
Appeal Decision

Site visit made on 25 January 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Appeal Ref: APP/Q1445/W/20/3260338
33 Hillside, Brighton BN2 4TF

- 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 Henry Dorman (Rivers Birtwell) against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01689, dated 19 June 2020, was refused by notice dated 19 August 2020.
 - The development proposed is a change of use of an existing C4 small house in multiple occupation to a Sui Generis large house in multiple occupation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the mix and balance of the community in the area; and
 - its effect on the living conditions of the occupiers of neighbouring properties, in particular 31 and 35 Hillside, with regard to noise and general disturbance.

Reasons

Mix and balance of the community

3. The appeal property is an end terrace two-storey house located in a residential suburb of mainly terraced and semi-detached houses. Many of these houses are of a character which are suitable for and likely to include family occupation. The appeal property has been enlarged at the rear by a ground floor extension and a dormer window loft conversion. It is lived in by six unrelated students¹ as a C4² house in multiple occupation (HMO) and, for the purposes of licencing, the appeal property has been granted a licence by the Council to this effect. The appeal proposal would sub-divide two rooms to create three additional bedrooms and allow use and occupation by nine unrelated people as a sui generis HMO.
4. Policy CP21(ii) of the Brighton & Hove City Plan Part One, March 2016 (the City Plan), supports mixed and balanced communities and seeks to ensure that a

¹ As was established at my site visit.

² The Town and Country Planning (Use Classes) Order 1987, as amended.

range of housing needs are met in the city. In certain circumstances this policy does not prevent development for HMOs and I accept that HMOs per se, including sui generis HMOs, can contribute in a particular way to meeting these aims of the policy.

5. Nonetheless, on plain reading the policy seeks to not only control the number of new HMOs created by new build and change of use, but also the type (and size) of HMOs. In this regard I note that 'applications for the change of use... to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted' where more than 10% of dwellings within a radius of 50m of an application site are already in mixed C3/C4 use or HMO use.
6. The supporting text to this policy explains that the city has 'a high number of HMOs'. Moreover, that the Council seeks to 'enhance the quality... of residential environments' within HMO dominated neighbourhoods and avoid an 'over-concentration' of HMOs that could otherwise have a 'potential impact... on their surroundings and to ensure healthy and inclusive communities are maintained'.³
7. Indeed, in these regards HMOs can be occupied on a short term basis in a manner where residents are more likely to be more transient and therefore have less stake in a local area, at odds with maintaining cohesive and integrated communities. Detrimental effects on the general amenity of a local area can also arise from an accumulation of people living in HMOs (in terms of the number and adult age of residents) beyond that generated by family houses in longer term single family occupation, including children. This could also include increased antisocial behaviours arising from increased activity, noise and general disturbance in the area and indirect changes such as a reduction in demand for family orientated local facilities and services and less interest or concern for the overall character or appearance of a neighbourhood.
8. I acknowledge that the appeal property is a C4 HMO and consequently that a family home has already been 'lost' to the housing stock such that the appeal property no longer contributes to the aims of Policy CP21(ii) by that means, but instead as a C4 HMO. I also appreciate that the proposed change of use to a sui generis HMO would not alter the number or proportion of HMOs compared to other types of residential properties in the local area.
9. However, and nonetheless, once the 10% saturation in HMOs is reached any further change of use to an HMO, including a situation where a house would move from a C4 HMO to a sui generis HMO, creates an imbalance in the housing stock and therefore conflicts with Policy CP21(ii). Accordingly, these circumstances would otherwise undermine what this policy seeks to achieve in this regard. There is no objective evidence before me of any recognised unmet housing need (as opposed to market demand or owner aspiration) beyond that already provided for by Policy CP21(ii) for sui generis HMOs, as opposed to C4 HMOs, as the appellant otherwise suggests.
10. The Council considers that the proportion of HMOs in the housing stock within 50m of the appeal site (excluding the appeal property) is 31.4%. The appellant does not dispute this figure and on the evidence before me, I have no reason to reach a different view in this regard. Even though HMOs are to this extent part of the character of the area and, as the appellant suggests, the area may

³ City Plan paragraphs 4.233, 4.234 and 4.235.

be popular with sharers and students, this is nonetheless already to a degree that is otherwise resisted by the Council and significantly exceeds the tolerance of Policy CP21(ii).

11. The appeal proposal would therefore be an unwarranted and unsuitable further alteration to the type, size and nature of HMO housing in this area which is already sensitive to the effects of such change and it would unduly further increase the number of occupiers at the appeal site (and so in this area) by half (50%), from six to nine people. Even though they would be living in the same house (and number of houses overall in the area) the concentration of HMOs in this area (thus an increased number of people living in such houses) nonetheless already substantially exceeds, by over three times, the 10% control limit embedded in Policy CP21(ii).
12. Consequently, whilst three additional residents would be a relatively modest intrinsic numeric increase, it would nevertheless be a significant increase at the appeal site, locally in this area and would also add to a cumulative increase in sui generis HMOs and their resident population in the city as a whole. The appeal proposal would therefore cause significant harm by virtue of an inappropriate change to the mix and balance of the community in the area, be to the detriment of local amenity generally and would unduly erode and undermine the Council's adopted planning and housing strategy in these regards. It would not accord with Policy CP21(ii) or with saved Policy QD27 of the Brighton & Hove Local Plan, 2005 'policies retained, March 2016' (the Local Plan).
13. It would also conflict with the National Planning Policy Framework (the Framework) paragraphs 59, 117 and 124 which include that in addressing the needs of groups with specific housing requirements development should take place where it is needed, should safeguard and improve the environment and create high quality places that function well, add to the overall quality of the area and where disorder does not undermine the quality of life or community cohesion.

Living conditions

14. The appeal property is attached to 35 Hillside. Their respective front doors, windows and gardens are relatively close to one another and some habitable rooms have a common party wall. There is a relatively narrow gap to 31 Hillside created by side paths (though no habitable room windows in the end elevation of 31 Hillside) and the rear gardens of these properties are also next to each other. The appeal property has a sensitive relationship to both of these properties as a result.
15. The intensity and pattern of activity associated with a C4 HMO generally contrasts with houses in single family occupation, including that occupiers are likely to lead more independent lives from one another whereas families occupying a single house, even a large one, are more likely to carry out day to day activities together as a household. That said, I acknowledge that the appeal property is a C4 HMO and can already be occupied by up to six adults and differing patterns of behaviour from those of a family house are already established at the appeal site.
16. However, there is therefore already likely to be more people resident and activity generated at the appeal site than what I consider might normally be

expected in most of the neighbouring houses. Indeed, a level of activity already unwelcome in this area given the high proportion of HMOs. I am therefore concerned that increasing the number of residents by 50% from six to nine, and the commensurate increase in associated activity at the appeal site, would have an unacceptable adverse effect on the normal living expectations of the occupiers of neighbouring properties.

17. The activity that would be generated by nine persons living independent lives, with separate routines, generation of refuse, use of the rear garden for leisure and entertaining purposes and their attendant comings and goings along with those of their visitors, would lead to a level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with six residents. Even if the occupiers may be out at education (or work) for long periods of the day such movement would itself nonetheless give rise to a level of general noise and disturbance at an intensity that would be unduly disruptive, particularly to the occupiers of 31 and 35 Hillside and consequently harm their living conditions.
18. The appeal proposal includes a specification for soundproof wall insulation in rooms which have an internal party wall with 35 Hillside, and for 2m high acoustic fencing between garden boundaries, including with 31 and 35 Hillside. In addition, soft door closing mechanisms would be installed. At my site visit I observed that it would be possible to undertake these measures and I accept that they would be likely to have some noise attenuating benefits.
19. However, there is no objective evidence before me (such as an acoustic report) to establish baseline noise conditions or therefore the significance of alleged generators of noise such as the nearby road junction and passing traffic, a public house and a local shop. It has not therefore been justified that the noise reductions claimed by the appellant from the proposed noise attenuation measures are material; nor that there would be a satisfactory mitigating effect on the levels of noise experienced internally by the occupiers of 35 Hillside, or by the occupiers of 31 and 35 Hillside using their respective gardens or rooms in these houses, including with open windows, as a result of the appeal proposal.
20. I appreciate that there have been no objections to the appeal proposal from local residents, including the occupiers of 31 and 35 Hillside, but a local Councillor did object including for reason of noise. The absence of greater public objection does not mean the absence of planning harm in these regards. Furthermore, and in any event, I consider that the proposed measures would be unusual in a normal domestic setting and consequently are indicative that the likely level of noise and activity that would result from the appeal proposal exceeds what this house and garden were originally envisaged or reasonably expected to accommodate in this residential area. In addition, these measures would not mitigate all noise and disturbance caused by the comings and goings and incidental activity associated with nine people living in the same house.
21. Consequently, the proposed increased occupancy of the appeal property would have an undue impact on the amenity of the occupiers of the neighbouring properties. The appeal proposal would therefore cause harm to the living conditions of the occupiers of neighbouring properties, in particular 31 and 35 Hillside, having regard to noise and general disturbance. It would not accord with Policy QD27 or Policy SU10 of the Local Plan. These policies

include that development should not cause material nuisance and loss of amenity to existing adjacent residents and should minimise the impact of noise on occupiers of neighbouring properties. It would also conflict with Framework paragraph 127 which includes that development should have a high standard of amenity for existing users.

Other Matters

22. The appellant has provided excerpts from three appeal decisions⁴ and an excerpt from a Council officer report⁵ relating to applications for HMOs and Policy CP21. I do not have full details of the proposals and evidence considered by the Inspectors before me. Nonetheless, the excerpts essentially refer to the same matters. In these regards, in the current appeal I have acknowledged that increasing the number of occupants would 'not change the proportion of HMOs in the area' (relative to all residential properties) and would not 'lead to a loss of a family house'. I have explained the relevance of both of these findings to my decision.
23. However, I have found that the appeal proposal would 'alter the range of housing types in the area' by virtue of the change from one house type (C4 HMO) to another house type (sui generis HMO) that would be necessary to accommodate the increase in occupants and that there is therefore conflict with Policy CP21(ii). Furthermore, I note that in the last of these appeal decisions the proportion of HMOs in the relevant area was in dispute, whereas in the current appeal it is not. In addition, with regard to the officer report, I note that the actual proportion of HMOs within the relevant area in that case, and the effect of the proposed development in that regard, is not contained in the excerpt. These decisions can therefore be distinguished from the current appeal which I have, in any event, determined on its individual planning merits and in the exercise of my own planning judgement.
24. There is no substantive evidence before me to suggest that there are any particular adverse traffic or on-street parking conditions in the immediate locality, or that the appeal proposal would cause such concerns. I note that the Council did not object to the appeal proposal for these reasons. However, there is also no objective evidence that 'Generally, sharers are less likely to have access to private vehicles than families' as the appellant otherwise suggests. I am therefore unable to reach a firm view on this matter but it is not determinative to my decision.
25. I acknowledge that the appeal proposal would provide satisfactory internal living space standards, that the accommodation would be high quality, that the appeal property would continue to be well-managed and that the appeal site is accessible to the city's universities, to employment and to local services and facilities by means other than the private car. However, the absence of harm in these regards is a neutral factor in my decision.

Conclusion

26. For the reasons given, the appeal does not succeed.

Robin Buchanan

⁴ APP/Q1445/W/18/3211788, APP/Q1445/W/17/3167367, APP/Q1445/W/19/3231901.

⁵ BH2019/03485.

INSPECTOR