



Appeal Decision

Site visit made on 11 January 2020

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021.

Appeal Ref: APP/Q1445/W/20/3255181

64 Barcome Road, Brighton BN1 9JR

- 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 Richard Carr against the decision of Brighton and Hove City Council
 - The application Ref BH2020/00893, dated 13 March 2020, was refused by notice dated 20 May 2020
 - The development proposed is 'Change of use from dwellinghouse (C3) to a large house in multiple occupation (sui generis) (part retrospective)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was amended following submission of the application to "*Change of use from dwellinghouse (C3) to a seven bedroom large house in multiple occupation (sui generis) (retrospective)*". The amended description better reflects the development proposed, however, as the appeal is dismissed, I have referred to the original description for the purposes of the appeal.

Main Issues

3. The main issues are the principle of the development, specifically whether the proposal supports a mixed and balanced community, and whether the proposal would provide an adequate standard of living conditions for its occupiers.

Reasons

Principle of development

4. The appeal proposal is for a change of use from a single dwelling to a large house in multiple occupation¹ (large HMO). The change of use has already taken place. The appeal site is located on Barcombe Road, a residential street in a predominantly residential area. Barcombe Road is parallel with the A270 Lewes Road and as such, there are only houses on the east side of the road.
5. Policy CP21 of the Brighton and Hove City Plan Part 1 (CP pt1) adopted in 2016 supports the provision of large HMOs in principle, where not more than 10 percent of dwellings within a 50 metre radius of the application site are not

¹ The use of a dwelling more than six residents as a "*house in multiple occupation*" (sui generis).

already in use as a Class C4, mixed C3/C4 or other types of house in HMO in sui generis use. The justification for this policy is to support mixed and balanced communities and to ensure a range of housing needs continue to be accommodated throughout the city, to support and enhance the quality and management of housing and residential environments within HMO dominated neighbourhoods. The appeal proposal results in a greater than 10 percent of dwellings within the vicinity being in use as HMOs, contrary to this policy and its aims.

6. Saved policy QD27 of the Brighton and Hove Local Plan 2005 (LP) seeks to protect the living conditions of occupants of development and users of adjacent land. It seeks to avoid material nuisance and undefined loss of amenity to adjacent users. There is little to suggest a direct and serious impact to the living conditions of neighbouring occupiers. The house is well maintained and has a similar external appearance to the other dwellings along the road. The Council refers to previous noise complaints having been made regarding the property since it has been in multiple use, however, little information is available as to the nature and duration of the problem. However, the effects of over concentration of HMOs on the general amenity of an area are not necessarily visible but are by way of impact on housing provision, mixed and balanced communities and community cohesion.
7. The proposal therefore conflicts with policies CP21 and QD27.
8. The Appellant submits that a grant of planning permission would not create a new HMO because the house has been in such use for nine years. Instead, the Appellant submits, planning permission would simply regularise an existing situation. However, planning permission is required for the use which has not yet become lawful through the passage of time. As such, the actual use could be subject to enforcement action requiring it to cease. A grant of permission would indeed establish a new lawful use and it is entirely appropriate to consider the effects of granting such a planning permission.
9. The Appellant suggests that there is no greater proportion of HMOs in the area, but the percentage is skewed by the fact that there are less total houses in Barcombe Road. The policy calculation is based on a 50 metre radius of the site and provides a proportional percentage of existing houses which may be in HMO use, rather than a cap to the total number of HMOs. As such, the percentage does factor-in the lower number of houses in Barcombe Road. As the percentage reflects, the mix of the community is more sensitive to such changes of use where there are less houses. Any increase in student or transient occupiers in the area would affect community balance and its potential for cohesion to a degree.
10. The use began before the Council introduced an Article 4 Direction and the relevant policies. From its commencement, the change of use to a large HMO required planning permission. Had previous policies been more favourable it would have been within the Appellant's interest to have applied for permission when those policies applied. Similarly, though that other dwellings have changed use to HMOs since the HMO use began at the appeal site, there is an inherent risk of policy exceedance in not gaining the relevant permission in a timely manner.
11. Further, the Article 4 Direction seeks to restrict the permitted development rights for changes of use from a single dwellinghouse (Use Class C3) to the

'small HMO' Use Class C4² which was introduced some time prior. Since the appeal proposal use exceeds the definition of a small HMO, it would have not benefited from the permitted development rights to change to Use Class C4 even if the Article 4 Direction had not been made. Perhaps the Appellant may have relied on a 'fallback position' of a permitted change to a small HMO prior to the Article 4 Direction, however no such 'fallback' exists now. In any case, such a 'fallback position' would not change my conclusions on the principle of development for the reasons set out above.

12. I have had regard to the appeal decisions referred to by the parties, which reach various conclusions relating to the principle of HMOs and I have reached my conclusions based on those appeals and the particular circumstances of the proposal.
13. For these reasons, I find that the principle of the proposal conflicts with policy CP21 of the CP pt1 and saved policy QD27 of the LP and there are no material considerations which would justify determining the application other than in accordance with the relevant policies of the Development Plan.

Living Conditions of Occupiers

14. The HMO provides bedrooms for up to seven individuals and has communal spaces including a kitchen, living room, conservatory, outbuilding and a garden. Several of the rooms and communal spaces do not provide the minimum standard of space set out in the Nationally Designated Space Standards (NDSS). The NDSS have not been adopted into local policy and whilst they provide helpful guidelines, it is thus necessary to determine whether the accommodation provides adequate living conditions for occupiers on its own merits.
15. The communal kitchen, living room and conservatory are particularly small. Aside from their size, the functionality and useability of the rooms for up to seven occupants is limited as the interior of the house is closed plan, so the capacity of each of these rooms is limited and separate.
16. The kitchen is cramped and occupants would not be able to prepare meals simultaneously; a restrictive degree of coordination would be required for occupants to prepare meals should they find themselves on similar daily schedules. The living room features a single corner sofa, with little space for any other furniture or circulation. The conservatory is heated and contains a dining table, though its size is not conducive to gatherings for up to seven occupants. There is a single bathroom containing a shower, toilet and basin. There is also a separate toilet room. One of the bedrooms contains a basin and shower for the sole use of the occupier of that bedroom as they are within the room itself with no privacy screen. As such, six of the occupants would have use of a single shower facility. For these reasons, the communal accommodation has a poor provision of facilities and has limited useable space.
17. The space available would improve somewhat during the summer, though the additional shared space provided by the outbuilding and large, well-maintained garden would not be useable during any inclement weather conditions and winter. The outbuilding currently contains bicycles, a fridge or freezer and a

² Houses shared by three to six unrelated individuals. Permitted development (now) under Class L, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

sofa; its construction is uninsulated timber-clad chipboard and it is unheated. During my visit, the damp and cold environment of the outbuilding was exacerbated by a broken single-glazed window.

18. Moreover, two of the bedrooms are particularly small. Whilst they contain a small desk, bed and wardrobe or chest of drawers, the furniture is placed against the bed and there is very limited circulation space within the room, creating a cramped and oppressive environment. Combined with the limited communal space, this would offer a poor standard of living conditions for the occupiers of those bedrooms.
19. For these reasons, I find the proposal provides an inadequate standard of living conditions for occupiers, contrary saved policy QD27 of the LP.

Other Matters

20. The Appellant states that the occupants of the house prior to the HMO were a foster family and that there is little practical difference between the two uses. However, fostering within a family does not create a residential institution use and a foster family would for all intents and purposes interact with its community in the same manner as other families. It is also unlikely a family would require the conversion of the larger communal spaces into additional bedrooms. The private familial arrangements of the previous occupiers are not comparable with HMO use.

Conclusion

21. For the reasons stated above, I find that the appeal proposal conflicts with the relevant policies of the Development Plan. There are no material considerations which justify determining the appeal other than in accordance with the Development Plan. The appeal is accordingly dismissed.

Kim Langford Tejrar

INSPECTOR