

Appeal Decision

Site visit made on 26 February 2021

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021.

Appeal Ref: APP/Q1445/W/18/3219547

38 Coldean Lane, Brighton BN1 9GE

- 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 Marion Collins (Executor of the estate of Nick Collins) against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/00576, dated 21 February 2018, was refused by notice dated 27 July 2018.
 - The development proposed is a change of use from a six bedroom small house in multiple occupation (C4) to a seven bedroom large house in multiple occupation (*sui generis*).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a six bedroom small house in multiple occupation (C4) to a seven bedroom large house in multiple occupation (*sui generis*) in accordance with the terms of the application Ref BH2018/00576, dated 21 February 2018, subject to the following conditions:
 - 1) The house in multiple occupation hereby approved shall not be occupied by more than 7 persons.
 - 2) The house in multiple occupation hereby approved shall not be occupied other than in accordance with the proposed layout detailed on drawing No 1973-01, with the exception that the front room denoted 'living' on that plan may be used as a bedroom. The rooms annotated as 'Kitchen' and 'Conservatory' shall be retained as communal space and neither of these rooms shall be used as bedrooms at any time.
 - 3) Within 6 months of the date of this decision secure cycle parking facilities for the occupants of, and visitors to, the development shall be provided in accordance with details first submitted to and approved in writing by the local planning authority. The approved cycle parking facilities shall thereafter be retained available for that use at all times.

Procedural matters

2. Although not shown correctly on the submitted plan No 1973-01, the proposal includes the use of the main front room as a seventh bedroom. The Council is aware of this aspect of the proposal and I see no problem with considering the appeal on that basis.

3. The Council has agreed that there were errors in its original report and decision notice and has issued a corrected report. The Council's reasons for objecting to the proposal are set out in the revised report and in its appeal statement.

Main issues

4. The main issues are whether the proposal would: (i) support the retention of a mixed and balanced community in the local area, including consideration of the impact on local amenity; and (ii) provide an adequate standard of living conditions for its occupiers.

Reasons

Mixed and balanced community

5. 38 Coldean Lane is a semi-detached house within a residential neighbourhood of similar houses. The proposal is to change it from a small house in multiple occupation (HMO) for up to 6 people not living as a single household, which falls within Use Class C4¹, into a large HMO for 7 people. HMOs for 7 or more people do not fall within a Use Class so are considered to be in a class of their own – commonly described as being *sui generis*.
6. The appellant says that the house has been occupied by 7 people since 2012 and the Council confirms it has been licensed as a 7 person HMO since 2014. The appeal application is therefore retrospective. Brighton & Hove City Plan Part One (CP1) Policy CP21(ii) states that changes of use to a Class C4 HMO, a mixed Class C3 (dwellinghouse)/C4 use or to a *sui generis* HMO will not be permitted where more than 10% of dwellings within a radius of 50m of the application site are already in use as HMOs.
7. The Council's report that 3 of the 15 houses (20%) within a 50m radius are HMOs is not disputed. The Council argues that in these circumstances Policy CP21(ii) restricts not only the creation of new HMOs but also any increase in the intensity of use of HMOs. The appellant submits that Policy CP21(ii) restricts only the creation of new HMOs and does not seek to prohibit changes of use of HMOs from Class C4 to a large HMO as is proposed here. To support that view, the appellant refers to several appeal decisions² where Inspectors have interpreted the policy in that way, finding no conflict with Policy CP21(ii) where there would not be an increase in the number of HMOs.
8. It seems to me that this policy is vaguely worded and could potentially be interpreted either way. Due to the age of this appeal, all of the other decisions cited by the appellant are now a few years old. I would not be surprised to find that other Inspectors have backed the Council's interpretation, but no such decisions have been brought to my attention. National Planning Policy Framework paragraph 16d states that plans should contain policies that are clearly written and unambiguous so it is evident how a decision maker should react to development proposals. I see no such clear restriction in Policy CP21(ii) in relation to this particular appeal proposal.

¹ As defined in the Town and County Planning (Use Classes) Order 1987 (as amended)

² APP/Q1445/W/15/3140528; APP/Q1445/W/16/3150798; APP/Q1445/W/16/3154217; APP/Q1445/W/16/3162725; APP/Q1445/W/17/3167367; APP/Q1445/C/17/3177383; and APP/Q1445/C/17/3177384

9. The proposal does not affect the number or proportion of HMOs in the vicinity and does not significantly affect the range of accommodation in the local area. The increase in the number of residents from 6 to 7 is marginal and should not have significant impacts on the balance of the community. The Council also refers to the potential effects on local amenity such as noise and disturbance. In this respect I note that the house has apparently been lived in by 7 people for at least 7 years and I have not been provided with any evidence of particular problems.
10. I conclude that the proposal does not significantly or unduly affect the mix and balance of the local community or local amenity. It accords with the aims and requirements of CP1 Policy CP21(ii) and Brighton & Hove Local Plan Policy QD27, to support mixed and balanced communities and to ensure that development does not cause material nuisance and loss of amenity to adjacent residents.

Living conditions of future occupiers

11. The Council's concern in regard to this issue is that the shared communal space and one bedroom would fail to provide an acceptable standard of accommodation. Part of the communal space for the HMO is provided in a room shown on the submitted plans as a conservatory, but this room has been improved so that it has brick walls and a flat roof, with only one glazed wall. I confirmed this situation at my site visit. The Council accepts that in these circumstances this particular objection would be withdrawn. I find that the kitchen and the improved conservatory together provide sufficient communal space for the 7 residents.
12. The bedroom in question measures about 7 sqm in floorspace on the submitted plans. The appellant states that it has since been extended so that it is now 7.5 sqm. I could not confirm this at my site visit due to COVID-19 restrictions.
13. The Council refers to the nationally described space standard³ (NDSS), which sets a minimum standard of at least 7.5 sqm floor area for single bedrooms. The NDSS is a technical document and gives no policy guidance on its application. The Framework states that policies may make use of the NDSS - where the need for an internal space standard can be justified. The Planning Practice Guidance further advises that the NDSS is optional and that local planning authorities will need to gather evidence to determine whether there is a need for the standard in their area, and to justify setting appropriate policies in their Local Plans.
14. The Council has not adopted the NDSS into a Local Plan or other policy, so it can be given only limited weight in decision-making. I understand that its adoption is proposed in the current version of the draft Brighton & Hove City Plan Part 2, but I have not been provided with any information to indicate that that plan is at a sufficiently advanced stage to be given significant weight. There is therefore no clear policy objection to the size of this bedroom.
15. An alternative standard exists in the form of the Council's HMO licensing minimum of 6.5 sqm for single bedrooms. Even at 7 sqm the bedroom would be in excess of this lower standard. Although somewhat compact, I find the

³ Technical housing standards – nationally described space standard (Department of Communities and Local Government, March 2015)

bedroom to be adequate bearing in mind that there would also be significant communal space available to residents.

16. I conclude that the proposal would provide satisfactory living conditions for future occupiers in terms of internal room space. It therefore accords in this respect with LP Policy QD27, which aims to avoid loss of amenity to occupiers of developments.

Other matters

17. I have taken into account the views of local residents and the local Ward Councillor. I note that there could be some inaccuracies in the plans and that the change of use was unauthorised. I find nothing, however, which outweighs my conclusions on the main issues.

Conditions

18. As the development has been implemented already, there is no need for the standard 3 year commencement condition. Conditions limiting occupation to 7 people and requiring the retention of communal space are necessary to protect the living conditions of neighbours and the occupiers of No 38. A condition requiring the provision of secure cycle parking is also needed, in the interest of sustainable transport.

Conclusion

19. For the reasons set out above, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR