



Appeal Decision

Site visit made on 16 March 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st April 2020

Appeal Ref: APP/Q1445/W/19/3230412

148 Bevendean Crescent, Brighton, BH2 4RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Tangerine Property (Sussex) Ltd. against Brighton & Hove City Council.
 - The application Ref: BH2019/00428 is dated 31 October 2018.
 - The application sought planning permission for change of use from residential dwelling (C3) to 4 no. bedroom small house in multiple occupation (C4) without complying with conditions attached to planning permission Ref: BH2018/00802 dated 17 July 2018.
 - The conditions in dispute are nos. 3 and 4 which state that:
(3) No extension, enlargement, alteration or provision within the curtilage of the dwelling/house as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
(4) The HMO unit hereby approved shall only occupied by a maximum of four persons.
 - The reasons given for the conditions are:
(3) The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policy QD14 and QD27 of the Brighton & Hove Local Plan.
(4) To ensure a satisfactory standard of accommodation for future occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan.
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Decision

1. The appeal is dismissed, and planning permission is refused for change of use from residential dwelling (C3) to 4 no. bedroom small house in multiple occupation (C4) without complying with conditions attached to planning permission Ref: BH2018/00802 dated 17 July 2018.

Preliminary Matters

2. The appeal site is located within an area of Brighton where there is pressure for changes of use from family housing to houses in multiple occupation (HMOs). The Council is concerned about the overconcentration of HMOs in those areas and their impact upon their surroundings and local communities.

3. No. 148 is a small two/three-bedroom end of terrace house. In 2018, planning permission was granted to convert it into a small HMO. This was allowed due to the low proportion of other HMOs within the immediate vicinity of the site and on the basis that only 4 occupants would be able to reside at the property. In granting permission, the Council imposed a series of conditions. It did so to protect the character and appearance of the area and the living conditions of both adjoining and future occupiers. Only Condition 3 and 4 are in dispute.
4. The appeal was submitted on the basis that the Council failed to determine the planning application to remove these conditions within the prescribed period. However, the Council has provided an Officer's report which set out the reasons that the Council would have refused the application had it determined it within the appropriate timescales. This focussed primarily on the adequacy of the internal accommodation for the occupants. However, I have determined the appeal having regard to both the Officer's report and the Council's statement and the reasons attached to the conditions on the original decision.
5. There was a discrepancy between the Officer's report and the Council's statement in respect of the reasons that the Council would have refused the application. Following clarification, the Council confirmed this was an administrative error, so I have dealt with the appeal on the basis of the reasons set out in the Officer's report.
6. At my site visit I saw that a roof extension has been constructed which appeared to provide 2 additional bedrooms and a bathroom. However, these alterations are not relevant to my assessment of the necessity of the conditions on the original permission. I have therefore determined the appeal having regard to the plans submitted with the original application and the conditions that are in dispute.

Main Issues

7. The main issues are:

- whether or not the restriction on the number of occupants is reasonable and necessary, in the interests of their living conditions; and
- whether or not the removal of permitted development rights under Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015) is reasonable and necessary in the interests of:
 - i) protecting the living conditions of occupants;
 - ii) protecting the living conditions of neighbouring occupiers; and
 - iii) the character of the area.

Reasons

Living conditions of occupiers

8. The conversion of the appeal property into a 4-bedroom HMO involved significant internal alterations which enabled the appellant to provide 4-bedrooms and communal space of a satisfactory size. The HMO provides 1-bedroom on the ground floor and 3 on the first floor. Each is indicated to be between 8-8.5sqm. There is a shared shower room and a communal

kitchen/living/dining area of 19sqm. Given the limited size of the property, Condition 4 was imposed to restrict the maximum occupancy of the HMO to 4 people in order to ensure a reasonable standard of accommodation for all the occupants. The communal space was also secured in perpetuity by requiring implementation of the permission in accordance with submitted plans.

9. The bedrooms, whilst of an adequate size for single occupancy, are not generous in terms of space. As a result, occupants are more likely to spend time in the communal space to socialise and relax as well as undertaking domestic tasks. On my site visit I saw that this area was laid out with space for two small sofas, a dining table and kitchen area. In my view, this communal space is adequate for the day-to-day needs of 4 unrelated occupants. However, if the condition was removed and there were more people sharing these communal facilities, the HMO would become congested and cramped. There is not enough room for additional occupiers to cook, eat, wash clothes and relax in the existing shared areas. As such, any increase in the number of occupants would result in unsatisfactory living accommodation for all occupants.
10. Whilst Condition 5 would ensure the communal space would be retained in accordance with a HMO for 4 occupants, it would not ensure any increase in this space to match any increase in number of occupants.
11. I therefore conclude that Condition 4 is reasonable and necessary to ensure satisfactory living conditions for occupiers, due to the inadequacy of the communal space. It is required to ensure that the development complies with Saved Policy QD27 of the Brighton and Hove Local Plan 2005 (Local Plan) which seeks to ensure that the amenity of existing and future occupants of developments is protected.

Removal of permitted development rights

i) living conditions of occupiers

12. The Council has indicated that it would be unlikely to object to the principle of additional accommodation, but this would be subject to the provision of additional communal space to cater for any additional occupants. The condition restricting permitted development rights would enable the Council to consider the implications of any increase in floor area on the living conditions of existing and future occupants. On this basis, the Council's approach is reasonable.

ii) living conditions of neighbouring occupiers

13. No. 148 is located on a residential street where the majority of properties within its immediate vicinity appear to be family housing. The Council sought to restrict any extension of the property that would result in an increase in the number of occupants in order to protect the living conditions of neighbouring occupiers.
14. The removal of permitted development rights would ensure that the number of people living at the property could not be increased without the Council first considering the implications of any associated alterations to the building. An increase in the number of occupants could result in increased comings and goings from the property and greater use of the external amenity space, particularly if the number of bedrooms was increased without a commensurate enlargement of the internal communal space.

15. In controlling any enlargement or alteration which could accommodate additional occupants, the condition ensures that the Council retains the right to consider whether or not this would be likely to cause unacceptable noise and disturbance of neighbours before making its decision.

iii) Character and appearance

16. Bevendean Crescent is characterised by modestly sized two-storey properties, arranged in short terraces of 4 properties some of which have been extended at roof level. Each terrace features hipped roofs to properties either end of the terrace and have a symmetrical appearance. The consistent appearance of the terraces provides a uniform and rhythmic pattern to the street. No. 148, as an end of terrace property, is shown on the plans to have a hipped roof. The appeal site benefits from a modest front and rear garden, similar to adjacent properties. Beyond the rear garden, there is open land.
17. Unsympathetic and poorly designed extensions can cause harm to the character and appearance of an area. This is set out in detail under Policy QD14 of the Local Plan. Certain extensions that could be carried out under permitted development, such as a hipped to gable roof extension, would be harmful to the character and appearance of the terrace. Such extensions would disrupt the wider roof scape which is characterised by terraces of 4 dwellings with hipped roofs. In this context, the removal of permitted development rights to enable the Council to undertake an assessment of any potential impacts arising from such development on the character of the area, is justified.

iv) Findings in relation to permitted development rights

18. I am mindful of the provisions of paragraph 55 of the National Planning Policy Framework which sets out that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable. The Planning Practice Guidance sets out in paragraph 017¹ that conditions restricting the future use of permitted development rights may not pass the test of necessity and should only be used where justified. However, in this case, I find that the Council's approach in seeking to control any extensions, enlargements or outbuildings to this HMO property is justified in combination with the other conditions on the planning permission to protect the living conditions of both occupiers and neighbours and to protect the appearance of the property and wider area.
19. I have been referred to a recent appeal decision at 110 Auckland Drive² where the Inspector found that there were no exceptional circumstances to justify the removal of permitted development rights to a small HMO. However, unlike the HMO in the appeal scheme before me, I note that the Auckland Drive appeal related to a 6-bedroom HMO, which is the maximum number of occupants for a small HMO. The number of occupants could not be increased without planning permission being granted for a change of use to a large HMO (*sui generis*). As such, the justification for restricting permitted development rights did not exist. That case is therefore not directly comparable to the scheme before me.
20. The removal of permitted development rights does not prevent development but allows the Council to have control over what happens to this small HMO. I

¹ Paragraph: 017 Reference ID: 21a-017-20190723

² APP/Q1445/W/18/3197045

therefore conclude that Condition 3 removing permitted development rights is reasonable and necessary in the interests of protecting the living conditions of both occupiers and neighbouring occupiers and safeguarding the character of the area. Without those controls in place, the development would conflict with Saved Policies QD14 and QD27 of the Local Plan which seek to protect local character and the amenities of occupiers and neighbouring occupiers.

Other Matter

21. It may be that restricting the occupancy of this property could increase the demand for converting other dwellings to HMOs. However, this cannot be a justification for allowing something that I have found to be harmful. In any event, the Council retains the right to consider the implications of any such conversions before deciding whether or not to permit such changes of use. In so doing it would have regard to the particular circumstances of the case, as I have done here.

Conclusion

22. For the reasons set out above, I conclude that the conditions are both reasonable and necessary and permission for the scheme without the disputed conditions should be refused.
23. The appeal is therefore dismissed.

Rachael Pipkin

INSPECTOR