



Appeal Decision

Site visit made on 4 September 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/Q1445/W/19/3231101

Land to the rear of 20-30 Portland Street, Brighton BN1 1RG

- 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 Edwards (Hargreaves Management Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/00557, dated 20 February 2018, was refused by notice dated 21 February 2019.
 - The development proposed is the construction of four residential dwellings above an existing car park.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. The Council has changed the description. Initially it was changed to erection of 4no detached dwellings (C3) of two storeys plus room in the roof, with 16no undercroft parking spaces and 9no cycle spaces. This, to all intents and purposes, accords with the description provided by the appellant on the appeal form. The description on the decision notice is different and states the erection of 4no detached dwellings (C3) of two storeys plus room in the roof, with undercroft parking spaces and cycle spaces. My decision is based on the description of development taken from the decision notice.

Main Issue

3. The main issue raised in this appeal is whether the proposed development would provide appropriate living conditions for future occupants with particular reference to noise and disturbance from the commercial car park.

Reasons

4. The appeal site comprises a commercial car park located behind a terrace of two storey plus rooms in the roof dwellings on the west side of Portland Street. There are 38 privately rented spaces which are accessed via a single access point at the southern end of the terrace, which is controlled by an electronically operated security gate. The site is enclosed by built development on three sides. The eastern boundary is defined by a brick wall enclosing the rear gardens of the adjacent terraced houses. There is a tall retaining wall along the western boundary, which separates the site from commercial buildings in

Windsor Street, which are sited at a significantly higher ground level. The southern boundary is defined by the wall of a large multi-storey mixed-use building. To the north, there is a cleared site with extant permission for a mixed use residential and commercial development.

5. The car park operates independently of the adjacent properties. The Council has confirmed that it was previously used in connection with the residential properties to the east, and that an enforcement case in respect of the breach of condition relating to the parking spaces has been considered and closed by the Council. The current use is therefore uncontrolled by any planning restrictions. The appellant has confirmed that the car park is used by local businesses and residences within the locality. There is 24-hour access which is restricted to those with reserved spaces.
6. 34 parking spaces will remain as part of the appeal proposal, 16 of which will comprise undercroft parking below the four new houses. The appellant has confirmed that none of the parking spaces will be specifically allocated to the proposed new dwellings, although spaces would be available for renting should future occupants choose to do so.
7. Notwithstanding that any future owner or occupier of the new dwellings would be aware of the situation, the appeal proposal would, nevertheless, result in a juxtaposition of independent uses that would have the potential to provide a poor standard of living conditions for the occupants of the new houses.
8. The appellant refers to other examples of city centre dwellings adjacent to roads and car parks where there is vehicular activity day and night. Whilst I acknowledge that the appeal site is located in a mixed commercial and residential urban environment, I must determine the appeal on the basis of the specific appeal site circumstances.
9. The proposed development would be positioned away from the surrounding street frontages, within a relatively quiet, enclosed, confined environment, surrounded by built development, some of which extends to a significantly greater height than the appeal scheme. In such circumstances, the impact of the commercial car parking upon the living conditions of the occupiers of the new houses would be experienced more sensitively than if the dwellings were located directly fronting the street. A quieter residential environment would be expected by future occupants.
10. Given the site constraints, principal windows of the houses are mainly positioned on the front elevations, directly fronting the car park, including living room and bedroom windows. In addition, each house would have four, potentially unrelated parking spaces positioned directly beneath the dwelling and its first floor courtyard external amenity area.
11. The impact of the comings and goings of the users of the commercial car park over a 24 hour period would result in an unacceptably poor living environment for the occupiers of the houses. Given their proximity to the car park, there would be an associated risk of noise disturbance from vehicle engines, driver and passenger conversations, and in-vehicle music/entertainment systems, together with light disturbance from vehicle headlights.
12. The appellant cites the results of a recent 3-day survey of parking usage, which demonstrates a low frequency and volume of traffic movements associated

with the car park, particularly during night time hours. It is submitted that this demonstrates there is unlikely to be adverse impacts on the living conditions of future occupants. The appellant also confirms that this would remain the case, since there is no intention of altering the way the car park would be managed. The use of spaces would continue to be restricted to those who rent them, and there would be no general public access to the car park.

13. The current operation of the car park, as evidenced by the recent survey, does potentially reduce the likelihood of harm to the living conditions of the future occupants of the new dwellings. However, it does not eliminate the risk of harm completely. The car park would continue to operate over a 24 hour period. No precise mitigation measures and/or mechanisms to ensure their future implementation, are included within the appeal proposal, such as a car park management plan and/or noise insulation measures within the new buildings. There would be no control over the type of vehicle that would be parked there, nor any guarantee that the existing electronic security gate controlling public access is retained in the future.
14. For the above reasons, material harm is likely to be caused to the living conditions of the occupiers of the new dwellings, as a result of noise impacts and disturbance from vehicle lights associated with the use of the commercial car park. Accordingly, the proposal would not comply with retained Policy QD27 of the Brighton and Hove Local Plan 2005 Brighton and Hove Local Plan Policies Retained on Adoption of the Brighton and Hove City Plan Part One (March 2016), which aims to protect the amenity of future occupiers of new developments. This is generally consistent with the Policies of the National Planning Policy Framework (the Framework), which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (paragraph 127).

Other Matters

15. The site lies within the North Laine Conservation Area. The Council has not found any harm to the character and appearance of the conservation area as a result of the proposed development, subject to the protection of the historic flint wall adjacent to the western site boundary. I agree with this assessment. The design of the new houses would be different from the residential terraces characteristic of much of the conservation area. Notwithstanding this, the proposed domestic scale dwellings with pitched roofs and dormer windows would not harm the mixed residential and commercial character of this part of the conservation area. Furthermore, the proposed development would not be readily visible in public views given the enclosed nature of the appeal site.
16. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites. It considers that it has a 4.5 year supply and this figure is not disputed by the appellant.
17. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, including designated heritage assets, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed

against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

18. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest.
19. In terms of its component dimensions, there would be a small social benefit in providing four extra housing units. However, whilst paragraph 59 of the Framework refers to boosting significantly the supply of homes, the provision of four additional units would make little meaningful difference. Economic advantages would also arise from the construction and occupation of the new houses.
20. However, a good standard of residential amenity is also a key aspect of sustainable development. The harm I have identified to the living conditions of the occupiers of the new housing identified would be significant. As a result, the social role of sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

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

S Leonard

INSPECTOR