



Appeal Decision

Site Visit made on 20 October 2021

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2021

Appeal Ref: APP/Q1445/W/21/3269349

9 Hornby Road, Brighton BN2 4JL

- 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 Terry Mole (Tangerine Property (Sussex) Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02841, dated 17 September 2020, was refused by notice dated 26 January 2021.
 - The development proposed is change of use from a small house in multiple occupation (C4) to a large house in multiple occupation (Sui Generis) incorporating a single storey rear extension.
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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, at 9 Hornby Road, Brighton BN2 4JL in accordance with the terms of the application, Ref BH2020/02841, dated 17 September 2020, and the plans submitted with it, subject to the attached Schedule of conditions.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties were given the opportunity to comment on this matter, and I have had regard to the updated Framework in determining this appeal.

Main Issues

3. The main issues are:
 - The effect of the development on the mix and balance of households in the local community; and
 - Whether the proposal would provide satisfactory living conditions for the intended occupiers of the development, with particular regard to communal internal space.

Reasons

Mix and balance of households

4. Located within an established residential area, the appeal site comprises a semi-detached property, which has previously been extended to the side and currently provides accommodation for six unrelated individuals. The Council has previously confirmed that the use of the appeal premises as a C4 House in Multiple Occupation (HMO) is lawful¹.
5. Policy CP21ii) of the Brighton & Hove City Plan Part One² (the City Plan) seeks to support mixed and balanced communities and ensure that a range of housing needs continue to be accommodated in the area. The aim of the policy is to manage the supply of HMOs and avoid high concentrations of such uses in a particular area. Although, as noted above, the appeal property is already occupied as a C4 HMO, Policy CP21ii) makes no reference of the existing use, and is therefore considered applicable to all properties, regardless of their current use. Consequently, I see no reasons why the policy would not apply to changes of use from C4 to Sui Generis HMOs.
6. The Council's submissions indicate that 13% of the properties situated within a 50-metre radius of the appeal site are currently in HMO use, although this is disputed by the appellant. It is indeed unclear whether the properties which have been identified as HMOs using the licensing database are lawful in planning terms, particularly in the light of the Article 4 Direction, which prevents the change of use from C3 dwellinghouses to C4 HMOs using permitted development rights. However, no detailed evidence has been presented by the appellant to contradict the Council's assessment, other than an application form dating from February 2020 which suggests that no 6 Hornby Road is in use as a C3 dwellinghouse. Accordingly, and in the absence of substantive evidence to the contrary, it is accepted that the proportion of HMOs in the area exceeds 10%. The proposed development would therefore conflict with Policy CP21ii) of the City Plan.
7. As the appeal premises are already in use as a C4 HMO, the proposed development would not affect the overall percentage of properties in HMO use in the area. Nor would it lead to the loss of a family home. The proposal would intensify the HMO use on the site, particularly as there would be additional comings and goings by reason of the increased number of residents. However, these would remain relatively modest in the context of this area, and I have no reason to believe that the proposed development would adversely affect the surrounding area by giving rise to harmful levels of noise and disturbance.
8. The main parties have drawn my attention to a number of appeal decisions involving changes of use from C4 to Sui Generis HMOs. Setting the assessment required by Policy CP21ii) aside, the circumstances of each case are inevitably different, having regard to the available evidence and a number of considerations such as the size of the property and the context of its surroundings. Limited information has been presented in respect of these other appeal decisions, and I cannot therefore be certain that direct parallels can be drawn with the proposal before me, which I have assessed on its individual merits.
9. Despite the conflict with Policy CP21ii) of the City Plan, there are in this particular instance material considerations which have to be taken into account. Given the above, it is my view that the appeal development would not

¹ Local Planning Authority Reference BH2019/01260.

² March 2016.

adversely erode the mix and balance of households in the local community or cause harm to residential amenity, with regard to noise and disturbance. Accordingly, the proposal would accord with Policy QD27 of the Brighton & Hove Local Plan 2005³ (LP), which states that planning permission will not be granted for development or change of use causing material nuisance and loss of amenity to existing and/or adjacent residents.

Living conditions

10. The proposal includes the construction of a single storey extension and internal alterations to provide accommodation for two additional persons. Whilst the eight bedrooms would comply with the Government's Nationally Described Space Standards, most of them would be relatively restricted in size. The occupiers of the development would therefore be more likely to spend prolonged periods of time in the communal space, and it is therefore essential that the size of the living and dining areas reflects the number of residents.
11. As shown on the proposed floor plan, the extension would enable the size of the living/dining area to be increased to accommodate the proposed number of residents. Whilst the Council questions the functionality of the space, the layout shown on the proposed plans is only indicative, and could to some extent be altered to meet the needs of the residents. Despite the L-shape of the room, it would be large enough for the provision of a table and chairs for eight residents, and a separate seating area. Having regard to the available evidence, I am satisfied that the space could function appropriately without feeling unduly constrained.
12. Given the above, the proposal would provide acceptable living conditions for the intended occupiers of the development, with particular regard to communal space. Accordingly, it would accord with LP Policy QD27, which notably seeks to ensure that proposals do not cause material nuisance and loss of amenity to occupiers of the development.

Other Matters

13. A number of other concerns have been raised by interested parties, notably regarding the effect of the proposal on traffic and parking, which I have noted. However, the Local Highway Authority raised no objection to the appeal scheme, and there are no reasons for me to take a different view in this particular instance.

Conditions

14. I have had regard to the conditions suggested by the Council, making minor amendments where necessary, to ensure compliance with the relevant tests set out in the Framework and the national Planning Practice Guidance⁴. In addition to the standard time limit, I shall impose a condition specifying the relevant drawings which the development must accord with, in the interests of certainty and to provide clarity.
15. A condition restricting the number of residents is deemed necessary to control future occupation of the development, and in order to support mixed and balanced communities. A condition requiring the implementation of the cycle

³ Retained Policies March 2016.

⁴ Paragraph: 003 Reference ID: 21a-003-20190723.

parking facilities prior to occupation of the development is being imposed to provide sustainable modes of transport. However, as the approved plans include references to the external finishes for the extension, a separate condition requiring the use of matching materials is not considered necessary.

Conclusion

16. Although the proposal would conflict with Policy CP21ii) of the City Plan, this is outweighed by other material considerations as explained above. I conclude that the appeal should be allowed.

S Edwards

INSPECTOR

SCHEDULE OF 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 plans: SUI.01 Rev A.
- 3) The ground floor rooms annotated as kitchen and living/dining, as detailed on drawing no.SUI.01 Rev A (dated 10.09.2020) shall be retained as communal space at all times and shall not be used as bedrooms.
- 4) The development hereby permitted shall only be occupied by a maximum of eight (8) persons.
- 5) Prior to occupation of the development hereby permitted, the cycle parking facilities shown on drawing no. SUI.01 Rev A (dated 10.09.2020) 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.

END OF SCHEDULE