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## Appeal Decision

Site visit made on 20 February 2018

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 1 March 2018

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**Appeal Ref: APP/Q1445/W/17/3186174**

**26 Plymouth Avenue, Brighton BN2 4JB**

- 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 Scott Youlden against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/00647, dated 23 February 2017, was refused by notice dated 30 September 2017.
  - The development proposed is change of use of an existing C3 dwellinghouse to dual C3/C4 small house in multiple occupation.
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### Decision

1. I allow the appeal and grant planning permission for change of use of an existing C3 dwellinghouse to dual C3/C4 small house in multiple occupation at 26 Plymouth Avenue, Brighton BN2 4JB in accordance with the terms of application Ref BH2017/00647, dated 23 February 2017, subject to conditions 1) to 4) on the attached schedule.

### Main Issues

2. These are;
  - The effect of the proposed change on the provision of balanced communities and on local amenity.
  - The effect of the proposed change on the living conditions of prospective occupiers.

### Reasons

#### *Balanced Communities and Local Amenity*

3. The history of the use of the dwelling indicates that it has, from time to time, varied between a C3 dwelling house, perhaps with 2 lodgers in the 3 bedroom property, and what should be considered a C4 small 'house in multiple occupation' when the use of one of the larger bedrooms is by a couple. The dwelling has not been converted in a way that would prevent its use by a family of 4 related adults under Class C3, as opposed to 4 unrelated adults under Class C4. The appellant makes clear that whilst the uses just stated have varied since 2013, the building is not used for student accommodation.
4. Policy CP21 of the Brighton & Hove City Plan Part One is entitled '*Student Accommodation and Houses in Multiple Occupation*' and states the aim that to meet increasing accommodation demands from students and to create mixed,

healthy and inclusive communities, the Council will support the provision of additional purpose built accommodation and actively manage the location of new houses in multiple occupation. Change of use to a house in multiple occupation will not be permitted where more than 10% of dwellings within 50m of the site are already in use as Class C4 use.

5. The appellant points to the usual ability to change from a C3 dwelling use to a C4 small house in multiple occupation and *vice versa* without express permission as allowed for in Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. In the present case the supporting text to Policy CP21 confirms that an Article 4 Direction was made in 4 wards requiring permission for a change to a C4 use, stemming from information from the Student Housing Strategy.
6. The policy text states that a database uses a variety of information sources including planning records, details of houses in multiple occupation licensed by the council and those properties identified as student housing through Council Tax records. The text continues with the words '*planning permission for the change of use will not be granted where more than 10 per cent of these neighbouring properties are already in 'house in multiple occupation' use.'*
7. The Council's reason for refusal refers to the percentage of extant permissions within 50m, whilst the appellant points to the use of the words '*already in use'* in both the policy text and the supporting text, and discounts extant but unimplemented permissions. The problem with this, possibly literal, approach to the wording is that if and when these other permissions are implemented, the 10% figure could then be breached by a longer-standing permission. Whilst it is reasonable that there is a 'first-come-first-served' approach to granting permission, that approach cannot be reasonable, having regard to the aims of the policy, on the basis of when permissions are implemented.
8. The Policy is clearly justified very much with regard to student accommodation needs and pressures, and the proximity of the site to 2 universities will have informed the need for the Article 4 Direction. The appellant's stated proposal is not for student accommodation and although the title of Policy CP21 is both student accommodation *and* houses in multiple occupation, the harm identified and the choice of wards for the Direction clearly links possible harm with the student use.
9. The location of this dwelling near the road junction with Fitch Drive, with its nearby lengths of kerbside parking without frontage development, and the separation from the dwelling to the south-east by a wide gap for the pathway, lead to the conclusion that there is very limited scope for harm through any theoretical additional need to park vehicles, or other increases in activity.
10. Taking all of the forgoing into consideration, it is determined that the risk of harm can be overcome by disaggregating the multiple occupation from the student use. The appellant suggests a condition to that effect, but the possible problem with that is ease of enforcement. An Undertaking may provide the more legally binding vehicle for the necessary control, and other possibilities may involve the keeping of a log of occupiers, submitted for inspection as required. The same Council Tax records that are used to identify student housing as stated in the text to Policy CP21 could also be used. In the event, a condition requiring a scheme would allow negotiation on this essential matter.

11. To conclude on this main issue, the provision of a house in multiple occupation for student use in this area would likely cause the harm sought to be avoided in Policy CP21 due to the percentage already granted permission, but provided that use can be prevented, no such harm would occur and the proposed change of use can go ahead without adverse effects on the provision of mixed, healthy and inclusive communities. No harm would be caused to the living conditions of local residents of the type that Policy QD27 aims to prevent.

#### *Living Conditions*

12. Policy QD27 states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed occupiers, or where it is liable to be detrimental to human health
13. Supplementary Planning Document '*Parking Standards*' require 0.25 spaces per bedroom, and 1 cycle space per 2 bed-spaces. The equivalent standard for the existing 3-bedroom C3 use would be 1 car space per dwelling and 2 cycle spaces per unit. In this case the provision of car spaces would not change and the garage would be available for cycle parking as it is not essential to provide a car space in addition to the driveway.
14. The dwelling has 3 bedrooms and there does not appear to be any dispute that bedrooms 1 and 3 are large enough to accommodate up to 3 adults. Bedroom 2 is considered in the Council's reason for refusal as being of limited size resulting in a cramped and oppressive standard of accommodation with little circulation space available. However, the room seen at the site inspection had a single bed across its width with its foot to the window wall, a double wardrobe and a chest of drawers, together with adequate space to move around, dress and the like. Due to the large window, the falling ground to the rear, extensive views and the large garden, the room was light, airy and attractive. The room may not be readily useable as a study-bedroom for a student wishing to work away from the communal areas, but is adequate as private space for an adult who would be making use of the communal areas for eating and relaxing.
15. In this connection is the concern of the Council that there is no designated dining area to either the kitchen or the living room and neither space could accommodate a dining facility for 4 persons while retaining sufficient space for its named function. At the time of the site inspection the kitchen had been enlarged to provide such space by the removal of the rear door lobby, store and cupboard shown on the drawings. To the extent that a non-student C4 use differs from what is capable of being at least a 4 person family house, the communal spaces provide an acceptable standard of accommodation for future occupiers in accordance with Policy QD27.

#### **Conditions and Conclusions**

16. The Council suggested a condition requiring details of the cycle store, but this is already provided in the garage and a condition requiring the use to be retained would be sufficient. A condition is required to ensure that the living room did not become used as bedroom, so that another suggested condition limiting the number of occupiers to 4 would ensure that only the 3 bedrooms are used. With that restriction in numbers and on the use of the living room, there is no need to remove permitted development rights as the harm

identified in the Council's reason for the condition would not occur. In view of the appellant's comment about the use already having occurred at times, there is no need for the commencement condition, but the requirement for a scheme to prevent student letting, as reasoned above, should have time limits for the appellant's action, otherwise the permission would lapse.

17. With those provisions, the proposed use as a small house in multiple occupation by unrelated adults, but not students, would serve a useful purpose in making best use of resources with a high level of occupancy and providing low-cost general housing in a sustainable location. For the reasons given above it is concluded that the appeal should be allowed.

*S J Papworth*

INSPECTOR

#### Schedule of Conditions

- 1) Unless within 3 months of the date of this decision a scheme for the prevention of letting to students is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 2 months of the Local Planning Authority's approval, the use of the premises as a Class C4 house in multiple occupation shall cease until such time as a scheme is approved and implemented.  
  
In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2) The development hereby approved shall be occupied by a maximum of 4 persons.
- 3) The secure cycle parking facilities in the garage shall be retained as such and be available for use at all times.
- 4) The living room as shown on drawing 0457.EXG.001 shall be retained as communal space and shall not be used as a bedroom at any time.