

Appeal Decisions

Site visit made on 27 August 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2024

Appeal A Ref: APP/Q1445/W/23/3334901

5 Egremont Place, Brighton BN2 0GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Patrick Eaut on behalf of Mishbec Limited against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02675.
 - The development proposed is change of use from 6-person house in multiple occupation (HMO) (C4) to 7-persons HMO (Sui Generous). (Re-submission of BH2023/01895).
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Appeal B Ref: APP/Q1445/W/24/3337147

5 Egremont Place, Brighton BN2 0GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Patrick Eaut on behalf of Mishbec Limited against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02856.
 - The development proposed is rear roof terrace.
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Decision Appeal A

1. The appeal is allowed and planning permission is granted for change of use from 6-person house in multiple occupation (HMO) (C4) to 7-persons HMO (Sui Generous). (Re-submission of BH2023/01895) at 5 Egremont Place, Brighton BN2 0GA in accordance with the terms of the application, Ref BH2023/02675, and the plans submitted with it, subject to the conditions in the attached schedule.

Decision Appeal B

2. The appeal is dismissed.

Application for costs

3. In respect of appeal A an application for costs was made by Mr Patrick Eaut against Brighton & Hove City Council. This application is the subject of a separate decision.

Preliminary Matters

4. As set out above there are two appeals on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
5. At the time of my site visit, I saw that the development proposed through appeal A was complete and I have dealt with the appeal on that basis.

Main Issues

6. The main issues in respect of appeal A are:

- the effect of the proposed development on the mix and balance of housing in the area,
- the effect of the proposed development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and
- whether the proposed development would provide adequate living conditions for future occupiers with regard to communal space.

7. The main issues in respect of appeal B are:

- the effect of the proposal on the character and appearance of the host building and the Queens Park Conservation Area, and
- the effect of the proposal on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

Appeal A

Mix and balance

8. The appeal property is a three storey terraced building with a basement that is located within a predominantly residential area.
9. Policy CP21 of the Brighton & Hove Local Plan 2005 (LP) relates to student accommodation and houses in multiple occupation (HMO) and states that amongst other things, applications for change of use to a sui generis HMO (more than six people sharing) will not be permitted where more than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as HMO's.
10. The Council state that the percentage of neighbouring properties in HMO use within radius is 10.3% which is a figure not disputed by the appellant. The number of HMO's within vicinity of the site is therefore above the threshold and I also acknowledge that there could be further unregistered HMO's which would increase this figure. However, as the appeal property is already in use as a HMO, the proposal would not increase the number of HMO's in the area or affect the mix of house types.

11. I therefore conclude that the proposed development would not affect the mix and balance of housing in the area. I find no conflict with Policy CP21 of the Brighton & Hove City Plan Part One Brighton & Hove City Council's Development Plan March 2016 (CP1). Amongst other things, this seeks to ensure that proposals support mixed and balanced communities.

Living conditions of neighbouring occupiers

12. I note that the neighbouring property is not in use as a HMO and is sandwiched between the appeal site, and another HMO. However, the new occupant would be accommodated within the existing fabric of the building and use the existing facilities, as a result, it is unlikely to unacceptably increase the level of noise and disturbance for the occupiers of the neighbouring building.
13. I therefore conclude that the proposed development would not unacceptably harm the living conditions of neighbouring occupiers. I find no conflict with Policy DM20 of the City Plan Part Two Brighton & Hove City Council's Development Plan October 2022 (CP2). Amongst other things, this seeks to ensure that development does not cause unacceptable loss of amenity to adjacent users.

Whether adequate living conditions would be provided for future occupiers.

14. The appeal property has two main areas of communal space which are the kitchen/dining area and living room. The appellant has also included a laundry room and office as part of the communal space, however, the functionality of these small rooms as part of the communal space is limited.
15. In regard to the kitchen/dining area, this is a large space which has a number of cupboards, appliances and preparation surfaces. The room is narrow, however, due to the overall length of the room it would allow for several occupants to use the space at the same time. While narrow, occupiers would still be able to pass each other within the space and there is also room for a large dining table that seats the seven occupiers.
16. The living room is located at the front of the property and contains a large feature bay window. The room is large enough to allow for several sofas and still allows for a good amount of circulation space within the room.
17. I therefore conclude that the proposed development would provide adequate living conditions for future occupiers with regard to communal space. I find no conflict with Policies DM1 and DM7 of the CP2 which amongst other things, seek to ensure that communal living space and facilities are provided appropriate in size to the expected number of occupants.

Appeal B

Character and appearance

18. The appeal site is located within the Queens Park Conservation Area (CA) which covers an area encompassing Queens Park as the central key feature with urban development forming the remainder of the area. Buildings within the CA are generally a tighter urban grain of predominantly large, terraced

housing which a strong degree of uniformity and consistency. The appeal properties terraced design contributes positively to the significance of the CA.

19. Rear projections are a feature of the area with many being altered, including some roof terraces albeit these tend to be at higher levels than the appeal proposal and as such are viewed in a different context. The proposal would not be readily visible from the street scene, however, this does not mitigate the change in uniformity and it would still be visible from a number of neighbouring properties and their gardens.
20. The proposal to create a roof terrace on the existing flat roof of the kitchen at first floor level, due to its overall size and privacy screening would appear as a dominant and alien feature that would upset the uniformity and consistency of the terrace at this level.
21. I therefore find that the proposal would cause harm to the character of the host building and would fail to preserve the significance of the CA. Insofar as the harm to the host building, it would be contrary to Policy DM21 of the CP2 which amongst other things, seeks to ensure that development takes into account the existing character of the area.

Living conditions

22. The proposal seeks to create a roof terrace at first floor level that would be accessed from the existing laundry room. The appeal property has an existing terrace on ground floor level which is accessed from the kitchen and is enclosed by solid walls and is a narrow space.
23. The proposed terrace would be larger than the existing terrace and while it would have screening, the overall size and elevated position would make it a much more attractive to use as opposed to the existing terrace. The overall size and elevated position, combined with the potential 6 occupiers to be using the space at the same time could lead to unacceptable noise and disturbance to the occupiers of neighbouring properties.
24. In particular, the proposed terrace would be closer to the rear gardens of 71 and 72 Edward Street and therefore the use of this terrace would be much more noticeable and unacceptably harmful than the existing terrace at ground floor level, even with the existing background noise levels.
25. I therefore conclude that the proposed development would unacceptably harm the living conditions of neighbouring occupiers with regard to noise and disturbance. I find conflict with Policy DM20 of the CP2 which amongst other things, seeks to ensure that development would not cause unacceptable loss of amenity to adjacent users.

Other Matters

26. The appellant has referred to examples of other appeals and developments in an attempt to justify the proposed development. I do not have the full details in respect of such examples so I cannot be sure of the circumstances of these. In any case, I have determined the appeal on its own merits, based on the evidence before me.

27. In regard to 28 Park Street¹ this relates to a single modest dwelling which differs from the large HMO before me which has the potential for six occupiers at a time. The terrace would also be closer to the occupiers on Edward Street when compared to the existing terrace.
28. In regard to 24 Great College Street² found that the screening would mitigate noise, however, considered that the rear yard would give rise to a greater potential disturbance which differs from the appeal before me.
29. The Council have referred to interpretations of Policy CP21 by previous Inspectors. However, no details of any appeals have been provided so I have not had regard to this matter further in my assessment of appeal A.
30. The Council have found that the proposals would not harm highway safety, provide adequate parking provision and not harm the living conditions of neighbouring occupiers with regard to privacy, outlook, sunlight and daylight. I have no reason to conclude otherwise, however these are neutral matters.

Heritage and Planning Balance (Appeal B)

31. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset and that this should have a clear and convincing justification.
32. Given the scale of the proposed development, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
33. The proposal would be contrary to Policies DM20 and DM21 of the CP2. These Policies are consistent with the Framework in focusing on ensuring that proposals are sympathetic to local character and create places with a high standard of amenity for existing users.
34. The Council is unable to demonstrate a 5-year supply of deliverable housing sites in accordance with Paragraph 77 of the Framework. The appellant states that the current figure is 1.8 years which is not disputed by the Council and represents a significant shortfall. Paragraph 11 d) of the Framework indicates that, in such circumstances where the requisite housing land supply cannot be shown, the Policies which are important for determining the application should be deemed out-of-date and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Policies in the Framework taken as a whole.
35. The proposed development would contribute to the supply of new homes in a situation where there is a shortfall. This attracts significant weight in favour of the proposed development. However, this benefit is tempered as the proposal is only small in scale and so the weight I afford it does not outweigh the great

¹ APP/Q1445/D/22/3291939

² APP/Q1445/D/22/3293841

weight I afford to the conservation of the CA which would conflict with the Framework, Policy CP15 of the CP1 and Policy DM26 of the CP2.

36. In this instance, the harm to the character and appearance of the host building, living conditions of neighbouring occupiers and CA would significantly and demonstrably outweigh the very modest benefits. As such, the proposal would not constitute a sustainable form of development in terms of the Framework.

37. Consequently, when assessed against the Policies in the Framework when taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits.

Conditions (Appeal A)

38. I have considered the Council's suggested conditions in the event I were to allow the appeal. Where necessary, and in the interests of clarity and precision, I have slightly altered them to more closely reflect the advice in the Framework and the Planning Practice Guidance.

39. Condition 1 is required in order to ensure that the property is occupied by no more than seven people in order to protect the living conditions of neighbouring occupiers. Condition 2 is required in order to ensure that the communal space is retained to provide adequate living conditions for future occupiers.

Conclusion Appeal A

40. For the reasons given above the appeal should be allowed.

Conclusion Appeal B

41. For the reasons set out above, and having had regard to all other material considerations, I conclude that the appeal should be dismissed.

D Wilson

INSPECTOR

Schedule of conditions (Appeal A)

1. The HMO hereby approved shall only be occupied by a maximum of seven (7) persons.
2. The HMO use hereby approved shall only be implemented in strict accordance with the proposed layout detailed on the proposed floor plan ref. 2023-20-P-04B and shall be retained as such thereafter. The layout of the kitchen / dining and living space shall be retained as communal space at all times and shall not be used as bedrooms.