



Appeal Decision

Site visit made on 18 October 2022

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/Q1445/W/22/3291398

9 Manton Road, Brighton BN2 4FB

- 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 Henry Dorman (Rivers Birtwell) against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/04012, dated 10 November 2021, was refused by notice dated 7 January 2022.
 - The development proposed is 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 dismissed.

Preliminary Matters

2. Notwithstanding the description of proposed development above, which is taken from the application form, it is clear from the plans and accompanying details that the proposed development would also involve erection of a cycle storage shed and alterations to fenestration. The Council considered the proposal on this basis and so shall I.
3. Brighton & Hove City Council's City Plan Part Two was adopted in October 2022, while the appeal was under consideration. This now forms part of the adopted development plan, alongside the City Plan Part One, adopted in March 2016.
4. City Plan Part Two replaces saved policies of the Brighton & Hove Local Plan adopted 2006, which were referred to in the reasons for refusal. Both main parties have had the opportunity to comment on the implications of the recently adopted policies and I have considered the appeal based on the adopted development plan.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the living conditions of occupiers of neighbouring properties, in particular 10 Manton Road, with regard to noise and disturbance, and
 - its effect on the mix and balance of the local community.

Reasons

Living conditions

6. The appeal site is a two storey semi-detached house in a cul de sac of similar properties. It currently provides a C4 House in Multiple Occupation (HMO) for up to 6 persons, with two bedrooms on each of three floors, including a recently-added loft conversion. Communal areas are on the ground floor and include a rear single storey projection providing an open plan kitchen and living space. The rear garden slopes steeply upwards and includes patio areas at both lower and higher levels.
7. The appeal site adjoins the gardens of further semi-detached dwellings to the north. These are set at a lower ground level and are screened by vegetation. To the south, the adjoining semi-detached dwelling at no. 10 Manton Road is set at a higher ground level, with close boarded fencing along the shared boundary to the rear.
8. The open plan ground floor layout within the appeal site, coupled with easy access into the rear garden, is likely to encourage social activity in these areas. Social use of the garden is particularly likely to generate intrusive noise and disturbance. Such activity would be focussed in a relatively small area, in close proximity to the neighbouring house and garden. Although the boundary fencing provides screening immediately to the rear of the dwellings, it is likely to be less effective in preventing noise transmission between the elevated garden in the appeal site and the first floor windows or rear garden to no. 10.
9. The cul de sac is narrow and the properties around the turning head are tightly grouped together. As such, comings and goings would be concentrated within a small area and prone to causing disturbance. The location of the appeal site at the opening of the cul de sac would not adequately mitigate this issue, given the tight knit relationship between the properties. The gable on the front of no. 10 does not extend out far enough to mitigate disturbance from outdoor activity to any meaningful degree.
10. I note that sound proofing has been installed at the appeal site, which would mitigate noise transfer through the party wall. The proposed replacement of patio doors with a single back door may also help to reduce noise transmission from internal activity to some further extent. However, these measures would not address noise or disturbance from increased outdoor activity.
11. While two additional occupiers may appear numerically insignificant, it is proportionately an increase of one third, which is enough to be noticeable. Although some family dwellings may have a similar level of occupation, the properties in Manton Road are not particularly large and it is unlikely that 8 people would be the norm in typical family occupation. The pattern of activity associated with 8 independent adults also differs from that of a single family household, since each person is likely to have their own timetable for working, studying and socialising. Therefore, the cumulative level of comings and goings, as well as social events, is likely to be more frequent, potentially including at unsocial hours.
12. The proportionate increase in occupation would increase the likelihood of noise and disturbance to a material degree. As set out in more detail below, there is an existing high concentration of HMOs in the immediate vicinity of the site.

The evidence indicates that this level of concentration is already causing disturbance to local residents, with representations from interested parties including evidence about takeaway deliveries at unsocial hours. As such, even a modest increase in occupation would add to an existing pattern of disturbance, within an area which is already under stress.

13. For the above reasons, I conclude that the proposed development would be harmful to the living conditions of the occupiers of neighbouring properties, particularly 10 Manton Road, as a result of increased noise and disturbance.
14. As such, the proposed development conflicts with Policy DM20 of the City Plan Part Two. This policy, amongst other things, protects adjacent or nearby residents from changes of use which would cause an unacceptable loss of amenity.

Mix and Balance of Local Community

15. Policy CP21 of the Brighton & Hove City Plan Part One, adopted March 2016 (City Plan Part One) states that applications for change of use to a sui generis HMO will not be permitted where more than 10 per cent of dwellings within a radius of 50m of the application site are already in HMO use. The policy explains that this is to support mixed and balanced communities and continue to accommodate a range of housing needs.
16. Policy CP21 explicitly refers to changes of use to sui generis HMO use, without making any exception for properties in existing use as a C4 small HMO. Although paragraph 4.237 of the supporting text refers to 'new' HMOs, this explanatory text is not part of the policy and the policy wording makes no such distinction. While there is a range of interpretation in the previous appeal decisions which have been brought to my attention, several concluded that Policy CP21 applies to changes of use between classes of HMO. Having considered the specific wording of the policy, which does not refer to the existing, but only to the proposed use, I have concluded that Policy CP21 does apply in principle to the proposed development. I further concur with the view consistently expressed in previous appeal decisions that each such proposal should be considered on a case by case basis.
17. The Council state in their Officer Report that 42.1% of the properties within a 50m radius of the appeal site are lawfully in HMO use and this figure has not been disputed by the appellant. Based on this evidence, the concentration of HMO properties at local level significantly exceeds the 10% threshold in Policy CP21. It also materially exceeds the percentages mentioned in several of the appeal decisions referred to.
18. In the context of an area which is physically constrained, as outlined above, and also has a high local concentration of HMOs, the more intensive proposed use is particularly relevant. While the proposed development would not reduce the availability of family housing, it would further imbalance the community living in the most immediately surrounding area. While evidence of specific adverse impacts from HMO use is limited, I note that interested parties have referred to existing tensions associated with a high local HMO population. Further cumulative increases in the HMO population risk increasing such tension, which would further undermine community cohesion.

19. The small benefit to the availability of student accommodation would not to my mind outweigh these adverse consequences for the wider community. The proposed development would not significantly increase the safeguarding of family homes in the immediate area, since these are already protected by Policy CP21. For reasons noted above, even if the total occupancy of the nearby HMOs was similar to that of equivalent family homes, the associated pattern of activity and the occupiers' contribution to the local community would be different.
20. In the recently adopted City Plan Part Two, Policy DM7 introduces further criteria for the consideration of changes of use to sui generis HMO use. However, Policy DM7 and its supporting text make clear that Policy CP21 remains in place and both policies are to be applied. Although the Council has confirmed that the concentration of HMOs at wider neighbourhood level is below the threshold in Policy DM7 part 2(a), that is a separate consideration, which does not overcome the harm associated with the much higher concentration at local level, as set out above.
21. For the above reasons, I conclude that the proposed development would conflict with Policy CP21 of the City Plan Part One, which amongst other things states that changes of use to a sui generis HMO will not be permitted where more than 10% of dwellings within a 50m radius are already in HMO use. I further conclude that there are no material considerations which outweigh such conflict, having had regard to the specific circumstances of the case.
22. The proposed development would also conflict with Policy DM20 of City Plan Part Two, which amongst other things seeks to avoid changes of use which would cause an unacceptable loss of amenity to nearby residents.

Other Matters

23. Whilst I have read each of the appeal decisions which has been brought to my attention, these decisions clearly establish that each such proposed development should be determined on a case by case basis. None of the highlighted cases are precisely comparable with the appeal site, its physical surroundings or the current mix and balance within the surrounding community. Therefore, while I have noted the reasoning set out in previous appeals, none of these decisions would lead me to reach a different conclusion or outweigh the harm that would result from the proposal, as set out in the foregoing main issues.

Conclusion

24. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR