



Appeal Decision

Site visit made on 28 July 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2020

Appeal Ref: APP/Q1445/W/20/3249592

95 Heath Hill Avenue, Brighton BN2 4FH

- 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 Steve Granocchia of Elandus 1 against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/03433, dated 15 November 2019, was refused by notice dated 9 March 2020.
 - The development proposed is change of use of a small house in multiple occupation (C4) to a large house in multiple occupation (sui generis) incorporating a single storey rear extension and creation of parking area to front.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposal was refused for a single reason relating to the living conditions of neighbouring occupiers. However, third party representations raised a second issue relating to potential conflict with the mix and balance of the community in the area, which is the subject of Policy CP21 of the Brighton & Hove City Plan Part One 2016. I consider that issue is material to the case. The main parties have therefore been given the opportunity to comment on the policy and its relation to the appeal proposal. I have taken account of the additional comments made.

Main Issue

3. The main issues are:
 - the mix and balance of the community in the area
 - the effect on the living conditions of neighbouring occupiers, with regard to noise and activity.

Reasons

Mix and balance of community

4. Policy CP21 of the Brighton & Hove City Plan Part One 2016 supports the provision of purpose built student accommodation on strategic allocations while at the same time seeking to prevent the over-concentration of houses in multiple occupation (HMOs). To that end, the policy resists changes of use to an HMO, including to a sui generis HMO (more than six people sharing), where

- more than 10% of dwellings within a radius of 50m of the site are already in use as HMOs.
5. The proportion of HMOs within 50m of the appeal site has been calculated variously as 1/16 (6.25%) by the Council and 1/17 (5.9%) by the appellant. However, on the evidence before me there are at least two lawful HMOs within 50m of the appeal site, these being 38 Heath Hill Avenue and 95 Heath Hill Avenue (the appeal property). These give a proportion of 2/16 (12.5%) or 2/17 (11.8%) HMOs to dwellings respectively, depending on the exact number of dwellings within the 50m radius. I note that neither main party included the appeal property in their calculations, but as Policy CP21 is based on controlling the proportion of HMOs within a given area, in my view it is necessary to do so as the appeal dwelling forms part of the properties in that area. I note that planning permission has recently been dismissed on appeal for the change of use of 44 Heath Hill Avenue to an HMO, on the basis that the concentration of HMOs in the area exceeds the 10% threshold. 44 Heath Hill Avenue is located on the opposite side of the road to the appeal site.
 6. I acknowledge that the existing lawful use of the appeal site is as a small HMO within Use Class C4 and that a change of use to a sui generis HMO will not therefore alter the number of dwellings in HMO use in the area. However, on my reading of Policy CP21 once the 10% threshold is reached any further change of use to an HMO, including a situation where a dwelling moves from a small HMO to a sui generis HMO, conflicts with the policy. The drafting of the policy in this way makes sense in that the intention of the policy is to maintain mixed and balanced communities and to increase the number of students in a given area, even if they are living in the same number of dwellings, would further unbalance the mix of people in the community.
 7. In addition to the proportion of HMOs to dwellings in the area, I am conscious of the significant amount of opposition to the proposal from local residents and their representatives who perceive that the concentration of HMOs in the area is having a harmful effect on the mix and balance of the community. Such an effect includes increased antisocial behaviour such as noise and litter, and more indirect changes such as a reduction in demand for family orientated local services and a loss of pride in the neighbourhood. While there is no evidence to suggest that such antisocial behaviour relates specifically to the appeal premises, it is apparent that there is a perception that a tipping point has been reached with regards to the concentration of HMOs in this part of the neighbourhood.
 8. I conclude that the proposed development conflicts with Policy CP21 of the Brighton & Hove City Plan Part One 2106 by changing the mix and balance of the community in the area, with a consequent harm to community cohesion.

Living conditions

9. 95 Heath Hill Avenue is a relatively modest semi-detached bungalow within a row of similar properties. The property has already been extended by front and rear roof extensions allowing up to 6 occupants. This number of occupants is already towards the upper end of what would normally be expected to be accommodated in most of the neighbouring bungalows. Extending the property to enable up to 9 occupants would further intensify the use of the site.

10. I am concerned that the increase in the intensity of use of the property would have a detrimental impact on the quiet enjoyment of the neighbouring properties by reason of additional noise and disturbance. The pattern of activity associated with houses in multiple occupation, in this case mainly used by students, contrasts with the more family orientated use of the neighbouring properties and would be exacerbated by an increase from 6 to 9 occupants. The increase in activity would be particularly apparent to the neighbouring bungalow at 97 Heath Hill Avenue, which shares a drive with the appeal site and has a number of habitable room windows facing onto the drive.
11. The building has soundproofing installed on the party wall with the adjoining property at 93 Heath Hill Avenue and it is proposed to have internal door soft closers and acoustic fencing. While these modifications would to some extent dampen noise disturbance, to my mind this indicates that the level of noise and activity associated with the proposed use goes beyond what the building was ever intended or expected to accommodate. The modifications would not be able to mitigate all the noise and disturbance caused by the comings and goings and incidental activity associated with 9 people living in the same property.
12. I conclude that as a result of additional noise and activity the development would have a harmful impact on the living conditions of neighbouring occupiers and would therefore conflict with saved policies QD27 and SU10 of the Brighton & Hove Local Plan 2005, which resist development where it would cause material nuisance and loss of amenity to adjacent users, including by noise.

Other Matters

13. A local councillor has drawn attention to a proposal for a change of use from a small HMO to a sui generis HMO at 25 Wheatfield Way, which was dismissed on appeal in 2017¹. I acknowledge the similarities in the size and type of dwelling between this case and the appeal scheme although Wheatfield Way is a cul-de-sac as opposed to Heath Hill Avenue which is a through road and therefore will carry different levels of traffic.
14. The appellant has drawn attention to two appeal decisions which address the interpretation of Policy CP21². I have already acknowledged that the appeal proposal would not increase the number of dwellings in HMO use in the area, which was a particular issue in both cases, but have found that the increase in the number of bedrooms would conflict with the balance of the community, which the first of those decisions recognises is a matter of planning judgement.
15. While I have had regard to these appeal decisions, they all relate to sites in different parts of the city and in some cases smaller proposals than that subject of the current appeal. There are therefore material differences that distinguish them from the appeal scheme. I have come to my own view based on the evidence before me and my interpretation of the relevant planning policies that guide the development of HMOs in the city.
16. In addition to the two lawful HMOs at 38 and 94 Heath Hill Avenue, third parties have drawn my attention to other potential student accommodation in the area at 40, 44, 50 and 101 Heath Hill Avenue, and 10 and 14 Auckland Drive. The Council has initiated enforcement investigations into the use of 40

¹ APP/Q1445/W/17/3167805

² APP/Q1445/W/18/3211788 and APP/Q1445/W/19/3231901

and 44 Heath Hill Avenue. 10 and 14 Auckland Drive are more than 50m away from the appeal site and therefore not counted under the terms of Policy CP21. 50 Heath Hill Avenue is an extant permission for purpose built student accommodation but has not been constructed so I can give it little weight. The Council says it has investigated 101 Heath Hill Avenue but I do not have any further information as to that property's use. Given my conclusion that the proportion of HMOs to dwellings within 50m of the appeal site already exceeds the 10% threshold, I have not needed to consider the use of this property for the purposes of the appeal.

17. I acknowledge the recommendation of the Council's officers, which was in favour of the proposal. I also acknowledge that the proposed rear extension would not cause any physical harm given that it would not be seen in public views and would not materially affect outlook from the neighbouring properties. However, the absence of harm in this respect does not alter my conclusions on the main issues for the reasons set out above.

Conclusion

18. I conclude that the appeal is dismissed.

Guy Davies

INSPECTOR