



Appeal Decision

Site visit made on 9 June 2020

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

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2020

Appeal Ref: APP/Q1445/W/19/3243292

15 Norwich Drive, Brighton, BN2 4LA

- 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 (Rib Ltd.) against the decision of Brighton & Hove City Council.
 - The application Ref: BH2019/02995 dated 7 October 2019, was refused by notice dated 26 November 2019.
 - The development proposed is change of use of house in multiple occupation (C4) to a large house in multiple occupation (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of house in multiple occupation (C4) to a large house in multiple occupation (sui generis) at 15 Norwich Drive, Brighton, BN2 4LA in accordance with the terms of the application, Ref: BH2019/02995 dated 7 October 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The HMO hereby permitted shall only be occupied at any time by a maximum of eight (8) persons.
 - 3) The facilities for secure cycle parking shown on the approved plan: 0130.A 01 Existing and proposed plans shall be fully implemented and made available for use prior to the first occupation of the development hereby permitted and shall thereafter be retained for such use at all times.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of the occupiers of nearby properties, particularly 13 Norwich Drive, in relation to noise and disturbance.

Reasons

3. The appeal property is a semi-detached 2-storey dwelling paired with 13 Norwich Drive (No. 13). Both properties are set back from the road with driveways and lawns to the frontages. The property has been enlarged through a 2-storey extension to the side. Norwich Drive is an established

residential area with, from the evidence before me, predominantly family homes.

4. Planning permission was granted for the change of use of the property to a small house in multiple occupation (HMO) within use class C4 in July 2019. I observed during my site visit that the physical works for this change of use had taken place and the appellant confirms that it has been implemented. There are currently 2 bedrooms on the ground floor and 4 on the first floor. The ground floor also accommodates a communal kitchen / dining area and a separate communal living room.
5. The proposal is to divide 2 of the first-floor bedrooms into two to create 8 bedrooms in total thus allowing occupation of the dwelling by up to 8 people. Within the property the staircase and living room are to the side away from No. 13 but the kitchen is adjacent to the party wall. This is an open plan room with a dining area. It is likely that there would be a significant degree of activity within this room, particularly as it provides access to the rear garden. In addition, the 2 bedrooms to be divided are also adjacent to the party wall and the creation of 2 smaller rooms would concentrate activity in the new bedrooms closer to No. 13. The increase in occupants would result in a more intensive use of the rear garden, front door and frontage of the property.
6. The appellant indicates that the occupiers of the property are likely to be a group of students. Whilst occupation by students may result in a greater level of shared activities than by 8 unconnected tenants, it cannot be guaranteed that the students would share the same timetable and social activities. Moreover, the circumstances of individual students will change over time and the property may not always be occupied by students. Although the occupation of the property by a single family of 8 people of varying ages could give rise to noise and disturbance, a family could share more activities thus resulting in less overall daily activity and associated disturbance.
7. However, in any event, the appeal property has permission for use as an HMO for up to 6 people, a use which is likely to continue regardless of the decision on this appeal. From the evidence before me, there is soundproofing to the party wall between the appeal property and No. 13 which reduces noise transmission between the properties in excess of the requirements of building regulations for sound insulation to walls between dwellings. The Council has provided no evidence that this level of soundproofing would be inadequate for 2 additional occupants in the appeal property.
8. The occupiers of No. 13 have referred to disturbance and anti-social behaviour at the property but have not specifically identified noise from the existing daily occupation of the property as an issue. Therefore, in the absence of evidence to the contrary, I have no reason to doubt that the soundproofing would adequately mitigate any additional noise generated within the property as a result of the proposed increase in tenants.
9. The rear garden is relatively spacious and its use by an additional 2 people would be unlikely to significantly increase noise and disturbance for the occupiers of No. 13 and 17 Norwich Drive, to the other side. The front door of the property is not immediately adjacent to the neighbouring properties and a degree of activity is to be expected on the frontages of properties. Accordingly, the increased use would not cause unacceptable additional noise or disturbance.

10. Whilst noise and anti-social behaviour have been identified in a Government report as potential harmful impacts of HMOs¹, for the reasons given above, I conclude that the use of the property for up to 8 people would not result in unacceptable additional instances or levels of noise and disturbance for the occupiers of nearby properties. Consequently, it would not adversely affect the living conditions of those occupiers.
11. In this respect, the proposed development would not conflict with Policy QD27 of the Brighton & Hove Local Plan (2005) (BHLP) which states that planning permission will not be granted for a change of use where it would cause material nuisance and loss of amenity to adjacent occupiers. Neither would it conflict with Policy SU10 of the BHLP which seeks to reduce the impact of noise on the occupiers of neighbouring properties.
12. Furthermore, the proposal would not conflict with paragraph 127 f) of the National Planning Policy Framework, which sets out that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

13. I note the concerns of local residents about the number of existing HMOs in the area. However, the Committee Report indicates that the percentage of HMOs within a 50 m radius of the appeal property falls within the threshold of 10% set out in Policy CP21 of the BHLP. The proposal is therefore compliant with this policy. In any event, the proposed change of use would not result in an additional HMO.
14. On-street parking is another concern raised in many of the representations. However, 2 additional occupiers would not necessarily result in 2 additional vehicles. Even if it did, I am not persuaded that this would result in additional on-street parking that would be materially harmful to the living conditions of the occupiers of properties in the area or highway safety. I observed during my site visit that Norwich Drive is not a controlled parking zone and I note that the Council's Transport team did not object to the proposed development, nor was this a reason for refusal.
15. An elected representative of the Council refers to a previous appeal decision at 2 Wheatfield Way, Brighton for a similar change of use to that before me, which was dismissed². From the Inspector's decision notice, that scheme differs from that before me in that it was for 9 residents and the property had a living area as well as a kitchen adjacent to the party wall and a small rear garden. That property was also located within a quiet cul-de-sac, whereas Norwich Drive is a through road serving many properties. The circumstances of that previous appeal are therefore materially different from those before me, on which I have determined this appeal, and I am not bound by my Inspector colleague's decision.
16. I have had regard to the representations made by local residents on other matters including the lack of need for more HMOs, the living conditions of the occupiers of the property, the effect on local services, and issues with other HMOs. However, none of these matters are determinative in this case.

¹ Housing in Multiple Occupation (DCLG, September 2008)

² APP/Q1445/W/17/3167805

Conditions

17. The Council has not suggested any conditions were planning permission to be granted. The appellant has suggested a condition requiring soft door closures were permission to be granted. However, as I have concluded, on the evidence before me, that the proposal would not necessarily result in unacceptable additional noise disturbance to the occupiers of No 13, I consider this condition not to be necessary to make the development acceptable. It would therefore fail to meet the tests for conditions in paragraph 55 of the Framework and I have not attached it.
18. I observed during my site visit that, whilst adequate, the rooms in the property, with the exception of the kitchen / dining area, are not generously proportioned. I therefore consider that in addition to the standard time limit for commencement, a restriction on the occupancy of the dwelling to 8 people is also necessary to ensure a satisfactory standard of living accommodation. A condition requiring the provision and retention of cycle parking is necessary to encourage travel by means other than the private car.

Conclusion

19. For the reasons given above, and having regard to other matters raised, the appeal is allowed, and planning permission is granted subject to conditions.

Martin Small

INSPECTOR