
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/20/3256156
55 Hartington Road, Brighton BN2 3LJ

- 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 Allum Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01136, dated 21 April 2020, was refused by notice dated 18 June 2020.
 - The development proposed is a change of use from Use Class C4 (six persons) to Sui generis large HMO (seven persons).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal the appellant submitted a letter from the Council.¹ It confirms that for the purposes of licensing, the appeal property has been granted a license by the Council for occupation by up to seven people. Having regard to the 'Wheatcroft Principles'² the letter does not change the development and it would not deprive those who should have been consulted of the opportunity of such consultation. Consequently, no prejudice would be caused to any interested party. The Council has had an opportunity to comment on the letter but did not do so. I have considered the appeal on this basis.

Main Issue

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

Reasons

4. The appeal property is a mid-terrace two-storey house located in a residential suburb of mainly terraced 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 students as a C4³ house in multiple occupation (HMO). The appeal proposal would utilise a sufficiently large locked storage room to establish an additional first floor

¹ Private Sector Housing Team, dated 18 December 2020.

² *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

³ The Town and Country Planning (Use Classes) Order 1987, as amended.

- bedroom and allow use and occupation of the appeal property by seven unrelated people as a sui generis HMO. It would also increase the size of the loft bedroom by removing an internal partition wall to incorporate the floor area of another locked storage room.
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 sui generis 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 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.
 7. 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'.⁴
 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 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.
 10. However, and nonetheless, once the 10% saturation in HMOs is reached any further change of use to an HMO, including 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.

⁴ City Plan paragraphs 4.233, 4.234 and 4.235.

11. The Council considers that the proportion of HMOs in the housing stock within 50m of the appeal site (excluding the appeal property) is 17.5%. 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 appeal property is near 'an academic corridor', this is nonetheless already to a degree that is otherwise resisted by the Council and significantly exceeds the tolerance of Policy CP21(ii).
12. 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 approaching a fifth (16.7%), from six to seven people. Even though they would be living in the same house (and number of houses overall in the area) and one additional resident 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 (thus an increased number of people living in such houses) nonetheless already substantially exceeds, approaching double, the 10% control limit embedded in Policy CP21(ii).
13. Consequently, whilst one additional resident 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).
14. 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.

Other Matters

15. The appellant suggests that its case on Policy CP21(ii) has been 'regularly' supported by Planning Inspectors in recent appeals in the area, including a 2018 appeal relating to the appeal property, and that 'These appeals have considered change of use from a Class C4 HMO to sui generis HMO to be "neutral" with regard to City Plan Policy CP21'. The appellant has provided an excerpt from the 2018 appeal decision.⁵ I do not have full details of the proposals and evidence considered by the Inspector before me. Nonetheless, in the current appeal I have acknowledged that 'a change of use from a small HMO to a large HMO' does not 'increase the number of properties in use as HMOs' (relative to all residential properties) and would not 'result in loss of a family home'. I have explained the relevance of both of these findings to my decision.

⁵ APP/Q1445/C/17/3176609.

16. However, I have found that the effect on 'housing mix and balance' arising from the proposed change of use would not be 'neutral' and that there is therefore conflict with Policy CP21(ii). The 2018 decision 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.
17. It is evident from the Council's officer report and appeal statement, and the appellant's appeal statement, that interpretation of Policy CP21 in this regard has also previously been considered by a number of other Inspectors. The appellant has provided excerpts from two of these appeal decisions.⁶ I do not have full details of the proposals and evidence considered by those Inspectors before me. Nonetheless, the excerpts essentially include the same matters that I have already referred to above and therefore do not alter my findings in the current appeal in these regards.
18. I accept that were I minded to grant planning permission a condition could restrict occupancy of the appeal property to seven bedrooms and persons. I note that the appellant states that the appeal property 'has historically been laid out as an 8-bedroom house', and even if it has been 'licensed as an 8-person HMO', there is no evidence before me that the appeal property was originally built as an 8 bedroom house, as the appellant may otherwise suggest. Indeed, having regard to the planning history for the appeal property that is before me⁷ and the submitted appeal plans, that appears to be unlikely.
19. Some interested parties also objected due to concerns about a lack of parking and refuse storage. However, the appeal site is within a controlled parking zone and the Council could limit access to on-street parking and, similarly, satisfactory arrangements for refuse storage would also be a matter for the Council to enforce. I note that the Council did not object to the appeal proposal for either reason. I acknowledge that the appeal proposal would provide attractive and satisfactory internal living space standards and would have good quality rear garden communal space. The appeal site is also accessible to the city's universities, to employment and to local services and facilities, including public open space, by means other than the private car. However, the absence of harm in these regards is a neutral factor in my decision.

Conclusion

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

Robin Buchanan

INSPECTOR

⁶ APP/Q1445/W/19/3223833; APP/Q1445/W/19/3231901.

⁷ Council's officer report.