
Appeal Decision

Site visit made on 14 October 2013

by Thomas Shields DipURP MA MRTPI

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

Decision date: 17 December 2013

Appeal Ref: APP/Q1445/A/13/2200989

3 Wellington Road, Brighton, BN2 3AB

- 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 Mrs Lucinda Yazdian-Tehrani against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/00936, dated 14 March 2013, was refused by notice dated 11 June 2013.
 - The development proposed is: Change of use from dwelling house (Use Class C3) to a use falling within Class C3 (dwelling house) or Class C4 (house in multiple occupation). Replacement of all ground and first floor windows. Also replacement of ground floor entrance porch windows and doors.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - the effect of the proposal on the mix and balance of the community
 - the effect of the proposal on the living conditions of occupiers of 3b Wellington Road with particular regard to noise
 - the effect of the replacement windows and doors on the character and appearance of the host building

Preliminary Matters

3. 3 Wellington Road is a semi-detached property which has been divided such that the basement is owned and occupied separately as a flat (3b Wellington Road). For clarity, the appeal relates to the proposed use of the ground and first floors only.
4. Notwithstanding the wording of the description of development, the main issues relate to the material change of use to a Class C4 house in multiple occupation (HMO). Matters concerning whether the proposal requires planning permission are not relevant to this appeal, which I am required to determine solely on its merits.

Reasons

The effect of the proposal on the mix and balance of the community

5. No 3 is located at the junction of Wellington Road and Elm Grove within the Hanover and Elm Grove Ward area of the city. There are a range of shops, facilities and services nearby and the appellant confirms that the proposal is intended to provide accommodation for students attending the principal campuses of the city's universities, which are easily accessible by bus from this location. The submitted plans show re-configuration of the internal layout to provide 6 bedrooms and shared facilities including a living/dining room, kitchenette, and shower/toilet facilities.
6. Policy QD27 of the Brighton and Hove Local Plan (2005) (LP) requires development to avoid material nuisance and loss of amenity. Draft Policy CP21 of the Brighton and Hove City Plan Part One (2012) (submission document) (CP) seeks to support mixed and balanced communities, and to ensure that a range of housing needs continue to be accommodated throughout the city. In pursuit of these objectives draft Policy CP21 states that applications for the change of use to a Class C4 use will not be permitted where more than 10% of residences within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use.
7. The Council argues that within a 50 metre radius of the appeal site the percentage of residential properties in HMO use is currently 11.1%, and that this would rise to 13% if the proposal were allowed, in conflict with the 10% policy threshold. The Council is concerned that the proposal would fail to support a mixed and balanced community in an area imbalanced by such HMO uses, and considers that draft Policy CP21 should be given significant weight. However, the CP has yet to be formally adopted by the Council and the appellant refers to an objection to policy CP21. In these circumstances I attribute little weight to policy CP21 in reaching my decision.
8. I acknowledge that individual similar proposals could have cumulative effects in terms of supporting a mixed and balanced community, but I have not seen any evidence that would clearly indicate that this particular proposal would have significant implications for the community at a stage before Policy CP21 can be given substantial weight.
9. At the time of my visit I saw no evidence of harm to local amenity resulting from the presence of HMOs in the area, and there is no quantitative or qualitative analysis from the Council with regard to their concerns in respect of harm to local amenity arising from this type of use, nor were there any objections from the Highway Authority, Environmental Health or the Police. Third party representations from the occupiers of No 3b refer to large numbers of letting signs in the area, that parking will be challenging, and that household waste in the area is not properly stored. I acknowledge that these are factors which can affect the general amenity of an area, but this single representation falls far below the level of evidence that would be necessary for me to be able to conclude that the proposal would harm local amenity.
10. I therefore conclude that the proposal would not result in a material nuisance or loss of amenity and would accord with LP Policy QD27. Also, although the proposal would exceed the 10% threshold criteria, I conclude on the evidence

that there would be no demonstrable harm to the mix and balance of the community, and hence there would be no material conflict with the aims and objectives of emerging Policy CP21.

Living conditions

11. The Council's main concern relates to potential noise disturbance to the occupiers of No 3b from a more intensive use of the upper floors. The occupiers of No 3b state that they have already experienced noise disturbance, particularly from an internal staircase which is directly above a bedroom in their flat which I was able to see during my site visit. I consider that if the appeal were allowed it would be necessary to ensure that adequate noise insulation measures were in place between the whole of the ground floor and No 3b before use as a HMO commenced.
12. Notwithstanding the Council's concerns with regard to the viability and practicability of securing a scheme for noise insulation, I am satisfied that a planning condition could be imposed which required a noise assessment and a detailed scheme for noise insulation to be submitted to and approved in writing by the Council before any other works commenced, and that the approved scheme could be required to be implemented in full prior to first occupation as a HMO. Such a condition would ensure that the potential for noise disturbance would be adequately controlled, and would be in accordance with the provisions and advice in Circular 11/95: "The Use of Conditions in Planning Permissions".
13. I therefore conclude that no significant harm would result from the proposal with regard to noise disturbance to the occupiers of No 3b. As such, it would accord with emerging Policy CP21 and LP Policies SU10 and QD27.

Character and appearance of the host building

14. The appeal property is an imposing traditional dwelling with large timber sliding sash windows set back behind deep reveals. The proposed windows to the rear elevation would not result in significant harm to the character and appearance of the property given that they would not be readily visible from the public realm.
15. However, the proposed replacement windows and door to the front and flank elevations of the property are very prominent from public viewpoints, and would significantly detract from the character and appearance of the host property due to their inclusion of a more modern casement design, method of opening, uPVC construction material, and dimensions. The combination of these features would result in a form of development that would be incongruous to the traditional character and appearance of the building. As such, it would conflict with the provisions of the National Planning Policy Framework which requires good quality design for all developments. I acknowledge that the adjoining property has modern replacement windows, but that does not outweigh the harm to which I refer above.
16. Consequently, I find the proposal would harm the character and appearance of the host building and would conflict with the aims and objectives of LP Policy QD14, which seeks to ensure that alterations are well designed in relation to the host property and the surrounding area, and make use of materials which are sympathetic to the parent building.

Other matters

17. I appreciate the appellant's arguments that the site would be sustainably located in respect of access to public transport and other local facilities, that LP Policy H014, subject to criteria, resists the loss of HMOs, and that a temporary permission could be granted for the use (although not the windows and door). However, these considerations do not outweigh the harm to the character and appearance of the building which I have identified above.

Conclusion

18. For all the above reasons, I conclude that the harm to the character and appearance of the building, resulting from the proposed replacement windows and door, outweighs the favourable conclusions in respect of the other two main issues. Consequently, I conclude overall that the appeal should be dismissed.

Thomas Shields

INSPECTOR