



Appeal Decision

Site visit made on 1 November 2017

by **J Ayres BA Hons, Solicitor**

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

Decision date: 18th December 2017

Appeal Ref: APP/Q1445/W/17/3180711 7 Hollingbury Road, Brighton BN1 7JB

- 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 Ms Catherine Lowe against the decision of Brighton & Hove City Council.
 - The application RefBH2016/06022, dated 9 November 2016, was refused by notice dated 30 May 2017.
 - The development proposed is a change of use from small HMO (C4) to large HMO (sui generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This property used to be a House in Multiple Occupation (an HMO) for 5 residents, each with their own bedroom. However, the works associated with this change of use now before me have been undertaken and now the property has 7 bedrooms as a result of the conversion of the attic. At the time of my visit 6 bedrooms were occupied. I have no reason to consider the introduction of this sixth resident, whether in the attic or in another of the large bedrooms, has resulted in a material change of use in the property. However, the occupation of the seventh bedroom would mean the property was a sui generis large HMO. Accordingly I am treating the proposal as increasing the number of residents at the property by one.
3. A dormer extension has been formed on the rear roof slope and an extension has been added to the kitchen. The appellant claims they were built as 'permitted development' as such rights can be applied to small HMOs of 6 residents or fewer. The Council nonetheless contended that as they facilitated the change of use before me and allowed the occupation of the property as a large HMO they were not 'permitted development'.
4. I note that the appellant has not included the extensions in their application, and indeed there are no elevations before me. I also have no reason to doubt that, on a small HMO, these works would be 'permitted development'. However, on the other hand I am aware that the change to a large HMO would not be possible without the works, and the formation of the rear dormer occurred at the same time as the creation of the 2 bedrooms in the roof space.
5. It is not for me, as part of this section 78 appeal, to form a view as to whether or not these works required the specific planning permission from the local

planning authority. I shall therefore proceed on the basis that they did. Given the submissions, this would prejudice neither party, but clearly, in these circumstances, my approach has no bearing on any formal determination that may be subsequently sought.

Main Issues

6. The main issues are the effect of the proposal on;

- the living conditions of occupiers with particular regard to living space;
- providing a balanced community;
- the living conditions of neighbouring occupiers, with particular regard to activity and noise;
- the living conditions of the occupiers of No 5 Hollingbury Road; and
- the character and appearance of the property, and the area.

Reasons

Living conditions of those residents occupying the HMO

7. The communal space for the residents is on the ground floor at the rear of the property. It comprises an open plan kitchen, dining area and lounge with a television. Despite the appellant's assertion that it is suitable for residents, I note that they acknowledge it would be unlikely for all of the students to use the area at once. Indeed, in my view the use of this area by more than a handful of residents at any one time would be extremely difficult to achieve. The kitchen space is barely large enough for two adults to move around in comfortably. The dining table is uncomfortably positioned between the sitting area and kitchen, so although it provides a surface upon which to place food, the physical element of sitting down to eat, wedged in between a sofa and a walkway would, in my view, be completely unsatisfactory.
8. The outdoor space to the rear of the property that is put forward in the evidence as an additional communal space can only be utilised comfortably in the warmer months due to it being open to the elements and accessed via a set of steep steps. I therefore have significant doubts as to the practicality of this space in terms of it having any meaningful purpose with regards to providing functional leisure space for occupants.
9. The floorspace for the front bedroom on the second floor may technically extend to some 11.5 square metres, however in reality the room suffers from severely restricted headroom over most of its area. It was clear at the time of my site visit that the limited headspace provides severely restricted circulation space, and any continued use would result in extremely cramped and inadequate living conditions for future occupiers. In my view this would not be mitigated by ensuring the room is occupied by a shorter tenant, as suggested by the appellant.
10. Taking into account the need to utilise bedrooms due to the limited communal space available, it is my view that this bedroom is not adequate to comfortably accommodate a grown adult.

11. Consequently I find that an additional bedroom, and its occupation, would unreasonably restrict and constrain the living conditions of occupiers of the property. As such the proposal would conflict with Policy QD27 of the Brighton and Hove Local Plan with regards to protecting amenity.

Providing a balanced community

12. Policy CP21 part ii of the Brighton and Hove City Plan Part One (2016) specifies that in order to support mixed and balanced communities, and to ensure that a range of housing needs are accommodated, applications that involve a change of use to a class C4 HMO, a mixed C3/C4 use, or to a sui generis HMO will not be permitted except in certain circumstances. The change of use is restricted where more than 10 % of dwellings within a 50 metre radius of the application site are already in use as a class C4, mixed C3/C4 or other HMO sui generis use.
13. The council has carried out a mapping exercise, and the percentage of properties in an HMO use within a radius of 50 metres is 25%. The council asserts that the percentage of HMOs in this area is already significantly high, and an incremental use such as this proposal would result in a further imbalance in the community.
14. Policy CP21 generally aims to shape new development. However, it does not specify in Part ii that it is only applicable to new build or initial changes of use. Furthermore, I note that the policy refers to 5 wards in the city where it has been necessary to warrant an article 4 direction due to the over-concentration of HMOs. The article 4 direction came into full effect on 5 April 2013 and the appeal property is subject to the article 4 direction.
15. The council has concerns regarding the intensification within this area, and has referred me to an appeal decision where the Inspector found that Policy CP21 was applicable to a scheme that sought an additional bedroom¹. In that appeal the Inspector found that the additional occupant would result in an area of imbalance, in conflict with Policy CP21 (ii) of the Brighton and Hove City Plan Part One (2016).
16. I agree with the reasoning of the Inspector in the appeal for 53 Stanley Road, referred to above, that an increase in occupants, even if limited, may be likely to cause an additional degree of community imbalance, and result in a level of additional noise and nuisance, both of which are in conflict with the aims of Policy CP21, and those of Policy QD27 of the Local Plan. However, the Inspector was clear that they were considering a fractional increase in the number of occupants. Therefore the associated harm was not inevitable, although it was open for a decision maker to attach some degree of weight to the harm. The level of harm would vary depending on the individual facts of the case.
17. In contrast, the appellant has provided a number of appeal decision extracts to demonstrate that Policy CP21 should only be applied to the initial change of use of a building to an HMO. This appears to be a standard approach to the application of Policy CP21 and I attach significant weight to that approach.
18. In my view an element of common sense must be applied. The purpose of Policy CP21 is clearly to ensure that the city does not suffer an imbalance of

¹ APP/Q1445/W/16/3157915

HMOs due to over intensification. The point at which it is most practical to determine this is when considering a new development, or when an initial change of use to an HMO takes place. This is clearly covered in the council's policy and duly relied upon by the appellant. However, I agree with the Inspector in the 53 Stanley Road appeal that Policy CP21 is concerned with what the change of use is to, not what it is from. It may, in certain circumstances, be perfectly applicable to a case where the property is already in some form of HMO use.

19. In the case before me, I am mindful that the current level of HMOs in the applicable radius is some 25%, which is in excess of the policy threshold. However, the appeal property has functioned as an HMO for some time, the proposal would not increase the number of HMO properties in the area, and 1 or even 2 additional occupants would not have a significant effect on the impact of the HMOs on the surrounding area. Moreover, I have not been provided with evidence to suggest that there are any concerns relating to the use of the HMO at present with regards to its impact on the neighbourhood. Indeed the areas to the front and rear of the property are well maintained and clear, and the property itself is in good decorative order both inside and out. In my view it is a good example of a well maintained HMO.
20. The bedroom located in the loft extension is only suitable for single occupation as it is of a limited size. It has not been suggested that the occupancy of this room be secured by way of condition. On the basis of the evidence before me, and taking into account the relevant law relating to the licence of the HMO and tenancy agreements, I consider that it may be possible to impose and subsequently enforce a condition restricting the occupancy of this building to no more than 7 people.
21. Accordingly, I do not consider that an additional occupant would conflict with the overall aim of Policy CP21 part ii of the Brighton and Hove City Plan Part One (2016) in providing a mixed and balanced community. Due to the limited increase in occupation I consider that the proposal would comply with Policy QD27 of the Brighton and Hove Local Plan (2005) insofar as that policy seeks to avoid disturbance to existing and adjacent residents.

Living conditions of neighbouring occupiers

22. Due to the severely limited communal space it is probable, indeed the appellant refers to it in their statement as a likelihood, that residents would spend a large proportion of time in their bedrooms. Furthermore, due to different timetables, working and socialising patterns, the result would be a minimum of seven adults (who are likely to be accompanied by friends on occasion) coming and going to the property.
23. The result would be a number of individuals carrying out tasks and spending time in bedrooms that would normally be associated with a ground floor living space. This is a very different pattern to that of a family, or possibly a household with a more generous and functional communal space.
24. However, the property has a lawful use as a small HMO. In my view the additional movement and activity associated with one additional occupant, and on occasion their guests, would not result in a material increase in the level of current movement such as to have a detrimental impact on the living conditions of the neighbouring occupiers at No 9.

25. I am mindful that, although the property is currently being used for 6 occupiers, it was previously used, unlawfully, for 7. I have not been provided with any evidence from the council that would suggest that during this time there was an increase in noise or disturbance.
26. I therefore find that the proposal would not conflict in this regard with saved Policy QD27 of the Brighton and Hove Local Plan which seeks to prevent material nuisance and loss of amenity for existing residents. Based on the evidence before me, I find that the proposal would comply with saved Policy SU10 of the Brighton and Hove Local Plan with regards to the level of noise generated.

Effect of the extensions on the living conditions of the occupiers of No 5 Hollingbury Road

27. The ground floor extension is largely concealed due to its positioning within the site. The property extends significantly towards the rear, which is a consistent pattern of the built form in the area. This projection also includes a roof line of some mass. In respect of its relationship with the existing built form the loft extension does not appear overbearing. Views of the adjacent property would be limited due to the existing dwelling, and although the extension does not respond to the roofline of the existing property I do not consider that it is of a scale that results in harm to the character of the property or the surrounding area.
28. As such I find that the works do not result in harm to the living conditions of adjacent residents. As such they comply with Policy QD27 of the Brighton and Hove Local Plan with regards to the effect of development on the living conditions of adjacent residents.

Character and appearance of the extensions

29. Given the diversity of buildings in the vicinity and the concealed nature of the extension and dormer window now before me, to my mind they do not constitute discordant elements and are not harmful to the character and appearance of the area. As such they do not conflict with Policy QD14 with regards to its design criteria.

Other Matters

30. The appellant refers to the proposal delivering a sustainable scheme. I accept that the proposal would provide accommodation for an additional occupier in a sustainable location, close to transport links and the university. However, in my judgement, the benefit of providing one additional bedroom cannot be provided in a way that also provides adequate living conditions for those occupiers. Therefore, the proposal would not be sustainable development.

Conclusion

31. I have found that the proposal would not result in an imbalanced community, nor would it have a significantly detrimental impact on the living conditions of neighbouring occupiers. There is some dispute between the parties as to the lawfulness of the extensions. However, I have considered the extensions and found that they do not result in harm to the character of the area, or have a detrimental impact on the living conditions of neighbouring occupiers.

32. However, I have found that the proposal provides severely restricted communal space and inadequate living conditions for the occupier of the second floor front bedroom. These are matters to which I attach significant weight, and are not outweighed by the elements that weigh in favour of the proposal.
33. Accordingly, for the reasons above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

J Ayres

INSPECTOR