



Appeal Decision

Site visit made on 8 August 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2023

Appeal Ref: APP/Q1445/W/22/3313501

118A St James's Street, Brighton and Hove, Brighton, BN2 1TH

- 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 Khasru & Sabbir Miah & Ahmed against the decision of Brighton and Hove City Council.
 - The application Ref BH2022/01324 dated 19 April 2022, was refused by notice dated 9 December 2022.
 - The development proposed is change of use from dwellinghouse (C3) into a 3-bedroom house of multiple occupancy (C4) incorporating replacement of glazed roof to conservatory with timber roof and clay interlocking tiles, installation of metal railings to first floor roof terrace with revised fenestration and associated works. (Part retrospective).
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from dwellinghouse (C3) into a 3-bedroom house of multiple occupancy (C4) incorporating replacement of glazed roof to conservatory with timber roof and clay interlocking tiles, installation of metal railings to first floor roof terrace with revised fenestration and associated works. (Part retrospective) at 118A St James's Street, Brighton and Hove, Brighton, BN2 1TH in accordance with the terms of the application ref BH2022/01324 dated 18 April 2022 subject to the following conditions:
 - 1) The development shall not be carried out or maintained except in complete accordance with the details shown on submitted plans: Location and Block Plan 8 25 April 2022, Report/Statement Planning, Design and Heritage Statement 25 April 2022, Proposed Drawing 3 A 6 July 2022, Proposed Drawing 4 A 6 July 2022, Proposed Drawing 6 A 6 July 2022 and Proposed Drawing 7 A 6 July 2022.
 - 2) The development hereby approved shall only be occupied by a maximum of five (5) persons;
 - 3) The rooms described as 'kitchen' and 'communal area' as detailed on the first-floor level and 'communal' on the top floor level of the approved plans shall be retained as communal amenity space at all times and shall not be used as one or more bedrooms;
 - 4) The internal and external finishes of the works hereby permitted and of all works of making good shall match in material, colour, style and texture those of the existing features of the building unless otherwise specified in the approved drawings;

- 5) Unless the new tiled roof for the conservatory is implemented in accordance with the approved plans, the external staircase is painted black, the new timber windows and doors are installed in accordance with the approved plans and the new railings to the first-floor roof terrace are installed in accordance with the approved drawings and retained within 6 months of the date of this decision the use of the site as a three-bedroom HMO shall cease until such works are completed.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Within one month of the date of this decision details of a 1.5 metre high screen on the western elevation of the terrace shall be submitted in writing to the local authority for approval and be retained in place thereafter. Unless the approved screening is implemented within 6 months of the date of the date of this decision, or prior to the revised roof terrace coming into use if sooner, the use of the site as a three-bedroom HMO shall cease until such works are completed.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matters

2. I have utilised the Council's description of the development as per the decision notice as I feel it more concisely describes the development.
3. This appeal is accompanied by an application for costs. This is the subject of a separate decision.

Main Issue

4. The main issue is the impact of the proposal upon the amenity of the local area and community cohesion as a result of a frontage of three Houses in Multiple Occupation.

Reasons

5. The appeal site is a 3-bedroom property which is Grade II Listed and stands within the Eastcliffe Conservation Area. There is an Article 4 direction in place restricting the conversion of single dwelling houses into a House in Multiple Occupation (HMO) without express planning permission being granted. I note, from the evidence before me, that application BH2022/01325 granted Listed Building Consent for the physical works to the appeal site as part of the overall proposals before me. The Council's refusal reason raised one main issue, and based upon the evidence before me, I have no reason to conclude differently on other matters. In that regard, I would confirm that this appeal seeks only to focus upon the Council's refusal reason as stated within the decision notice.
6. I note, within the Council's Statement of Case, that it is highlighted that the original report raised that the proposal would not be compliant with the space standards as adopted within Brighton and Hove City Plan Part 2 2022 (LP)

Policy DM1 due to a limitation on bedroom space. The nature of reuse of buildings that are listed means they are often unavoidable restrictions as a result of working with the buildings and available space in question. Whilst I acknowledge the concern that has been highlighted with regard to space standards, this has not been carried through as a refusal reason by the planning committee and I have no reasoning or evidence before me to conclude differently to officer recommendations on this particular point.

7. LP Policy DM7 states that applications for the change of use to a C4 use will be permitted where the proposal complies with relevant plans within the City Plan Part 1 and a number of criteria are met. Clause 2(c) states that the proposal should not lead to a continuous frontage of three or more HMOs. The proposal would lead to a continuous frontage of three HMOs due to the existence of HMOs already being present at 119 St James Street and 120-121 St James Street respectively. Despite this the supporting text to LP Policy DM7 confirms that in situations where properties are not traditional houses situated along a street frontage LP Policy DM7 can be applied flexibly depending on the individual circumstances of the proposal.
8. In this case, the appeal site is not part of the frontage of traditional houses due to having commercial uses at the ground floor level of all three buildings which would, in the event this proposal was approved, be formally identified as HMOs. The commercial uses at ground floor level and general activities of the area mean that the area within the vicinity of the appeal site is likely less sensitive to the impacts which would arise as a result of the proposed change of use. In addition, the proposal is for a 3-bedroom HMO which I find is not large and would likely generate no more activity than if it had been occupied as a single dwelling. HMOs by their nature can indeed attract a higher percentage of student accommodation as well as, potentially, younger professionals living together but given the location within which the site is located (not suburban or dominated by residential uses) I do not find potential for such type of occupants to be sufficient to warrant refusal in this case.
9. I have also had regard for the fact that the Council submissions confirm that, within a 50-metre radius of the appeal site, the concentration of HMOs within the area would still total under 10%. The proposal would not result in over-concentrations of HMO properties within the area, nor would it incrementally unbalance and cause detriment to the character of the area. Based upon the reasoning outlined above, and the evidence before me, I consider that the proposal is consistent with LP Policy DM7 and its overarching objectives, and the proposal would not be to the detriment of the amenity of the local area and community cohesion. In this case, as secured by the separate listed building consent approval, there would also be improvements to the listed building itself which are of public benefit and further support the proposal.
10. The potential for further concentrations of HMOs being permitted to exist is entirely within the control of the Council as a result of determination of future applications. It is for Councils to consider each case on its own merits, as well as the actual impact and overarching objectives of the relevant policies to adequately control the presence of HMOs within the area to prevent harmful effect upon the amenity of an overall area including city centre locations. Should other applications fail to accord with Clause 2(c) of LP Policy DM7 or result in a continuous run of non-traditional properties in HMO use in differing areas, each can be, and should be, assessed on their own merits and would still

give the Council opportunity to refuse proposals should circumstances warrant this approach.

11. The proposal before me would be consistent with the overarching objectives of LP Policy DM7 which seeks to ensure high concentrations of HMOs are prevented to avoid negative impacts upon local communities and prevent continuous frontages of three or more HMOs in traditional houses.

Other Matters

12. I note the landowner statement which has been submitted as part of the appeal outlining a number of matters including illegal use of the property as an HMO, use of an alleyway, damage to property as well as anti-social behaviour issues. This appeal is solely concerned with the planning merits of the proposal against the relevant Local Plan as is the starting point for determination in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The Council have raised no issue with the suitability of access point and matters relating to property damage or antisocial behaviour are outside the scope of this appeal. They all within the remit of other departments including the Police and the Environmental and Antisocial Behaviour Teams. I note that the ground floor trades as an independent Estate Agent and, again, any noise or unsocial behaviour is not within the scope of this planning application. Matters such as water leaks or management of the property are not planning issues.
13. Comments regarding physical changes to the building are noted, however, these have already been approved through the granting of listed building consent. The proposal does seek to add a formalised outside area; however, the Council have specifically assessed residential amenity for neighbouring occupiers as well as the application having been considered by Planning Committee and no refusal reason has been based upon privacy or residential amenity matters. Based upon the evidence before me, I have no reason to conclude differently on this matter. Comments are noted regarding previous use of the property as an HMO, however, historic use of the site and any planning history in this case is outside the scope of appeal. I have considered this case on its own merits based upon the evidence before me.
14. Any breach of conditions on previous planning permissions, where appropriate, are able to be investigated and enforced (if appropriate) by the Council and non-compliance with existing conditions on previous permissions is not within the scope of the appeal before me. I acknowledge comments and concerns raised over noise and disturbance, but I consider this would be a minimal increase in noise and disturbance which, given the busy area of central Brighton within which the appeal site is located, would not warrant refusal. With regard to loss of privacy, as a result of the proposal before me, a screen detail can be secured by condition, which would provide improvements to privacy. It is common, in areas such as this, that residential flats and outdoor amenity spaces are in close proximity to one another due to the relatively dense layout and built form and as a result of this, I find impacts to neighbouring residential amenity to be acceptable subject to condition.

Conditions

15. The Council has suggested a number of conditions. A time condition has been suggested, however, the proposal is part retrospective and, in that regard, it has already commenced due to the installation of metal stairs to the rear and a

felt roof on the existing accessway. Whilst the application is partly retrospective, I have imposed a condition requiring the development to be both undertaken and maintained as per the submitted plans in order to define and control the consent which is granted. A condition limiting the number of occupants is required to control the development as this is the basis upon which it has been granted. A condition retaining communal amenity space is to protect the amenity of occupiers of the proposal. A condition regarding materials and internal and external finishes is required to ensure satisfactory preservation of the Listed Building.

16. The purpose of conditions 5 and 6 is to require the appellant to comply with a strict timetable for dealing with outstanding works which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a part retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the change of use has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
17. I note the appellant, in agreeing the conditions, requested the above conditions were extended (in terms of timescales) to 10 months. I have considered this request; however, I find that it is important that outstanding matters are dealt with as soon as possible and consider that six months is reasonable to concurrently order materials and schedule/engage the relevant tradespeople to allow the prescribed works to be completed.

Conclusion

18. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR