



Appeal Decision

Site visit made on 4 April 2014

by Megan Thomas BA(Hons) in Law, Barrister

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

Decision date: 14 July 2014

Appeal Ref: APP/Q1445/A/13/2206186

154 Saunders Hill, Brighton, Sussex BN1 9ES

- 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 James McAllister-Dew against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/01183, dated 9 April 2013, was refused by notice dated 13 June 2012.
 - The development proposed is "the property is to become a house in multiple occupancy".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of local residents and on the aim of securing a mixed and balanced community.

Reasons

3. The appeal site is a two storey semi-detached dwelling on the Coldean Estate located on the north-eastern side of Brighton and Hove. Saunders Hill runs along the north-western perimeter of the Estate and there are dwellings to the south, west and east of no.154, the appeal site. To the north, there is open countryside which is within the South Downs National Park.
 4. No.154 is part of a terrace of 5 properties. It is at the end of the terrace and has a rear extension and a front porch. It has a frontage to Saunders Hill and an off-road parking space. Its rear garden slopes down and is decked. The house has four bedrooms. It has a licence for a house in multiple occupation 'HMO'.
 5. The area is subject to a direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 removing permitted development rights to change the use of dwellinghouses to HMOs.
 6. Whilst there is an adopted policy in the Brighton & Hove Local Plan 2005 'LP' which is essentially a supportive one towards HMOs, this policy is not up-to-date and does not reflect changes which have occurred since the policy (HO14)
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was saved. The Council is in the course of preparing and adopting a City Plan as part of their Local Development Framework. Draft policy CP21 in the City Plan deals with Student Accommodation and HMOs and it responds to, in part, concerns the Council has about the amenity impacts of an over-concentration of HMOs in sectors of their administrative area. In addition to supporting the provision of additional purpose-built accommodation for students, CP21 seeks to actively manage the location of new HMOs by not permitting them where more than 10% of residences within a radius of 50 metres of an application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use.

7. In the case of the appeal site, the Council assert that within a 50 metre radius there are two HMOs, one at 111 Hawkhurst Road and one at 152 Saunders Hill which is adjacent to the site. Whilst neither of these two properties are recorded in the Council's records as being licensed HMOs, the Council indicate that they have come to their findings based on council tax, private sector housing and planning records. I am therefore satisfied that the properties are being used as HMOs. I note that the appellant points out that 152 Saunders Hill appears to be used by working professionals rather than students but this would not affect its use as an HMO.
8. The appellant also highlights the fact that it is only a small corner of the curtilage of 111 Hawkhurst Road which is within the 50m radius and that it is not the residential property itself. To my mind, it is reasonable to consider the term "residential properties" or the term "dwellings" as appears in the draft policy itself, as including the curtilage of dwellinghouses because domestic activity occurs in gardens as well as within buildings themselves. Furthermore, I note that the approach of the Council has been consistent in including in the total number of properties from which to calculate the 10% all properties whose curtilages, however fractional, fall within the radius. Overall therefore the appeal scheme would be in breach of draft policy CP21 with more than 10% of dwellings in HMO use within a 50m radius of the appeal site.
9. The second limb of emerging policy CP21 which addresses HMOs has not been subject to any objections but the first limb which deals with student housing has. An examination into the Plan has taken place but no final report has yet been issued. The limbs of the policy are, however, interrelated and at this stage it is not possible to draw the immutable conclusion that the second limb would not be altered in any way. However, the second limb of the policy is generally consistent with policies in the National Planning Policy Framework and that is also a relevant factor in assessing its weight. Having taken into account all factors relevant to CP21 at this stage of its evolution I accord it moderate weight.
10. Turning to the matter of residential amenity and in particular to potential noise and disturbance, I acknowledge that there are no houses and therefore no local residents to potentially disturb on the western side of Saunders Hill as this location is undeveloped and within the South Downs National Park. However the appeal site would immediately adjoin another HMO which is the adjacent attached house at no.152. This would give rise to significant potential for cumulative general activity and increased noise and disturbance in the immediate area. Evidence from a local resident supports this view. The separation distance from no.156 is small and the elevated location of the appeal

site above the residential properties on Hawkhurst Road adds to my concern that the likelihood is that there would be unacceptable noise and disturbance from the addition of another HMO in this part of the Estate. Therefore, on this matter I conclude that the proposed development would result in unacceptable noise and disturbance to the living conditions of local residents and would be contrary to saved policy QD27 of the LP. Furthermore, given the conflict with emerging policy CP21, I consider that the proposal would not further the aim of creating or maintaining a mixed and balanced community in this part of the Coldean Estate.

11. The appellant has referred to the Council's written reply to his initial enquiry about whether or not planning permission for change of use to an HMO would be likely to be granted. Whilst the reply would not have been legally binding on the Council in any event, it does say that it is possible that HMOs along Saunders Hill are not evenly spread and permission may be refused in any parts that exceed 10% in HMO use within 50 metres. I acknowledge that efforts were made to establish what the likely planning position would be prior to purchase of the property and I have noted that the property has been granted an HMO licence. I am also mindful that the appellant has already embarked on his degree course at the university. However, none of those factors convinces me that the harm I have identified above is outweighed in this instance.
12. The Government's Planning Practice Guidance was published on 6 March 2014 after the main representations were submitted. However, it is my view that neither the appellant nor the Council referred to or relied to any significant extent on the former guidance which has now been cancelled. In these circumstances neither the Appellant nor the Council would be prejudiced by me considering the appeal on the basis of the information already submitted, and the publication of the Planning Practice Guidance does not affect my conclusions.
13. Consequently, having taken into account all representations made, I dismiss the appeal.

Megan Thomas

INSPECTOR