



Appeal Decision

Site visit made on 12 October 2021

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 November 2021

Appeal Ref: APP/Q1445/W/21/3272551

14 Ringmer Road, Brighton BN1 9JA

- 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 and Hove City Council.
 - The application Ref BH2020/02302, dated 18 August 2020, was refused by notice dated 23 February 2021.
 - The development is the 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) in accordance with the terms of the application Ref BH2020/02302, dated 18 August 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
 - 2) The unit hereby approved shall only be occupied by a maximum of eight (8) persons.
 - 3) The ground floor rooms annotated as kitchen/dining, and living room as set out on drawing SUI.01 received on 19th August 2020, shall be retained as communal space and shall not be used as a bedroom at any time.
 - 4) The development hereby permitted shall not be occupied until the cycle parking facilities shown on drawing SUI.01, received on 19th August 2020, 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.

Main Issues

2. The main issues are the effect of the development upon:
 - The balance of uses in the locality, in terms of healthy, inclusive and mixed communities;
 - The living conditions of current and future occupiers with regards to provision of communal space.

Reasons

Healthy, inclusive and mixed communities

3. The appeal property is a two storey terraced building which appears to date from the mid twentieth century. Whilst Ringmer Road appears to have originally been part of a speculative designed housing estate with groups of terraced dwellings, over time this area has become a place which has also become home to students in the form of groups of students living together in what is called a House of Multiple Occupation (HMO). Currently the appeal site consists of a small HMO in Use Class C4 which is home to 6 people living together as a single household with their own room and having a communal kitchen/ diner, lounge and bathroom facilities. The increase in size of the HMO to house 8 persons would change the land use of the building to one that does not have a use class, which is called a 'Sui Generis' use.
4. Policy CP21 of the Brighton and Hove City Plan Part One (CPP1), section ii is specifically targeted at HMO's with the aim of the policy seeking to ensure balanced and mixed communities and to 'ensure that a range of housing needs continue to be accommodated throughout the city.' The Policy seeks to achieve this by limiting changes of use to Sui Generis HMO use 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.
5. The applicant raises concerns with regards to the interpretation of this policy and presents two recent appeal decisions¹ where Inspectors have applied the Policy and determined that the change of use from C4 HMO to a Sui-Generis HMO did not conflict with CPP1 Policy CP21. The Council also provides two recent appeal decisions, where the change of use from a C4 HMO to a Sui Generis HMO was determined by an Inspector to conflict with CPP1 Policy CP21.² Whilst I have read each of the appeal decisions which have been put forward to me, it does illustrate that each case is dependant upon the merits of each individual case and needs to be decided upon a case-by-case basis.
6. In applying CPP1 Policy CP21 to the appeal site, according to the Councils Planning Officer Report, within a 50 metre radius there are 33 properties not in Class C3 Residential Use, reflecting a ratio of 12.1 per cent. It is clear to me that the policy has been written to encourage balanced and mixed communities and that the aim of the policy is to limit the loss of single family dwellings to student housing and HMOs.³ In this particular case, whilst the area 50 metres surrounding the appeal site has a higher concentration of HMOs than as suggested by the policy, the use of the building is already in HMO use and would not result in the loss of a single family dwelling. Hence the proposal in this particular instance would not conflict with the main aims that the policy is attempting to prevent.
7. Whilst it is noted that the Council in their Reason for Refusal cite the intensification of the occupation of the property, the Policy CP21 provides no such requirement to assess the intensification of the use or its effect. Even so, as evidenced by my site visit, in this particular circumstance, the building is

¹ Appeal Decisions APP/Q1445/W/18/3219547, Dated 30 March 2021; APP/Q1445/W/20/3256052, Dated 12 March 2021

² Appeal Decisions APP/Q1445/W/20/3256156, Dated 10 February 2021; APP/Q1445/W/20/3260338, Dated 10 February 2021

³ Paragraph 4.233 of the CPP1 specifically refers to conversion of family homes to HMOs and student housing.

already functioning as a HMO and I agree that it is running very well with no evidence that official complaints have been made against the property in terms of noise and disturbance. The addition of two persons would continue to ensure a range of housing needs can be accommodated throughout the city which is a material consideration to this proposal.

8. Taken as a whole, and in conclusion of this matter, I do not find that the increase of two persons within the appeal building would on its own or cumulatively conflict with the aims of CPP1 Policy CP21 which seeks that development support the Council in creating inclusive, mixed and balanced communities. Whilst the proposal would be above the 10% ratio as suggested by the Policy, when assessing the policy and development plan as a whole against this specific case, the proposed development does not result in the loss of a family dwelling and that the aims of this policy would not be eroded.

Living Conditions with regards to the provision of communal space

9. The main concern raised from the Council is with regards to the communal kitchen/diner (15.6Sqm) and living room (15.2Sqm) to cater for 8 persons. The area of the spaces equates to 30.8 Sqm which is below a 4Sqm per person average which the Council has applied to the assessment and sees necessary given that many of the individual rooms just meet the standard room size. Whilst Saved Policy QD27 of the Brighton and Hove Local Plan (LP) is utilised to refuse the application on this basis, the policy contains no such requirement of floor space per person to be met for communal circulation space of HMOs or whether there are further tests to place on a determination where room sizes only meet a minimum standard.
10. The Council in their final comments state that there is no existing policy framework to support this figure of 4Sqm per person, and that Policy DM7 of the emerging Proposed Submission of the City Plan Part 2 (CPP2) provides this requirement in which was not cited in the Reasons for Refusal. In my application of paragraph 48 of the National Planning Policy Framework (the Framework), whilst the CPP2 is not part of the adopted development plan, it is at an advanced stage within the examination and has been subject to comments from the examining Inspector. The Council has not provided me with a copy of this policy, or the evidence base which supports this particular figure of 4Sqm, and I am also not aware of whether there have been any objections made to this proposed policy. Despite this, I am also mindful that the examining Inspector may wish to re-open the examination to hear further evidence and as such could result in further changes and additions to emerging policies and accompanying text. Based upon this, I will afford the CPP2 limited weight in this appeal decision.
11. The applicant in their Statement of Case put forward details from the Council's Licensing Standards for HMOs where kitchens with dining facilities for 8 persons should be 14.5 Sqm, with no requirements as to the communal living space. Whilst I agree with the Council that the Licensing team's standards are of a different legislative and policy framework than planning, I do accept them as a material consideration that assists in detailing parameters to acceptable size standards for HMO provision. Whilst I agree that from my site visit that the communal space does appear minimal for 8 residents, the Council does not provide any supporting planning policy or guidance as to what they deem to be

acceptable in terms of configuration or layout. I am therefore not persuaded that this matter regarding living conditions to be unacceptable.

12. In conclusion of this matter and on the basis of the evidence before me, I am not persuaded that material detriment to the living conditions has been reached and that the communal spaces are not able to sufficiently accommodate the proposed number of residents. Consequently, the scheme is not contrary to Saved Policy QD27 of the Brighton & Hove Local Plan 2005 (Amended 2016) which seeks to prevent the loss of amenity to the proposed, existing and / or adjacent users, residents, occupiers where it is liable to be detrimental to human health.

Conditions and Conclusions

13. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions as detailed at the beginning of this letter.
14. I refer to the suggested conditions specified by the Council in their Statement of Case, if the appeal was to be allowed and have considered them in accordance with the Planning Practice Guidance (PPG).
15. Suggested condition 1 sets the standard time limit which is necessary for the avoidance of doubt and in the interests of proper planning. Conditions 2 and 3 limits the occupation of the building to 8 residents and that communal spaces are not converted to bedrooms, and are necessary in order to control future occupation and in the interests of supporting mixed and balanced communities. Condition 4 ensures that there is adequate cycle provision for the occupants and is necessary to support travel by other means than private motor vehicles.

J Somers

INSPECTOR