



Appeal Decision

Site visit made on 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06.03.2024

Appeal Ref: APP/Q1445/W/23/3325524

21 Queens Road, Brighton BN1 3XA

- 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 Stewart against the decision of Brighton & Hove City Council.
 - The application Ref: BH2023/00194, dated 19 January 2023, was refused by notice dated 17 March 2023.
 - The development proposed is for the change of use from a residential flat (C3) to a short-term holiday let (*sui generis*).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by the Council against the appellant. This forms the subject of a separate Decision.

Procedural Matter

3. The appellant contends that the proposal, when considering potential occupancy, may not result in the loss of a residential dwelling within use class C3. The description of the proposed development provided in the application form clearly states planning permission is sought for a change of use from a residential flat falling within the C3 use class¹ to a short-term holiday let use, described as a '*sui generis*' use. With regard to the UCO, a *sui generis* use is a use which does not fall within any specific use class. Accordingly, I have assessed the appeal on the basis of a proposed material change of use to a short-term holiday let outside of the C3 use class, as applied for.

Main Issue

4. The main issue is whether the change of use of the property to a short-term holiday let would result in the unacceptable loss of residential accommodation falling within the C3 use class.

Reasons

5. The appeal site comprises the first and second floor of a property located in a terrace of buildings on Queens Road in the city centre of Brighton. The surrounding area includes a wide mix of commercial and residential uses. The site is a highly accessible location near to Brighton Station, bus stops and a

¹ As defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)

range of shops and amenities as well as being within the West Hill Conservation Area.

6. Policy DM2 of the Brighton & Hove City Plan Part Two adopted 2022 (CPP2) states that the Council will resist any net loss of existing residential accommodation falling within the C3 use class unless it meets one or more of six criteria. The appellant has not put forward any justification to demonstrate compliance with criteria (a) to (e) and seeks to rely upon accordance with criterion (f), which allows for residential accommodation to be lost where the previous use of the building would be a material consideration.
7. In this regard, I note the appellant contends that the proposal would operate similarly, in terms of occupancy and related comings and goings, as the existing residential accommodation. The appellant has offered to accept a condition to restrict occupancy to a maximum of 4 people in order to bring the existing and proposed occupancy as close to each other as possible.
8. Whilst such a condition could ensure the numbers of occupants are similar between residential accommodation and a short-term holiday let use, the nature of these uses would remain materially different to each other. Residential accommodation within the C3 use class would likely see occupants living and working in the city all year round accessing and contributing toward the range of services associated with permanent residential use. In contrast, a short-term holiday let would have different effects on local services, and it would be transient in terms of its occupancy.
9. It is possible, therefore, for there to be periods of vacancy and inactivity with a short-term holiday let use outside of peak holiday periods. I am therefore not persuaded that the proposed use as a short-term holiday let outside of the C3 use class is imperceptibly different to the existing use of the property as residential accommodation within the C3 use class sufficient to justify its proposed permanent loss.
10. I have also considered the proposal against Policies CP5 and CP6 of the Brighton & Hove City Plan Part One adopted 2016 (CPP1), which seek to support the city's tourism economy by ensuring there is a wide range of sufficient high quality facilities and visitor accommodation available. However, Policy CP5 is focused on supporting interventions to maintain and enhance the cultural offer of the city, and Policy CP6 is primarily focused on the provision of new hotels as opposed to holiday let accommodation. Therefore, neither of these policies are directly applicable in this case. Moreover, even with overarching support for tourist accommodation in the city, the proposal is still required to accord with other relevant development plan policies, such as Policy DM2.
11. To conclude, the proposed change of use of the flat to a short-term holiday let has not been sufficiently justified and would be contrary to the requirements of Policy DM2 of CPP2. The loss of residential accommodation within the C3 use class contrary to Policy DM2 is a significant issue in the context of the city's acute housing shortage. Therefore, any general support for tourist accommodation as set out in Policies CP5 and CP6 of CPP1 does not outweigh the harm that arises from the loss of residential accommodation in this particular case.

Other Matters

12. I have reviewed the Brighton & Hove Visitor Economy Strategy 2018-2023 (BHVES). Whilst the report notes that the impact of short-term lets on housing supply may not be that significant and that further regulation may not be necessary, it is notable that the Council adopted Policy DM2 some time after the BHVES was published. The Council's most up to date planning policy position is clear that the need to retain residential accommodation is a significant issue for the city to which I give considerable weight.
13. The BHVES is also not conclusive in terms of the impacts arising from holiday lets nor does it state that the Council should be actively planning to provide for more in the city, with the focus in the strategy being more aimed at the provision of new and upgraded hotels alongside tourism marketing and other initiatives. I am therefore not persuaded that the BHVES provides any conclusive support for the proposal over the impacts that would arise from the loss of residential accommodation, contrary to the development plan.
14. I have also reviewed the appeal decision² provided by the appellant but this does not weigh in favour of the proposal as the development did not result in the loss of residential accommodation and is not therefore directly comparable to the main issue in this case. Similarly, the appeal decision provided by the Council³, whilst covering the same substantive issue, was determined on its own merits as I have done with the proposal before me.
15. The ability to control amenity matters at the property as proposed by the appellant is only a neutral factor as would likely always be a requirement for a holiday let use and therefore does not outweigh the harm I have identified.

Conclusion

16. The proposal would result in the loss of residential accommodation within the C3 use class in the context of an acute shortage of housing supply, contrary to the development plan taken as a whole. The material considerations weighing in favour of the proposal do not indicate that the appeal should be determined other than in accordance with the development plan.
17. For the reasons given above I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR

² APP/Q1445/W/21/3273913

³ APP/Q1445/W/21/3285018