



Appeal Decision

Site visit made on 9 May 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 June 2018

Appeal Ref: **APP/Q1445/W/18/3194945** **9 Coronation Street, Brighton BN2 3AQ**

- 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 Andrew Marchant against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/02666, dated 4 August 2017, was refused by notice dated 29 December 2017.
 - The development proposed is the change of use of a C3 dwellinghouse to a Sui Generis large house in multiple occupation.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application that led to this appeal was retrospective in nature- with the application form indicating that the disputed use commenced on 1 October 2012. At my site visit, I saw that the use as applied for is ongoing.
3. One of the reasons for refusal given on the Decision Notice relates to the dormer extension at the appeal property. The lawfulness or otherwise of this structure is a matter of dispute between the parties and I note references to an application for a lawful development certificate in relation to the dormer.
4. I have taken into account the Council's view that the material development entailed in the installation of the dormer is an integral element of the change of use. Nevertheless I have assessed the appeal on the basis of the material submitted with the application and the description of development given on the application form, which is reproduced in the banner heading above. Consequently, I consider that matters relating to the character and appearance of the dormer are not relevant to a consideration of the appeal scheme as applied for, and will not consider them further. In arriving at this view I am mindful of the court judgements¹ cited by the Council, and the recent appeal decisions², copies of which were supplied by the Council and appellant.

¹ *Murfitt v Secretary of State for the Environment & East Cambridgeshire District Council* [1980] JPL 598

Somak Travel Ltd v Secretary of State for the Environment & Brent LBC [1987] JPL 630

Kestrel Hydro v Secretary of State for Communities and Local Government & Spelthorne Borough Council [2016] EWCA Civ 784

² APP/Q1445/C/17/3174393 and APP/Q1445/W/17/3183901; APP/Q1445/W/17/3183594;

APP/Q1445/W/17/3184207; APP/Q1445/W/17/3166975; APP/Q1445/W/17/3180711; APP/Q1445/W/17/3184922

Main Issues

5. I consider the main issues in this case to be firstly, the effect of the appeal development on the amenity of its current and future occupants in terms of its provision of internal space; and secondly, its effects on the living conditions of the occupants of adjacent dwellings in terms of noise and disturbance.

Reasons

Internal Space

6. The appeal development as described above has entailed the conversion of a mid-terraced dwelling to supply a 7 bedroom house in multiple occupation (HMO) over four levels including the basement, ground floor, first floor and loft. Bathrooms are included on the ground and first floors. Communal space is located at the basement level with an area marked as a "kitchen/dining room" on the submitted plan to the rear and a room annotated as a "lounge" sandwiched between this and the bedroom at the front of the property. I saw that in addition to equipment within the kitchen that a small structure in the appeal property's back garden included laundry facilities and an additional fridge.
7. At my site visit, I saw that the bedroom to the rear of the roof space was small (the appellant estimates that it supplies a floor space of just over 6.5 SqM), with very little space around the bed for circulation or any other meaningful use of the room besides sleeping. Whilst I saw built in wardrobe space and shelves set within the line of the original roof to the side of the dormer, access to these was restricted to a considerable degree by the close proximity of the bed, limiting the convenience of their use. Whilst I note the measurement of floorspace (just over 7 SqM) supplied by the appellant for the front bedroom contained within the roof, a considerable proportion of this is of limited headroom due to the slope of the roof, and as a consequence this limits the practical utility of the space. I am mindful of the appellant's comment that current occupants have chosen to include double beds in these bedrooms; nevertheless, due to the constrained size of the rear bedroom, and limited headroom of the front bedroom, the use of a single bed in either would do little to address the cramped nature of the accommodation they supply.
8. I note references in the appellant's statement to the appeal building's location close to the city's universities, and that in their view this would make it an appropriate location for shared accommodation, and comments regarding the ability of the property to accommodate up to seven students. I am also mindful that the property is managed by a student letting agent.
9. Taking these matters together, I consider that it is highly likely that occupants of the appeal property would be students- and would consequently need space to conduct private and quiet study- which the rear bedroom in failing to supply sufficient space to accommodate a reasonably sized desk and related materials, would clearly fail to do. Furthermore, the lounge, due to the level of occupancy of the appeal property coupled with its adjacency to the kitchen dining room would be an area of considerable activity unsuited to the pursuit of quiet study. As a result, the appeal development fails to meet the day-to-day needs of the occupants of the rear roof level bedroom in these regards.

10. Moreover, the limited space provided in the roof level bedrooms would create pressure to use the communal space provided within the property from the occupant of those rooms, for most day-to-day domestic activities. To my mind this is a clear material difference between the appeal development and the proposal subject to an appeal decision³ relating to an 8 bedroom HMO elsewhere in Brighton, a copy of which was supplied to me by the appellant, wherein the Inspector found that the nature of HMOs means that their occupiers tend to spend time in their own rooms- which for the reasons given above, would be impractical in relation to the roof level bedrooms in this case.
11. This increases the likelihood of a more intensive use of the lounge, which due to its adjacency to the kitchen, is likely to be a space that has a considerable amount of footfall from the door way in its top left hand corner adjacent to the entrance hall, to the doorway in its bottom right hand corner giving access to the kitchen/dining room. Whilst I am mindful that circulation space is a feature of most rooms, the amount of movement through the lounge coupled with its likely flow due to the positioning of the doorways would serve to limit both its practical utility and its attractiveness as a place for recreation or other household activities. These considerations add materially to my overriding concerns in respect of the inadequacy of the appeal scheme's roof level bedrooms.
12. Whilst I have taken into account the findings of my fellow Inspector⁴ in relation to the adequacy of a smaller communal space provided in association with an 8 bedroom HMO elsewhere in Brighton, I have not been supplied with full details regarding the bedroom sizes supplied within that property. Consequently, this limits any meaningful comparative assessment of the two schemes. Similarly limited information was supplied to me in relation to a planning permission⁵ for an HMO granted by the Council, which provided a similar amount of communal space to that of the appeal scheme and also accommodated 7 occupants. These decisions do not therefore add any material weight in the appeal development's favour in the overall planning balance.
13. Whilst I note that the garden area provides additional amenity space, I consider that its use would be impractical for several months of the year due to limited hours of daylight and lower temperatures experienced at those times. Consequently, its presence does not alter my conclusions in respect of the adequacy of the internal space. I note also that there are no minimal standards relating to communal space set out in the development plan, and that the arrangement of furniture could change at any time- nevertheless these matters do not weigh in favour of the appeal development to any material degree.
14. Due to the length of time over an academic year when students are likely to be in residence, I can find no evidential basis to the assertion by the appellant that the residential requirements of student sharers are not directly comparable to those of permanent or long-term residents, aside from the strong likelihood that students would require adequate study space. Consequently, the nature of the appeal property's tenants does not justify a lower standard of amenity in this case than would otherwise be required.

³ APP/Q1445/A/14/2214317

⁴ APP/Q1445/W/15/3006221

⁵ BH2017/00319

15. I note the appellant's references to the "very high demand" for student and shared accommodation in the area. Due to this level of demand, I do not share the appellant's view that prospective occupants would necessarily be able to find other properties which better suited their requirements. I note the appellant's assertion that groups of friends occupy the property and negotiate who gets which room- this may be the case, however, it does not indicate that the roof level bedrooms provide an adequate amount, or convenient layout of space- or justify development that would cause the harmful amenity effects that I have described.
16. I readily accept that the appeal development has met the Council's standards in respect of licensing. Nevertheless, the Core Planning Principles set out in the National Planning Policy Framework (the Framework) include amongst other things that "planning should always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings". This consideration, to which I attach very considerable weight, requires a level of amenity in excess of the bare minimum which the licensing standards seek to secure, and which for the reasons set out above, the appeal development clearly fails to provide. Consequently, the appeal development's compliance with the licensing standards does not justify its harmful amenity effects.
17. Accordingly, on this basis, I conclude on this main issue that the appeal development supplies an inadequate level of amenity for its current and future occupants in planning terms and therefore does not comply with Policy QD27 of the Brighton and Hove Local Plan (adopted July 2005) (the Local Plan), insofar as it seeks to ensure that the amenity of the future occupants of developments is protected.
18. Although I am aware of the Council's references to the Government's *Technical housing standards- nationally described space standard* (March 2015) (the Space Standard), I am cognisant that the Written Ministerial Statement of March 2015 (the WMS) contains the relevant national planning policy relating to this document. The WMS clearly sets out that the Space Standard should only be required through new local plan policies where they address a clearly evidenced need. In the current case, the Space Standard has not been incorporated into the Council's Local Plan, and accordingly its requirements have not therefore formed a basis for my assessment of the appeal development. In reaching this view I am mindful of the appeal decisions supplied to me by the appellant relating to sites in Brighton⁶ and Sutton Coldfield⁷.

Living Conditions- Occupants of Adjacent Dwellings

19. The appeal property was previously occupied by a large family household of nine people, and due to the size of the property I consider that it could accommodate larger families. Consequently, whilst the appeal development has changed the type of occupancy from that of a single household to unrelated individuals, the overall occupancy of the property appears to have reduced, as a result of that use. Given the overall scale of the property and its consequent ability to accommodate a number of occupants, I consider that it has not been demonstrated that the appeal development has led to a material increase in comings and goings, or intensified noise and disturbance to a

⁶ APP/Q1445/W/17/3173703

⁷ APP/Q1445/W/17/3183804

degree that is likely to cause any harm to the living conditions of the occupants of adjacent dwellings. In arriving at this view, I am mindful that the use, although unauthorised, has been ongoing since 2012- and until the appellant made the application that led to this appeal that enforcement action does not appear to have been progressed in relation to it. I concur with the appellant that this helps to demonstrate that the use has led to no significant harm in these respects whilst it has been in place.

20. These considerations, taken together, lead me to the view that the appeal development has not caused a level of noise and disturbance sufficient to cause harm to the living conditions of the occupants of adjacent properties. In this respect it does not conflict with Policy QD27 of the Local Plan insofar as it seeks to protect the amenity of the occupants of adjacent properties.

Other Matters

21. The appellant has drawn my attention to Policy HO14 of the Local Plan insofar as it seeks to restrict the grant of permission for proposals that would involve the change of use of "non self-contained" accommodation such as HMOs. However, the relevance of this policy to the current case, which seeks the change of use to that of a HMO, has not been established.
22. I note that the supporting text of Policy HO14 attests to the ongoing need for HMOs in the city and the appellant's views on the very high demand for such properties in the area. The appeal development helps to meet this demand, and to some extent this is a social benefit; however, due to the level of amenity it provides this weighs in its favour to only a modest degree.
23. I am conscious that common ground exists between the Council and appellant that there would be no impediment to the subdivision of the appeal property in terms of its location, or the agglomeration of similar uses in the area, under terms of Policy CP21 of the Brighton and Hove City Plan- Part One (adopted March 2016). Nevertheless the lack of policy conflict in these terms is a matter which has only a neutral effect on the overall planning balance.
24. The appellant considers that the appeal development has supported the 'student economy' in its surroundings- however, no substantive evidence has been supplied to demonstrate the extent of such a benefit. In any event, the limited extent of both the development and its likely concomitant economic effects in this regard mean that this matter only attracts limited weight.
25. The appellant considers that the change of use of the appeal property has not resulted in any harm to the character of its surroundings, and I note that the building is not listed or within a conservation area. However, this merely attests to an absence of harm in these regards rather than a positive benefit of the scheme and accordingly has a neutral effect on the overall planning balance.
26. I note references to enforcement action in respect of the appeal property- however, this matter is not determinative in my assessment of the planning merits of the appeal.

Conclusion

27. The appeal development has not caused harmful effects to the living conditions of the occupants of adjacent dwellings- however, this lack of harm has only a

neutral effect on the overall planning balance. It would cause clear and considerable harm to the amenities of its occupants as a result of its inadequate supply of internal space- and the weight of this harm outweighs the modest and limited benefits that have been advanced in its favour.

28. Consequently, no material considerations have been established in this case that would justify a decision other than in accordance with the development plan, with which, in terms of the above-cited policy the appeal development conflicts. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR