
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/20/3256523

37 Auckland Drive, Brighton BN2 4JD

- 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 Terry Mole, Tangerine Property (Sussex) Ltd, against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01258, dated 7 May 2020, was refused by notice dated 29 June 2020.
 - The development is a change of use from a dwellinghouse (C3) to a small house in multiple occupation (C4).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development described in the banner above, which is taken from the application form, started before the date of the application. In section E of the appeal form the appellant repeats the description of development used by the Council when it consulted on the application and in making its decision, which includes 'alterations to fenestration', and agrees that these works have taken place. The Council has not objected to this part of the development and I have no reason to take a different view in this regard. I have considered the appeal on this basis.

Main Issue

3. The main issue is the effect of the development on the mix and balance of the community in the area.

Reasons

4. The appeal property is a semi-detached two-storey house located in a residential suburb of mainly semi-detached and some terraced houses. Many of these houses are of a character which are suitable for and likely to include family occupation. On the evidence before me, the appeal property was built and occupied as a C3¹ house and has been used as a C4 house in multiple occupation (HMO) without planning permission since September 2014.² It is currently arranged with five bedrooms. The appeal plans show the internal

¹ The Town and Country Planning (Use Classes) Order 1987, as amended.

² Such permission being necessary by virtue of an Article 4 Direction that came into effect in April 2013. It removed permitted development rights to otherwise change the use of a C3 dwellinghouse to a C4 HMO.

- living accommodation re-configured, including to provide four single bedrooms and occupation of the appeal property by four unrelated people in this C4 HMO.
5. 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 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 C4 HMOs, can contribute in a particular way to meeting these aims of the policy.
 6. 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 Class C4 (Houses in multiple occupation) use... 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.
 7. The supporting text to this policy explains that the city has 'a high number of HMOs' and that there has been 'a significant conversion of family housing to student occupied 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
 8. 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.
 9. I acknowledge that the appeal property has been used for many years as a C4 HMO. However, this use, and the change in the type and nature of residential use that has occurred, is a breach of planning control. The Council could take enforcement action to reinstate a C3 use of the appeal property and by that means restore a suitable balance of residential uses in this area in accordance with Policy CP21(ii). Furthermore, whilst the appellant has meantime opted not to use the appeal property as a C3 family home, were I minded to grant planning permission this would likely result in the permanent loss of a C3 house to the housing stock and in circumstances where this C4 HMO materially alters the number and proportion of HMOs compared to other types of residential properties in the local area.
 10. 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 C3 use to a C4 HMO use, creates an imbalance in the housing stock and therefore conflicts with Policy CP21(ii). Accordingly, these circumstances would otherwise

³ City Plan paragraphs 4.233, 4.234 and 4.235.

undermine what the 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 C4 HMOs, as the appellant otherwise suggests.

11. The Council considers that the proportion of HMOs in the housing stock within 50m of the appeal site (excluding the appeal property) is 11.11%, including the recently built house next to the appeal site at 37A Auckland Drive. The appellant does not dispute this figure as derived by measuring a 50m radius from 'the centre point of the application site's front curtilage boundary'.⁴ On the evidence before me I have no reason to reach a different view in this regard.
12. The appellant considers that if the 50m radius is measured using an alternative meaning of 'front curtilage boundary' this would exclude a nearby HMO and reduce the percentage of HMOs in this area to below 10%. However, even if one side elevation or side curtilage boundary is the closest part of the appeal property to one part of Auckland Drive, I saw at my site visit that this arrangement is not an exception in the area and, in any event, it is not unusual for these parts of a property to be near a road. The siting of the appeal property is therefore not 'atypical' as the appellant otherwise suggests.
13. Moreover, I also saw that this part of Auckland Drive is significantly elevated above the appeal site such that this side of the appeal property has no significant presence in the streetscene at this point. In addition, the pedestrian entrance and path that has been created to 37A Auckland Drive lies between the appeal property and Auckland Drive. Accordingly, the side elevation and side curtilage boundary of the appeal property does not 'front' onto Auckland Drive. Albeit that it is set back from Auckland Drive at an oblique angle to this road, the front elevation of the appeal property, which includes a front door and front garden, nonetheless faces its 'front curtilage boundary' which is orientated towards a lower part of Auckland Drive and is as a result more conspicuous in this part of the streetscene. I am therefore satisfied that the measurement and calculation relied on by the Council accords with Policy CP21(ii) and the supporting text of the City Plan.
14. I note that the nearby Hyde Business Park is outside of either 50m radius area (and even if it were not, as a commercial use, it would anyway be excluded under the Council's measurement⁵) but that part of a woodland is not. Even if, as the appellant suggests, these trees mean that there is a smaller 'baseline' number of houses in either 50m radius area, it is just as likely that any notional 'additional' houses could include HMOs (there is certainly no evidence before me that they would all be C3 houses). Accordingly, the business park does not affect the number of C3 houses or C4 HMOs, thus the density or proportion of C4 HMOs in the area, and even with an increased housing baseline 'allowance', any assessment of C4 HMO density or proportion relative to C3 houses would be hopelessly speculative.
15. Even though HMOs are a part of the character of the area, and the appeal property is near 'an academic corridor', this is nonetheless already to a degree that is otherwise resisted by the Council and, albeit by a limited extent, nevertheless exceeds the tolerance of Policy CP21(ii). I appreciate that the appeal plans show a reduction in the number of residents from five to four and

⁴ City Plan paragraph 4.237.

⁵ City Plan paragraph 4.237.

that this could be a similar number of people as could live in the appeal property as a C3 house. However, the intensity and pattern of activity associated with a C4 HMO generally contrasts with houses in single family occupation, including that the unrelated adult 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.

16. The activity that would be generated by four 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 four members of the same family living together as a single family household. In this appeal, the development does not therefore contribute to the aims of Policy CP21(ii).
17. Furthermore, the proposed reduction in the size of the C4 HMO would not alter the unwarranted and unsuitable distribution in the type, size and nature of HMO housing in this area, due to the development, which is already sensitive to the effects of such change. Even though the occupiers would be living in the same house (and number of houses overall in the area) and four residents would not, in this appeal, cause material harm to the living conditions of the occupiers of neighbouring properties, the concentration of HMOs in this area and the nature of their occupation nonetheless already exceeds the 10% control limit embedded in Policy CP21(ii).
18. Consequently, whilst the development that has occurred (and as would be altered by the appeal proposal) is a relatively modest intrinsic numeric increase in the number of HMOs in this area from 2 to 3, it is nonetheless a material increase by half (50%) and it has also increased the proportion of HMOs in this area (including the appeal property) to 15.78%. It is therefore is a significant change locally in this area and also adds to a cumulative increase in C4 HMOs (and HMOs generally) and their resident population in the city as a whole. The development therefore causes significant harm by virtue of an inappropriate change to the mix and balance of the community in the area, to the detriment of local amenity generally and unduly erodes and undermines the Council's adopted planning and housing strategy in these regards. It does not accord with Policy CP21(ii).
19. It also conflicts 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.

Other Matters

20. As Framework paragraph 2 makes clear, I am required to make my decision in accordance with the development plan, unless material considerations indicate otherwise.⁶ On the evidence that is before me the appeal property has been in

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

C4 HMO use since before Policy CP21(ii) was adopted by the Council. Nonetheless, it is not a lawful use and this consideration does not therefore circumvent the obligation on me to have due regard to this policy at the time of my decision. Furthermore, were I minded to grant planning permission the 'regularisation' of the appeal property for planning purposes would therefore result in 'a new shared house' at the appeal site.

21. I have acknowledged in the main issue above that there may well be a demand for HMOs in this area. However, if C4 HMO use ceased at the appeal site there is no objective evidence before me that a 'likely' result 'would be two or three additional HMOs being proposed in the area' or that this 'would result in a loss of family homes to the detriment of community balance', as the appellant otherwise suggests. Indeed, on the face of it, such proposals in this area could be at odds with Policy CP21(ii).
22. Even if, as the appellant contends, there have been no previous formal complaints made to the Council or to the Police regarding C4 HMO use of the appeal property, there has been public objections to this planning application from interested parties, including on matters that are material to my consideration of this appeal. The absence of greater public objection does not mean the absence of planning harm.
23. Some interested parties also objected due to concerns about additional car parking and effect on property values. I saw at my site visit that Auckland Drive and some nearby roads are reasonably wide and include provision for on-street parking. I accept that the number of parked cars at the time of my visit may not have been representative of peak parking use, but nonetheless 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. In these regards I note that the Council did not object to the appeal proposal. Alleged loss of property value due to development is not a material planning consideration.
24. I acknowledge that the appeal proposal would make more effective use of the internal living space including to provide more storage, that some rooms would be more spacious and usable than at present and that access into the rear garden has already been improved by installation of French doors. I also have no reason to doubt that the appeal site and appeal property would continue to be well-managed and maintained to a high standard. I also appreciate that the appeal site is accessible to the city's universities and to local services and facilities by means other than the private car and that there would be no undue effect on the living conditions of occupiers of neighbouring houses. However, the absence of harm in these regards is a neutral factor in my decision.

Conclusion

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

Robin Buchanan

INSPECTOR