
Appeal Decision

Site visit made on 19 April 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2021

Appeal Ref: APP/Q1445/W/20/3260967
92 Southall Avenue, Brighton BN2 4BB

- 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 of Tangerine Property (Sussex) Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01765, dated 30 June 2020, was refused by notice dated 23 September 2020.
 - The development is change of use from dwelling (C3) to small house in multiple occupation (C4) and erection of a single-storey rear extension to provide a six bedroom small house in multiple occupation (C4) (part-retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from 3 bedroom dwelling house (C3) to 6 bedroom small House in Multiple Occupation (C4), and the erection of a single-storey rear extension and rear decking at 92 Southall Avenue, Brighton BN2 4BB in accordance with the terms of the application, Ref BH2020/01765, dated 30 June 2020, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The description of development in the banner heading above is taken from the application form. However, my formal decision uses the Council's wording from the decision notice. For completeness, this makes reference to a new area of decking to the rear of the property.

Main Issue

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

Reasons

4. The appeal property is one of a pair of semi-detached houses on the north side of Southall Avenue. It was granted permission¹ in July 2017 for change of use from a three bedroom dwelling (Class C3) to a four bedroom small house in multiple occupation (Class C4) (HMO). Use of the property as an HMO commenced shortly afterwards, but the appellant concedes that the permission was not implemented correctly, due to the erection of a single-storey rear

¹ Ref BH2017/00690

extension and inclusion of an additional occupant over the five originally approved. An application² to regularise the unauthorised HMO use was refused, owing to concerns over the internal layout.

5. The application before me successfully addressed this objection. Nevertheless, it was refused for non-compliance with Policy CP21 of the Brighton and Hove City Plan Part One (2016) (CP1). This policy states that applications for the change of use to a Class C4 use, mixed C3/C4 use or to a sui generis HMO use will not be permitted where more than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use for such purposes.
6. The apparent inconsistency in the Council's approach is explained by events which took place during the most recent application. At the time the application was submitted there were 3 identified HMOs out of the 39 dwellings within 50 metres of the site, a policy compliant density of 7.69 per cent. However, shortly before the application was determined permission was granted³ for change of use of the adjoining property, 90 Southall Avenue, to a small HMO. If this were taken into account, the density of HMOs would be 10.25 per cent which is above the policy threshold.
7. The appellant contends that No 90 should not have been included in the calculations because its HMO use had not commenced. The Council, on the other hand, states that extant permissions are always included within its assessment. Whilst I can appreciate the Council's position, my determination of this appeal must be informed by interpretation of the policy as it is written. This stipulates that dwellings should be counted when they are **already in use** as an HMO (my emphasis). The evidence indicates that the permitted HMO use at No 90 has not begun and there can be no certainty that it will be, hence it need not be included within the density calculation. Applying the policy according to how it has been framed, the appeal scheme is compliant with CP1 Policy CP21.
8. I have been given no indication as to whether the circumstances pertaining to this appeal are common within the City, or whether this is an isolated example. If there are issues with the policy wording then that is a matter for the Council to address outside of this appeal. Clearly, were multiple applications to be submitted at the same time in a similar location there is the risk of a harmful over-concentration of HMOs. Whilst this would be a material consideration to be taken into account, it is not the situation here. Even if I had taken the view that No 90 should be included in the calculations, there is no compelling evidence to convince me that a worst case density figure of 10.25%, which is marginally above the policy threshold, would cause significant harm to the balance and general amenity of the area.
9. The Council has drawn my attention to three recent appeal decisions. These acknowledge the contribution of HMOs to meeting the City's housing needs and the importance of ensuring that such uses do not dominate established communities. However, in each of the cases presented the number of properties in HMO use was already above the policy threshold, without consideration of any extant permissions, in one case significantly so. Applications need to be determined on their merits based on the facts of the case and that is what I have endeavoured to do with this appeal.

² Ref BH2020/03389

³ Ref BH2020/00995

10. Accordingly, I conclude that a grant of planning permission for change of use of the appeal property to a small HMO would not have a material adverse effect on the mix and balance of the community in the area. There would be compliance with CP1 Policy CP21 in this regard.

Other Matters

11. The Council raises no concerns with the appearance of the rear extension and decking, the standard of accommodation or the impacts on neighbours. I have no reason to take a different view. Although I have noted the comments from interested parties regarding noise, overlooking, an increase in rubbish and impacts on local house prices, no substantive evidence has been presented on these matters. Based on the information presented they do not form grounds to dismiss the appeal. Likewise, the fact that the property is being used in breach of planning controls is not a consideration which carries any significant weight in the overall balance.

Conditions

12. To provide certainty and ensure satisfactory living conditions for occupants of the HMO, I have attached conditions to define the approved plans and secure implementation of the internal layout. This includes the retention of the kitchen and separate living room as communal space. A further condition is necessary to require provision of refuse and recycling storage facilities to meet the Council's standards.
13. I have imposed conditions relating to parking provision and secure, covered cycle spaces, respectively to accord with the Council's parking standards and to encourage use of sustainable transport modes. To protect the living conditions of neighbours, a condition is also necessary to require the retention of a 1.8m high fence on the boundary with 94 Southall Avenue.

Conclusion

14. For the reasons given above I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. 0266/03.
- 2) Within 3 months of this decision, three secure, covered cycle spaces shall be provided on site, and thereafter retained for this purpose.
- 3) Within 3 months of this decision, refuse and recycling storage facilities shall be installed to the side or rear of the building and made available for use. These facilities shall thereafter be retained for use at all times.
- 4) The development hereby permitted, specifically the internal layout shown, shall be implemented within 12 months from the date of this permission and thereafter retained for the life of the development.
- 5) The kitchen and separate living room shown on drawing no. 0266/03 shall be retained as communal space at all times and shall not be used as a bedroom.
- 6) The existing fence separating the rear terrace from the neighbouring building at 94 Southall Avenue shall be retained, or if replaced an equivalent fence or other solid screening of at least 1.8m from the height of the decking and/or ground level, whichever is the greatest, shall be installed and thereafter permanently retained as such.
- 7) The hard surfaced area forward of the front wall of the property shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.

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