



Appeal Decision

Site visit made on 17 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 17th January 2020

Appeal Ref: APP/Q1445/W/19/3237510

55 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 Michael Chang against the decision of Brighton & Hove City Council.
 - The application Ref: BH2019/01615 dated 30 May 2019, was refused by notice dated 12 August 2019.
 - The development is the change of use from Use Class C3 to Use Class C4 small HMO.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Use Class C3 to Use Class C4 small HMO at 55 Park Road, Brighton, BN1 9AA in accordance with the terms of the application Ref: BH2019/01615 dated 30 May 2019 and the unnumbered drawings; Location Plan, Block Plan, Existing/Proposed Floor Plans and Section A-A, subject to the following conditions;
 1. Unless within six months of the date of this decision the internal layout of the house has been altered so that it is as shown on the Existing/Proposed Floor Plans received by the local planning authority on 31 May 2019 as part of planning application BH2019/01615, the use of the house as a house in multiple occupancy shall cease until this layout has been implemented. Once this layout has been implemented the rooms annotated as 'Kitchen' and 'Lounge and Dining' as set out on the drawing of the Existing/Proposed Floor Plans shall be retained as communal space and neither shall be used as a bedroom at any time. 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.
 2. Unless within three months of the date of this decision details of the facilities to be provided for the secure parking of bicycles are submitted in writing to the local planning authority for their written approval, or if no details in accordance with this condition are approved within six months of the date of this decision, or if the approved facilities have not been provided as approved within six months of the date of the local planning authority's written approval, the use of the house as a house in multiple occupancy shall cease until such time as facilities approved by the local planning authority have been provided and made available for use. The facilities provided as approved shall be retained as approved. 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.

3. The HMO hereby permitted shall only be occupied at any time by a maximum of five (5) persons.

Procedural Matters

2. From the evidence before me and my observations during my site visit, the change of use has already taken place. This application is therefore retrospective and I have determined the appeal on this basis. However, the layout of the property at the time of my site visit was not as shown on the Existing/Proposed Floor Plans submitted with the application in that the room annotated as 'Lounge and Dining' was in use as a bedroom, the room annotated as 'Bedroom 2' was in use as a dining room and the room annotated as 'Bedroom 1' was in use for storage.
3. The description of the development in the banner heading above is taken from the application form. I note that the Council has used a slightly different description of development on the decision notice. However, I have no evidence that this change in description was agreed with the appellant and the appellant has used the original description on the appeal form. I have therefore used the original description in my decision, which adequately describes the development.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance.

Reasons

5. The Council's reason for refusal states that "*The proposed change of use to a HMO would result in increased noise disturbance and nuisance that would be detrimental to the amenity of neighbouring occupiers*". However, the Council has not provided any evidence that the living conditions of the occupiers of neighbouring properties have been or would be adversely affected by the development, including by 'comings and goings'.
6. A number of local residents have referred to noise from the property and activity in representations made in response to the submission of the planning application. However, I have not been provided with any specific examples or any evidence of complaints about noise or disturbance having been made to the Council or to the police during the period between the date of the change of use first taking place, indicated on the application form as 1 October 2018, and the submission of the application, as might be expected if that noise or disturbance was significant.
7. Furthermore, if the property remained in C3 use, it could lawfully be occupied by a family of 5 or more, or up to 6 people living as a single household. Such occupation would potentially give rise to noise and disturbance from both inside and outside the dwelling, including from the elevated deck to the rear of the property.

8. Notwithstanding the Council's contention that occupation by up to 5 unrelated adults would typically result in a more intensive use of the property than a family occupancy as a single household, no persuasive evidence has been provided to demonstrate that the use of the property as a small HMO has caused or would cause significantly more noise or other disturbance than its use as a dwelling within Use Class C3. I note that a similar view was taken by the Inspector that determined two appeals for 31 Park Road, to which the appellant draws my attention¹.
9. I therefore conclude that it has not been demonstrated that noise and disturbance associated with the use of the property as a C4 small HMO is sufficient reason for withholding planning permission. Accordingly, I find in this respect that the development does not conflict with Policy QD27 of the Brighton and Hove Local Plan (2005), which seeks to protect the living conditions of existing and / or adjacent residents and occupiers. For the same reason and as it does not specifically relate to living conditions with regard to HMOs, I also find no conflict with Policy CP21 of the Brighton and Hove City Plan Part 1 (2016) (CPP1) in this respect.

Other Matters

10. The appellant contends that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. This is not disputed by the Council. However, as I have found that the development does not conflict with the development plan, I do not need to consider this matter further.
11. The development has given rise to objections from a number of local residents. I have considered noise and disturbance above. Concern has also been expressed about the loss of a family home, the number of existing HMOs in the area and the consequent effect of the development on the local community and property market. However, the Committee Report notes that the proportion of neighbouring properties in HMO use within a 50 metre radius of the appeal property is 9.1% and that the development is therefore compliant with Policy CP21 of the CPP1 in this respect. I note that the number of existing properties in HMO use in the area was not a reason for refusal.
12. There is no requirement for the need for a proposed HMO to be demonstrated in Policy CP21 of the CPP1 or, from the evidence before me, elsewhere in the development plan. The issue of whether or not there is a need for additional HMO accommodation is thus not a consideration in the determination of this appeal. The Council has powers under environmental health legislation to deal with refuse disposal and tidiness, and thus the quality of the management of other HMOs in the area whether or not within the ownership of the appellant is not a reason for withholding permission for this development.
13. The implications of the development for Council Tax do not relate to its planning merits and therefore have no bearing on my determination of this appeal. I note the concern about a potential future extension to this property and additional students living in it, but I must determine this appeal on the basis of the development before me. Although the number of occupants may vary over time and some may not stay very long, I have no evidence that these factors significantly add to noise or disturbance.

¹ APP/Q1445/C/18/3200326 and APP/Q1445/W/18/3212147

14. Concern has been expressed that additional parking would increase the hazard of negotiating the bend at the junction of Park Road and Ridge View. However, no evidence has been submitted to demonstrate that this has been or would be the case and I am therefore not persuaded that any additional on-street parking as a result of the use of this property as a small HMO has significantly harmed or would significantly harm highway safety.

Conditions

15. I attach conditions to the permission having regard to those suggested by the Council and the comments of the appellant on those conditions. However, I have rephrased the Council's suggested condition requiring development to be in accordance with the approved drawings to reflect the fact that the change of use has already taken place but that the layout shown on the submitted Existing/Proposed Floor Plans has not been implemented.
16. It is necessary for this layout to be implemented and the kitchen and the lounge and dining room to be retained as communal space to provide and ensure satisfactory living conditions for the occupiers of the property. The purpose of condition 1 is thus to require the appellant to comply with a strict timetable for dealing with the implementation of the approved layout which needs to be addressed in order to make the development acceptable. The purpose and effect of the condition is therefore to ensure that the use of the property authorised by the grant of planning permission may only continue if the appellant complies with this requirement. I have also included a reference to the relevant plans in my formal decision to make it clear on which plans my decision is based.
17. A condition requiring the provision of cycle storage facilities is necessary to encourage travel by means other than the private car. I consider 3 months is adequate time for these details to be submitted, although I have allowed 6 months for the installation of the facilities following their approval by the Council which I consider a more reasonable period of time than the 3 months suggested by the Council. I have also rephrased this condition to reflect the fact that the development has already taken place.
18. The purpose of condition 2 is to require the appellant to comply with a strict timetable for dealing with the submission of details of cycle storage facilities and implementation of the approved facilities which need to be provided in order to make the development acceptable. The purpose and effect of the condition is therefore to ensure that the use of the property authorised by the grant of planning permission may only continue if the appellant complies with this requirement.
19. The Council requests a condition restricting the number of occupiers of the appeal property to a maximum of 5 people, the number stated in the appellant's Planning Statement. The reason given for this condition is "*To ensure a suitable standard of accommodation for occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan*". However, the Council's Statement of Case indicates that the reason for the suggested restriction relates only to concerns over noise and disturbance.
20. The Council has not demonstrated and I am not persuaded that the occupation of the property by 6 unrelated people would cause materially more noise and disturbance than its occupation by 5 unrelated people or by a family of 6 or

more. The use of the property as an HMO with more than 6 occupiers would take the use of the property outside Class C4 and require a separate grant of planning permission.

21. Nevertheless, I observed during my site visit that the rooms in the property are not generously proportioned. Notwithstanding the Council's view that "*the communal space would be of sufficient size for six persons*", the 4-bedrooms are suitable for a maximum occupancy of 5 persons as indicated in the appellant's Planning Statement. Although the appellant considers that a restriction on occupancy is not necessary, I therefore consider that a restriction on occupancy to a maximum of 5 people is necessary to make the development acceptable by ensuring a suitable standard of living conditions of the occupiers of the property. Accordingly, I have attached such a condition to the permission.
22. I have not attached a condition requiring the implementation of the management plan put forward by the appellant as requested by the Council. I have not been advised of the imposition of such a condition in respect of other permissions for changes of use to HMOs in the area or of any special circumstances relating to the appeal property that warrants this requirement. In the light of my conclusions on the main issue, it has not been demonstrated that a management plan is necessary to make the development acceptable. The condition would therefore fail to satisfy the first of the tests for conditions set out in paragraph 55 of the National Planning Policy Framework (the Framework).
23. I have not attached a condition requiring the submission of a scheme to provide that residents (other than Blue Badge holders) have no entitlement to a resident's parking permit. This is because, as noted above, notwithstanding the concern of a local resident, I have no persuasive evidence that the development has resulted, or would result, in significant harm to highway safety or the living conditions of the occupiers of dwellings in the area due to an increased demand for on-street parking. It has therefore not been demonstrated that this condition is necessary for the development to be acceptable and it too would therefore fail to satisfy the first of the tests for conditions set out in paragraph 55 of the Framework.

Conclusion

24. For the reasons given above, and having had regard to the other matters raised, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

Martin Small

INSPECTOR