

Appeal Decision

Site visit made on 10 November 2020

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal Ref: APP/Q1445/W/20/3256052
97 Whippingham Road, Brighton, BN2 3PF

- 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 Alium Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/00721, dated 3 March 2020, was refused by notice dated 23 April 2020.
 - The development proposed is change of use from six-person C4 HMO to seven-person sui generis large HMO.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from six-person C4 HMO to seven-person sui generis large HMO at 97 Whippingham Road, Brighton, BN2 3PF in accordance with the terms of the application, Ref BH2020/00721, dated 3 March 2020, and the plans submitted with it, 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 development hereby permitted shall not commence until the internal alterations to the shower room on the first floor and to remove the chimney breast in Bedroom (5) have been undertaken in accordance with drawing 1657/02A.
 - 3) The kitchen/communal living area shown on drawing 1657/02A shall be used as a communal space at all times and shall not be used as bedroom accommodation.
 - 4) The development hereby permitted shall only be occupied by a maximum of 7 persons.

Main Issue

2. The effect of the proposed development on the mix and balance of the community in the area.

Reasons

3. A previous appeal at the property for a change of use to a large house in multiple occupation (HMO) (APP/Q1445/W/19/3229965) was dismissed last year. This was because the living conditions for the occupiers of the first floor rear bedroom would have been unacceptable. As part of that decision the

Inspector found that as the property already has a lawful use as an HMO then the percentage of such uses in the area would not alter. Therefore, the development would comply with Policy CP21 ii) of the Brighton and Hove City Plan Part One.

4. Other appeal decisions have previously considered the question of whether there would be a breach of Policy CP21 in changing from a small Class C4 HMO to a larger sui generis HMO. This has been decided in different ways and I have taken account of all the decisions referred to. However, what is most important is to interpret the policy correctly before applying it to this case.
5. The policy specifically applies to applications for the change of use to a Class C4 use, a mixed Class C3/C4 use or a sui generis HMO use. It makes no mention of the existing use of the property so that an application involving a change to *any* of the uses listed is 'caught' by the policy. Furthermore, the detailed criteria for assessing acceptability refers to dwellings within a radius of 50m that are already in such uses. This excludes the application property and confirms that its current use has no bearing.
6. Paragraph 4.237 of the City Plan refers to applications for "new" HMOs but the explanatory text does not form part of the policy. Furthermore, that paragraph also indicates that planning permission for change of use will not be granted where more than 10% of neighbouring properties are already in HMO use. Thereby supporting the interpretation that the policy does not take into account the existing use of the property.
7. The policy therefore applies to changes of use from Class C4 (small HMO) to a large HMO. Within a 50m radius of the appeal property the 10% policy threshold is exceeded. Indeed, the previous Inspector recorded that the figure stood at 22.5%. In these circumstances the policy states that such changes will not be permitted and so the proposal would not accord with Policy CP21.
8. In order to be effective such a policy needs to be applied on a case-by-case basis because of the potential cumulative effects of a series of individual changes. Other Inspectors have highlighted this point. However, the policy has expressly been devised to support mixed and balanced communities and to ensure a range of housing needs continue to be accommodated throughout the City. In this case the property is already an HMO and there would be no loss of a single family home. Therefore, there would be no conflict with either of the main expressed aims of the policy.
9. The issue of intensification is not referred to in either the policy or the supporting text. There is therefore no evidence to support the contention that the policy was deliberately drafted to prevent change from one type of HMO to another. Furthermore, an increase in occupation from 6 to 7 persons would be unnoticeable. It would be no different to the fluctuations that occur in all types of housing that are outside the control of the planning system.
10. The supporting text also refers to the potential impacts of concentrations of HMOs upon their surroundings. Residents in Bonchurch Road raise concerns about the use of the small garden, noise, light pollution and anti-social behaviour. Whether or not their experiences are directed to the appeal property allowing one additional person to live there would have no significant adverse impact in these respects. There is also no evidence that there would be issues in terms of parking, recycling or waste. Therefore, in line with the

finding of the last Inspector, the proposal would accord with Policy QD27 of the Brighton and Hove Local Plan which seeks to protect amenity.

11. The Council refers to several dismissed appeals involving changes of use from small HMOs to larger HMOs where Policy CP21 has been applied. One of the cases cited was for a change from a single dwellinghouse in Class C3 to a Class C4 HMO (Ref: APP/Q1445/C/17/3170152) and so it not directly comparable. Most of the others were also different to this appeal because they proposed an increase in occupation of 3 persons rather than the one additional person proposed here. Furthermore, all of them raised specific objections such as the unsuitability of the accommodation, noise and disturbance and the effect on the character and appearance of the area.
12. Two of the other appeals comprised changes from a 6 person HMO to a 7 person HMO (Refs: APP/Q1445/C/18/3205556 & APP/Q1445/W/16/3149843). However, in both of those cases there were found to be deficiencies in the standard of internal accommodation, and this contributed to the decisions reached. In this case, the previous issue relating to the size of one of the bedrooms would be overcome. Therefore, this appeal can be distinguished from all the others referred to.

Conclusions

13. Because of the HMOs currently in the immediate area around the appeal site and the way that the policy is worded, the proposed development would not be in accordance with Policy CP21. However, no tangible disadvantages would occur. As referred to earlier a succession of small changes could, over time, undermine the policy objectives. But this proposal involves such a small and unobjectionable alteration to the numbers living at 97 Whippingham Road that the aims of the policy would not be eroded. Put shortly, and even taking a longer-term perspective, there would be no adverse effect on the mix and balance of the community in the area.
14. Based on the appeal decisions provided by the Council this case appears to be unusual in that occupation would only be increased by one and there are no specific objections in terms of amenity including the standard of occupation. This decision has been taken in the light of these specific factors and should not be taken as a commentary on the future application of this policy.
15. Therefore, whilst the proposed development would conflict with the development plan, this is outweighed by other material considerations as explained above.
16. Conditions should be imposed to secure the internal works to enlarge the rear bedroom, to ensure that there is adequate communal space and that the number of residents does not exceed seven. This is to provide satisfactory internal living conditions and to control future occupation in the interests of supporting mixed and balanced communities.
17. For the reasons given the appeal should succeed.

David Smith

INSPECTOR