

Appeal Decision

Site visit made on 23 August 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 15th September 2016

Appeal Ref: APP/Q1445/W/16/3150798

53 Barcombe Road, Brighton BN1 9JR

- 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 Dr Ryan Scott against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00252, dated 26 January 2016, was refused by notice dated 26 April 2016.
 - The development proposed is described as permitted development loft conversion (certificate of lawfulness granted and works completed). Change of use from 5 bed HMO to 7 bed HMO. Retrospective application.
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Decision

1. The appeal is allowed and permission is granted for the change of use from five bedroom small house in multiple occupation (C4) to seven bedroom house in multiple occupation (Sui Generis) incorporating hip to gable roof extension, dormer to rear and front rooflights at 53 Barcombe Road, Brighton BN1 9JR, in accordance with the terms of the application, Ref BH2016/00252, dated 26 January 2016, subject to the attached schedule of conditions.

Preliminary Matters

2. The building had already been extended and converted to a seven bedroom HMO on the date of the site visit.
3. The Council amended the description of the application in its decision notice, and in the interests of clarity and for completeness I have used this more detailed description in my formal decision.

Main Issues

4. The main issues are:
 - whether the development provides acceptable living conditions for its occupiers; and
 - the effect of the development on the mix and balance of the community in the area and the living conditions of nearby occupiers.

Reasons

Living conditions

5. No 53 Barcombe Road is a two storey end of terrace house in a line of similar properties. It is set behind a front garden and has a good sized garden to the rear. There is no dispute that the property has a lawful C4 use which

- comprised, until recently, five bedrooms together with a communal bathroom, wc, kitchen and living room.
6. A certificate of lawfulness for a loft conversion incorporating a hip to gable roof extension, dormer to rear and front rooflights was approved in October 2014 under Ref BH2014/03021 and such an extension has been constructed. According to the Council, the completed works do not correspond exactly with the alterations approved under the certificate, but due to this fall back position no objections are raised to the physical extension works that have been carried out to the building.
 7. Internally, the previous ground floor layout with its communal kitchen and living room remains unchanged. On the first floor, bedroom 3 has been reduced in size to install a staircase to the second floor but the communal bathroom and wc have not been affected. The second floor provides a further communal shower room/wc and two bedrooms, each with an individual sink.
 8. The two new second floor bedrooms are about 14 m² and 12.5 m² in size and are in fact the largest in the house. This excludes the area occupied by the communal shower room/wc which takes out a corner of each room. Contrary to the Council's view, this does not make the shape of either bedroom awkward or inconvenient to use. As part of the appeal, the appellant produced layout plans for the two bedrooms which demonstrate how a single bed, wardrobe and desk could be satisfactorily accommodated in each. My inspection confirmed this to be the case, even though double beds were in place and the desks were in different positions in the two rooms. The sloping ceiling does restrict the headroom available on one side of each room but only a small part is below head height and this does not seriously constrain their layout which includes a good sized area of full height circulation space.
 9. Bedroom 3 on the first floor is now about 9 m² in size, but the retained area is still sufficient to accommodate a single bed, desk, drawers and wardrobe with some circulation space as indicated on the layout plan and confirmed by my inspection. The other four bedrooms, unaffected by the alterations, are about 8, 9, 8.5 and 7.5 m² in size respectively. My inspection confirmed that the layout of the smallest room, bedroom 5, was very tight, but even in this case the bed, desk, wardrobe and shelves could be accommodated in a satisfactory way within the room.
 10. The communal kitchen, about 10 m² in size, contains the expected cooking and fridge facilities, a washing machine and a good range of storage cupboards and work surfaces. Although the two extra bedrooms increases the number of users of this kitchen from 5 to 7 persons it appears adequate for the number of occupiers given that they are unlikely to be all cooking at any one time. In addition, a communal living room about 10 m² in size is provided with a table and 2 chairs, TV and two sofas seating 5 people. Whilst the space for dining is limited to just two people at any one time, this is supplemented by the lounge area which provides informal, relaxed seating for five people. Again, this room appears adequate for the number of occupiers given that they are unlikely to be all using the room at the same time.
 11. I note that the space standard adopted by the Council in 2012 for HMO licence purposes is 9 m² for a kitchen without dining facilities to serve seven occupiers and a further 10 m² for a separate dining room. In this case the second room is laid out more as a lounge than a dining room but this could be rearranged in

future if necessary. Whilst these standards have been issued for the purposes of the Housing Act this lends support to the conclusion that the spaces provided are acceptable to accommodate seven persons. The property is clearly aimed at the short term student market rather than longer term occupiers for whom higher standards might be necessary.

12. The Council has issued the premises with an HMO licence for seven persons. Whilst planning legislation is clearly separate, the different remits of the two sets of legislation is not explained and the Council as local planning authority has not adopted any HMO space standards. A recent appeal¹ for the change of use of the adjacent property, No 52, to a nine bedroom HMO was dismissed despite the existence of an HMO licence. However, details of the layout and room sizes in that case have not been supplied. Since the current case involves two less bedrooms, it is unlikely to be directly comparable.
13. For these reasons I conclude that the development provides acceptable living conditions for its occupiers and therefore complies with saved Policy QD27 of the Brighton and Hove Local Plan 2005 (the Local Plan) which seeks to prevent material nuisance and loss of amenity to proposed and existing occupiers.

Mix and balance of the community and living conditions of nearby occupiers

14. The Council argue that the development is contrary to Policy CP21 of the Brighton and Hove City Plan Part One 2016 (the City Plan) which seeks to support mixed and balanced communities across the City and to ensure that a range of housing needs continue to be met. To this end applications for the change of use to an HMO will be resisted where more than 10% of dwellings within 50 m are already in HMO use.
15. In the case of 53 Barcombe Road there is no dispute that 6 out of 24 dwellings within 50 m are in HMO use, some 26% and well above the policy limit of 10%. If No 53 is included in the calculation the proportion is 29%. However, since the appeal property already has a lawful HMO use these proportions would not change if the appeal is allowed. As such, there is no conflict with Policy CP21. The development would not affect the range of housing types in the area, nor the number of HMOs, just increase the number of occupants within this particular HMO. Although the number of residents would increase from five to seven, this would only be a marginal increase within the neighbourhood as a whole and any effects arising from two extra people living in No 53 are unlikely to be significant.
16. At the time of the site visit the property appeared well managed with the front and rear gardens well maintained. There was no obvious difference between the standard of maintenance of the property and others in the area, whether HMOs or not.
17. For these reasons I conclude that the development would not significantly affect the mix or balance of the community in the area in compliance with Policy 21 of the City Plan, nor cause significant harm to the living conditions of nearby occupiers in compliance with Policy QD27 of the Local Plan. The latter seeks to prevent material nuisance and loss of amenity to adjacent residents.
18. The Council suggested four conditions should the appeal be allowed and I agree these meet the relevant tests. It is necessary to define the plans which have

¹ APP/Q1445/W/15/3139159

been approved for the avoidance of doubt. It is also necessary to restrict the occupancy of the building to seven persons and ensure that the kitchen and living room are retained for communal use in order to ensure satisfactory living conditions for the occupiers. Finally, it is necessary to ensure secure cycle storage facilities are provided to encourage sustainable travel.

19. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted has been assessed in relation to the following approved plans: 026-(PL)000, 26-(PL)001, 026-(PL)002, 026-(PL)003 and 026-(PL)004.
- 2) The development hereby permitted shall only be occupied by a maximum of seven persons.
- 3) The kitchen and living room identified on the existing and proposed plans shall be retained for communal living space purposes at all times and shall not be used as additional bedrooms.
- 4) The existing outbuilding to the rear shall be made available for secure covered cycle storage for a minimum of two bicycles and shall be retained for such purposes at all times.