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# Appeal Decision

Site visit made on 7 May 2014

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 21 July 2014**

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**Appeal Ref: APP/Q1445/A/14/2214317**  
**53 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 Mr and Mrs Donald Rayward against the decision of Brighton & Hove City Council.
  - The application Ref. BH2013/03203, dated 18 September 2013, was refused by notice dated 14 November 2013.
  - The development proposed is change of use from dwelling house to House of Multiple Occupancy.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from dwelling house to House of Multiple Occupancy at 53 Hollingbury Road, Brighton, BN1 7JB in accordance with the terms of the application, Ref. BH2013/03203, dated 18 September 2013, and the plans submitted with it, subject to the following conditions:
  - 1) Within 2 months of the date of this decision, full details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details and to an agreed timetable, and they shall thereafter be maintained for use in connection with the development.
  - 2) Within 2 months of the date of this decision, a scheme for the storage of refuse and recycling shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and to an agreed timetable, and it shall thereafter be maintained for the lifetime of the development.

## Procedural Matters

2. My site visit included an inspection of the interior of the property and its rear garden. It was clear that the property is already in use as a House in Multiple Occupation (HiMO) providing 8 bedrooms. The application seeks to retain this use, which is classed as *sui generis* due to the number of persons occupying the property.

3. The appellants assert that the previous use of the property was a HiMO falling within Use Class C4<sup>1</sup>. The Council accepts that this could be the case. I have therefore taken this into account when determining the appeal.
4. The Government launched the Planning Practice Guidance web-based resource on 6 March 2014, after this appeal was lodged. The content of the guidance has been considered but in light of the facts in this case the Planning Practice Guidance does not alter my conclusions.

### **Main Issues**

5. The main issues in this case are:
  - a) Whether the continued use of the appeal property as a HiMO supports the objective of creating a mixed and balanced community, having regard to emerging development plan policy;
  - b) The effect on the living conditions of nearby residents, with particular reference to noise and disturbance; and
  - c) Whether the HiMO provides acceptable living conditions for its occupants.

### **Reasons**

#### *Community Structure*

6. The Council's case rests largely upon Policy CP21 of the Brighton & Hove City Plan Part One (submission document). This emerging policy seeks to balance the increasing accommodation demands from students with the need to create mixed, healthy and inclusive communities. Part (i) of the policy encourages the provision of purpose built student accommodation and allocates specific sites for this form of development. Part (ii) of the policy is aimed at actively managing the location of new HiMOs. The policy states that applications for the change of use to a Class C4 HiMO, a mixed C3/C4 use or a *sui generis* HiMO will not be permitted where more than 10 percent of dwellings within a radius of 50 metres of the application site are already in use for any of these purposes.
7. The Council has supplied data, taken from planning, licensing and Council Tax records, which indicates that there are already 9 HiMOs within 50 metres of the site. This represents 17.6 percent of the total number of properties in the policy radius. The creation of a HiMO at No.53 has increased the figure to nearer 20%. As such, there is a clear conflict with the emerging policy.
8. Policy CP21 does not currently form part of the statutory development plan. However, the National Planning Policy Framework (the Framework) states that weight may be accorded to an emerging plan according to the stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework.
9. The emerging plan has been through examination and therefore it is at a relatively advanced stage in the process. However, the Inspector has indicated that the plan falls well short of meeting the objectively assessed need for housing. Her initial conclusions suggest to me that significant additional work

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<sup>1</sup> Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

is required to make the plan sound and therefore it is unlikely to progress to adoption any time soon.

10. The Council states that the representations received on Policy CP21 at publication stage relate to part (i) of the policy and that no representations or objections were received to part (ii). It argues that, although Policy CP21 was subject to discussion at the examination hearing, part (ii) was not raised as an issue by the Inspector in her initial conclusions. Accordingly it considers that the policy should be accorded significant weight.
11. Whilst I can understand the Council's confidence in its own emerging policies, Policy CP21 is, to all intents and purposes, a policy relating to the delivery of housing. The Inspector's letter has only identified the headline issues in relation to the soundness of the emerging plan. For this reason, I cannot be completely confident that Policy CP21 will be retained in its current form and this significantly limits the weight which I can afford to it. Consequently, the conflict with emerging policy will not be determinative and the appeal will turn on whether the development complies with saved Policy QD27 of the adopted Brighton & Hove Local Plan (2005) (LP) in respect of the other main issues.

#### *Living Conditions of Nearby Residents*

12. The Council considers that the conversion of the appeal property to a HiMO would result in a material increase in noise and disturbance for neighbouring residents. However, it has provided no substantive evidence to support this assertion. This is despite the use being in existence, without planning permission, for over six months prior to the appeal being lodged.
13. According to local residents there has been at least one occasion where the police have been called to deal with a noisy party and anti-social behaviour at the property. However, I have not been provided with any police reports to corroborate the residents' version of events, nor is there any record of complaints to the Council's Environmental Health Service. Moreover, there is nothing to indicate that noisy parties are a regular occurrence at the property.
14. Neighbours have also expressed concerns regarding the level of noise emanating from within the appeal property. I accept that with 8 persons occupying the premises the level of activity is likely to be greater than would be expected for the previous use. This will almost certainly manifest itself in additional noise. However, there is no substantive evidence before me to persuade me that this noise is of such duration, volume or frequency so as to amount to material harm to the living conditions of adjacent occupiers, or that excessive noise cannot be controlled by the Council under its HiMO licensing or statutory nuisance powers.
15. Further concerns are expressed by local residents regarding the general effects of HiMOs on the appearance of the street, for example in relation to spill-over of refuse and litter. I accept that such issues are commonly associated with high concentrations of HiMOs. This is well documented in the background reports and studies supplied by the Council. However, I saw no evidence during my visit to indicate that use of the property as a HiMO has harmed the appearance of the street. The building is recently refurbished and in good order, and the front garden is well maintained and kept tidy. Indeed, without entering the property it was impossible for me to differentiate it from a family dwellinghouse.

16. Despite the lack of substantive evidence from the Council, it is clear from the representations received from local residents that there is a tension developing within the community, and a sense of frustration amongst owner occupiers, regarding the concentration of HiMOs in Hollingbury Road. This suggests a community imbalance and it lends weight to the Council's argument, which is supported by considerable background evidence, that the location of new HiMOs needs to be actively managed.
17. However, based upon the evidence before me and my observations whilst on site, I cannot be satisfied that the use of the appeal property as a HiMO has resulted in a material increase in noise and disturbance, or that the other impacts described by local residents can be attributed directly to the appeal property. This being the case, I am unable to conclude that there has been a conflict with saved Policy QD27 of the LP which seeks to prevent material nuisance and loss of amenity for existing residents.

#### *Living Conditions for Occupiers*

18. The appeal property has recently been extended at the rear to provide a communal kitchen and associated open plan area. The latter is labelled on the submitted drawings as a breakfast room but there is flexibility to use the area in different ways. At the time of my site inspection it contained a sofa, television and dining table.
19. The combined kitchen and communal area is approximately 22.5 sqm in size and I consider this to be adequate. I acknowledge that it would be a struggle to squeeze all 8 residents into the space available. However, this would be an extremely unlikely scenario. The nature of HiMOs means that occupiers tend to come and go, eat at different times and also spend time in their own rooms.
20. The Council is also concerned regarding bedroom sizes, and in particular the headroom available at second floor within the roof space. This area provides two bedrooms and a toilet/shower room. One of the bedrooms is served by a roof light and it has reduced ceiling height due to the slope of the roof. However, the room was furnished and occupied at the time of my visit and it was clear from my observations that space was not unduly restrictive. The other bedrooms are all reasonable sized and therefore I do not share the view that the accommodation is cramped.
21. The appellants draw my attention to the fact that the HiMO is licensed by the Council's Private Sector Housing team. Whilst this is a separate, albeit parallel, control regime it does reinforce my view that the standards of accommodation for the occupants are acceptable. Accordingly, I find no conflict with saved Policy QD27 of the LP insofar as it relates to the standards of amenity for occupiers of the development.

#### **Other Matters**

22. Concerns have been raised regarding overlooking and loss of privacy for residents of the sheltered housing at the rear of the property. These concerns stem from the recent addition of a rear dormer. However, this dormer does not form part of the application and the Council has indicated that it was constructed under permitted development rights.

23. I note the disquiet amongst local residents regarding the fact that planning permission is being sought retrospectively. However, this is not a factor which I can take into account. The appeal must be considered on its planning merits.

24. I accept that the development may have increased pressure on parking within the street. However, this issue does not form part of the Council's case and I have been provided with no evidence on the extent of any parking problems.

### **Conditions**

25. I have imposed a condition requiring the provision of secure cycle parking, to meet the requirements of saved Policy TR14 of the LP and in the interests of promoting more sustainable modes of transport. A condition is also required in connection with the storage of refuse and recycling, to protect the amenity of the area. I have amended the wording of the Council's suggested conditions to reflect the fact that the development has already been implemented.

### **Conclusion**

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Robert Parker*

INSPECTOR