



Appeal Decision

Site Visit made on 28 July 2021

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/Q1445/W/21/3267514

84 Chailey Road, Brighton BN1 9JF

- 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 Rivers Birtwell against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/03322, dated 13 November 2020, was refused by notice dated 11 January 2021.
 - 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 allowed and planning permission is granted for change of use of a small house in multiple occupation (C4) to a large house in multiple occupation (sui generis) at 84 Chailey Road, Brighton BN1 9JF in accordance with the terms of the application, Ref BH2020/03322, dated 13 November 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawing listed: SUI.01.
 - 3) The kitchen/diner and lounge as detailed on plan SUI.01 shall be retained as communal space at all times and shall not be used as bedrooms.
 - 4) The development hereby approved shall only be occupied by a maximum of eight (8) persons.
 - 5) Prior to the commencement of development, the cycle parking facilities shown on plan SUI.01 shall be 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.

Main Issues

2. The main issues are the effect of the proposed development on the living conditions of nearby occupiers with particular regard to noise and disturbance and whether the proposed development would support mixed and balanced communities.

Reasons

Living Conditions

3. There would be an additional two independent adults living at 84 Chailey Road. The appeal property adjoins 82 Chailey Road on one side and is detached on the other. The communal living, kitchen and dining areas at no 84 are located away from the shared party wall, therefore any increased noise in these areas would not be directly adjacent to the adjoining neighbours.
4. On the side shared with no 82 the main change is that one first floor bedroom would be subdivided to create two. I understand that soundproofing has been provided to this wall and I do not have any evidence that a bedroom in this location causes undue disturbance to the adjoining neighbour.
5. Two additional adults entering and leaving the property and using the communal garden may result in more noise and disturbance externally. However, I am not persuaded that the amount of increase associated with two people coming and going would be at a level that would be unacceptably harmful to neighbouring occupiers over and above the existing situation.
6. Consequently, the layout, minimal changes to the accommodation on the shared boundary and likely limited increase in any external noise lead me to conclude that the proposed development would not result in a harmful increase in noise and disturbance to neighbouring occupiers.
7. As such the proposed development would have an acceptable effect on the living conditions of neighbouring occupiers. Consequently, it would be in accordance with Policies SU10 and QD27 of the Local Plan which together require development to protect amenity, including minimising the impact of noise on neighbouring properties.

Mixed and balanced communities

8. Policy CP21 of the Brighton and Hove Local Plan states that applications for a change of use to a sui generis HMO will not be permitted where more than 10 per cent of dwellings within a radius of 50m of the application site are already in HMO use. The reason for this policy is to create mixed and balanced communities and accommodate a range of housing needs.
9. The main parties agree that more than 10 per cent of dwellings (11.4%) within a radius of 50metres of the application site are already in HMO use. Therefore, it appears to me that the proposed development would be contrary to the development plan in this respect.
10. However, in this case, the existing property is already in HMO use. Therefore the proposed development would not lead to the loss of family housing or significantly change the mix of dwelling types. I have also taken into account the impact of two additional HMO residents on the balance of occupants in this area. Taking into account the small scale of the increase and the mix of property types in this area I am not provided with specific evidence that leads me to find that the change to the balance of the community would be noticeable.

11. I have no reason to believe that similar intensifications are likely at other nearby properties. In any event such applications would be judged on their merits based on the particular circumstances of that case.
12. I am presented with appeal decisions which both allow¹ and dismiss² appeals for a change of use from a small to a large HMO and I have taken these into account in reaching this decision. I advocate the position of other Inspectors that such decisions must be made on a case by case basis. As set out above, I have done that here, based on the specific circumstances of this case and the evidence before me.
13. As such the proposed development would not result in harm to the mix or balance of the community in this area. Consequently, although the development would be contrary to Policy CP21 of the Local Plan, as set out above, in this case these material circumstances indicate that there would be no harm in relation to this main issue.

Conditions

14. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the National Planning Policy Framework (July 2021) and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, including ensuring that the conditions would not unnecessarily delay the delivery of development.
15. I am attaching the standard implementation condition, and in the interests of certainty a condition to define the plans with which the scheme should accord. Conditions requiring the permanent retention of the communal space and limiting the number of occupiers are also required in order to ensure adequate living conditions for nearby and future occupiers. Cycle parking is required to be provided in order to encourage alternative means of travel which have a less harmful environmental impact than the car. This is a pre commencement condition as the cycle parking would be required from the point of occupation which, as this application is for a change of use, is the same as commencement.

Conclusion

16. The proposal would not wholly accord with the development plan. However, in this case the other considerations set out above indicate that, subject to the conditions listed, this appeal should be allowed.

H Miles

INSPECTOR

¹ APP/Q1445/W/20/3256052, APP/Q1445/W/18/3219547

² APP/Q1445/W/20/3249592, APP/Q1445/W/20/3256156, APP/Q1445/W/20/3260338