



## Appeal Decision

Site visit made on 18 December 2018

**by J Davis BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 March 2019**

---

**Appeal Ref: Q1445/W/18/3205935**  
**50 Heath Hill Avenue, Brighton, BN2 4FH**

- 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 John Talbot, Heath Hill Student Developments Limited against Brighton and Hove City Council.
  - The application Ref BH2017/03820, is dated 17 November 2017.
  - The development proposed was originally described as 'Erection of three storey building to provide for student halls of residence (35 units)'.
- 

### Decision

1. The appeal is dismissed and planning permission for the erection of three storey building to provide student halls of residence of 33 units is refused.

### Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises the erection of a three storey building to provide student halls of residence of 33 units. The Council dealt with the application on this basis and so shall I.
3. The Council have set out their objections to the proposal in their statement of case. I have had regard to this statement in framing the main issues below.

### Main Issues

4. The main issues in relation to the appeal are as follows:
  - i) Whether the loss of a community facility is justified having regard to planning policies concerning community facilities;
  - ii) The effect of the proposal on the character and appearance of the surrounding area;
  - iii) The effect of the proposal on the living conditions of the occupiers of neighbouring dwellings;
  - iv) Whether the proposal provides an adequate standard of accommodation for future occupants of the development; and

- v) Whether financial contributions towards improved sustainable transport provision and the improvement and expansion of open space and recreation in the vicinity of the site are necessary.

## **Reasons**

### *Background*

- 5. The planning history of the site is of relevant to the current appeal. The site previously comprised of a doctor's surgery, now demolished. An appeal decision dated 19 November 2013 (Ref. APP/Q1445/A/13/2200971) granted planning permission for the redevelopment of the site to provide for replacement surgery and student halls of residence (19 rooms). A further application under Section 73 of the Town and Country Planning Act 1990 to 'vary' the approved plans condition was subsequently refused by the Council but allowed on appeal (Ref. APP/Q1445/W/14/3001891). These changes involved alterations to the internal arrangements and fenestration to provide 24 student units of accommodation.
- 6. The development which is the subject of this appeal comprises a three storey building to provide 33 student rooms with on-site office and disabled parking only and does not make provision for a replacement doctor's surgery.

### *Community facility*

- 7. Policy HO20 of the Brighton & Hove Local Plan 2005 seeks to retain community facilities, including surgeries and clinics. The policy sets out a number of exceptions including under (b) where the community use is relocated to a location which improves its accessibility to its users; and under (d) where it can be demonstrated that the site is not needed, not only for its existing use but also for other types of community use. Although this policy predates the National Planning Policy Framework (NPPF) it aligns with paragraph 92 which states that in order to provide social, recreational and cultural facilities and services the community needs, planning policies and decisions should (among other things) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. I therefore afford the policy full weight.
- 8. The appellant does not dispute that the proposal would lead to the loss of a community facility but advises that former patients of the surgery were relocated to other surgeries and that a number of surgeries in the area are accepting new patients. Some evidence to this effect has been provided in the form of information from NHS UK website, albeit undated. However, this evidence does not demonstrate that the requirements of Policy HO20 (b) have been met in terms of the relocation of the community use to a location which improves accessibility to its users.
- 9. Furthermore, a Marketing Letter from Rand & Co, dated May 2017, states that the site had at that time been marketed for over 12 months without success in finding a tenant. However, it does not provide precise details of the marketing of the site and it is not clear from this letter whether the site was solely marketed as a surgery site or for wider community facilities. As such, the information contained within this letter does not enable me to conclude with certainty that the site is not needed for an alternative community use.

10. The proposal would result in the unjustified loss of a community facility and so would be contrary to Policy HO20 of the Brighton & Hove Local Plan 2005 which seeks to ensure that residential neighbourhoods have adequate community facilities to meet local needs and with advice contained within the NPPF, which has similar aims.

#### *Character and Appearance*

11. The proposed building is part two storey, part three storey with a flat roof design. The proposed development would have a frontage onto both Heath Hill Avenue and Auckland Drive. The adjacent properties along Heath Hill Avenue are semi-detached bungalows, some of which have accommodation within their roofspace. These bungalows have a relatively low ridge line. The adjacent properties along Auckland Drive are two storey semi-detached, with side gables. Beyond these semi-detached houses is a three storey property with pitched roof. Land levels vary significantly with the properties in Auckland Drive being located at a higher level than the dwellings along this part of Heath Hill Avenue. The appeal site itself also rises steeply away from Heath Hill Avenue.
12. The design and form of the proposed development would contrast sharply with the existing character of the area. The three storey elements, particularly where full height and unrelieved by any form of set back, would appear highly dominant in the street scene and would appear incongruous and out of character with the surrounding area. The scale of the development as a whole would visually overwhelm the adjacent bungalows. The design includes large expanses of brickwork which are largely unrelieved by fenestration or other detailing resulting in a rather stark appearance, out of character and jarring with the more traditional style of properties in the area. I take into account that the previous approved scheme<sup>1</sup> comprised a large 2 storey building on the site with accommodation in the roof. However, the bulk and mass of this proposal would be significantly less intrusive than the scheme before me.
13. Consequently, the proposal would harm the character and appearance of the area and would be contrary to Policy CP12 of the Brighton & Hove City Plan Part One (2016) which seeks to raise the standard of design in the city, and with the guidance in the Framework, which has similar aims.

#### *The effect of the proposal on the living conditions of the occupiers of neighbouring properties*

14. The scheme provides for 33 students. It is reasonable to assume that this number of students would give rise to comings and goings on site and that this could be late at night. This would change the character of the use from the previous medical centre where late night activity was limited. There would also be intensive periods of activity when students move in and out of the accommodation at the start and end of the academic year. Taking into account the quiet residential character of the area it is likely that harm to the living conditions of nearby occupiers would be likely to occur. I note that the previous appeal schemes were accompanied by a unilateral undertaking that required a management plan to be entered into with one of the nearby Universities. This would ensure that unacceptable behaviour and disturbance could be addressed, helping to protect the living conditions of neighbouring properties. Whilst a draft management plan has been provided, this does not appear to have been

---

<sup>1</sup> Appeal ref: APP/Q1445/A/13/2200971 and APP/Q1445/W/14/3001891

formally entered into with either University and I have not been provided with a planning obligation to secure this. In these circumstances I cannot be assured that adequate steps to address potential disturbance arising from the use would be implemented in this case.

15. Furthermore, the proposal would result in 8 windows at first and second floor level on the rear projecting wing on the west elevation which would face towards adjoining residential property. Whilst the windows would be set back from the boundary and the views provided would be oblique, the number of full height windows on the west elevation of the building would nonetheless harm the living conditions of the adjacent dwelling through both actual and perceived overlooking of its garden area.
16. As a result on the third matter I conclude that the proposal would be contrary to Policy QD27 of the Brighton & Hove Local Plan 2005 and Policy CP21 and of Brighton & Hove City Plan Part One which seeks to protect the amenity of existing residents.

*Standard of accommodation for future occupants.*

17. The Council's main concern in relation to this issue is the size of the communal area, which they consider is inadequate for the number of students proposed. The Council do not appear to have any specific policy or guidance which sets out the amount of communal space which would be required. The proposed studio flats would provide students with their own cooking facilities such that no communal space would be required for this purpose. The accommodation would also benefit from reasonable levels of light and outlook such that some students may be content to socialise within their rooms rather than in the communal common room for some of the time. A large area of outdoor amenity space is also proposed which could provide an alternative area for socialising, in addition to the common room. Whilst the common room is relatively small, it would be sufficient for the number of students proposed in this particular case.
18. On the fourth matter I therefore conclude that the proposal is therefore considered acceptable in this respect and would comply with Policy QD27 of the Brighton & Hove Local Plan 2005 which seeks to protect the amenity of proposed residents.

*Whether financial contributions are required towards improved sustainable transport provision and the improvement and expansion of open space and recreation in the vicinity of the site.*

19. Core Strategy Policy CP7 relates to Infrastructure and Developer Contributions and states that inadequacies in infrastructure arising from proposal developments will be mitigated through S106 Planning Obligations and sought where they meet the statutory tests. Policy CP9 relates more specifically to sustainable transport and Policies CP16 and CP17 set out the Council's requirements for new development to contribute to the provision of public open space and sports provision.
20. The Council's statement confirms the requirement for a Travel Plan in addition to a sustainable transport contribution of £18,300 to be secured via a legal agreement in order to mitigate the impact of the development. The Highway Authority's consultation response explains how this figure has been derived at having regard to the Brighton & Hove City Council Developer Contributions

Technical Guidance. It also confirms the local projects to be funded by the contribution. In the absence of any evidence to the contrary, in these circumstances I consider that such a contribution together with the requirement for a Travel Plan, would be fairly and reasonably related to the development proposed and that it passes the statutory tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the National Planning Policy Framework. The proposal would fail to secure the provision of a Travel Plan and an appropriate sustainable transport contribution and so would be in conflict with Core Strategy Policies CP7 and CP9.

21. The Council's statement also confirms that a scheme of this scale and type requires an open space and indoor sport contribution of £39,719.69. However I have not been provided with any detailed evidence as to how the above contributions have been derived at, or the effect the proposal might have on transport or on open space and recreation facilities in the local area. Nor has any detailed information been provided to show how and where the contributions would be spent. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation for open space and indoor sport contributions does not weigh against the development.

#### *Other matters*

The proposed development involves the removal of a Willow tree which is protected by a Tree Preservation Order. However, the principle of removing this tree has already been established by the previous approval. A replacement tree is shown in a similar location on the submitted drawings. Moreover, I also note that the footprint of the proposed building is very similar to that of the approved scheme which has previously been found to be acceptable on arboricultural grounds. In the light of this, matters relating to tree retention, protection and replacement could be adequately dealt with by condition in the event that I was minded to allow the appeal. This matter does not therefore add to my concerns.

#### **Conclusion**

22. For the reasons set out above I conclude that the proposal would result in the unacceptable loss of a community use. It would also be harmful to the character and appearance of the area and would result in material harm to the living conditions of the occupiers of adjoining properties. The benefits arising from the provision of student housing, some of which would be suitable for those with reduced mobility, would not outweigh the harm identified in these respects. The proposal therefore conflicts with the development plan and there are no material considerations that should indicate a decision otherwise.

23. Accordingly, the appeal is dismissed and planning permission for the erection of three storey building to provide student halls of residence of 33 units is refused.

*J Davis*

INSPECTOR