

Appeal Decision

Site visit made on 12 July 2016

by Andrew Steen BA (Hons) DipTP MRTPI

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

Decision date: 03 August 2016

Appeal Ref: APP/Q1445/W/16/3147094

9 Fairlight Place, Brighton, East Sussex, BN2 3AH

- 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 Patrick Spiers of DataFast Limited against Brighton & Hove City Council.
 - The application Ref BH2015/03799, is dated 19 October 2015.
 - The development proposed is the change of use from class C3 (dwelling house) to mixed class C3/C4 (dwelling house/house in multiple occupation).
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Decision

1. The appeal is dismissed and planning permission for the change of use from class C3 (dwelling house) to mixed class C3/C4 (dwelling house/house in multiple occupation) is refused.

Application for costs

2. An application for costs was made by Mr Patrick Spiers of Datafast Limited against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The development has been completed and the property is occupied by students as a small house in multiple occupation.
4. There is an Article 4 Direction in place in this part of Brighton that restricts changes of use such that planning permission is required for the change of use from dwelling under use class C3 to small house in multiple occupation under use class C4.
5. The Brighton & Hove City Plan Part One (CP) was adopted during the course of this appeal and policies within this plan supersede a number of policies contained within the Brighton & Hove Local Plan (LP). The Council provided a list of policies in their draft report, along with copies of CP Policies that superseded LP Policies, with the appeal questionnaire. Policies QD27 and HO14 of the LP, which have been drawn to my attention, were not superseded and remain part of the adopted development plan. Policy CP21 of the CP submission document, referred to in the Council's reason for refusal, has been adopted and now forms part of the development plan. I have based my

decision on the current adopted development plan policies contained within the LP and CP.

Main Issue

6. The main issue in this appeal is whether the development and any associated increase in noise and disturbance would undermine the provisions of the development plan aimed at providing healthy and mixed communities across the city.

Reasons

7. It is alleged by the Council that the over-concentration of houses in multiple occupation in an area leads to increased noise and disturbance for other residents and they present government research justifying that concern, alongside other evidence including a summary of Environmental Health records of noise complaints. I understand that these were the reasons given for introducing the Article 4 Direction in this part of the city.
8. In order to address these issues, Policy CP21 of the CP, at section ii), seeks to restrict changes of use to houses in multiple occupation where more than 10% of dwellings within 50m of the site are in that use. In this case, there is no dispute that the proposed development would result in around 25% of dwellings within 50m of the site being houses in multiple occupation, such that the proposal is contrary to that policy. I understand the proportion in the policy is considered too low by the appellant, but has been tested at examination and now forms part of the adopted policy.
9. Construction of the house was completed shortly prior to occupation by students in September 2015 and the planning application was submitted shortly after that date to regularise that use. The previous use of the site was as a commercial yard, which suffered from various forms of anti-social behaviour that ceased during construction of the houses. Whilst the development and current use of the property may be an improvement over that situation, this would not outweigh the policy conflict identified.
10. The character of the area is informed by the relatively high proportion of student properties, which are generally well kept and in most cases it is not obvious which properties are in use as houses in multiple occupation, such that they do not have a distinct character. I agree that not all such properties create noise and disturbance and that the number of residents of a dwellinghouse within use class C3 can be similar to the number in a house in multiple occupation. I note that the owners of such properties have a responsibility to ensure they are occupied by suitable tenants and instances of noise and disturbance should be correctly dealt with and I have no reason to consider the appellant would not do so.
11. A previous appeal decision¹ has been provided that was issued prior to adoption of the CP, although then draft Policy CP21 of the CP was given significant weight in that decision. In that case, the proportion of houses in multiple occupation was around 11%. Consequently, the higher proportion of houses in multiple occupation in this case, combined with the statutory weight to be given to the development plan policy, means that case is not comparable and I have considered the proposed development on its own merits.

¹ Appeal reference APP/Q1445/A/14/2213817

12. However, based on the evidence presented by the Council and summarised above, the use of this property results in a proliferation of houses in multiple occupation and this proliferation cumulatively results in an unacceptable increase in noise and disturbance for surrounding residents.
13. For these reasons, I conclude that the use of this property as a house in multiple occupation has an adverse effect upon the living conditions of surrounding residents and would not lead to a healthy and mixed community in this part of the city. As such, the development is contrary to Policy CP21 of the CP which seeks to provide for a range of housing needs within the city and Policy QD27 of the LP that seeks to protect the living conditions of neighbouring occupiers.

Other matters

14. Occupiers of the house in multiple occupation support the services and facilities on Lewes Road aimed at the student market and the property contains high quality accommodation that provides adequate living conditions for its residents. It is suggested that there is a shortage of suitable student accommodation to which this property contributes, although I have been provided with limited information as to this demand.
15. Policy HO14 of the LP remains part of the adopted development plan and seeks to protect non-self-contained accommodation, such as houses in multiple occupation, that are of acceptable standard and meet the need for this type of accommodation within the city. As the property does not benefit from planning permission for this use, the refusal of planning permission would not lead to the loss of such accommodation so would not be contrary to this policy.
16. The Council request that dropped kerbs and tactile paving be provided outside the site should this appeal be allowed. It is unclear why these are required to provide for a small house in multiple occupation rather than the permitted single dwellinghouse use. Consequently, I conclude that such provision is not necessary or relevant to the development to be permitted.
17. The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development, defined as development in accordance with the Framework as a whole. This confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
18. Sustainable development has three dimensions that must be considered together, being economic, social and environmental. Residents of the property would bring economic benefits to the local area and the development would contribute to the need to provide student accommodation in a location accessible by a range of transport choices and close to services and facilities, including the Universities of Brighton and Sussex. The construction of this dwelling appears to have had a positive effect on the appearance of the area and removed the anti-social behaviour prevalent on the site prior to redevelopment. However, the social and environmental harm arising from the noise and disturbance to living conditions of neighbouring occupiers and the adverse effect on the healthy and mixed community of the area would significantly and demonstrably outweigh these benefits.

Conclusion

19. On the basis of the above considerations, I conclude that the appeal should be dismissed.

Andrew Steen

INSPECTOR