor lounge looks over the large open-plan basement kitchen/dining room, provides a sense of spaciousness to the communal accommodation. Accordingly, I do not share the Council's view that the premises provide 'oppressive and gloomy' living conditions for future occupants, and, having regard to the generous sizes of the lounge and kitchen/dining room, I consider that the property would provide for sufficient communal living space for six future occupants to spend time away from their bedrooms.
12. Furthermore, I note that bedroom 1 has two windows directly looking out onto Steine Street, bedroom 2 has a roof light in addition to the rear elevation window, and bedroom 3 has glazed doors leading directly onto its own private external amenity area. The Council has confirmed that each bedroom size conforms with the Government's Technical Housing Standards – Nationally Described Space Standards 2015, and I find that each bedroom is well provided for in terms of bathroom/ensuite provision.
13. Taking these factors together, I consider that the appeal scheme would provide acceptable living conditions for the proposed six occupants of the HMO, and that occupier living conditions would not be materially harmed by the availability of natural light and the outlook from the rooms.
14. Both parties are agreed that the development accords with contemporary Building Control requirements, including ventilation standards, and that the property has a Final Certificate of completion under the Building Regulations. Whilst the remit of the Planning system allows the Council to seek a higher standard of accommodation than the minimum standards contained within the Building Regulations, the Council has not referred me to any specific living conditions standards with respect to natural light and outlook, which have been adopted by the Council.
15. Furthermore, in making my assessment, I have had regard to the aforementioned Class L of the GPDO which allows, in principle, for a change of use from C3 dwellinghouses to C4 HMOs for not more than 6 residents, regardless of the outlook and light available to the living accommodation, thereby acknowledging that a small HMO use would not be expected to result in materially more harmful living conditions for future occupants than that of a C3 dwelling house within the same building.
16. For the above reasons, I conclude that the proposed development would provide appropriate living conditions for future occupants, with particular reference to outlook, natural light and air. 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 new development does not cause material loss of amenity to future occupiers.

Other Matters

17. The Council has confirmed that the site lies within the Valley Gardens Conservation Area. The Council has not found any harm to the character and appearance of the conservation area as a result of the proposed development. I agree with this assessment, since no external alterations are proposed to the appeal property, and the property will continue to be used for residential accommodation.
18. Neighbours have drawn my attention to their concerns that the appeal property has been used as a guest house/'party house' accommodating a greater number of occupants than that of a single dwelling, and that this has harmed neighbouring living conditions due to associated noise and disturbance. I must determine the appeal on the basis of the scheme before me, which is for a proposed C4 HMO. Having regard to the use specifically sought, and the living conditions of neighbouring occupants, I am proposing a condition to restrict the number of occupants to a maximum of six.

Conditions

19. 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. In addition to the standard implementation condition, it is necessary to define the plans for certainty. A condition is required to ensure that the communal kitchen/dining room and lounge on the basement and ground floors are retained as communal living space, to ensure appropriate living conditions for the occupiers of the HMO.
20. The Council has suggested a condition restricting occupancy of the HMO to a maximum of three persons. However, I do not find such a condition to be reasonable or necessary, since this would conflict with the details of the appeal scheme, which includes three double bedrooms, and with the definition of a small HMO, which allows for up to a maximum of 6 occupants. Instead, 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.
21. A condition to ensure the provision of secure on-site cycle parking is justified in the interests of promoting sustainable travel in the city.

Conclusion

22. 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 begin not later than three years from the date of this decision.
- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing No. A.002 rev b.
- 2) The basement and ground floor rooms annotated as 'kitchen', 'dining' and 'lounge' as set out on drawing No. A.002 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 No. A.002 rev b shall be provided before the HMO hereby permitted is brought into use, and 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 occupation of the HMO hereby permitted shall be limited to a maximum of 6 persons at any one time.

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