



Appeal Decision

Site visits made on 19 May & 21 July 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/Q1445/W/21/3281282

40 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 Ms Belinda Coote against the decision of Brighton and Hove City Council.
 - The application, Ref. BH2021/01014, dated 22 March 2021, was refused by notice dated 8 June 2021.
 - The development proposed is a change of use from the existing dwelling (C3) to a 4 No. bedroom small house in multiple occupation (C4).
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Application for Costs

1. An application for an award of costs against Brighton and Hove City Council was made by Ms Belinda Coote. This is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for a change of use from the existing dwelling (C3) to a 4 No. bedroom small house in multiple occupation (C4) at 40 Heath Hill Avenue, Brighton in accordance with the terms of the application, Ref. BH2021/01014, dated 22 March 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
 - 2) The development hereby approved shall be occupied at any one time by a maximum of four persons;
 - 3) The lounge area as shown on the approved floor layout plan shall be retained as a communal space and shall not at any time be used as a bedroom;
 - 4) Within three months of the date of this Decision, details of secure cycle facilities for the occupants of, and visitors to the development shall be submitted in writing to the Local Planning Authority. The approved facilities shall be fully implemented prior to the commencement of the building's use as an HMO.

Main Issues

3. The main issues are (i) the effect of the proposed change of use on the mix and balance of the local community, and (ii) the adequacy of the living conditions for the occupiers of the HMO as regards the suitability of the
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communal space for residents and for the occupant of bedroom 2 in terms of privacy and noise.

4. On the first issue the Council objects to the proposal because it would result in the HMO density within a 50m radius of the application site rising above 10%. It is considered that this would result in the adverse effects outlined above in issue (i), contrary to Policy CP21 of the Brighton and Hove City Plan Part One 2016. The evidence for this is cited as the Council's findings of their 'mapping exercise', namely that there are twenty houses and two HMOs within the 50m radius or *'10% which is the maximum threshold set by Policy CP1'*.
5. However, Section ii) of Policy CP21 and supporting paragraph 4.237 clearly state that applications of the type refused in this case will not be permitted where *more than 10* per cent of the dwellings within a radius of 50 metres of the application site *are already* in HMO use (my emphases). This does not apply to the appeal application because on the basis of the Council's own analysis there are currently two HMOs which amount to 10% of the total dwellings. Accordingly, the appeal scheme is not in an area where the 10 per cent threshold has already been crossed, this being the part of the policy which would preclude any further permissions.
6. Where an adopted policy has a quantitative element I consider that it must be interpreted with the precision intended in its application to development proposals. It is not enough for the Council to rest on a subjective planning judgement to the effect that because a proposal appears to run counter to the aspirations of the policy the development should be refused, despite its clear compliance with the figures within it.
7. Turning to the second main issue, the Council firstly considers that as an addition to the house with extensive glazing the communal space would become either too hot or too cold, depending on the time of year and weather, to provide comfortable accommodation for residents. However, the roof is of a solid construction with a heat reflective coating, insulation and a couple of roof lights, rather than being fully glazed as would be the case with an orangery or conservatory. I understand that the latter was originally in place before this part of the building was replaced or adapted.
8. At the time of my visit (1300 hours on a warm and bright sunny day) I did not notice the temperature within the room as being different from the rest of the building. Furthermore, in hot weather the glazed doors can be opened to permit more ventilation, whilst on colder days I see no reason why with its solid roof the room would not retain the warmth, particularly given that there is central heating and cavity wall insulation.
9. On the second point of this issue, it is considered that bedroom 2 would be inadequate as a room within the proposed HMO because of a lack of privacy and the likelihood of its occupiers being unduly affected by noise and disturbance from the adjoining communal area. I acknowledge that the window opening into the communal area rather than to the outside is a disadvantage of bedroom 2, albeit this drawback should be considered together with the merits of the building, including above-standard room sizes and good standard of fixtures, fittings and decoration.

10. Moreover, this separation from the communal area was originally an outside wall and with this form of construction I do not consider that noise and disturbance would be any greater than between the other internal walls of the building. As regards, privacy and light, vertical or horizontal window blinds when set at the half open position would facilitate a reasonable level of amenity in these respects for the bedroom. I therefore see no conflict with saved Policy QD27 of the Brighton and Hove Local Plan: (Retained Policies March 2016).
11. Overall, I conclude that the proposal is not in conflict with the Council's policies which have similar objectives to Government policy in the National Planning Policy Framework 2021, and that the accommodation would be of a satisfactory standard for a small 4 person HMO. I have taken account of the objections of a member of the Council and of a local resident, but whilst I note their concerns this application complies with the relevant planning policy. Moreover, the conditions attached herewith and the terms of the HMO licence will assist in ensuring that the development would not cause harm.
12. Having regard to my conclusions on the main issues and all other matters raised I shall allow the appeal and grant permission subject to conditions. Conditions limiting the premises to a maximum of four occupiers and retaining the communal space are required to ensure satisfactory living conditions. A cycle storage condition will encourage the use of this mode of transport in the city.

Martin Andrews

INSPECTOR