The Planning Inspectorate

Appeal Decision

Site visit made on 5 May 2021

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/Q1445/W/20/3271774
55 Centurion Road, Brighton BN1 3LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mishbec Limited against the decision of Brighton & Hove City Council.
- The application Ref BH2020/01285, dated 12 May 2020, was refused by notice dated 7 July 2020.
- The application sought planning permission for change of use from dwellinghouse (C3) to flexible use as 5no bedroom small house in multiple occupation (C4) or single family dwellinghouse without complying with conditions attached to planning permission Ref BH2019/03209, dated 30 March 2020.
- The conditions in dispute are:
  - No 5 which states that: The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
  - *The reason given for the condition is: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards*
  - No 7 which states that: The use hereby approved shall not commence until a soundproofing scheme has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.
  - *The reason given for the condition is: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.*
  - No 8 which states that: Within 6 months of commencement of the development hereby permitted or prior to occupation, whichever is the sooner, a scheme shall be submitted to the Local Planning Authority for approval to provide that the residents of the development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit. The approved scheme shall be implemented before occupation.
  - *The reason given for the condition is: This condition is imposed in order to allow the Traffic Regulation Order to be amended in a timely manner prior to first occupation to ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One and SPD14: Parking Standards.*

Decision

1. The appeal is allowed and planning permission is granted for change of use from dwellinghouse (C3) to flexible use as 5no bedroom small house in multiple occupation (C4) or single family dwellinghouse at 55 Centurion Road, Brighton BN1 3LN in accordance with the application Ref BH2020/01285 dated 12 May 2020, without compliance with conditions numbers 5 and 8 previously imposed on planning permission Ref BH2019/03209, dated 30 March 2020 and subject to the conditions listed in the schedule at the end of this decision.

Preliminary Matters

Background

2. At my site visit the property was arranged broadly in accordance with the proposed layout. I also have evidence from neighbours including 57 Centurion Road that indicates the property has been occupied as an HMO since September 2020. Therefore, it appears to me that the use as an HMO has commenced.

3. It follows that I find conditions 5, 7 and 8 were not breached before the planning application not to comply with them was made. Therefore, I have dealt with the appeal on the basis that it was submitted, as an appeal following a refusal of an application to carry out development without complying with a condition imposed on a permission (S73).

Pre-commencement conditions

4. The original planning permission sought consent for a change of use only. Consequently, in this case, occupation is the same as commencement. The trigger point for condition 5 is occupation, condition 8 is occupation or sooner and condition 7 is commencement. As such, in this case, these are all pre-commencement conditions.

5. The Town and Country Planning Act 1990 (The Act) requires pre-commencement conditions to have the written agreement of the applicant to the terms of the condition. The fact that such conditions were discussed on a webcast does not replace the requirement of the Act for written agreement. Consequently, the imposition of these conditions without the written agreement of the applicant was an unfortunate oversight on the part of the Council.

6. However, this does not affect whether the substantive information required by the conditions are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects as required by the National Planning Policy Framework (February 2019) (the Framework). I go on to consider this in detail in this decision. Nonetheless, if I find the conditions to be necessary, they could be amended, or the written agreement as required by the Act could be sought so that they would not unnecessarily delay the delivery of development. Nevertheless, as I am of the view that the development has been implemented, the trigger points would need to be re-drafted in any case.

Application for costs

7. An application for costs was made by Mishbec Limited against Brighton & Hove City Council. This application is the subject of a separate Decision.

Main Issues

8. The main issues are:

- Whether the provision of secure cycle parking is reasonable or precise having regard to the use of alternative means of travel which have a less harmful environmental impact than the car (condition 5).
- Whether the provision of soundproofing is reasonable, necessary and precise, in relation to the living conditions of existing occupiers (condition 7).
- Whether the lack of entitlement to a resident's parking permit is reasonable or necessary having regard to highway safety, the living conditions of existing occupiers and to promotion of sustainable forms of transport (condition 8).

Reasons

Cycle Parking

9. Due to the constraints of the site there are limited options for providing a suitable location for secure cycle parking. The only private outdoor space is at basement level. This is accessed via an internal hallway with 4 tight corners and through the living room. It is therefore not a practical place in which to store bikes. It would therefore be unlikely to be used in practice and consequently would not encourage cycle use. Given the likely lack of use, such provision would have a similar effect on the use of bicycles as no provision at all. I am not presented with any alternative feasible options for cycle storage within the boundary of the appeal site.

10. If occupants chose to own a bike, alternative public cycle parking could be used. However, locking bikes to the external railings would partially obstruct the pavement, leading to issues for pedestrians, particularly those with visual impairments, buggies, or wheelchair users and so would not be supported.

11. Therefore, even if there were to be an increased cycle parking demand, I am not persuaded that there is a practical location to provide secure cycle storage on this site as required by condition 5.

12. This would be in conflict with Policy TR14 of the Brighton and Hove Local Plan 2005 (the Local Plan) which requires the provision of cycle parking for changes of use. However, in the absence of any suitable place on the site or close by where secure cycle storage could be provided it is not reasonable to require the development to provide it. However, for clarity, this finding relates solely to the particular circumstances of this case.

13. Consequently, the requirements of condition 5 do not meet the test of reasonableness. As such it should not be imposed.

Noise

14. The change of use has created a 5 bedroom HMO. I am presented with a technical note from RBA Acoustics which sets out that such properties are likely to have a higher level of occupancy, be occupied by adults under 30 and/or students and have an increased likelihood of activity later into the evening. I am further provided with evidence that the neighbouring property has experienced noise disturbance since September 2020.

15. An application under building regulations, and therefore soundproofing, would not be required due to the size of the HMO. I have also taken into account the comments from the Environmental Health officers who did not require additional sound proofing. However, in this case, I have detailed evidence before me that since the change of use has occurred this has resulted in increased noise and disturbance to the neighbouring property which is unacceptably harmful to the adjacent occupiers' living conditions. It is therefore both reasonable and necessary to seek to make this otherwise unacceptable development acceptable through the imposition of a condition requiring soundproofing.

16. I am provided with a number of decisions for small HMOs which have not included soundproofing conditions. Such decisions are made in relation to the specific circumstances of the cases, and in this instance, I am provided with detailed site specific information which leads me to conclude that soundproofing is necessary.

17. However, the existing condition refers to a soundproofing scheme, but provides no further detail. As such it is not suitably precise. I have taken into account the comments sought from the main parties and have amended this condition to refer to a specific noise level that must be achieved. This is the level that would be required by Building Regulations if a change of use were judged to have occurred. The neighbouring property is in residential use. Although there are currently low levels of background noise at 57 Centurion Road, I cannot be certain that this would be likely to remain in the future, for example if the occupants changed. As such, I am not imposing an additional restriction on this basis. Nor am I persuaded that a particular increase in the dB level is justified in light of the proposed HMO use.

18. On the basis that the development has commenced, it would be reasonable to reword the condition to require that details are submitted within 1 month of the date of this decision and implemented within 3 months after that. Given the use has been implemented it is also necessary to include a provision that the use would cease if an acceptable scheme were not submitted. I have sought comments from the main parties on this change and have taken any comments received into account.

19. Therefore, the provision of soundproofing is reasonable and necessary, to protect the living conditions of the occupiers of 57 Centurion Road. The amended condition is required in order that the development complies with Policy SU10 and QD27 of the Local Plan which together require no loss of amenity to adjacent occupiers, with particular regard to noise nuisance.

Car parking

20. No car parking spaces are proposed, and the appellant is therefore relying on existing off street parking to serve this development. Car parking pressure is high in this area and I am not provided with evidence that any additional parking could be accommodated on the street. As such any additional car parking generated could cause highway safety issues due to dangerous parking, and adversely affect the living conditions of existing occupiers who may not be able to park within a reasonable distance of their home.

21. The site is very close to shops, services and public transport and all occupants would not necessarily need to own a private car. However, it is likely that 5

independent adults could own more vehicles than those associated with a single household. This would add to the demand for parking in an area that has no capacity to absorb it. There is therefore a justification for excluding the property from the list of those whose occupants are eligible for a resident's parking permit. This would ensure compliance with the development plan.

22. This would be the case whether or not the previous single dwelling and the HMO have access to any private car parking space. The Council's sustainable transport team commented that this issue was for the Planning Department to decide and it can be seen above that I agree with planning officers' assessment. Whilst the impact on the highway as a result of trip generation would be minimal, I am persuaded that the impact on parking would be harmful.

23. The evidence also includes a number of cases where permission has been granted for changes of use to C4 which do not include a condition restricting on street parking permits. I am not provided with the full details of the parking arrangements or levels of parking stress at these locations and therefore I am not persuaded that these circumstances are comparable. Nevertheless, I have considered the particular information put to me in this case and in this instance, for the reasons set out above, such a restriction would be necessary.

24. The existing condition is insufficiently precise due to its reference to a 'scheme' but the absence of details or actions required by the appellant. However, the reason given for the condition is that a change to the Traffic Regulation Order (TRO) will be necessary to remove the property from the list of those eligible for a residents' parking permit. For the reasons set out above I consider that such an amendment is required to make the development acceptable in planning terms. However, this can only be achieved by the Council using its powers to implement an amendment to the TRO under highways legislation. I therefore sought assurances from the Council of its intention to make the necessary amendment, without which I could not be certain that the proposal would comply with the development plan. The Council has provided me with that assurance and consequently, no action is required by the appellant and the condition is not needed.

25. I conclude that the condition is not necessary as the Council has indicated its intention to ensure that the traffic order is amended to confirm that future occupiers of No 55 will not be eligible for residents' parking permits. I am therefore satisfied that the development would comply with Policies TR7 and QD27 of the Local Plan which together require no loss of amenity to existing residents and no detrimental impact on highway safety.

Conditions

26. I have considered the conditions attached to the original permission against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.

27. It appears to me that the use as an HMO has commenced. Therefore, a condition specifying the time limit for commencement is not necessary. A condition to define the plans with which the scheme should accord in the interests of certainty and the living conditions of future occupiers is attached and I have combined the original conditions 1 and 3 for brevity.

28. The Council's condition 6 restricts the use to a C3 or C4 use. Taking into account the flexible C3/C4 use in this case, in the interests of clarity I have re-attached this condition. A condition limiting the number of occupiers is also required in order to ensure adequate living conditions for future occupiers. Condition 3 is required for the reasons above.

Conclusion

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

H Miles

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be implemented in accordance with Location Plan 01, Proposed Drawing 02, including the proposed layout detailed on the proposed floorplans, drawing no 02, and shall be retained as such thereafter. The layout of the kitchen/dining and living room shall be retained as communal space at all times and shall not be used as bedrooms.

2) The HMO unit hereby approved shall only be occupied by a maximum of five (5) persons.

3) The dwellinghouse shall be occupied as either a dwellinghouse (C3) or as a small House in Multiple Occupation (C4).

4) Within 1 month of the date of this decision a soundproofing scheme which provides sound insulation levels between 55 and 57 Centurion Road of 43 $D_{nT, w}$ + C_{tr} dB shall be submitted in writing to the local planning authority for approval. Unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation as a 5 bedroom house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

   If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the occupation as a 5 bedroom house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

   Upon implementation of the approved soundproofing scheme specified in this condition, that soundproofing scheme shall thereafter be retained.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.