
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: 19 May 2021

Appeal Ref: APP/Q1445/W/20/3262956
118 Newick Road, Brighton BN1 9JG

- 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 Henry Dorman of Rivers Birtwell against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02586, dated 14 September 2020, was refused by notice dated 22 October 2020.
 - The development proposed is change of use of a small house in multiple occupation (C4) to a large house in multiple occupation (sui generis).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) whether the proposed large house in multiple occupation would provide a satisfactory living environment for its occupiers;
 - b) the effect of the development on the living conditions of the residents of neighbouring properties including Nos 116 and 120 Newick Road; and
 - c) the effect on the mix and balance of the community in the area.

Reasons

Quality of living environment

3. The appeal property is presently in use as a small house in multiple occupation (HMO) with six bedrooms. The proposal is to subdivide the largest bedrooms to create an eight bedroom HMO. The Council's concern relates to the adequacy of the communal space to accommodate two additional residents.
4. The communal space comprises a shared kitchen and dining area with a separate living room located in a rear extension. The kitchen feels relatively spacious, but food preparation areas¹ are limited in extent and the room acts as a thoroughfare for residents accessing the lounge. Occupants of HMOs can often operate on different schedules and therefore it is unlikely that every resident would be cooking at the same time. Nevertheless, there are periods of

¹ The actual kitchen layout differs from that shown on the plans.

peak demand and on those occasions there would be competition for worktop space and significant potential for conflict between the users of the kitchen and the comings and goings associated with the living room. The latter could be reconfigured to provide additional seating, but the dining area would need a larger table which would encroach on the route between the bedrooms and communal areas.

5. The appellant argues that the communal spaces are double the requirement under HMO licensing standards. However, these standards operate independently of planning and do not necessarily align. Policy QD27 of the Brighton and Hove Local Plan 2005 (LP) states that proposals for development or change of use will not be granted where it would cause material nuisance or loss of amenity to the proposed or existing occupiers or where it is liable to be detrimental to human health. This is consistent with the requirement in national policy² to promote health and well-being and a high standard of amenity for existing and future users.
6. It was evident from my observations at the site visit that the HMO provides a good standard of accommodation for six occupants. However, notwithstanding its size, the configuration of the communal space is such that the addition of two further bedrooms would reduce the quality of life for existing residents and create a substandard living environment overall. The proposal would therefore conflict with LP Policy QD27.

Living conditions of neighbours

7. The Council contends that the proposed increase in occupancy would have a significant direct and cumulative impact on the amenity of immediately neighbouring properties. The addition of two bedrooms would generate more comings and goings compared to the existing situation. This could be mitigated where sharers operate similar daily timetables, for example travelling to university together for lectures. But regardless, I am not convinced that the activity associated with two extra occupants at the property would generate a level of noise or disturbance sufficient to have a material adverse impact on the occupiers of the adjoining dwellings. The front door to the appeal property is well away from the neighbours on either side and therefore in all probability the additional pedestrian movements would be imperceptible.
8. Clearly, there would be more persons living at the address and therefore some potential for additional noise within the building. However, as part of recent renovation and extension works soundproofing has been installed to both party walls at ground and first floor. The appellant states that this significantly exceeds the requirements of Building Regulations for sound insulation to walls between dwellings, reducing noise transference by up to -60dB. Whilst there is no noise assessment before me to confirm the effectiveness of these measures, there is no evidence to demonstrate that noise has been a problem for either neighbour.
9. One local resident has raised concern regarding the potential for excess noise from parties. Whilst there is always this risk with student housing, an eight bedroom HMO is no more or less likely to host parties than a six bedroom HMO. Given that there is no dispute over the lawfulness of the existing small HMO use, this is not a factor which weighs against the proposal.

² Paragraph 127 f) of the National Planning Policy Framework.

10. Accordingly, for the reasons set out above I conclude that the proposal would not have an unacceptable impact on the living conditions of neighbouring residents. There would be no conflict with LP Policy QD27 in this regard.

Mix and balance of community

11. Policy CP21 of the Brighton and Hove City Plan Part One (2016) (CP1) states that applications for the change of use to a Class C4 (HMO) use, a 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 as Class C4, mixed C3/C4 or other types of HMO in a sui generis use. The policy makes no mention of the existing use of the property, meaning that any proposal to change to any of the listed uses is 'caught' by the policy.
12. The officer report states that 6 out of 45 dwellings within a 50 metre radius of the appeal property have been identified as HMOs, but does not provide any details of the analysis. The appellant has undertaken a separate calculation using the Council's online mapping which shows 5 out of 44 dwellings to be in HMO use. However, this includes 64 Barcombe Road which is the subject of a dismissed appeal and an enforcement notice requiring the cessation of HMO use. Depending on whether this property is discounted and the analysis used, the proportion of HMOs within 50 metres of the appeal site could be anywhere between 9.1 per cent and 13.3 per cent. There are uncertainties in the Council's analysis which cast significant doubt over whether there has been a breach of the threshold in Policy CP21.
13. The stated purpose of the policy is to support mixed and balanced communities and to ensure a range of housing needs continue to be accommodated throughout the City. In this particular case, the property is already an HMO and therefore there would be no loss of a family home. As such, neither of the expressed aims of the policy would be compromised.
14. Policy CP21 makes no reference to the issue of intensification and neither does its supporting text. There is no other evidence to indicate that the policy was drafted with the current scenario in mind. For the reasons I have set out previously, an increase in occupation of the property from 6 to 8 persons would not be perceptible, even to nearby residents. Although the Council has drawn my attention to an appeal decision³ in which the Inspector took the opposite view, the concentration of HMOs in that case was higher at 17.5 per cent. The appeal decision of 97 Whippingham Road⁴ demonstrates how Inspectors have accepted increased occupancy of HMOs, even in situations where the 10 per cent threshold has been breached. Applications need to be determined on an individual basis according to the particular circumstances of the case.
15. To conclude, it is unclear based on the conflicting evidence submitted, whether the proposal would breach the threshold within CP1 Policy CP21. On the balance of information provided, it has not been demonstrated that the proposal would harm the mix and balance of the community in the area.

³ APP/Q1445/W/20/3256156

⁴ APP/Q1445/W/20/3256052

Conclusion

16. I have not identified any material harm in respect of the effects on the living conditions of neighbours or the mix and balance of the community. However, the proposal would fail to provide a satisfactory living environment for its occupiers. For this reason, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR