



Appeal Decision

Site visit made on 22 September 2022

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2022.

Appeal Ref: APP/Q1445/W/22/3297037

141 Elm Grove, Brighton BN2 3ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Patrick Eraut, Mishbec Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2021/04478, dated 21 December 2021, was refused by notice dated 7 April 2022.
- The application sought planning permission for change of use from residential dwelling (C3) to House in Multiple Occupation (C4) and erection of rear dormer and rear extension (part retrospective) at 141 Elm Grove, Brighton BN2 3ES without complying with conditions attached to planning permission Ref BH2021/03176, dated 2 December 2021.
- The conditions in dispute are Nos 1, 2 and 3 which state that:
 1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
Location and block plan 2021-05-P-01; Proposed Drawing 2021-05-P-07 B; Proposed Drawing 2021-05-P-12; and Proposed Drawing 2021-05P-13
 2. The development hereby approved shall be implemented in accordance with the proposed layout detailed on the proposed floorplans, drawing no 2021-05-P07 REV B received on the 28/10/2021, and shall be retained as such thereafter. The layout shall be retained as communal space at all times and shall not be used as bedrooms.
 3. The HMO unit hereby approved shall only be occupied by a maximum of five (5) persons.
- The reasons given for the conditions are:
 1. For the avoidance of doubt and in the interests of proper planning.
 2. To ensure a suitable standard of accommodation for occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan.
 3. To ensure a satisfactory standard of accommodation for future occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan.

Decision

1. The appeal is allowed and the planning permission Ref BH2021/03176, for change of use from residential dwelling (C3) to House in Multiple Occupation (C4) and erection of rear dormer and rear extension (part retrospective) at 141 Elm Grove, Brighton BN2 3ES granted on 2 December 2021 by Brighton & Hove City Council, varied by amending condition Nos 1, 2 and 3 to read:
 1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
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Location and block plan 2021-05-P-01; Proposed Drawing 2021-05-P-07A; Proposed Drawing 2021-05-P-12; and Proposed Drawing 2021-05-P-13.

2. The development hereby approved shall be implemented in accordance with the proposed layout detailed on the proposed floorplans, drawing no 2021-05-P-07A, and shall be retained as such thereafter. The layout shall be retained as communal space at all times where shown and shall not be used as bedrooms.
3. The HMO unit hereby approved shall only be occupied by a maximum of six (6) persons.

All other conditions on BH2021/03176 are continued in full force and effect.

Application for Costs

2. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the proposal on living conditions for future residents.

Reasons

4. The appeal property is a mid-terraced HMO with four floors and an enclosed garden to the rear. The amendments to conditions which are sought would see a formalised increase in bedrooms / occupants from five to six and a communal living room 'removed' to facilitate this. Some works are in situ but this does not affect the way in which I assess the case before me.

Living conditions

5. The Council's concern is that the proposal via *"the introduction of a further resident and the resultant loss of shared living space would be unacceptably detrimental to the quality of life of future residents"* (Decision Notice BH2021/04478). The Council's Statement of Case (para 2.7) further explains that *"after a period of debate the Members had too many concerns regarding the reduced communal space, and lack of bathrooms and toilets for the proposed number of occupants so that on balance, they considered the scheme was not acceptable"*.
6. I therefore need to consider the matters of quantum and quality of communal living space and bathrooms / toilets to determine whether provision as proposed would be reasonable for 6 residents.
7. The appeal proposal would result in a kitchen / dining / sitting area of some 27 square metres floorspace. The 'Houses in Multiple Occupation (HMOs) Standards' (HMO standards) document states that a kitchen for 6 people with dining facilities should measure at least 13.5sqm. This would be 2.25sqm per resident. That document does not focus on lounge areas. The emerging City Plan Part 2 (CP2) carries significant weight given the stage reached towards adoption. I note that supporting text to Policy DM7 'Houses in Multiple

Occupation' indicates, albeit without complete specificity for every case, that communal living space ("lounge, kitchen and dining areas") should equate to some 4sqm per resident. The appeal proposal would achieve about 4.5sqm per resident. I am satisfied in principle as to *quantum* of communal living space embodied with the appeal proposal.

8. The multi-purpose communal room is of good usable shape and height; well-lit with both natural and electric light; ventilated; functionally and pleasantly laid out, furnished, equipped and floored; and all together an inviting space. It appeared to be equipped in accord with the HMO standards document. As a plus point, the space further gains from its direct abutment via glazed doors to a spacious and thoughtfully laid out deck and garden area offering a pleasing relatively private external amenity area. I am satisfied as to the *quality* of communal room.
9. Turning to bathrooms / toilets I observed two rooms with these facilities both of reasonable size, in accessible positions, and well equipped. I also am aware that the HMO standards document, when looking at 6-8 occupants, calls for 2 bathrooms, with 2 WCs and wash hand basins. That is achieved within the appeal property. I am content with the *quantum* and *quality* of these facilities would reasonably serve 6 residents.
10. I note that the Council's Environmental Health and Private Sector Housing Teams have no objections to the planned communal space arrangements or the ratio or specific provision of bathrooms / toilets in this case.
11. I should add that whilst there may have been hesitance by some Members of the Planning Committee over the suitability of the lower front room as a bedroom this was not included in any planning application decision paperwork. I do not need to address this matter but I would just confirm that given all the evidence included in the application, and my site visit, I would agree with Officers of the Council who concluded that the room was suitable for use as a bedroom in its own right.
12. Brighton & Hove Local Plan Saved Policy QD27 and CP2 Policy DM20 are relevant. Taken together and amongst other matters they seek to ensure that new development would protect or provide for good quality living conditions with protection of residential amenity. Given the foregoing I would conclude that the appeal scheme would not conflict with these policies. Policies in the National Planning Policy Framework have been considered in their own right and the Council policies which I cite also mirror relevant objectives within that document.
13. Finally, I would underline that I have considered and appreciate the concerns raised in representations. I am not persuaded that with the scheme before me, i.e. effectively some increase in the scale of the HMO, any points raised would tip the planning balance to a position whereby the appeal should be dismissed. I would trust that should any need arise for intervention to protect neighbourliness then the authorities would use powers open to them which lie outside the planning regime.

Overall conclusion

14. For the reasons given above I conclude that the appeal proposal would not have unacceptable adverse effects on living conditions for future residents. Accordingly, the appeal is allowed.

D Cramond

INSPECTOR