



Appeal Decision

Site visit made on 16 June 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Appeal Ref: APP/Q1445/W/21/3268252

95 Heath Hill Avenue, Brighton BN2 4FH

- 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 Steve Granocchia of Elandus 1 against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/03070, dated 27 October 2020, was refused by notice dated 14 January 2021.
 - The development proposed is change of use from small house in multiple occupation (C4) to large house in multiple occupation (sui generis) incorporating a single-storey rear extension, creation of parking area to the front and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from small house in multiple occupation (C4) to large house in multiple occupation (sui generis) incorporating a single-storey rear extension, creation of parking area to the front and associated works at 95 Heath Hill Avenue, Brighton BN2 4FH in accordance with the terms of the application, Ref BH2020/03070, dated 27 October 2020, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The decision notice does not reference the correct plan revision numbers. The Council made its decision against Drawings 02.D and 03.B and I have determined the appeal on the same basis.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring residents with particular regard to noise disturbance and refuse and recycling storage.

Reasons

4. No 95 Heath Hill Avenue is a modest semi-detached chalet bungalow within a street of similar dwellings. The property is in lawful use as a six-bedroom house in multiple occupation (HMO). The en-suite bedrooms are spread out across two floors, with a large ground floor living room at the front and kitchen/dining room at the rear. The proposal is to subdivide the living room into a pair of bedrooms and to construct a single-storey extension at the back of the property to provide replacement communal accommodation.

5. An earlier application for change of use of the property to a nine-bedroom HMO was dismissed on appeal¹, in part because the additional noise and activity would have a harmful impact on the living conditions of neighbouring occupiers. The current proposal reduces the total number of bedrooms to eight. As noted by the last Inspector, the number of occupants is already towards the upper end of what would normally be expected to be accommodated in most of the neighbouring bungalows. The provision of two further bedrooms would intensify the use, and the question for me to consider is whether this would be detrimental to adjoining occupiers.
6. The appeal property is an existing HMO and any differing patterns of activity associated with this use, as compared to a family home, will be an established part of the neighbourhood. The proposed bedrooms would generate further comings and goings, but fewer than in the case of the previous appeal. The main entrance to the property is set apart from No 93 and whilst the additional pedestrian movements may be perceptible to the neighbours, I do not consider that they would give rise to material noise disturbance.
7. The scheme makes provision for a pair of parking spaces on what is presently front lawn. This would encourage activity on the driveway shared with No 97. However, in all probability vehicle movements would be infrequent and little different from when the property was in use as a dwellinghouse. Consequently, I am satisfied that they would not be disruptive for the neighbours.
8. Neither the proposed bedrooms nor the communal accommodation within the new extension would have a party wall with a neighbour and therefore internal noise transmission between buildings is less likely to be an issue. The existing kitchen would continue to function as communal accommodation, but the party wall with No 93 has been sound insulated and I have not been made aware of any previous complaints regarding noise.
9. Indeed, all the evidence points to this being a responsibly managed HMO. The accommodation is of high quality and the building appears well-maintained. The communal spaces are spacious and each of the bedrooms is of a satisfactory size with good outlook and natural light. The proposed bedrooms would not be en-suite but they would meet the Nationally Described Space Standard. The new extension would provide generous amounts of space for dining and relaxation. Externally, there would be a good sized garden, provision for cycle storage and, notwithstanding the Council's concerns, plenty of opportunity to store refuse and recycling bins to the side of the property without detriment to the neighbours.
10. I acknowledge the concerns regarding over-concentration of HMOs within certain parts of the City. Policy CP21 of the Brighton and Hove City Plan Part One (2016) (CP1) seeks to address cumulative impacts by ensuring that permission is not granted 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 sui generis use. Paragraph 4.237 of the policy supporting text makes clear that the 10 per cent figure relates to neighbouring dwellings and not the application property itself. This is the methodology used by the Council and in my opinion it is the correct one. In the case of the appeal property, there is only one lawful HMO property within the 50 metre policy radius (38 Heath Hill Avenue). This equates to an HMO density of 5.9 per cent, which is below the

¹ APP/Q1445/W/20/3249592

policy threshold, leading me to the view that the balance of the community would be maintained. There would be no net loss of family accommodation.

11. Compliance with CP1 Policy CP21 does not form part of the authority's case. However, I note that local councillors have drawn attention to other properties which they believe to be in HMO use. The officer report provides an explanation as to why these should not be included in the calculation, and based on the information available I have no reason to disagree with these findings.
12. To conclude, I am content that the proposal would not have an unacceptable impact on the living conditions of neighbouring residents. There would be no conflict with Policy QD27 of the Brighton and Hove Local Plan 2005 (LP) insofar as this seeks to ensure that any change of use does not cause material nuisance and loss of amenity to adjacent residents. There would also be no conflict with the requirement of LP Policy SU10 that proposals should minimise the impact of noise on the occupiers of neighbouring properties.

Other Matters

13. The Council raises no objection to the proposed extension. This would not be seen in public views and it would not harm the character and appearance of the host building. The extension would be set well away from the boundary with No 97, buffered by a garage, and it would be of similar depth to an existing rear extension on No 93. As such, it would not harm the outlook of adjoining occupiers.
14. The proposal would require the creation of a window opening in the side of the property facing onto No 97. However, there are already bedroom windows in this elevation and as such there would be no reduction in the privacy of the neighbours.
15. A local councillor cites major problems in the area with late night noise, litter and rubbish dumped in front gardens and gardens neglected by landlords, together with significant parking problems as the off-street parking is at saturation point for this area. However, No 95 is well maintained and I have seen no substantive evidence to demonstrate that its occupation as an HMO is a significant contributor to these problems. The proposal does not breach Policy CP21 and this indicates that there is no over-concentration of HMOs in the vicinity of the site.

Conditions

16. In addition to the standard commencement condition I have attached a condition specifying the approved plans, to provide certainty. To ensure a suitable standard of accommodation for occupiers of the HMO, the condition requires the new living room and kitchen/dining area to be provided prior to first occupation of the additional bedrooms and thereafter retained as communal space. To protect the amenities of neighbours, a further condition is needed to restrict the number of occupants to eight. Conditions are also necessary to secure the additional soundproofing shown on the plans, and the provision for cycle parking and refuse and recycling storage.

Conclusion

17. For the reasons given above and having regard to all other matters raised, including vacancy rates within other student properties and the impact on local property values, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos. 02.D and 03.B.
- 3) The development hereby approved shall be implemented in accordance with the layout detailed on approved Drawing 02.D. The rooms annotated as living room and kitchen/dining shall be provided prior to first occupation of the additional bedrooms. They shall be retained as communal space thereafter and shall not be used as bedrooms at any time. The bedrooms shown shall be retained in the form shown on the plans and not subdivided.
- 4) The sui generis HMO hereby approved shall only be occupied by a maximum of eight (8) persons.
- 5) All the interior and exterior sound proofing measures shown on Drawing 02.D (including the acoustic fencing) shall be installed prior to the occupation of the property as a sui generis HMO. They shall be retained thereafter for the lifetime of the development.
- 6) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 7) The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.

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