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## Appeal Decision

Site visit made on 3 August 2022

**by Lynne Evans BA MA MRTPI MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 August 2022**

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**Appeal Ref: APP/Q1445/W/22/3291178**  
**18 Colbourne Avenue, Brighton, BN2 4GE**

- 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: BH2021/02989 dated 13 August 2021, was refused by notice dated 23 December 2021.
  - The development proposed is use of the property as a nine-bedroom house in multiple occupation (*sui generis*).
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### Decision

1. The appeal is allowed and planning permission is granted for use of the property as a nine-bedroom house in multiple occupation (*sui generis*) at 18 Colbourne Avenue, Brighton, BN2 4GE in accordance with the terms of the application, Ref: BH2021/02989 dated 13 August 2021, 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 plans: 2378.01 and 2378.02.
  - 3) The development hereby permitted shall only be occupied by a maximum of nine (9) persons.
  - 4) The communal areas as shown on Plan 2378.02 shall be retained as communal space at all times.

### Preliminary Matters

2. There is a disagreement between the Appellant and the Council over the description of development, with the Council seeking that the description should explicitly refer to a change of use from a 8 bedroom HMO (*sui generis*) to a 9 bedroom HMO (*sui generis*). Whilst I understand the Council's reasoning, there is no dispute that planning permission is required for the proposed use and the proposed use is clear from the description of development, that is for a 9 bedroom HMO (*sui generis*). I am satisfied that I can proceed on this basis.
3. I have taken into account that the Brighton & Hove City Plan Part 2 is now at a very advanced stage of preparation, although not yet adopted, and I have therefore given significant weight to its policies. Both the Council and the Appellant have referenced policies and text from this Plan.

## **Main Issues**

4. The main issues in this case are:

- a) The effect of the proposal on the balance of communities in the local area;
- b) Whether the proposal would create a satisfactory living environment for future occupiers; and
- c) The effect of the proposal on the living conditions of surrounding neighbours.

## **Reasons**

### ***Issue a) Balance of Communities***

5. The appeal property is a terraced house on the eastern side of Colbourne Avenue within a predominantly residential area, with a mix of both family housing and shared houses including HMOs. The property was granted permission under appeal Ref: APP/Q1445/VV/16/3162725 for a change of use from a four bedroom small house in multiple occupation to a six bedroom house in multiple occupation. A condition was attached to restrict the maximum occupancy to 8 individuals. A subsequent application under BH2017/026348 sought to change the two double occupancy bedrooms to four single occupancy bedrooms, maintaining a total number of 8 individuals. The current proposal seeks to use the property as a 9 person HMO (*sui generis*).
6. Policy CP21 of the Brighton & Hove City Plan Part One seeks to support mixed and balanced communities for a range of housing needs and seeks to restrict HMOs where 10 % or more of dwellings within a 50 metre radius of the sites are already in HMO use. The Council has indicated that just over 16% of the dwellings within 50m of the site are already in HMO use.
7. However, this is not a proposal for a new HMO use where one does not already exist, and the planning history indicates that the property has been in HMO use for a number of years, albeit first as a small HMO and subsequently as a larger HMO. This proposal seeks to increase the size of the existing HMO. If planning permission were to be refused for this proposal, it would not remove the HMO use of the property. Conversely, granting planning permission for the proposal would not change the proportion of dwellings in HMO use.
8. Whilst I understand and support the Council's objectives to secure mixed and balanced communities, I am not persuaded that in the particular circumstances of this case the change from an 8 person HMO to a 9 person HMO would materially affect or intensify the existing balance of communities in the local area. There would be no conflict with Policy CP21 of the Brighton & Hove City Plan Part One in this regard.

### ***Issue b) Living Conditions for Future Occupiers***

9. The proposed additional room would convert one of the downstairs rooms marked as a study on the existing plan to a single occupancy bedroom with room for a desk and storage. It would be of similar size, and in fact one of the slightly larger rooms within the house and there is no issue in terms of size.
10. There are already two other bedrooms on the ground floor that would all share a ground floor bathroom (shower and toilet). There is no information before me

to suggest that the position of this room on the ground floor would lead to unacceptable disturbance from other occupiers of the house. It is to be expected that in a shared house of this nature there will be a degree of activity from individual residents accessing the communal areas. I do not consider that this would justify withholding planning permission.

11. I have noted the comments from the Inspector of the 2017 appeal for occupancy for a maximum of 8 persons, in relation to the communal areas. There was limited discussion on this point in the decision letter and the reference related to the Inspector's reasons for the imposed conditions. I do not therefore agree with the Council's contention that the Inspector was concluding that any reduction in the level of communal space would have a negative impact of the standard of living for future occupants. Furthermore, from my site visit, I was satisfied that the communal areas of a linked dining area, kitchen and living space would serve be adequate to serve the proposed number of occupants in the house. Each room is shown with its own study space and desk and there is no evidence before me to indicate that the removal of the additional space at ground floor would lead to a harmful impact on the living conditions of the occupants.
12. The Appellant has referred to Paragraph 2.69 of the supporting text to the submission version of the Brighton & Hove City Plan Part 2 which sets out an indication of the level of communal space to be provided in HMOs. I am satisfied from the information before me that the communal space would be broadly in accordance with the Council's advice in this regard.
13. In the absence of any specific information to the contrary and on the basis of my site visit, I am therefore satisfied that the proposal would continue to provide a satisfactory living environment for the existing and future occupants of the property, including the occupant of the proposed additional room on the ground floor. There would be no conflict with Policy QD27 of the Brighton & Hove Local Plan and draft Policy DM1 of the Brighton & Hove City Plan Part 2 as well as paragraph 130 f) of the National Planning Policy Framework, all of which seek a high standard of amenity for existing and future occupants.

***Issue c) Living Conditions for Neighbouring Residents.***

14. The proposal would increase the occupancy of the property from 8 to 9 persons. On the basis that the property can already be occupied by 8 persons I have no information before me to indicate that an increase of 1 person would materially change the existing position in terms of the impact on the living conditions of neighbours. I acknowledge that there can be situations where relatively small changes can lead to a more significant effect, but there is no reason to suggest that is this position in this case.
15. I have taken into account and have sympathy with the concerns of the neighbour regarding noise and disturbance. However, the control of noise and disturbance and the management of HMOs can be addressed under other legislation.
16. I am therefore satisfied that the proposal would not materially harm the living environment for the existing and future surrounding neighbours. There would be no conflict with Policy QD27 of the Brighton & Hove Local Plan and draft Policy DM1 of the Brighton & Hove City Plan Part 2 as well as paragraph 130

f) of the National Planning Policy Framework, all of which seek a high standard of amenity for existing and future occupants.

### **Other Considerations**

17. The Council have provided me with a number of appeal decisions relating to HMO related matters, including a) a certificate of lawful use or development for a sui generis large HMO (up to 10 occupants ) which was refused in December 2020 under the reference APP/Q1445/X/20/3255152; b) a change of use from a Use Class C4 (six persons) to a sui generis large HMO (seven persons) which was dismissed in January 2021 under the reference: APP/Q1445/W/20/3256156 and c) a change of use of a small house in multiple occupation (C4) to a large house in multiple occupation (sui generis) dismissed in December 2020 under the reference APP/Q1445/W/20/3245366. Each proposal must be determined on its individual planning merits which has been the basis of my assessment. However, I have taken these other appeals into account, but they do not in my view directly compare with the proposal before me; two appear to have related to a change from Class C4 use to a sui generis use and the first one to issues relating a lawful development certificate. In respect of the appeal at 52 Barcombe Road (APP/Q1445/W/20/3245366 where the Inspector found that the location of a bedroom in relation to the communal areas would be disturbing, it is not clear to me whether this directly compares with the situation before me, where there are already two bedrooms at ground floor level. They do not therefore persuade me to a different conclusion in the particular circumstances of the proposal before me.

### **Conditions and Conclusion**

18. I agree with the Council that the maximum number of occupants should be specified to accord with the details of the application and that a condition should be imposed to require the communal areas to be retained for communal use to enable a satisfactory standard of accommodation and to enable any proposed future changes to be formally considered. I shall also list the approved plans for the avoidance of doubt and in the interests of proper planning.
19. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

*L J Evans*

INSPECTOR