The Planning Inspectorate

Appeal Decision

Site visit made on 8 June 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 14th June 2017

Appeal Ref: APP/Q1445/W/17/3167023
63 Park Road, Brighton, BN1 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Oliver Dorman against Brighton & Hove City Council.
- The application Ref BH2016/05536, is dated 3 October 2016.
- The development is described as *'change of use of an existing C4 house in multiple occupation to a Sui Generis large house in multiple occupation'*.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the Planning Inspectorate wrote on the 22 May 2017 informing both main parties as to the date and time of the site visit, no-one from the Council attended. Nor was the appointed Inspector notified or given any reason as to why no-one from the Council turned up. However, the appellant did attend and I was able to gain access into the building, with the site visit proceeding by means of the Access Required Site Visit procedure. I am therefore content that I was able to see all I needed to see in order to make an informed decision.

3. The Council indicates, in their statement of case dated 21 April 2017, that they issued a decision notice on 19 January 2016. However, this post-dates the submission of the appeal made by the appellant on 12 January 2017 following circumstances that a decision should have been issued by the Council on 29 November 2016, unless agreed otherwise. I have proceeded on the basis that this 'decision notice', has in effect no legal standing as when it was issued the power to determine the proposal had passed from the LPA to the Planning Inspectorate with the appellant exercising their right of appeal.

4. The Council indicates that had it been a position to determine the proposal it would have refused permission for the following reasons:

   a) *The size of the bedrooms and the limited headroom of the first floor front bedrooms results in a cramped and oppressive standard of accommodation with little circulation space available in any of the bedrooms. The communal dining room provides insufficient relaxation space for the proposed number of occupants and therefore increases the amount of time occupants would spend in their individual bedrooms. The development therefore fails to provide an acceptable standard of accommodation for future occupiers, contrary to policy QD27 of the Brighton and Hove Local Plan.*

b) The proposed level of occupancy of the building would have a significant direct impact on the amenity of neighbouring properties, in particular 61 and 65 Park Road, due to the increased activity, noise, disturbance and additional comings and goings from the property, contrary to Policies QD27 and SU10 of the Brighton and Hove Local Plan.

5. I have taken these putative reasons into account in framing the main issues as I see them in this case.

6. Lastly, I saw during my site inspection that the change of use for which permission is sought has already taken place. I also saw that the submitted drawings do not necessarily replicate all the facts on the ground. For example, the existing rear dormer actually spans across the whole of the rear roof slope rather than being inset from the adjoining property. Also, the ground floor plan is not set out entirely in accordance with the EX.01 or SG.01; for example the entrance into the kitchen is in a slightly different location. Notwithstanding this, planning permission is still required and I have considered the appeal scheme on the basis of its planning merits in relation to the change of use sought.

Main Issues

7. The main issue is the effect of the change of use on the living conditions on occupiers of the appeal and neighbouring buildings, with specific regard to the standard of internal living conditions and, noise and disturbance.

Reasons

8. The appeal building comprises a semi-detached chalet bungalow located within a residential area of Brighton. There are roof extensions and alterations to both the rear and front of the existing building. Internally, the ground floor comprises four bedrooms together with hallway, stairwell, w.c. and/or shower rooms and an open plan kitchen dining area. On the first floor, there are a further five bedrooms leading off a short hallway. I saw the each of the nine bedrooms contains a bed, built-in wardrobe and desk areas. Outside there is a driveway along the side of the property, together with a detached garage and decked rear amenity area to the rear.

9. Policy QD27 of the *Brighton and Hove Local Plan* (BHLP) requires that planning permission for any change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents or occupiers. I have also been directed to the fact that the eight of the nine bedrooms would measure less than 7.5m^2 of useable floor space sought by DCLG's *Technical housing standards - Nationally Described Space Standards* of March 2015 (NDSS) for a single bedroom. The measurements are given on the submitted drawings and therefore there is no reason for me not to take these at face value.

10. The Council have not directed me to a specific policy that seeks the imposition of the NDSS within the local context. I note that Policy CP19 of the *Brighton and Hove City Plan Part One* (BHCP) refers to fact that Part 2 of the plan will seek to apply these; but this is an aspiration rather than a policy at the current time. Nonetheless, the NDSS does provide a useful guide as to the minimum space standard sought by the government in order to ensure that the internal

space provided across all tenures is one that provides a good standard of amenity for all existing and future occupants of residential buildings.

11. The appellant points to 'local HMO standards' requiring a single bedroom to have a floor area of 6.5m^2 and their view that standards for a family home should not be compared to those for a shared house. However, the *Standards for Licensable Houses in Multiple Occupation* September 2012 (LHMO) upon which this figures derives not only predates the publication of the NDSS, but is a document for the licensing of HMOs. In other words not only is the NDSS a nationally prescribed and more recent standard, but it is one that is specifically applicable to planning applications. In this case, the proposal would fall below the level set by the NDSS and this fact is one that weighs against the appeal scheme.

12. On its own, however, this is not determinative. What compounds this issue here is the fact that the building, which would be occupied by at least 9 individuals, would only have a kitchen and dining room as communal space. The appellant points to the fact that the HMO licensing standard requires an area of 15m^2 when a kitchen has dining facilities in it and that the floor area of the kitchen and dining areas combined is 25m^2. However, the dining area here is separated from the kitchen by a split level and worktop, effectively creating a separate room, and in such case the sizes according to the tables on page 7 of the LHMO, areas for a 9 person HMO should be 10m^2 for a kitchen and 15m^2 for a dining room. In this case, the proposal would satisfy this element of the LHMO in terms of the combined floor area. But as considered above, this is a standard relating to HMO licenses and not planning policy.

13. What is more, this fact does not negate the fact that there is nowhere, except for the bedrooms, for the occupiers to socialise or relax except for the dining room and kitchen area. I saw that both areas provide no more than a fixed dining table for sitting down. Whilst able to accommodate all 9 occupants on high stools around it, this is unlikely to be attractive to occupiers as an area to socialise or study more generally. This is all the more worrying as one of the ground floor rooms (to the north east corner) leads directly onto the kitchen area. In practice, this means that the occupier of this room would be disturbed by other residents within the property using the only limited communal area when it is used.

14. In such circumstances, I find that the internal space that the change of use provides in this case would not only fail to meet the amount set out in the NDSS (albeit this is guidance), but would also fail to provide a suitable and realistically usable internal area for occupants of the HMO to socialise, study collectively or relax beyond their bedrooms. In doing so, I find that the internal space provided results in material harm to the living conditions of occupants of the house in multiple occupation. I also find that without clarity that the bedroom leading directly onto the kitchen would be adequately soundproofed, the proposal would fail to minimise the impact of noise on the potential future occupants of this room. The proposal would therefore fail to accord with Policy QD27 of the BHLP the aims of which I have aforesaid, in respect of internal living conditions.

15. In terms of noise and disturbance within the surrounding environment, although the Council point to national reports and also Policy CP21 of the BHCP, I have not been provided with any detailed assessment of the possible

impact in relation to this scheme. For example, there is no detailed information on the number of Police or Environmental Health cases concerning noise or disturbance from the appeal building or nearby.

16. On the other hand, I note the comments made by interested parties relating to this matter. I also note that, broadly speaking, an over-concentration of particular uses in one area of another can exacerbate issue sometimes associated with HMO uses; particularly within towns and cities with universities. This is reflected locally by the 10% limit figure set out in Policy CP21 of the BHCP. However, in this case, the overall percentage within a 50 metre radius in this case according to the Council's statement of case is 6.25%.

17. In the absence of site specific evidence that there is an unacceptable impact upon residential amenity or that it has not been minimised in relation to increased noise and disturbance, I can only come to the conclusion that the proposal would not result in material harm to neighbouring occupiers. In this respect, the proposal would broadly accord with Policy CP21 of the BHCP and Policy SU10 of the BHLP insofar as they apply to noise and disturbance matters.

18. I also note the extracts of two appeal decision made in the appellant's Planning Statement dated October 2016, ref 31408(sic) and 3150798 respectively. I do not have the full details of these appeals before me, nor are the full decision letters provided, merely two paragraphs from each. From what I can deduct from these extracts is that the point the relative Inspectors were dealing with is whether an increase in the number of occupiers was significant or not in respect of mixed and balanced communities. This is not a specific issue in this case and therefore these decisions do not alter my assessment of the main issue above.

19. I note that the appeal site lies within an area subject to an Article 4 Direction. Put simply, this requires that to change from a C3 use to a C4 use, planning permission is required. However, this is not the case here where permission is sought to change from a Use Class C4 House in Multiple Occupation (HMO) to a Sui Generis HMO. Nonetheless, permission is still required for a change of use from a C4 to a Sui Generis HMO.

Overall Conclusion

20. Whilst I have found in favour of the appellant on the second part of the main issue, I have found that there is an unacceptable standard of internal living conditions and this would result in conflict with Policy QD27 of the adopted BHLP. I do not find that the unacceptable internal living conditions would be outweighed by the lack of identified harm arising in respect of noise and disturbance. Logically, I can only therefore come to a conclusion that the proposal would result in material harm that would not be outweighed or overcome by any other mitigating factor. Accordingly, the appeal must fail.

21. For the reasons given above I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR