

Appeal Decision

Site visit made on 9 May 2017

by Rory MacLeod BA MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/Q1445/W/17/3166975

26 May Road, Brighton BN2 3EB

- 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 C & L Dwyer Smith Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/02907, dated 4 August 2016 was refused by notice dated 18 November 2016.
 - The development proposed is change of use from dwelling house (C3) to a house in multiple occupation (HMO) (sui generis).
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Decision

1. The appeal is allowed and planning permission granted for change of use from dwelling house (C3) to a house in multiple occupation (HMO) (sui generis) at 26 May Road, Brighton BN2 3EB in accordance with the terms of the application, Ref. BH2016/02907, dated 4 August 2016, subject to the following condition:
 - 1) The development hereby permitted, including the communal ground floor room annotated as Kitchen/Breakfast Room, shall be retained in accordance with the layout shown on drawing 1171/03, and the development shall not be occupied by more than seven persons.

Procedural Matter

2. Based on the submitted evidence and what I saw at my site visit, the proposed change of use has already taken place. A dormer window has also been recently added to the rear roof slope. I do not have elevational details of this, but it is clear from the floorplans, and from what I saw, that this addition is necessary for the continued operation of the house in multiple occupation (HMO) as proposed. Although the appellant says that it was constructed as permitted development prior to the change of use occurring, this is disputed by the Council, and I have no conclusive evidence in support of the appellant's position.
3. Accordingly, I am inclined to the Council's view that the dormer window is part and parcel of the development as proposed, and I have approached the appeal on that basis. Both main parties and neighbouring residents have also commented on the merits of the dormer window, and I am satisfied that no injustice would occur as a result of this approach.

Main Issues

4. The main issues are

- (1) the effect of the use on the living conditions of the occupiers of dwellings in the surrounding area, particularly with respect to noise and disturbance, and
- (2) the effect of the rear dormer on the character and appearance of the area.

Reasons

Use of the building

5. The appeal relates to a semi-detached property paired with 28 May Road on the southern side of the road. It is located some two metres above street level on rising ground levels.
6. Policy CP21 of the Brighton and Hove City Plan Part One dated March 2016 supports the aim of providing mixed and balanced communities, and in relation to changes of use to houses in multiple occupation seeks to limit their density to less than 10% within a 50 meter radius of a site. The appeal proposals satisfy this assessment and the Council raises no objection to the principle of the use of the property as a house in multiple occupation (HMO), subject to an assessment of other material considerations.
7. The property could be used as a HMO under Class C4 by up to 6 persons without the need for a grant of planning permission. The proposed layout provides for 7 bedrooms in addition to communal facilities and so would constitute a large scale HMO, a 'sui generis' use for more than 6 persons sharing the property.
8. The Council have provided background material in relation to the problems encountered with HMOs in general within Brighton, but have produced little evidence in relation to any issues of noise and disturbance in relation to the site itself. The Council asserts that there would be disturbance arising from a far more intensive use by seven unconnected adults when compared to a typical family use, particularly as the property is semi-detached. Whilst individual bedrooms would adjoin the party wall with 28 May Road, the communal living and kitchen area would not and this is where noise and activity is most likely to occur through the assembling of occupiers. The use has been in place for over a year but there would appear to have been few complaints arising from the use.
9. Policy QD 27 of the Brighton and Hove Local Plan (2005) (saved policies) states that planning permission will not normally be granted for a change of use where it would cause material nuisance and loss of amenity to adjacent occupiers. Given the limited evidence of harm arising to date from the use and that the level of occupation would be only one person above that which could be undertaken under permitted development allowances, I conclude that any increase in noise and general disturbance arising from the occupation by a maximum of 7 tenants would not be material. As such I do not find conflict with the provisions of this policy.

The rear dormer

10. The appeal site comprises a two storey semi-detached building paired with 28 May Road. They were originally constructed with hipped pitched roofs, but

both now have undergone roof alterations. There is a barn end gable wall to no. 28 that enables provision of a full width rear facing dormer, whereas no. 26 has undergone a hip to full gable change, also with inclusion of a rear facing dormer. The two dormers are of similar size and design, occupying most of the width of each house, but are set in from the raised flank wall to each property. The proposal rebalances this pair of semi-detached properties and re-establishes a sense of symmetry.

11. To the west of the site there is a row of semi-detached properties that retain their original hipped roofs, whereas to the east is a new three storey building and other new buildings beyond this. The site therefore acts as a transition between these two character areas.
12. Policy QD 14 of the Brighton and Hove Local Plan (2005) (saved policies) seeks to ensure that new development is well designed, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area. The dormer has been designed, sited and detailed to resemble that at 28 May Road. Supplementary Planning Document 12, Design Guide on Extensions and Alterations (adopted June 2013) (SPD 12) recognises the expediency of this approach: "where one half of a pair of semi-detached houses has previously been altered and this has created an imbalance, a well-designed alteration that returns symmetry to the pair may be acceptable". The Council objects to the large box design of the dormer, and SPD 12 discourages the provision of full width box dormers. However, in this instance, having regard to the location of the pair of properties in a transitional position between two character areas, I consider that the particular design proposed to be acceptable. Accordingly I do not find a conflict with the development plan on this issue and conclude that there would not be an adverse effect on the character and appearance of the area.

Other Matters

13. There are representations from residents to the rear of the site expressing concern about overlooking and loss of privacy from the dormer window(s). The Council has not objected to the dormer on this issue and having regard to the separation distances to the properties to the rear, I consider that any overlooking would not be so significant to warrant refusal of permission on this ground.
14. There is also some concern that planning permission is being sought retrospectively. This is not a factor that I can take into account; the appeal must be determined on its planning merits.
15. There is a garden store in the rear garden that contained one bike at the time of my visit, but which is large enough to accommodate three bikes and so satisfy the requirements of local planning policy on this issue.

Conditions

16. I have reviewed the Council's suggested conditions. The time period and plan number conditions are unnecessary as the development has already been implemented in accordance with the submitted plans. The third suggested condition, relating to retention of the approved layout, requires amendment as the development has been implemented. To my mind one condition could cover retention of the layout and the maximum number of occupiers (the Council's forth suggested condition) to satisfy the policy requirement to ensure

that a satisfactory standard of accommodation is retained at the property. This would also encompass the issue in the appellant's one suggested condition.

Conclusion

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

Rory MacLeod

INSPECTOR