
Appeal Decision

Site visit made on 7 May 2014

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

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

Decision date: 5 June 2014

Appeal Ref: APP/Q1445/A/14/2214205
30 Colbourne Avenue, Brighton, BN2 4GE

- 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 Elizabeth Smith against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/02561, dated 26 July 2013, was refused by notice dated 1 November 2013.
 - The development is described on the application form as 'change of use of small HMO (C4) to House of Multiple Occupancy.'
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Decision

1. The appeal is allowed and planning permission is granted for change of use to a house of multiple occupation (HMO) (Sui Generis) at 30 Colbourne Avenue, Brighton, BN2 4GE in accordance with the terms of the application, Ref BH2013/02561, dated 26 July 2013.

Procedural Matters

2. The main parties agree that the development applied for has been commenced. There is disagreement between the parties as to the existing or recent lawful use of the building. It is not for me to formally determine that matter. Nevertheless, the appellant has agreed that the proposal description is that which I have used in the decision section above; namely a change of use to a house in multiple occupation (HMO) (Sui Generis). I have therefore considered the appeal on the basis that that is the development applied for.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area and on the living conditions of neighbours in terms of ensuring a mixed and balanced community.

Reasons

4. The appeal site is located in a residential area of Brighton. The building itself is a semi-detached house with garden areas to the front and rear. There is also a detached garage and area of hardstanding for parking to the front. It is understood that the building was originally a three bedroom dwellinghouse, which the submitted drawings show has been converted internally into a seven bedroom building with shared kitchen and bathroom facilities.

5. In terms of the appeal site and its wider context, the Council has provided a list of the buildings they consider are in Class C4 HMO or *Sui Generis*¹. However, it was not obvious to me during my site visit that these buildings were in such uses. Visually the buildings appeared well-kept and there is no evidence to suggest that the use in this case would harm the overall character and appearance of the street scene. Moreover, there is nothing to suggest that the quality of accommodation or the visual appearance would deteriorate in the future due to the building's use as a House in Multiple Occupation (HMO). I therefore conclude that the development does not result in material harm to the character and appearance of the area
6. In terms of living conditions, the Council's aim is to ensure mixed and balanced communities and this is achieved in part through Policy QD27 of the Brighton and Hove Local Plan 2005 (BHLP), which indicates that permission should not be granted where it would cause material nuisance and loss of amenity. The National Planning Policy Framework (the Framework), which is a material consideration, indicates in the over-arching core planning principles of Paragraph 17 that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.
7. The Council is concerned that the use of the appeal building as a HMO would give rise to a loss of amenity to nearby residents and subsequently could result in the area becoming 'imbalanced'. This concern appears to be based upon a general position that occupiers of HMOs could create noise and disturbance above that of other residents. However, in this case there is no technical evidence before me that indicates that there is a particular proliferation of such problems within this area. As such, there is no substantive basis to conclude that the provision of a HMO in this case would necessarily result in a material nuisance or loss of amenity to adjacent users.
8. I note that Policy CP21 of the Brighton and Hove Submission City Plan Part One February 2013 (CP) has been cited. It is understood that the CP is under examination, and has not been adopted. The Council has indicated that no objections were raised to the part of Policy CP21, which provides that where more than 10% of properties within a 50 metre radius are in HMO use, then a change of use to a HMO type of use will not be permitted. I am mindful of its advance stage of examination, that no objections have been received to the element of the Policy in question, and its consistency with the Framework. I therefore consider that in this case it should be afforded significant weight.
9. Based on the Council's records, the development would exceed this threshold, which at present stands at around 16%. However, I have found no harm in terms of living condition of neighbours in terms of noise and disturbance in this case. Moreover, the Framework does not contain a specific threshold on the levels of HMOs in any given area, indicating that the focus is on generally seeking a good standard of amenity for occupiers. Whilst I acknowledge that the threshold of unadopted Policy CP21 has technically been breached, there is no clear evidence that demonstrates that the current scheme would represent a tipping point from the heterogeneous, mixed and balanced community, to a homogenous and unbalanced one. Given that the proposal would not result in harm to residential amenity or the character and appearance of the area, I do

¹ These are uses which do not fall into the normal Use Classes such as C3, C4, but can include HMOs over a certain size.

not find that it would fail to contribute to balanced or mixed communities, which is one of the broad aims of the emerging unadopted Policy CP21.

10. Accordingly, the development is in accordance with the broad aims of Policy QD27 of the BHLP and the Framework as cited above. It would also be in accordance with the underlying aim of unadopted Policy CP21 of the CP, the objectives of which I have aforesaid.
11. A number of appeal and planning decisions have been cited by both parties². I do not have the full details of the context of those schemes. Furthermore, they appear to relate to different developments, on different sites and, in the main, in different districts or boroughs. In any case, it is well-established planning practice that each application is considered on its own merits, as I have done in this case. These examples do not therefore alter my overall conclusions on the case before me.

Conditions

12. The Council has suggested two conditions. I have had regard to Paragraph 206 of the Framework and the Planning Practice Guidance which was issued on 6 March 2014. The existing use of the building is residential. My site visit confirmed that there is sufficient off street external space to the rear and front of the site for the storage of bicycles and refuse. As such, I do not consider that conditions requiring the submission of specific details for bicycle storage and refuse/recycling to be reasonable in this instance given that such facilities are likely to exist for existing occupants and there is already space within the site for this to be provided.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

² Appeal decisions: APP/Z5060/A/11/2167184, APP/D1780/A/11/2143903, APP/L3815/A/09/2116026 & APP/Z1775/A/11/2164766 and Planning decision: BH2013/01141