





**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	3 December 2008
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	<p>Councillors:Hyde (Chairman), Wells (Deputy Chairman), Barnett, Carden (Opposition Spokesperson), Davey, Hamilton, Kennedy, McCaffery, K Norman, Smart, Steedman and C Theobald</p> <p>Co-opted Members: Mr J Small (CAG Representative) and Mr R Pennington (Brighton & Hove Federation of Disabled People)</p>
Contact:	<p>Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk</p>

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AGENDA

140. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

141. MINUTES OF PREVIOUS MEETING

1 - 22

Minutes of the meeting held on 12 November 2008 (copy attached).

142. CHAIRMAN'S COMMUNICATIONS

143. PETITIONS

No petitions had been received by the date of publication of the agenda.

144. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 25 November 2008)

No public questions received by date of publication.

145. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 25 November 2008)

No deputations received by date of publication.

PLANNING COMMITTEE

146. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

147. LETTERS FROM COUNCILLORS

No letters have been received.

148. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

149. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

150. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST

(copy attached)

151. TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST

152. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY

153. APPEAL DECISIONS

23 - 76

(copy attached).

154. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

77 - 78

(copy attached).

155. LIST OF NEW APPEALS LODGED

79 - 82

(copy attached).

Members are asked to note that officers will be available in the Council Chamber 30 minutes prior to the meeting if Members wish to consult the plans for any applications included in the Plans List.

PLANNING COMMITTEE

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

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For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Tuesday, 25 November 2008

BRIGHTON & HOVE CITY COUNCIL**PLANNING COMMITTEE****2.00PM 12 NOVEMBER 2008****COUNCIL CHAMBER, HOVE TOWN HALL****MINUTES**

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Barnett, Carden (Opposition Spokesperson), Davey, Hamilton, Kennedy, McCaffery, K Norman, Smart, Steedman and C Theobald

Co-opted Members Mr J Small (CAG Representative) and Mr R Pennington (Brighton & Hove Federation of Disabled People)

PART ONE**124. PROCEDURAL BUSINESS****124A Declarations of Substitutes**

124.1 There were none.

124B Declarations of Interest

124.2 Councillor Hamilton declared a personal but not prejudicial interest in Application BH2008/02532, The Hyde, Rowan Avenue by virtue of his connections with Mile Oak Football Club. During consideration of the item he referred to his knowledge relative to past use of the site, but abstained from voting when determining the application.

124C Exclusion of Press and Public

124.3 The Committee considered whether the press and public should be excluded from the meeting during consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present. There would be disclosure to them of confidential or exempt information as defined in Section 100A (3) or 100 (1) of the Local Government Act 1972.

124.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any items on the agenda.

125. MINUTES OF PREVIOUS MEETING

125.1 **RESOLVED** - That the minutes of the meeting held on 22 October 2008 be approved and signed by the Chairman.

126. CHAIRMAN'S COMMUNICATIONS

Webcasting of Planning Committee Meetings

126.1 The Chairman explained that following a “soft” launch meetings of the Planning Committee were to be webcast live from that afternoon. Following the success of webcasts of full Council, Cabinet and the Overview and Scrutiny Commission, Planning Committee was also to be webcast. Those 4 meetings would be used as a pilot study which would run until June 2009. Members were reminded to speak directly into their microphones and to switch them off when they had finished speaking in order to ensure that they could be heard clearly both within the Council Chamber and the Public Gallery above.

126.2 The Clerk to the Committee explained that correspondence sent to those wishing to make representations at meetings included information to ensure that they were aware that meetings were to be webcast and guidance was given relative to use of equipment available in the meeting room including operating instructions for the microphones.

126.3 **RESOLVED** - That the position be noted.

127. PETITIONS

127.1 There were none.

128. PUBLIC QUESTIONS

128.1 There were none.

129. DEPUTATIONS

129.1 There were none.

130. WRITTEN QUESTIONS FROM COUNCILLORS

130.1 There were none.

131. LETTERS FROM COUNCILLORS

131.1 There were none.

132. NOTICES OF MOTION REFERRED FROM COUNCIL

132.1 There were none.

133. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

133.1 **RESOLVED** - That the following site visits be undertaken by the Committee prior to determination:

*BH2008/02095 / 02808, Royal Alexandra Children's Hospital Site
Development Control Manager

*BH2008/01992, Northfield, University of Sussex
Development Control Manager

*BH2008/03220, Sussex Education Centre, Nevill Avenue
Development Control Manager

*BH2007/04446 / 04452, 7 Brunswick Street West
Development Control Manager

* Anticipated as applications to be determined at the next scheduled meeting of the Committee.

134. PLANS LIST APPLICATIONS 12 NOVEMBER 2008**(i) TREES**

134.1 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 7 and resolves to grant consent to fell the trees which form the subject of the applications set out below subject to the conditions set out in the report:

BH2008/03204, 51 Crescents Drives North, Brighton;
BH2008/02935, 43 Rowan Way. Rottingdean
BH2008/02705, Priory Court, Stanford Avenue, Brighton

(ii) SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM COUNCIL POLICY : 12 NOVEMBER 2008

134.2 **Application BH2008/02586, Gala Bingo Hall and Adjacent Carpark, 193 Portland Road** - Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1 / D2 unit at ground floor and 38 residential units above in part 3, part4 and part 5 storey building including 15 affordable units (40%)/. Surface car parking and landscaping at rear. (Resubmission of withdrawn application BH 32008/00600).

134.3 It was noted that this application had formed the subject of a site visit prior to the meeting.

134.4 The Planning Officer gave a detailed presentation setting out the constituent elements of the scheme and the reasons it was recommended for refusal.

134.5 Mrs Pearson spoke on behalf of local objectors stating that in their view the proposed number of units represented gross overdevelopment of the site which would result in a significant loss of amenity for neighbouring residents and would result in a poor standard of accommodation for those occupying the scheme. Mr

Zara spoke on behalf of the applicants in support of their application and referred to boards indicating the appearance and finishes of the completed scheme. In addition to much needed affordable housing the development would also provide a much needed doctor's surgery. Councillor Kemble spoke in his capacity as a local ward councillor. He supported the reasons for refusal stating that although suitable redevelopment of the site would be welcomed any development needed to be sympathetic with and of a scale which was in keeping with the surrounding area which this was not.

- 134.6 Councillor Wells sought clarification regarding the appearance of the external walkways and means by which they would provide access to the flats. Councillor Barnett sought confirmation regarding whether there would be lift access to the flats and as to whether it was of similar height and dimensions to Noble Court which was located elsewhere in Portland Road. The Planning Officer was unable to confirm details apropos that development. Councillor McCaffery sought information regarding the overall height of the side elevations and the materials to be used both generally and specifically with regard to the timber balconies which were proposed along the Portland Road frontage and would project across the walkway below.
- 134.7 Councillor Mrs Theobald sought clarification regarding the number of staff it was anticipated would work at the doctor's surgery and expressed concern that although a small number of parking spaces were proposed in association with the consulting rooms that no off street parking was proposed for those who would be residing in the development. In answer to further questions the applicant's representative confirmed that a communal space it would be possible for a communal space to be provided at ground floor level.
- 134.8 Councillor Davey considered that the development should be designated car free in that the site had good access to public transport. The site fell within an air quality management area and this would be compromised if significant additional numbers of vehicle movements and on street parking would result from the scheme. Councillor Barnett did not agree stating that parking was needed to enable those visiting the surgery and who were unwell to park close by. In her view apart from at certain "crunch" points in the day she did not consider residents parking would exacerbate the existing situation in that there was not a waiting list for permits and a number of the bays were designated for that purpose.
- 134.9 Councillor Mrs Theobald stated that in her view there was a desperate need for additional housing across the City, she considered the percentage of affordable / social housing proposed was acceptable in this instance. She had concerns regarding the level of parking proposed however and considered that the option of providing underground car parking should be proposed. She considered that the scheme was too overpowering as presented but was of the view that it might be appropriate to agree to a deferral in order to encourage the applicant to make further amendments to the scheme. The development Control manager stated that in her view the level of amendments sought was so fundamental they would require a new application to be submitted. In her view the application should be determined as presented. Councillor Mrs Theobald proposed that the application be deferred this was seconded by Councillor Barnett.

134.10 A vote was taken relative to deferral of the application but this was lost on a vote of 5 to 6 with 1 abstention. A further vote was taken and members voted unanimously that planning permission be refused on the grounds set out below.

134.11 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse planning permission for the following reasons:

1. The development by reason of scale, bulk, height and mix of uses is considered to represent an overdevelopment of the site. The proposal is therefore contrary to policies QD1, QD2, QD3, QD27, HO3, H04, HO5 and H06 of the Brighton and Hove Local Plan.
2. The proposed development, by reason of its form, bulk, scale height and positioning within the site would be out of keeping with surrounding development and represents an incongruous feature that fails to respect the context of its setting. The proposal is therefore contrary to policies QD1 QD2, QD3 and QD5 of the Brighton & Hove Local Plan.
3. Policy SR21 of the Brighton & Hove Local Plan resists the loss on indoor recreation facilities except where it can be demonstrated that there is an excess of provision within the area, the facilities are to be replaced by improved facilities and that replacement facilities are in a location which is equally accessible to the users by a choice of transport modes as the existing facilities. Insufficient justification has been made to address these issues, including inadequate marketing of the premises for a similar use thereby failing to adequately account for the loss of such a facility, to the detriment of the amenities of the local population and contrary to policy SR21.
4. Policy H020 of the Brighton & Hove Local Plan resists the loss of community facilities except where it can be demonstrated that the use is incorporated or replaced in the new development, is relocated to a location which improves its accessibility to users, nearby facilities are to be improved or the site is not needed not only for the existing use but also for other types of community use. Insufficient information has been made for the loss of this element of the facility, contrary to policy, and to the detriment of the amenities of the local population.
5. The proposal would result in an unsatisfactory level of private amenity space which would be to the detriment of the living conditions of any future residents of the scheme and is contrary to policies H05 and QD 27 of the Brighton & Hove Local Plan.
6. Policy H06 of the Brighton & Hove Local Plan requires the provision for outdoor recreation space. Where it is not practicable or appropriate for all or part of the space requirement to be provided on-site, contributions to their provision on a suitable alternative site may be acceptable. The proposed communal amenity space would not be accessible for all of the residents of the development. It would be appropriate and practicable for a proportion of the outdoor recreation space to be provided on - site in this location. The proposal would thereby be

contrary to the policy, to the detriment of the amenities of the future occupiers of the properties.

7. the proposed development would by reason of its height, scale and positioning in close proximity to the northern boundary of the site lead v to a significant overbearing effect and increased sense of enclosure to neighbouring properties to the detriment of the living conditions of existing occupiers. The proposal would therefore be contrary to policies QD1, QD2 and QD27 of the Brighton & Hove Local Plan.
8. The proposed development would by reason of the external walkways along the north elevation lead to a significant level of the overlooking and consequential loss of privacy to the occupiers of adjoining properties to the detriment of neighbouring residential amenity. Furthermore, the linked walkways by reason of the positioning of windows serving habitable rooms would have a detrimental impact on the amenity of future occupiers by reason of overlooking and noise and disturbance. The proposal would therefore be contrary to planning policies QD1, QD2 and Qd27 of the Brighton & Hove Local Plan.
9. The car parking by reason of its positioning in close proximity to the northern boundary of the site, together with the potential for frequent trips during the day in connection with the use of the Doctors Surgery which will lead to a significant level of noise and disturbance for neighbouring occupiers to the north and future occupiers of the proposed development. The proposal would therefore be contrary to planning policies SU10 and QD27 of the Brighton & Hove Local Plan.
10. The application proposes internal bathrooms throughout the development which would be reliant on artificial lighting and mechanical ventilation to an unacceptable level. The proposed development is therefore contrary to policy SU2 of the Brighton & Hove Local Plan.
11. Notwithstanding inaccuracies between the accompanying plans and the supporting documentation, the applicant has failed to demonstrate that the introduction of 161 square metres of A1 floor space would not have a detrimental impact on the existing town and local centres in order to ensure that the viability is not compromised. The development is therefore considered contrary to PPS 6 and policies SR1 and SR2 of the Brighton & Hove Local Plan.

Informatives:

1. This decision is based on drawing nos P01, P02, P03A, P04A, P05A P06B, P07D, P08D, P09D, P10C, P11D, P12D, P13D, P14A, P15C, P016E, P017C, P018C, P018C, P20 submitted on 1 September 2008.

134.12 **Application BH2008/02532, The Hyde Rowan Avenue, Hove** – Development of 28 sheltered residential units within one additional caretakers unit, associated support and recreational areas with private landscaped gardens.

134.13 It was noted that this application had formed the subject of a site visit prior to the meeting.

- 134.14 The Planning Officer gave a detailed presentation setting out the proposals referring to the history of the site and to the reasons refusal was recommended.
- 134.15 Mrs Holden spoke on behalf of neighbouring objectors including the residents association. Albeit that the open space was privately owned it had been used as such for a number of years. The proposals would result in noise, overlooking and loss of amenity and although landscaping had been promised for several years and indeed was included within an earlier planning consent hose works had yet to be carried out. Rubbish had also been allowed to accumulate on part of the site and had not been cleared. Mr Lewis spoke on behalf of the applicant in support of their application. The applicant considered that the report contained factual inaccuracies and that the was a "Brownfield" one in that part of it had been used for parking for some 12 years. Local football clubs had not used the land for a number of years although it would be possible to retain such use within part of the site. Although not designated for housing the site was not necessarily precluded from such use and the development would provide much needed accommodation for the elderly. The Local Ward Councillors had been consulted in respect of the scheme.
- 134.16 Councillor Barnett stated that it was a misnomer to refer to the proposed development as a sheltered scheme , sheltered schemes had a resident warden whereas when caretakers were provided as in this case provision would be active elderly rather than those with more far reaching needs. Councillor Carden sought clarification as to whether the development would be likely to free up Council owned family accommodation in the vicinity. The Housing Strategy Manager explained that as the accommodation would not be provided by a registered social landlord the council would not have any nomination rights to it.
- 134.17 Councillor K Norman was of the view that if it was accepted that the site was "Greenfield" land it did not preclude it being built on if the Council considered the scheme to be a suitable one. Councillor Steedman referred to the fact that the applicant had applied for a certificate of lawfulness relative to the applicant's assertion that the site was Brownfield. This had been refused and he queried why the applicant had not lodged an appeal. The applicants representative stated that as they had been engaged in pre-application discussions with the department this had not been pursued. He was also gravely concerned that it appeared that the Local Ward Councillors had been actively engaged in the consultation process relative to the scheme. Given that two of the Councillors for the Ward were present that afternoon as Members of the Committee he considered that there was a potential conflict of interest. Councillors Barnett and Smart responded that neither of them had been directly involved in matters relating to the application and had forwarded any correspondence / queries to their ward colleague, Councillor Alford. Councillors Davey and Kennedy were of the view that that the land was open space albeit private open space and that it should be retained and protected.
- 134.18 Councillor Smart stated that as the land had always been privately owned football had only ever been played there with agreement of the owners. He considered that it would be preferable for the development to be designed so that it was configured east / west but recognised that there was a need for such housing. Councillor Barnett stated that football pitches were available for use in Stoneham Park which was located very close by. She was of the view that there was a need for the type of

housing proposed and that agreement of the applicants could be obtained to ensure that all outstanding landscaping works would be carried out before commencement of the development. If the proposed balconies facing Rowan Avenue could be removed she was of the view this would address some of the issues relative to overlooking.

- 134.19 Mr Pennington Brighton & Hove Federation of Disabled People referred to the comments of the Council's access officer that the site was not fully accessible, neither did it meet lifetime homes standards. Councillors Davey, Kennedy and Steadman were of the view that the site was important as a green field site and as such should be protected. The scheme was not well designed and fell short of lifetime homes standards. They were gravely concerned that the conditions of the existing Section 106 obligation had not been met. Refusal was recommended on a number of grounds and they supported the officer's recommendations. They noted that the Council would have no nomination rights to any subsequent accommodation and notwithstanding the stated purpose of the proposal the applicant could not be compelled to reserve the accommodation for the active elderly.
- 134.20 Councillor Hamilton stated that had declared a personal but not prejudicial interest in the application by virtue of his knowledge and past involvement with junior league football in the area. To his certain knowledge the site had been used for playing junior matches over a number of years and whilst pitches were available in nearby Stoneham Park there was a shortage of junior facilities. Although the nature of the interest was not such that it was prejudicial he indicated that he would abstain from voting.
- 134.21 Councillors Barnett and Mrs Theobald were of the view that that the scheme would be acceptable if suitable minor amendments could be made to it and queried whether it would be possible to defer consideration of the report to enable to. However the Development Control Manager stated that the scheme should be considered on its merits as presented. The applicant had had the opportunity to make further amendments to the scheme and had not chosen to do so. The outstanding matters relative to the Section 106 Obligation in respect of the Lion's Gate development elsewhere on the adjoining land in the ownership of the applicant were enforceable.
- 134.22 A vote was taken and on a vote of 6 to 5 with 1 abstention planning permission was refused on the grounds set out below.
- 134.23 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of the report and resolves to refuse planning permission for the following reasons and subject to the informatives set out below :
1. The development of the site is not acceptable in principle because the land does not qualify as being previously developed and is not a site allocated for housing in the Brighton & Hove Local Plan. As such the proposal represents a departure from policy and the applicant has not provided sufficient justification for a departure from the development plan., notably policies H01 and QD20 of the Brighton & Hove Local Plan, which set out site allocations and housing targets to

seek to resist proposals that would result in the loss of areas of urban open space that are important to people because of their recreational, community and historical value ; and is contrary to the definitions of previously developed land contained in Planning Policy Statement 3 : Housing (2006).

2. Planning Policy Guidance Note 17: Planning for Sport, Open Space and Recreation, states that existing open space should not be built on unless an assessment has been undertaken which clearly shows that the land is surplus to requirements. In the absence of an independent assessment carried out by the applicant it is considered that it has not been adequately demonstrated that the land is surplus to requirements and should not be retained as open space. Planning policy S1 (L) of the east Sussex and Brighton & Hove Structure Plan 1991 - 2011 and QD230 and QD21 of the Brighton & Hove Local Plan seek to retain public and private open space and allotments except in exceptional circumstances, none of which have been identified. For these reasons the proposal is contrary to PPG17, policy S1 (L) of the East Sussex and Brighton & Hove Structure PLAN 1991 2011, and policies SR20, QD20, and QD21 of the Brighton & Hove Local Pan. Contrary to the objectives of Local Plan policies H02, H03 and H04 the proposal fails to make the most effective use of the site achieving a maximum density of 37 dwellings per hectare and with an inadequate mix of both affordable and market units that does not accord with the requirements identified in the Council's Housing Needs Survey.
3. Policy H02 of the Brighton & Hove Local Plan requires developments that are capable of producing 10 or more dwellings to provide 40% affordable housing. The proposed scheme would only provide 34.5% affordable housing. No information has been submitted to demonstrate that the scheme is not capable of providing 40% affordable housing and is therefore contrary to policy HO" of the Brighton & Hove Local Plan.
4. Policy H03 requires developments to incorporate a mix of dwelling types and sizes that reflects and responds to Brighton & Hove's housing need. The proposed mix of residential accommodation in the affordable sector fails to provide any one or three bedroom units. The proposal therefore fails to provide an adequate standard of accommodation to the detriment of future occupiers and the City's housing stock.
5. Policies QD6 and QD28 of the Brighton & Hove Local Plan seek provision of new public art in major development schemes, or a financial contribution towards public art, appropriate to the development. The proposal does not incorporate public art or set out the required framework for such provision off – site and is therefore contrary to policies QD6 and QD28.
6. The design, layout and appearance of the buildings is unacceptable and neither creates a sense of place, enhances the locality nor takes into account the characteristics of existing development including the form, scale and proximity of the surrounding family homes. The form, scale, massing style and external finishes of the proposed buildings are considered incongruous, plain and utilitarian and do not achieve a sufficiently high standard of design or incorporate visual or architectural features of interest that might otherwise justify a modern

approach to the development. AS such the proposal would give rise to harm to visual amenity and the character and appearance of the immediate environs and is contrary to policies QD1, QD2, QD3, and H04 of the Brighton & Hove Local Plan.

7. The proposed development would, by reason of its height, scale and positioning in close proximity to the western boundary of the site , lead to a significant overbearing effect sand increased sense of enclosure to neighbouring properties to the detriment of living conditions of existing occupiers. The proposal would therefore be contrary to policies QD1, QD2 and QD27 of the Brighton & Hove Local Plan.
8. The proposed development would, by reason of its height, scale, positioning in the site, together with the internal floor layouts of flats, lead to a significant level of over looking and consequential loss of privacy to the occupiers of adjoining properties, to the detriment of neighbouring residential amenity. The proposal would therefore be contrary to policies QD1, QD2 and QD27 of the Brighton & Hove Local Plan.
9. The proposal would result in a total of 68 flats (including Lions' Gate) being served by a single access point which is inadequate in terms of width and visibility , whilst allowing for minimal connectivity and site permeability and making no provision for a cohesive cycle and pedestrian network in and out of the development. The proposal is therefore contrary to policies TR8 and TR14 of the Brighton & Hove Local Plan.
10. The applicant has failed to demonstrate that the scheme would be efficient in terms of energy, water and materials and does not include any indication of sustainable design and renewable energy features in the scheme. In addition, the application proposes internal bathrooms throughout the development which would be reliant on artificial lighting and mechanical ventilation to an unacceptable level. The proposed development is therefore contrary to policy SU2 of the Brighton & Hove Local Plan and SPGBH16: Renewable Energy and Energy Efficiency in New Developments.
11. Policy H013 of the Brighton & Hove Local Plan requires new development to meet lifetime homes standards in that it can be adapted for disabled use and residents changing mobility needs in the future without the need for major structural alterations. The internal layout, communal areas and access ways do not meet the standards reasonably expected by the Council hence the proposal conflicts with the requirements of policy H013.

Informatives:

1. This decision is based on drawing nos 07675/001 Revision a; 07675/PA/002; 07675/PA/003; 07675/PA/004; 07675/PA/005; 07675/PA/006; 07675/PA/007; 07675/PA/008; AND 07675/ Design and Access submitted on 7 August 2008 and 18 August 2008

[Note: Councillor Hamilton having earlier stated that he would do so abstained from voting in respect of the above application].

- 134.24 **Application BH2008/02479, Former Flexer Sacks Building, Wellington Road, Portslade** - Change of use of all floors to mixed use development comprising ground floor - leisure (D2) and music rehearsal studios (B1) first and existing second floor – offices (1). Additional second floor to south section comprising offices (B1) and vertical circulation core (B1) to serve ground to second floors with lift motor room at roof level. Also, external refurbishment and alterations to all elevations.
- 134.25 The area Planning Manager (West) gave a detailed presentation relative to the proposed development.
- 134.26 Mr Field spoke on behalf of the applicant in support of their application. He stated that negotiations had reached an advanced stage with potential end users. Although the percentage of uses with the site would be different than previously it would result in increased employment overall and would return the site to use. Councillor Harmer –Strange spoke in his capacity as a Local Ward Councillor expressing his support for the scheme which would return the site to use and would generate employment opportunities within the locality.
- 134.27 Councillor McCaffery sought confirmation regarding servicing arrangements in respect of the site and in respect of the number of parking spaces proposed. The Traffic manager explained that although no detailed layout had been given and the number of spaces could not therefore be confirmed the applicant had indicated that 82 spaces would be provided. Councillor Smart sought clarification regarding the level of employment provided and whether this would represent any increase to that previously associated with the site. The Area Planning Manager (West) explained that B1 and B2 uses were sought, this did not include a provision for leisure use. the balance for that use was different. Councillor Carden stated that further clarification of the comments received from the East Sussex Fire and Rescue Service would have been helpful. In answer to further questions, the Solicitor to the Committee explained that matters relative to fire safety would need to be met under building control legislation.
- 134.28 Councillors Davey and Steedman were of the view that a number of matters remained to be resolved and that it was difficult to determine the application in the absence of detailed impact and other assessments.
- 134.29 Councillor Hamilton concurred with the views expressed by Councillor Harmer – Strange. He considered that the proposal was acceptable and would return the site to use whilst generating employment. Councillors Barnett, Carden Wells concurred in that view. Councillor Carden stated that the amount of time the site had lain vacant indicated that it there was no longer a demand for its original use at hat location. Councillor Mrs Theobald agreed stating the proposal would improve the appearance of the site considerably.
- 134.30 A vote was taken and on a vote of 9 to 1 with 1 abstention Minded to grant planning permission was granted on the grounds set out below. 11 Members were present when the vote was taken.

134.31 **RESOLVED** - That the Committee has taken into consideration the reasons for the recommendation set out but is minded to grant planning permission on the grounds that the proposed development would not be contrary to or compromise the policy objectives of EM11 of the Brighton & Hove Local Plan. The scheme would provide employment and bring a vacant site back into operational use. Conditions of the Section 106 Obligation to be agreed. Prior to a decision being issued the Chairman, Deputy Chairman and Opposition Spokesperson is consulted relative to details of the proposed conditions.

[**Note 1:** A vote was taken and on a vote of 9 to 1 with 1 abstention minded to grant planning permission was granted in the terms set out above].

[**Note 2:** Councillor Hamilton proposed that planning permission be granted. This was seconded by Councillor Barnett. A recorded vote was then taken. Councillors Barnett, Carden Hamilton Hyde (Chairman), McCaffery, K Norman, Smart, Mrs Theobald and Wells voted that planning permission be granted. Councillor Steedman voted that planning permission be refused. Councillor Davey abstained. Councillor Kennedy was not present when the vote was taken. Therefore on a vote of 9 to 1 with 1 abstention minded to grant planning permission was granted].

(iii) **DECISIONS ON MINOR APPLICATIONS WHICH VARY FROM THE RECOMMENDATIONS OF THE DIRECTOR OF ENVIRONMENT AS SET OUT IN THE PLANS LIST (MINOR APPLICATIONS) DATED 12 NOVEMBER 2008**

134.32 **Application BH2008/02842, 211 Old Shoreham Road** - Conversion of single dwelling to form 3 bedroom maisonette on the ground and first floors and a one bedroom flat on the second floor.

134.33 The Area Planning Manager (West) gave a presentation explaining the scheme in detail.

134.34 Mr Glasgow spoke as an objector to the scheme stating that the proposals would result in noise penetration through the common party wall and would also result in overlooking and loss of amenity. The level of parking proposed would be inadequate given that the Old Shoreham Road was subject to congestion at that point in its length. Fast moving vehicles nearby would make access / egress to and from the site problematic.

134.35 Councillor Smart sought confirmation regarding whether on street parking was permitted in that section of the Old Shoreham Road and it was confirmed that it was not. Councillor Norman requested to see elevational drawings particularly relative to the second floor of the proposed development and to ascertain whether the proposals would effect the external appearance of the building. It was confirmed that they would not as there was already a rear dormer in situ.

134.36 Councillors Davey and Steedman requested details relative to refuse and cycle storage and Mr Small enquired whether (as elsewhere in the Old Shoreham Road) garages to the rear were accessed from a shared driveway between buildings. It was confirmed that was the so. Councillor Mrs Theobald stated that she was concerned re potential noise penetration between the party wall. Councillor Smart stated that

the character of the area was predominantly of 1930's semi detached houses the proposal would result in an overdevelopment of the site in his view.

134.37 A vote was taken and on a vote of 5 to 3 with 3 abstentions planning permission was refused on the grounds set out below. 11 Members were present when the vote was taken.

134.38 **RESOLVED** - That the Committee has taken into consideration the reasons for the recommendation set out in the report but refuses planning permission on the grounds that the proposed development would not make adequate provision for private amenity space, servicing access and parking. The proposal is therefore contrary to policies H05 and TR14 of the adopted Brighton & Hove Local Plan. The applicant has also failed to demonstrate that the proposal makes provision for adequate noise insulation and the development is therefore considered to be contrary to policies QD27 and SU10 of the adopted Brighton & Hove Local Plan.

[**Note 1:** A vote was taken and on a vote of 5 to 3 with 3 abstentions planning permission was refused. 11 Members were present when the vote was taken].

[**Note 2:** Councillor Mrs Theobald proposed that planning permission be refused on the grounds set out. This was seconded by Councillor Smart. A recorded vote was then taken. Councillors Barnett, Hyde (chairman), K Norman, Smart and Mrs Theobald voted that planning permission be refused. Councillors Carden, Hamilton and Wells voted that planning permission be granted. Councillors Davey, McCaffery and Steedman abstained. Councillor Kennedy was not present at the meeting when the vote was taken. Therefore on a vote of 5 to 3 with 3 abstentions planning permission was refused].

(iv) **OTHER APPLICATIONS**

134.39 **Application BH2008/01164, 25 Roedean Crescent Brighton** - Demolition of existing dwelling and replacement with new contemporary house.

134.40 The Area Planning Manager (East) gave a presentation setting out details of the scheme.

134.41 Ms Bacheli spoke on behalf of neighbouring objectors. The proposed development would by virtue of its height, bulk and positioning within the plot result in an overbearing form of development which would result in overlooking, overshadowing and loss of amenity to the property at no 27. Mr Barling spoke on behalf of the applicant in support of their application He stated that his client had sought to provide a highly sustainable dwelling which would provide for his family's needs, and would add interest to the street scene, which was not characterised by any particular form of development. A number of letters of support had been received relative to the proposal.

134.42 Councillor Davey sought confirmation regarding the use to which the basement would be put and it was explained that in addition to parking a gymnasium and swimming pool would be located at that level within the site. Councillor Hamilton

sought clarification as to whether the neighbouring property at no 23 was in the same ownership as no 25. It was explained that it was not.

134.43 Councillor Wells stated that he considered that Roedean Crescent was not characterised by any particular architectural style and that the proposed development was acceptable.

134.44 Councillor Mrs Theobald stated that in her view the development would be ugly, too bulky, too high would be overly dominant and represented an overdevelopment which would overshadow the neighbouring property at no 27. Councillor Barnett concurred in that view.

134.45 A vote was taken and on a vote of 9 to 2 planning permission was refused on the grounds set out below. 11 Members of the Committee were present when the vote was taken.

134.46 **RESOLVED** - That the Committee has taken into consideration and agrees with the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the following reasons:

1. The proposal by reason of its prominent siting, design, height bulk and massing would result in the building appearing to be incongruous and out of character and would be of detriment to the character and appearance of the street scene contrary to policies QD1, QD2 and QD3 of the Brighton & Hove Local Plan.
2. The proposal, by reason of its siting height, design, bulk and massing, balconies and roof terraces, coupled with varying site levels would result in overlooking and loss of privacy to and have an overbearing impact on, neighbouring properties, and would unduly impact on their living conditions and the use and enjoyment of their private amenity space. As such the proposal is contrary to policy QD27 of the Brighton & Hove Local Plan.

Informatives:

1. This decision is based on drawing nos VA-01-VA-08. Revision E, VA-10-VA10 - 15, Revision E, VA - 20 VA- 23 Revision E, VA30 – Revision E VA- 031 – VA-033 Revision E, VA – 34, VA - 035, Revision E and VA - 041 Revision E submitted on 10 September 2008.
2. The applicant has failed to submit full elevational details of the gallery. The applicant is advised that all elevations are required for each element of any scheme which may be resubmitted on this site in the future.

[**Note:** Councillor Kennedy was not present at the meeting when the vote was taken in respect of the above application.

134.47 **Application BH2008/02925, 49 Old Mill Close, Patcham** – Erection of a detached bungalow.

134.48 The Area Planning Manager (East) gave a detailed presentation setting out details of the scheme.

- 134.49 Mr Hopwood the applicant spoke in support of his application. He stated that having obtained outline planning permission some 4 / 5 years previously he was now seeking to develop the site to enable a member of his family to live in the additional dwelling. He stated that the plot was actually larger than its neighbours in that it was a 1½ size. He stated that the submitted site plan was out of date in that it did not show the new development of 13 houses beyond the tree line shown or a recent development of 4 further houses nearby. He also referred to the badger setts nearby which had been referred to in the officer's report stating that there had been no evidence of badger activity for some 2 years.
- 134.50 The Area Planning Manager (East) stated that outline planning permission had never been granted in respect of the site although pre-application discussions may have taken place.
- 134.51 Councillor Mrs Theobald stated that in her view the plot was too narrow to be subdivided further. Councillor Smart concurred in that view.
- 134.52 A vote was taken and Members voted unanimously that planning permission be refused for the reasons set out below. 11 members were present at that time.
- 134.53 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the following reasons and subject to the informatives set out in the report :
1. The proposed development by virtue of its subdivision of the existing plot would be inconsistent with the pattern of existing development and detrimental to the open character of the area, contrary to policies QD1 and QD2 of the Brighton & Hove Local Plan.
 2. The proposed development by reason of the location of the proposed dwelling, would disturb an active badger sett. In the absence of an ecological survey the application fails to take account of the presence of a protected species and would be likely to have an adverse impact, contrary to policy QD18 of the Brighton & Hove Local Plan and the Protection of Badgers Act 1992.
 3. No tree survey has been submitted with the application, however the proposal would be within close proximity to existing trees on the adjoining site and may result in harm during construction. The application is therefore contrary to tree protection policy QD16 of the Brighton & Hove Local Plan.
 4. The proposed dwelling would not be provided with adequate amenity space and would therefore not provide suitable living conditions for future occupiers and as such is contrary to policies QD3 and QD27 of the Brighton & Hove Local Plan.
 5. The applicant has failed to demonstrate that the proposal would incorporate adequate measures to reduce the use of raw materials, water and energy and as such would be likely to result in excessive use of these limited resources. This would be contrary to policy SU2 of the Brighton & Hove Local Plan.

6. The applicant has failed to demonstrate that the application could meet the requirements of lifetime homes standards, contrary to policy H013 of the Brighton & Hove Local Plan.

[**Note:** Councillor Kennedy was not present at the meeting when voting took place in respect of the above application].

- 134.54 **Application BH2007/04160, Land to the rear of 49 / 49a Downs Valley Road, Woodingdean** – Erection of 2 storey dwelling with attached garage.
- 134.55 The Area Planning Manager (East) gave a presentation setting out details of the proposed scheme.
- 134.56 Councillor Wells stated that he considered that the feasibility of using the sum of £2,000 required by informative 2 to fund either an improved sustainable transport infrastructure or towards funding a study to consider local measures to improve road safety should be explored. The Traffic Engineer present confirmed that there would be no objection to this in principle. Members concurred in that view.
- 134.57 A vote was taken and Members voted unanimously that planning permission be granted in the terms set out below. 11 Members were present when the vote was taken.
- 134.58 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and subject to the conditions and informatives set out.

Condition 2 to be amended as follows:

“The applicant is advised that the requirements of condition 3 maybe satisfied by the completion of a Unilateral Undertaking or Agreement under Section 106 of the Town and Country Planning Act 190 to provide £2,000 to fund either improved sustainable transport infrastructure in the vicinity or towards funding for a study to consider local measures to improve road safety.

[**Note:** Councillor Kennedy was not present at the meeting when voting took place relative to the above application].

- 134.59 **Application BH2007/04462, Royal Alexandra Hospital Site, 57 Dyke Road, Brighton** - Conservation Area Consent for demolition of existing buildings (former children’s hospital).
- 134.60 The Planning Officer gave a detailed presentation setting out the reasons for refusal had an appeal against no n determination not been lodged by the applicant. It was further explained that further applications relative to the site by the same applicant were anticipated as coming forward for consideration at the next scheduled meeting of the Committee. The Committee would be asked to determine those at that time. There were currently no acceptable plans for redevelopment of the Royal Alexandra Hospital site. The approval of conservation area consent for demolition of the

existing buildings on the site would therefore be premature and would potentially result in the creation of a gap site that would be harmful to the character and appearance of the conservation area. For this reason it was recommended that conservation area consent would have been refused had the applicant not appealed against non – determination.

- 134.61 Mr Sutcliffe-Smith spoke on behalf of the applicants in support of their application stating that further applications were due to be considered at a future meeting of the Committee and he hoped to establish that in principle demolition of the existing buildings would be supported if a scheme was brought forward which Members were happy with.
- 134.62 Mr Small CAG stated that he was very concerned that “in principle” approval to demolition of the existing buildings was not given in advance of a suitable scheme being brought forward. In answer to questions of Councillor Smart, the applicant’s representative explained that their general preference would always be for to place a new build scheme on any given site although they had explored the feasibility of using the envelope of the existing main hospital building.
- 134.63 Councillor Steedman enquired whether it would be possible to add a further reason for refusal. However, the Solicitor to the Committee stated that it was important that any reasons for refusal put forward were robust and could be rigorously defended at appeal.
- 134.64 Councillor Davey enquired as to whether or not the comments received from the District Valuer relative to lack of viability of a scheme in which the main hospital building was retained were accepted. Councillor McCaffery stated that she was very concerned if the Committee were placed in the position of agreeing in principle to demolition of buildings currently on site in the absence of a suitable replacement scheme. The Development Control Manager explained that notwithstanding that the view of the District Valuer had been sought Officers’ were of the view that in the absence of a scheme which was considered acceptable it would be premature to give conservation area consent for demolition of the existing buildings on site. The Committee would have the opportunity to form a view relative to the further schemes which were due to come forward in respect of the site
- 134.65 A vote was taken and Members voted unanimously that they would have refused conservation area consent for the reasons set out below. 11 Members were present when the vote was taken.
- 134.66 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons set out in the report and resolves that the Local Planning Authority would have refused conservation area consent for the reasons set out below, had an appeal against non-determination not been lodged by the applicant:
1. Policy HE8 of the Brighton & Hove Local Plan states that demolition in conservation areas will not be considered without acceptable detailed plans for the sites development. In the absence of an approved planning application for the redevelopment of the site the demolition of the existing buildings would be premature and result I the creation of a gap site that would fail to preserve or

enhance the character or appearance of the Montpelier and Clifton Hill Conservation Area and adjoining West Hill Conservation Area.

Informatives:

1. This decision is based on supporting statements (Boyer Planning & David Lewis Associates) and drawing nos. 7964 FE AS00 C, 602E & 604 E submitted 30 November 2007; and drawing nos 7964 PL 15, & 115 submitted 11 December 2007.

[**Note:** Councillor Kennedy was not present at the meeting when the vote was taken relative to the above application].

- 134.67 **Application BH2007/04446, 7 Brunswick Street West, Hove** - Insertion of new windows to front and rear ground floor (part retrospective). Amended scheme.
- 134.68 It was noted that consideration of the above application had been deferred pending confirmation on matters relating to ownership of part of the site.
- 134.69 **RESOLVED** - That the position be noted.
- 134.70 **Application BH2007/04452, 7 Brunswick Street West, Hove** - Insertion of new windows to front and rear ground floor (part retrospective) Amended scheme.
- 134.71 It was noted that consideration of the above application had been deferred pending confirmation on matters relating to ownership of part of the site.
- 134.72 **RESOLVED** - That the position be noted.
- 134.73 **Application BH2008/02440, Tudor Cottage 263 London Road, Brighton** - Demolition of existing dwelling and garage and erection of four storey apartment building containing 7 flats.
- 134.74 It was noted that this application had formed the subject of a site visit prior to the meeting.
- 134.75 The Area Planning Manager (West) gave a detailed presentation relative to the proposals.
- 134.76 Councillor Norman sought details relative to the proposed boundary wall treatment. Councillor Smart also requested information regarding the height and proposed finishes. It was explained that a rendered finish would be used with brick piers, this would replicate the existing adjacent walls. Councillor McCaffery sought information regarding the distance of the proposed parking area from the London Road, relative to distances between the proposed development and neighbouring properties and relative to the appearance of the proposed balconies and materials to be used in their construction.
- 134.77 Mr Small CAG stated that in his view the Tower Gate building should be retained it had clearly been built prior to creation of the surrounding conservation area and would not have been included in it had it not been considered of merit. In his view

the existing building should be retained, the proposed replacement block of flats would be out of keeping with neighbouring properties.

134.78 Mr Small CAG also enquired regarding the roofing materials proposed. It was understood that artificial slate would be used. Mr Small was of the view that such materials would not sit well within the roof slope proposed by virtue of their depth and how this would appear in profile. Councillors K Norman and Wells concurred in that view considering that either clay tiles or traditional slate should be used.

134.79 Councillor Mrs Theobald sought confirmation that the existing trees on site would be retained. It was explained that they would. Several of the Hollies and maples trees located at the north east corner of the site could be effected by the building works but would not be compromised provided their roots were protected during the building works.

134.80 A vote was taken and on a vote of 6 to 3 with 1 abstention planning permission was granted in the terms set out below. 10 Members were present when the vote was taken.

134.81 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report.

[**Note:** Councillors Davey and Kennedy were not present at the meeting when the vote was taken].

134.82 **Application BH2008 /01036, Tudor Cottage, 263 London Road, Brighton -** Conservation Area consent for proposed demolition of existing dwelling and garage.

134.83 It was noted that this application had formed the subject of a site visit prior to the meeting.

134.84 A vote was taken and on a vote of 6 to 1 with 3 abstentions conservation area consent was granted in the terms set out below.

134.85 **RESOLVED-** That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant conservation area consent subject to the conditions and informatives set out in the report.

[**Note:** Councillors Davey and Kennedy were not present at the meeting when the vote was taken].

134.86 **Application BH2008 / 02529, 1 – 2 Clifton Hill, Brighton –** Alterations to existing boundary walls and railings with access to new hard standing.

134.87 A vote was taken and on a vote of 7 with 3 abstentions listed building consent was granted in the terms set out below. 10 Members were present when the vote was taken.

134.88 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendations set out in paragraph 8 of the report and resolves to grant listed building consent subject to the conditions and informatives set out in the report.

[**Note:** Councillors Davey and Kennedy were not present at the meeting when the vote relative to the above application was taken.]

134.89 **Application BH2008/02813, 1 Clifton Hill, Brighton** – Alterations to boundary wall and railings of no 1 with access to hard standing.

134.90 A vote was taken and on a vote of 9 with 1 abstention planning permission was granted in the terms set out below. 10 Members were present when the vote was taken.

134.91 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report.

[**Note:** Councillors Davey and Kennedy were not present at the meeting when the vote relative to the above application was taken].

134.92 **Application BH2008/02814, 2 Clifton Hill, Brighton** - Alterations to boundary wall and railings of No1 with access to hard standing.

134.93 A vote was taken and on a vote of 5 to 3 with 2 abstentions planning permission was granted in the terms set out below. 10 Members were present when the vote was taken.

134.94 **RESOLVED-** That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out therein.

[**Note:** Councillors Davey and Kennedy were not present at the meeting when the vote was taken relative to the above application].

(v) **DECISIONS ON APPLICATIONS DELEGATED TO THE DIRECTOR OF ENVIRONMENT**

134.95 **RESOLVED** - Those details of the applications determined by the Director of Environment under delegated powers be noted.

[**Note 1:** All decisions recorded in this minute are subject to certain conditions and reasons recorded in the Planning Register maintained by the Director of Environment. The register complies with the legislative requirements].

[**Note 2 :** A list of representations, received by the Council after the Plans List reports have been submitted for printing, was circulated to Members on the Friday preceding

the meeting (for copy see Minute Book). Where representations were received after that time they would be reported to the Chairman and Deputy Chairman and it would be at their discretion whether these should (in exceptional cases), be reported to the Committee. This is in accordance with Resolution 147.2 of the then Sub Committee held on 23 February 2005.

135. TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST

135.1 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determination:

* BH2008/02095 / 02808, Royal Alexandra Children's Hospital Site

Development Control Manager

* BH2008/01992, Northfield, University of Sussex

Development Control Manager

* BH2008/03220, Sussex Education Centre, Nevill Avenue

Development Control Manager

* BH2007/04446 / 04452, 7 Brunswick Street West

* Anticipated as applications to be determined at the next scheduled meeting of the Committee.

136. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY

136.1 The Committee noted those applications determined by Officers during the period covered by the report.

137. APPEAL DECISIONS

137.1 The Committee noted the content of letters received from the Planning Inspectorate advising on the results of planning appeals which had been lodged as set out in the agenda.

138. NEW APPEALS LODGED

138.1 The Committee noted the list of Planning Appeals which had been lodged as set out in the agenda.

139. INFORMATION ON INFORMAL HEARINGS AND PUBLIC INQUIRIES

139.1 The Committee noted the information set out in the agenda relating to information on Informal Hearings and Public Inquiries.

The meeting concluded at 7.25pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

Page

A. BRUNSWICK & ADELAIDE WARD

Applications BH2008/0007 and BH2008/00068, Flat 2, 33 Adelaide Crescent, Hove. Appeal against refusal to grant listed building consent and planning permission for a rear extension at first floor level for a further 3m in width extension to the rear. **APPEALS DISMISSED** (copy of the letter from the Planning Inspectorate attached). **27**

B. CENTRAL HOVE WARD

Application BH2007/03305, Albany Towers, St Catherine's Terrace, Kingsway Hove. Appeal against refusal to grant planning permission for proposed roof extension to provide 2 penthouse flats (1 x 2 bed and 1 x 3 bed) with 2 no. Reserved parking spaces (Nos.41 and 42) and a new secure cycle store. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **31**

C. CENTRAL HOVE WARD

Application BH2008/00582, Flat 5, 4 St Aubyn's Gardens, Hove. Appeal against refusal to grant planning permission for a replacement of 2 sets of bay doors and a window with uPVC storm proof equivalent. Fitting of cavity trays underneath the doors to prevent water leaking in and falling through ceiling of the flat below. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **37**

D. GOLDSMID WARD

Application BH2008/00149, West View, The Drive, Hove. Appeal against refusal to grant planning permission for proposed roof extension to create two flats (comprising of one four bed unit and one two bed unit) with a roof garden to each flat with two reserved parking spaces and a new enclosed cycle store. **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **39**

E. ST PETER'S & NORTH LAINE WARD

Application BH2007/0429, Land at 1A York Place, Brighton. Appeal against refusal to grant planning permission and enforcement action taken relative to replacement of timber sliding sash windows to the front elevation with uPVC units. **APPEAL DISMISSED** and enforcement notice upheld. (Copy of the letter from the Planning Inspectorate attached). **43**

F. ST PETER'S & NORTH LAINE WARD

Application BH2008/00612, 37 / 38 Providence Place, Brighton. Appeal against refusal to grant planning permission for demolition of the existing redundant storage building and redevelopment to provide 6 residential units in a 3 storey plus attic building. **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **45**

G. ST PETER'S & NORTH LAINE WARD

Application BH2007/04444, Land Behind 67 – 81 Princes Road, Brighton. Appeal against refusal to grant planning permission for development of 8 houses (two & three storey) with private and communal gardens, a street level lift "Gate House" and a new access off Prince's Road. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **51**

H. ST PETER'S & NORTH LAINE WARD

Application BH2007/04427, 99 North Road, Brighton. Appeal against refusal to grant planning permission for change of use of first and second floors from retail (A1) to offices (B1), infill extension at second floor level on the Vine Street elevation, insertion of new window at first floor North Road elevation, new shop front. **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **57**

I. ST PETER'S AND NORTH LAINE WARD

Application BH2006/03707, 101 North Road, Brighton. Appeal against refusal to grant planning permission for change of use from A1 to A4 relating to application BH2006/00707). **APPEAL ALLOWED**. (Copy of the letter from the Planning Inspectorate attached). **61**

J. PRESTON PARK WARD

Application BH2007/0428, Land at 117 Havelock Road, Brighton. Appeal against refusal to grant planning permission and breach of planning control for replacement of timber sliding sash windows (without planning permission) to the ground floor of the property with uPVC. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **65**

K. WITHDEAN WARD

Application BH2007/04384, Land at 334 Dyke Road, Brighton. Appeal against refusal to grant planning permission for erection of a single storey rear and side extension, double storey rear and side extension, new front boundary wall and double garage set into slope of garden. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **67**

L. STANFORD WARD

Application BH2007/02609, 57 Shirley Drive Hove. Appeal against refusal to grant planning permission to erect two semi-detached houses, one three – bedroom, one four-bedroom. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **69**

M. QUEEN'S PARK WARD

Applications BH2008/00437 and BH2008/00437, 87 St James Street, Brighton. Appeal against refusal to grant planning permission for erection of a kitchen extract flue. **APPEALS ALLOWED** (copy of the letter from the Planning Inspectorate attached). **73**



Appeal Decisions

Site visit made on 4 November 2008

by **John Papworth** DipArch(Glos) RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 November 2008

Appeal A: APP/Q1445/E/08/2081562 **Flat 2, 33 Adelaide Crescent, Hove BN3 2JJ**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Polly Borland & John Hillcoat against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00071, dated 2 January 2008, was refused by notice dated 31 March 2008.
- The works proposed are rear extension at first floor.

Appeal B: APP/Q1445/A/08/2081522 **Flat 2, 33 Adelaide Crescent, Hove BN3 2JJ**

- 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 Polly Borland & John Hillcoat against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00068, dated 2 January 2008, was refused by notice dated 28 February 2008.
- The development proposed is rear extension at first floor.

Decision Appeal A

1. I dismiss the appeal insofar as it relates to the rear extension and the associated works to the rear addition. I allow the appeal insofar as it relates to the internal works to the stair and kitchen enclosure and grant listed building consent for the removal of the kitchen enclosure and associated making good, and the works to the rear stair and associated changes to floors and walls, at Flat 2, 33 Adelaide Crescent, Hove BN3 2JJ in accordance with the terms of the application Ref BH2008/00071, dated 2 January 2008 and the plans submitted with it so far as relevant to that part of the works hereby permitted subject to the following conditions:
 - 1) The works hereby authorised shall begin not later than three years from the date of this consent.
 - 2) No works shall take place until full details of the proposed works to the rear stair, landings, doors and other joinery items and finishes have been submitted to and approved by the local planning authority, to include 1:20 sample elevations and full-size joinery profiles. The works shall be carried out only in accordance with the approved details.
 - 3) No works shall take place until full details of the proposed works to remove the kitchen enclosure and reinstate finishes have been submitted to and approved by the local planning authority, to include 1:20 sample

elevations and full-size joinery profiles. The works shall be carried out only in accordance with the approved details.

Decision Appeal B

2. I dismiss Appeal B.

Main Issues

3. The main issue in both appeals is;
 - The effect of the proposals on the historic or architectural interest of the listed building and its setting within the Brunswick Town Conservation Area.
4. and in Appeal B only;
 - The effect of the development on the living conditions of residential occupiers with particular regard to light and outlook.

Reasons

Listed Building

5. I concur with the view expressed in the "*Building History and Impact Assessment*" submitted with the applications, that the proposals fall into three sections, the works to the kitchen alcove, those to the rear stair and study and the provision of the rear extension and associated alterations to walls and plan form. Dealing with the first part, I see no reason to withhold listed building consent for these works; they are beneficial to the layout and understanding of the rooms and remove an inappropriate low ceiling, exposing the cornice to the dividing wall. The fact that the rear room would not be returned to its original form, due to the passage reduces the historical accuracy, but the provision of a rectangular room with a full cornice would appear attractive and in keeping.
6. The rear stair is, as stated in the assessment, an anomaly. I am unsure whether it is a remnant of a rear service stair, not uncommon in grander terraced houses, and it is certainly located within a service wing which appears on the earliest maps submitted. However, it has been truncated and does not, in my opinion, contribute to the appreciation of the building or its historic and architectural interest. Changes as proposed would retain the fabric whilst not undermining that which is of interest in the building.
7. Lastly, the extension is proposed in order to provide a bedroom displaced by the formation of the larger kitchen in the first section of the works. The placing of the proposed extension on the flat roof would, I find, disrupt the rhythm of the half-width and lower full-width additions and cover some of the rear windows of the main part of the building, to the detriment of the form and interest of the building as a whole. I acknowledge that there are limited public views, but there are views from First Avenue in addition the stated lesser views from St John's Road and the insertion of the extension would add further to the existence of some clutter on this rear elevation and the presence of such clutter does not, in my judgement, provide justification for more disruptive work.

8. Planning Policy Guidance Note 15 "*Planning and the Historic Environment*" stresses the importance of plan form, and the extension would, I consider, erode the relationship of the rear additions with the principal rooms of the house by blocking the outlook of a rear window and linking adjacent additions. That statement of Government policy further states the need for applicants to justify proposals. I have considered the justification in this case; that there are benefits to the main part of the building requiring movement of the bedroom to a new part, together with the provision of solar water heating, but do not find these to outweigh the harm that would be caused.
9. Hence the proposals for the extension fail to satisfy Sections 16(2) or 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Notwithstanding the limited views I conclude also that the rear extension would fail to preserve the character and appearance of the Brunswick Town conservation area contrary to the aims of Section 72(1) of the same Act. The extension proposals do not therefore accord with Brighton and Hove Local Plan Policy HE1 on listed buildings, Policy HE6 on proposals within conservation areas and Policy QD14 which seeks good design in extensions generally.
10. There is one further element of work shown on drawing A-01/A, and referred to by the Council, and that is a mezzanine shown to be placed over the opening between the front and rear room, that area proposed to be opened-up by the removal of the kitchen. This is not shown, as it should be, on Section A-A on drawing a-04/A. My views on the acceptability of the kitchen removal and exposure of the cornice are based on there being no intervening new work, and for the avoidance of doubt, grant of listed building consent for these works should not be taken to include any mezzanine. A condition requiring details would clarify this point, in addition to the need for details of the rear staircase and other joinery works.
11. In conclusion on this issue, there are parts of the proposals which I find acceptable and which can be carried out in isolation; there is no reason to withhold listed building consent for these works. The rear extension however is unacceptable in my view and both listed building consent and planning permission should not be granted due to the adverse effect on the listed building and its setting within the Brunswick Town Conservation Area.

Living Conditions

12. It appears from Section A-A on drawing A-04/A that the rear extension would cover a line drawn at 45° from the window of a flat below. The occupiers of Flat 1 have objected to the Council regarding loss of light among other things. Some of the other concerns could be addressed by condition covering construction separation. However, it appears to me that the light-well was designed to provide some light to lesser rooms in the basement but to provide a much greater level of light to the more important ground floor rooms, now separately occupied. The erection of the proposed rear extension would, in my opinion, severely reduce the level of light to the point where unacceptable harm would be caused to the living conditions of the occupiers contrary to the aims of Local Plan Policy QD27 which seeks the protection of amenity.

Conclusions

13. The rear extension is unacceptable in my judgement in both its effect on the listed building and its setting within the conservation area, and its effect on the living condition of residential occupiers. There are however elements of the internal works, the subject of only the listed building consent appeal, that are acceptable, are separate and may be permitted. For the reasons given above I conclude that the planning appeal should be dismissed in its entirety but that the listed building consent appeal should be allowed in part and dismissed in part.

S J Papworth

INSPECTOR



Appeal Decision

Site visit made on 4 November 2008

by **John Papworth** DipArch(Glos) RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 November 2008

Appeal Ref: APP/Q1445/A/08/2078029 Flat 5, 4 St Aubyns Gardens, Hove BN3 2TA

- 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 Joe Whiting against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00582, dated 7 February 2008, was refused by notice dated 1 May 2008.
- The development proposed is described as replacement of 2 sets of bay doors and a window with pvc storm proof equivalent. Fitting of cavity trays underneath the doors to prevent water leaking in and falling through ceiling of the flat below.

Decision

1. I dismiss the appeal.

Reasons

2. The property is within the Old Hove Conservation Area and the main issue is the effect of the proposal on the character and appearance of the area. The description of the proposal and the photographs supplied relate to 2 sets of doors and a window to the front elevation. The layout of the existing doors and windows is not appropriate to the age and design of the building and causes harm, in my opinion, to the character and appearance of the conservation area. As a result their replacement with a more appropriate design and layout of openings would be a welcome change to the building and would have benefit to the character and appearance of the wider area.
3. However, the proposed replacements are of the same design and layout, which I consider unfortunate and a proposal that would continue the harm that is presently caused. Furthermore, the choice of PVCu material would not generally be acceptable in a conservation area under the provisions of Local Plan Policies HE6 and QD14. Notwithstanding the height of these proposals above the ground, such use of material would not be justified in this case due to the inappropriate design and layout of the frames and opening arrangements. I have read the appellant's further justification regarding water ingress, noise and dust, but am not persuaded that these aims could not be achieved by other, more acceptable means. For the reasons given above I conclude that the appeal should be dismissed.

S J Papworth

INSPECTOR



Appeal Decision

Hearing held and Site visit made on
21 October 2008

by **Lynne Evans BA MA MRTPI MRICS**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 November 2008

Appeal Ref: APP/Q1445/A/08/2069697

Albany Towers, St Catherine's Terrace, Kingsway, Hove, BN3 2RQ

- 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 Anstone Properties Ltd against the decision of Brighton & Hove City Council.
- The application Ref: BH2007/03305 dated 30 August 2007, was refused by notice dated 25 October 2007.
- The development proposed is roof extension to provide 2 No. penthouse flats (1 x 2 bed and 1 x 3 bed) with 2 no. reserved parking spaces (Nos. 41 and 42) and a new secure cycle store.

Decision

1. I dismiss the appeal.

Preliminary Matters

2. In its hearing statement, the Council withdrew its ground for refusal No.6 and indicated that issues relating to sustainability, with particular regard to efficiency and the use of energy could be addressed by way of conditions. Given the scale of the development proposal and in the light of the Council's guidance in its adopted Supplementary Planning Guidance Notes 16 (Renewable Energy and Energy Efficiency in New Developments) and 21 (Sustainability Checklist), I agree that were there no other matters of concern, and planning permission were to be granted, the imposition of conditions would be an appropriate approach to address these matters.

Main issues

3. I consider that the main issues raised in this appeal are:
 - a) the effect of the proposal on the appearance and character of the Cliftonville Conservation Area and the setting of adjoining listed buildings;
 - b) the effect of the proposal on the living conditions of adjoining neighbours with particular regard to overshadowing, overlooking and loss of privacy, noise and disturbance, and
 - c) the effect of the proposed car parking arrangements on the availability of on-street car parking.

Reasons

a) the effect on the proposal on the appearance and character of the Cliftonville Conservation Area and the setting of adjoining listed buildings.

4. The appeal building is an eight storey block of residential flats on the corner of St. Catherine's Terrace, Kingsway with Albany Villas. Adjoining the appeal site fronting onto Kingsway is another residential block, The Priory, of similar height and architectural style, with a further tall residential building broadly opposite, Flag Court, rising to nine storeys. There is a marked change in scale between these taller buildings and the predominantly three and four storey residential dwellings in Albany Villas and Medina Villas and the surrounding area. The appeal site lies towards the southern end of the Cliftonville Conservation Area, the appearance and character of which is dominated by the residential villas dating from the mid nineteenth century. There are a number of Grade II listed buildings adjoining and within close proximity of the appeal site, including Nos. 1 – 5 Albany Villas; Nos. 2 – 5 St. Catherine's Terrace, Nos. 2- 8, 42 and 43 Medina Villas and properties in Courtenay Terrace on the southern side of Kingsway opposite the appeal site.
5. There was no consensus at the hearing between the main parties as to whether Albany Towers falls within or adjacent one of the corridors (Western Seafront/Kingsway) identified in the Council's adopted Supplementary Planning Guidance No.15: *Tall Buildings* (SPG) as being suitable for taller development. Given the limited information before me and as the SPG does not contain a plan of the areas regarded as suitable for taller development, it is difficult to be conclusive as to the intended extent of this particular corridor. However, I note that the guidance at 7.3.3 and at 8.14.1 is quite specific that conservations areas are not generally regarded as appropriate locations for tall buildings. Notwithstanding the above, I am in agreement with both the main parties that the building, as existing, falls to be defined as a tall building under the SPG and that the guidance in the SPG is therefore a material consideration in my assessment of this appeal.
6. The existing lift motor room is visible from a number of viewpoints and in particular when approaching from the north, along Albany Villas. However given its small size and design which relates to the rest of the building, I do not share the Appellant's view that it strikes a discordant feature in the street scene. By comparison, the proposed roof extension would extend almost fully across the building. The size of the proposal, taken together with the proposed design approach and use of different materials to the rest of the building would draw the eye upwards. Whilst I accept that the actual physical addition to the height of the building would be relatively small, the combined effect of the extent of the extension as well as the design approach would, in my view, accentuate the roof addition and exacerbate the scale and height of the building. There is already a marked contrast between the scale of the existing building and the adjoining buildings of more domestic scale but the size of the extension taken together with the design and materials would make this difference more acute. This would result in the building becoming a more dominant, and in my view, a discordant feature in the street scene. It would, as a result, detract from the appearance and character of the Conservation

Area, including views southwards along Albany Villas and harm the setting of the adjoining listed buildings. Furthermore, and contrary to the Appellant's assessment, I consider that Albany Towers, as existing, appears to be of similar height to the adjoining development, The Priory, particularly in views from the southern side of Kingsway. The additional storey to the appeal building would result in this building becoming more prominent. This would unbalance the existing relationship and would, in my view, be to the detriment of the street scene.

7. I therefore conclude that the proposal would not preserve the appearance or character of the Conservation Area and would harm the setting of the adjoining listed buildings. This would conflict with Policies QD1, QD2, QD4, QD14, HE3 and HE6 of the adopted Brighton & Hove Local Plan 2005 as well as the guidance in the adopted SPG Note 15. These policies and the SPG guidance seek a high quality of design, which respects the setting of listed buildings, preserves or enhances the appearance or character of conservation areas and protects important views.

b) the effect on the living conditions of adjoining neighbours

8. There is already a complex pattern of overshadowing of surrounding properties as a result of the existing building on the site, as well as from adjoining buildings. The overshadowing effect from the existing building on the appeal site is partly due to its scale and partly because of its siting to the south and east of adjoining properties. The Appellant submitted a Rights to Light and Overshadowing study as part of its appeal statement and although the diagrams extend over a wider area, it was specifically undertaken to assess the impact of the development only on No 2 Albany Villas. Several local residents, including those further to the north in Albany Villas and Medina Villas, as well as those with east facing flats in The Priory were concerned about increased overshadowing from the proposed extension but the only additional information before me was in the form of an informal, non technical assessment undertaken by a resident of Albany Towers, based on photographs of the existing shadow patterns and projecting these to take account of the proposed additional floor.
9. No. 2 Albany Villas is already heavily overshadowed at times by the existing built development, but the Appellant's report demonstrated that the proposed roof extension would result in a worsening of the position, particularly for the rear amenity space at certain times of the year. I consider that the extent of the additional overshadowing from the proposed extension would be clearly noticeable. This would exacerbate the existing position, and the living conditions of the neighbours at No. 2 Albany Villas would as a result, in my view, be harmed.
10. With regard to overlooking and loss of privacy, I consider that most of the additional windows facing northwards would be at a sufficient distance from the residential properties to the north so as not to cause a material increase in overlooking and loss of privacy for adjoining neighbours. The two windows in the northern elevation closest to No 2 Albany Villas (serving an en-suite bathroom and secondary bedroom window in the two bedroom flat) could be

required by condition to be in obscure glazing to protect the living conditions of those neighbours to the north of the appeal site.

11. There would be a much closer relationship between the neighbours in The Priory with flats facing towards the east and the new roof extension, but again I consider that the use of obscure glazing to the windows along the west elevation to the kitchen/diner and garden conservatory would protect the adjoining neighbours from overlooking and loss of privacy without compromising the living conditions of future residents of the proposed three bedroom flat.
 12. I have considered the relationship between the windows in the flats in Albany Towers facing north, particularly on the upper floors, with the proposed windows in the flat at the eastern end of the extension facing west, and in particular the proposed bedroom window for the two bedroom flat. However given the angle of vision, I do not consider that there would be a material effect on the living conditions of residents of the existing flats, as a result of overlooking and loss of privacy.
 13. I agree with the Appellant that concerns relating to noise and disturbance, resulting from the proposed layout, to those neighbours directly below the proposed flats would be satisfactorily addressed under other legislation. I have sympathy with the concerns of the residents in Albany Towers about noise and disturbance during the construction period, including as a result of works to the lift, but the impact would be for a limited period and could be minimised through good working practices, including in respect of the hours of working.
 14. However, my conclusions that the development would neither lead to a material increase in overlooking and loss of privacy for adjoining residents, nor unacceptable levels of noise and disturbance, do not override the harm I have found to the living conditions of the adjoining neighbours at No 2 Albany Villas as a result of increased overshadowing. Furthermore I am not satisfied that the impact of the development, in terms of overshadowing, has been rigorously tested in respect of other properties which would potentially be affected by the development. This would conflict with Policies QD14 and QD27 of the adopted Local Plan as well as guidance in the Council's adopted SPG on Tall Buildings, all of which indicate that new developments should protect the amenities of neighbours.
- c) *the effect of the proposed car parking arrangements on the availability of on-street car parking.*
15. The overall number of car parking spaces on the site to serve the residential flats would not be changed, but two of the existing visitor spaces have been remarked for use by the two additional flats. In addition the scheme would provide secure covered cycle parking for ten bicycles. Although no evidence, such as parking surveys, has been provided, I recognise from representations from residents of Albany Towers as well as from residents in the surrounding area, and also from my site visit that on-street parking in the surrounding area is heavily used and that some residents may be inconvenienced by the reduction in visitor spaces.
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16. However, the site is well located in terms of access to alternative means of transport as well as local services and facilities, and in this respect the cycle store would be a welcome addition. No evidence has been produced to suggest that there would be an increased danger to highway safety as a result of the development. I am not therefore persuaded that, were there no other matters of concern and planning permission were to be granted, that the amendment to the car parking arrangements within the site would materially affect the availability of on-street parking sufficient to justify withholding planning permission. The proposal would not therefore conflict with Policy TR1 of the adopted Local Plan.
17. The Appellants have promoted the offer of setting up a car share scheme through a local car club, but in view of my findings above I do not consider that this would be necessary in planning terms under the tests set out under Circular 05/2005 on Planning Obligations. I have therefore accorded this offer little weight in my decision.
18. My conclusion in respect of car parking issues does not outweigh the harm I have concluded in respect of the other two main issues. This harm is, in my view, compelling and justifies refusing planning permission. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should fail.

L J Evans

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Miss C Bartlett – D H Stallard
P. Rainier – DH Stallard

FOR THE LOCAL PLANNING AUTHORITY:

G. Everest – Brighton & Hove City Council

INTERESTED PERSONS:

G. Jenkins – 38 Albany Towers, Hove
L. Graham – 44 The Priory, Hove
D.Miranda – 6 Albany Villas, Hove
H. Rahimi – 8 Albany Towers, Hove
Ms L. Cobb – on behalf of 8 Albany Towers
C. Milward – 2 Albany Villas, Hove
Ms F. Ponikwer – 12 The Priory, Hove
Mrs L Korn- Bernstock -7 Albany Towers, Hove
A. Ebison – 32 Albany Towers, Hove
Mrs T. Cardiff – 39 Albany Towers
R. Blaney – 36 Albany Towers
Ms Z Hodges – 23 Albany Towers
Mrs P Ainsworth – 23 Albany Towers, Hove
Mrs L. Municchi – 25 Albany Towers, Hove
Ms J Baxter – 17 The Priory, Hove
Mr and Mrs J Coley – 38 Albany Towers, Hove
C Strube – 4 Albany Villas, Hove
Ms S. Pafford -28 Albany Towers, Hove
G. Gordon – 9 Albany Towers, Hove
Col. H Jeffes -35 Albany Towers, Hove
Mrs R Baxendale – 62 Woodruff Avenue, Hove
H Robertson – 8 Albert Road, Hove
C Highfield – 1 Green Meadows, Danbury Essex
L Stoner -42 St Stephens Close, Avenue Road, London NW8

DOCUMENTS

1 Notification of appeal dated 10 September 2008

PHOTOGRAPHS

1 5 Photographs of the appeal site showing car parking spaces, aerial view and early morning shadow across east elevation of The Priory (08.09.07)



Appeal Decision

Site visit made on 4 November 2008

by **John Papworth** DipArch(Glos) RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
10 November 2008

Appeal Ref: APP/Q1445/A/08/2076331

West View, The Drive, Hove BN3 6SB

- 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 Anstone Properties Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00149, dated 10 January 2008, was refused by notice dated 28 February 2008.
- The development proposed is roof extension to create two flats (comprising of one four bed unit and one two bed unit) with a roof garden to each flat: two reserved parking spaces and a new enclosed cycle store.

Decision

1. I allow the appeal, and grant planning permission for roof extension to create two flats (comprising of one four bed unit and one two bed unit) with a roof garden to each flat: two reserved parking spaces and a new enclosed cycle store at West View, The Drive, Hove BN3 6SB in accordance with the terms of the application, Ref BH2008/00149, dated 10 January 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until a scheme for the junction of existing and new work, and samples of all materials to be used in the external finishes of the extension, have been submitted to and approved by the local planning authority. Materials that are to match existing should do so in colour, style and texture. The approved scheme and materials shall be incorporated into the development.
 - 3) The secure cycle store shown on drawing A607/7 is to be completed and made available for the use of residents prior to the occupation of the first of the new units hereby permitted, and shall be retained for such use thereafter.
 - 4) The two new parking spaces shown on drawing A607/1 are to be completed and made available for the use of residents prior to the occupation of the first of the new units hereby permitted, and shall be retained for such use thereafter.
 - 5) Notwithstanding the details shown on the application drawings, no development shall take place until further details of the lift extension, motor room and lift overrun have been submitted to and approved by the local planning authority and the approved scheme shall be carried out.

- 6) The flat roof to the north-west corner, shown on drawing A607/2A as 'green roof to flat below' is to be accessible only for maintenance and repair and shall not be used as a balcony, roof garden or similar amenity area to which occupiers of any flat have access.
- 7) Notwithstanding the details shown on the application drawings, no development shall take place until further details of the balustrade and screening to the roof gardens have been submitted to and approved by the local planning authority and the approved scheme shall be carried out.

Main Issues

2. The main issues are:

- The effect of the development on the character and appearance of The Drive area of Hove.
- The effect of the development on the living conditions of residential occupiers with particular regard to outlook.

Reasons

Character and Appearance

3. A useful starting point in my consideration is an appeal decision dated 24 April 2006 (Ref; APP/Q1445/05/1194323) for what appears a similar proposal, but which has been explained and the differences illustrated by the appellant in submissions to this appeal. The Inspector writing then concluded that the proposal would be in conflict with Local Plan policies with respect to the character and appearance of Wilbury Avenue. I note that Flat 20 was designed to occupy a greater part of the footprint of the lower block than is the case now and in particular was designed to sit on the outer walls at the north-west and north-east corners, all along the north and east sides and for the first bay along the west side.
4. The scheme that is before me is similar to the earlier scheme along the elevation facing The Drive and also along that to the south, facing the railway lines. The previous Inspector did not object to these parts and neither do I. There are however significant improvements in my judgement to the treatment of the Wilbury Avenue elevation, where instead of being flush with the lower construction, a smaller, 2 bed flat is set back from the west and north sides. The area of roof not now to be built on would be an accessible balcony to the north-east corner and a planted flat roof to the north-west, accessible only for maintenance and repair. Both parts would be guarded by a handrail. It appears that the only remaining area of full height masonry in this area would be that shown on the photomontage of the proposed west elevation, and only occupies a short length of wall alongside the balconies to lower flats and the linen cupboard and wc of the proposed 4 bed flat. I do not find this aspect of the layout detrimental to either the building or the surrounding area.
5. Overall I consider the design changes to result in a well-articulated and pleasing termination to the block, removing the appearance of the protrusion of the lift motor room and overrun and providing some welcome modelling to the bland wall top of the present design. I do not consider that any objection to

the principle of a roof extension was identified in the previous appeal and that the unusual nature of the entrance at a higher floor level and the low siting of the block does not give compelling reason to reject this provision of further residential accommodation in a sustainable location on previously developed land. These attributes are in line with aims in Planning Policy Statement 3 "Housing" and the scheme before me satisfies the requirement in that document that new housing be of a high quality, well designed and to be in suitable locations, and which is well integrated with, and complements the neighbouring buildings and the local area.

6. I conclude that the proposals would not cause harm to the character and appearance of the area and would accord with the aims of Local Plan Policy QD1 and the design aspects to be taken into account in all development, the key principles in Policy QD2 including the impact on the skyline, and requirements in Policy QD14 that extensions should be well designed, sited and detailed in relation to the original property and the surrounding area.

Living Conditions

7. The reference in the Council's reason for refusal is to the west and the newer properties at Champions Row, Wilbury Road. The Inspector writing in 2006 criticised the effect of the then Flat 20 on the living conditions of occupiers of 16 Champions Row through some overshadowing. As set out above, there are significant differences in the design of the extension at the west and north elevations between 2006 and now. There would be a set-back of the flat, a reduction in footprint and the addition of a flat roof that is not normally accessible. Having in mind the differences in level and the setting back, I do not consider the design now proposed to present an overbearing aspect or cause harmful overshadowing to the west, with little of the new building being readily visible from ground level or the lowered level of the garden of No.16.
8. Similarly, overlooking was referred to previously, and notwithstanding that it is not now a reason for refusal, I do not consider the layout proposed for the 4 bed flat to be any more harmful compared to that which was before the Inspector in 2006, and to which no objection was mentioned, and the layout of the 2 bed flat would be definitely better and not give rise to harmful overlooking to the west.
9. There has been an objection from a resident to the north, although this is not supported by the Council. I acknowledge that there would be an accessible balcony facing this way, but there are at present living rooms and kitchens at lower levels and I am not persuaded that the risk would be that much greater over the distances involved across Wilbury Avenue. There are at present intervening trees and a condition could control the nature of the balustrade. In conclusion on this main issue I find the proposal to be acceptable in its effect on the living conditions of neighbouring residential occupiers with regard to overlooking, visual impact as well as sunlight and daylight, and hence to accord with Local Plan policies that seek the protection of amenity such as QD14(b) and QD27.

Other Considerations

10. I have seen representation from residents of the premises regarding possible disruption during the works. There is other legislation governing health and
-

safety during building operations and I can attach limited weight to this matter in considering this planning appeal. I have had in mind the comments of the previous Inspector, and am of the view that the proposal before me would be no more disruptive. Regarding comments that nothing has changed between the previous scheme and that before me, I have identified matters that were criticised by the previous Inspector and which have, in my view, been addressed satisfactorily.

Conditions

11. The Council has not provided any suggested conditions, but it appears to me that samples and details of materials should be provided, and that there is some doubt as to how the lift overrun will be accommodated without a protrusion. The cycle store and the two additional parking spaces are benefits, as the Council does not share the concerns of residents regarding highway and refuse access matters, but it is essential that these are provided and at the right time. In addition I have based my decision on the north-west part of the flat roof being accessible only for maintenance and repair, and this needs to be secured by condition as well as the nature of the balustrade. I have read the appellant's representation on conditions and the lack of need for a sustainable transport contribution, it appears that this was not required at the time of the previous appeal and I have been directed to no change in policy that would indicate that a smaller scheme would require this provision.

Conclusions

12. The development would provide additional housing within the urban area and the design now presented does not cause harm to the character and appearance of the area and does not have an undue effect on the living conditions of neighbours. Conditions could control matters that would ensure that a satisfactory quality of development occurs and therefore for the reasons given above I conclude that the appeal should be allowed.

S J Papworth

INSPECTOR



Appeal Decision

Site visit made on 28 October 2008

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
10 November 2008**

Appeal Ref: APP/Q1445/C/08/2079481

Land at 1A York Place, Brighton, BN1 4GU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr D G Newman against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0429.
- The notice was issued on 29 May 2008.
- The breach of planning control as alleged in the notice is *Without planning permission the replacement of timber sliding sash windows to front elevation with uPVC units.*
- The requirements of the notice are (1) *Remove uPVC windows to the front elevation* (2) *Replace with timber sliding sash windows to match the original design and method of opening prior to the insertion of the current uPVC windows and to match the first and second floor bay windows at the adjacent property.*
- The period for compliance with the requirements is 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)[a] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal fails, as set out in the Formal Decision.

1. No.1A is a first and second floor maisonette situated above No.1 York Place, a ground floor commercial unit. The building comprising Nos 1 and 1A fronts onto York Place and has a side elevation to Trafalgar Street. It is situated within the Valley Gardens Conservation Area.
2. Well established planning policies referred to in the representations reflect the legal requirement in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, that decision makers pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. A draft Council policy would bar all uPVC windows in this location but I attach limited weight to this policy because of its draft status. This does not, however affect the relevance to the appeal of Section 72(1) or that of the local policies consistent therewith.
3. From my inspection of the site and area, and consideration of the representations made, I have concluded that the main issue in this case is the effect of the replacement uPVC windows upon the character and appearance of the building and the Conservation Area.
4. The Appellant considers that the new windows are not materially different from or inferior to the original ones. Reference is also made to the varied character of the area, in particular to shopfronts/fascia and the windows on modern

- buildings, and it is suggested that in any event any differences are hardly noticeable due to the distance to the opposite side of the road.
5. As to the differences, it is not in dispute that the original windows were made of wood with sliding sashes, and as demonstrated by a Council survey photograph, had distinctive decorative rounded upper sections. The appeal windows are made of uPVC, have a different opening method, and do not have rounded upper sections. In addition the transoms and mullions are of differing proportions to those originally extant and differ between parts of the window. I conclude that the new windows are different from the ones they replaced, and have materially changed the external appearance of the building.
 6. As to quality of design, it is apparent from the presence of similar windows in other buildings in the area that the replaced windows were either the same as or later reproductions of those originally installed. As such they are part of the historic character of the building and area. I conclude that whatever the individual merits of the uPVC window design, which on a modern building would be unremarkable, the windows on the appeal building are incongruous. I found that it was not necessary to cross the road to view the appeal windows, as they can be easily seen from the pavement at relatively short range, and in relation to nearby upper floor sliding sash windows along the terrace to the north.
 7. The area has shopfronts whose designs are inappropriate to the building above, but I do not consider that their adverse effect or that of the modern buildings in the vicinity has gone so far as to make it inappropriate to protect what remains of the original appearance and character of the area. This matter will in any event have been assessed when the Conservation Area was designated. In respect of shopfronts there is also the prospect of a gradual return to more appropriate designs as needed replacements seek planning permission.
 8. In all these circumstances I have concluded on the main issue in this case that the replacement uPVC windows have harmed the appearance of the building and the character of the Conservation Area. It is likely that the appeal windows have better noise insulation qualities than those they replaced, but there is no evidence that the previous situation was so harmful to residential amenity or the present one so much less so that substantial weight should be given to this factor. I have concluded that the appeal should fail.

FORMAL DECISION

9. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V F Ammoun



Appeal Decision

Site visit made on 2 October 2008

by **S J Emerson BSc DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
21 October 2008**

Appeal Ref: APP/Q1445/A/08/2073225 37/38 Providence Place, Brighton BN1 4GE.

- 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 Holt against Brighton & Hove City Council.
- The application Ref BH/2008/00612 is dated 20 February 2008.
- The development proposed is the demolition of the existing redundant storage building and redevelopment to provide 6 residential units in a 3 storey plus attic building.

Procedural Matter

1. One of the Council's putative reasons for refusal is that, in the absence of on site parking, the development should be made permanently car-free and contribute to sustainable transport measures. At the application stage there was no section 106 obligation to facilitate the necessary changes to the Traffic Regulation Order (TRO) or to pay a sum for sustainable transport. The sum of £4,500 was highlighted as being necessary for the latter.
2. At a late stage in the appeal proceedings, the appellant submitted a section 106 obligation which purports to provide £4,500 to the Council for sustainable transport and £2,000 to amend the TRO. The obligation received by the Inspectorate was not dated and did not have the plan of the site referred in the obligation. Via the Case Officer, I raised these omissions with the main parties and asked the Council whether it had a complete, dated copy of the obligation and, if so, whether it satisfied the Council's concerns in relation to transport. No comments were received from the Council, but a new obligation was subsequently submitted which is dated (8 October 2008) and contains a plan of the appeal site. The Council was given a further opportunity to comment, but no comments were received. I have no reason to doubt that the dated obligation would ensure the necessary payments were made to the Council if I were to allow the appeal and I consider that this satisfactorily addresses the Council's concerns about transport.

Decision

3. I allow the appeal, and grant planning permission for the demolition of the existing redundant storage building and redevelopment to provide 6 residential units in a 3 storey plus attic building at 37/38 Providence Place, Brighton in accordance with the terms of the application, Ref BH/2008/00612, dated 20 February 2008, and the plans submitted with it (drawings 002/04, 002/05, 002080220/09 and 002071227/09) subject to the conditions listed below:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted and the surfacing of the rear courtyard have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) The bins store and the cycle store and cycle parking shown on the approved plans shall be provided before any of the dwellings hereby permitted are occupied and thereafter retained for their specified purpose.
- 4) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Main issues

4. The main issues are:
 - (a) Whether the development would result in the harmful loss of business premises.
 - (b) The effect on the character and appearance of Providence Place.

Reasons

Loss of employment premises

5. Nos 37 and 38 Providence Place are at the rear of 45/45a London Road which have retail uses on the ground floor with flats above. The access to these flats is across the appeal site. No 38 is a layer of rubble. No 37 consists of a flat-roofed building in 2 parts which is joined to the rear of No 45 London Road. That part of the building fronting Providence Place has a door wide enough for a vehicle to enter and the building is somewhat wider than a typical domestic garage. About a car's depth into this structure there is a partition and the floor drops to a lower level. This lower part of the building has no windows or doors and is currently a rather disorganised store of small timber. At the partition there is staircase which leads to an old covered walkway over the flat roof to the rear of the London Road building, but now no longer used.
 6. The appellant explains that the lower part of the building was used as ancillary storage for the shop fronting London Road and the part nearest Providence Place was a garage for the owner who lived in the flat above. This explanation seems to me to be logical and consistent with the character of a number of other plots between London Road and Providence Place. The internal staircase between the inside of the garage and the rear of the flat confirms the past link between these uses. The Council does not dispute this background, but suggests that the building was separated from No 45 sometime ago and operated independently of No 45. The Council consider that the building has an authorised use for B8 storage purposes. There is no specific evidence for these assertions. The appellant explains that the building was separated from No 45 in 2004 by the present owner and since that time he has pursued various applications to redevelop the site for flats. The interior of the building
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does not suggest that it has been used other than by the owner for casual storage and it does not appear to be fitted out to make it suitable for letting as a separate storage unit. The drop in the floor level part way into the building would make it unsuitable for many storage uses served from Providence Place.

7. Policy EM6 of the Brighton and Hove Local Plan 2005 states that small industrial, business and warehouse premises (Uses Classes B1, B2 and B8 of 235m² or less) will be retained for employment purposes unless one of 5 criteria are met (such as being genuinely redundant or would cause undue disturbance to residential neighbours). In my view, this policy can only effectively be engaged in relation to premises that can lawfully and practically be used for business purposes. The building on the appeal site was ancillary storage and parking for the retail unit and flat of 45 London Road. I am not convinced that it has since been used as an independent storage unit in any meaningful way or that it could be so used without planning permission. I consider that the configuration of the building does not make it readily suited to a storage use. The Council does not appear to be concerned to secure the retention of these particular premises because it suggests that the redevelopment of the site should incorporate an office use as the appellant has done in previous schemes for the site (all refused planning permission for various reasons). I am therefore satisfied that policy EMP6 is not engaged and the redevelopment of the site would not result in the harmful loss of business premises.

Character and appearance

8. Providence Place is a road of mixed uses and considerable variety in the scale and character of buildings. Its eastern side is at the back of London Road which is a main shopping street. In places, the London Road premises extend back at ground floor level to the back edge of Providence Place. Such buildings have a utilitarian appearance. Some of the London Road premises have small parking and service yards served from Providence Place. Some buildings front Providence Place. To the north of the appeal site is a 3 storey block of flats built in the 1980s. Adjoining this block are some 2 storey Victorian buildings now used for car repairs. A little to the south of the appeal site is a recently completed narrow 3 storey building with an office on the ground floor and 2 flats above and beyond these are some substantial 2 storey Victorian buildings also used for car repairs. Opposite the appeal site is a multi storey car park. Overall, Providence Place has a disjointed and generally unattractive appearance and must, at night, seem a rather unwelcome place because of the lack of informal visual surveillance from occupied buildings.
9. The appeal building would consist of 3 main floor floors with additional bedrooms in the roof space. The building would have a symmetrical layout. At the front, the main living room windows would be set inside the building shell with internal balconies finishing flush with the main front wall and enclosed with glass panels. The ground floor of the building would be slightly below the level of Providence Place. The shallow pitch roof would incorporate 2 dormers at the rear and 2 cut-outs within the roof at the front to create 2 small sitting areas. These would be concealed from street level by the lower part of the roof slope.

10. The application drawings included the development in the context of the street scene along Providence Place. The height of the recently completed new building to the south of the site was shown incorrectly, but this has been amended in a drawing submitted with the appellant's appeal statement. The Council has not highlighted any other errors, but I have not relied solely on this drawing in judging whether the height of the proposed flats would be appropriate. I was able to consider the scale of the building in the street scene of Providence Place from the elevated position of the 2nd floor of the multi-storey car park directly opposite.
11. The ridge of the proposed flats would not be as high as the block of flats to the north which also has 3 main floors of accommodation, but a steeper pitch to the roof. Nor would it be as high as the larger 2 storey Victorian buildings a little to the south which have quite steep and high pitched roofs. The ridge would be slightly higher than the recently completed narrow 3 storey building nearby to the south, but that building has a very shallow sloping roof and I do not consider that the height of that building sets the maximum height for redevelopment nearby. The small differences in height would not however be noticeable from Providence Place itself. I consider that the proposed building is of an acceptable height and scale.
12. The design of the building is relatively simple and conventional. The ratio of windows to walls would fall between the rather solid and somewhat austere 1980s flats, which have very small windows, and the dominance of glazing in the recently completed new building which the Council consider is preferable. I see no reason why that building should be the design template for the rest of the street. The Council is critical of the mix of materials. The walls would be mainly painted render which is the same as the recently completed building. Panels of red cedar are also proposed. Although this would be a new material within Providence Place, cedar is a material used extensively on some of the new large blocks of flats in the New England Quarter nearby. I cannot see that its introduction in Providence Place is harmful.
13. The inset balconies would give the building a suitable visual depth and interest. Although the kitchen windows for the ground floor flats are high level, the living rooms would have patio doors to the balconies and thus provide an active frontage. The entrance to the flats (which would also be the entrance to the flats at the rear of 45/45a London Road) would be a simple door, centrally placed in the Providence Place frontage. I accept that more could have been made of this entrance, but the entrance would be clear to all who need to find it and I consider that the street frontage of the building would have sufficient visual interest without the need for further embellishment of the entrance. The Council is critical of the dormers, but these would be small and on the rear roof slope. I see no material conflict with the Council's supplementary planning guidance on dormers. Neither the front balconies nor the proposed solar panels would be readily noticeable at street level. I consider that these are acceptable features.
14. The development would make a positive contribution to the character and appearance of Providence Place and the design accords with the policy requirements of QD1 (design) and QD5 (street frontages) of the local plan.

Conditions

15. I have considered the need for conditions in the light of the advice in Circular 11/95 and the Council's suggested conditions. In the interests of visual amenity, external materials should be approved. I see no need for soft landscaping given the small size of the rear courtyard. Also in the interest of visual amenity and the amenity of residents, the bin store shown be provided. To facilitate alternative means of transport, the cycle store should be provided. The Council seeks a Code for Sustainable Homes rating of level 3 or higher. There is no evidence-based development plan policy justifying a more demanding standard than the current Building Regulations, but the appellant indicated in the Design and Access Statement that the building has been designed to meet Code 3. In the interests of sustainability, I consider that this higher standard can therefore reasonably be required. How Code 3 is achieved is a matter for the developer and I see no need to specifically require the installation of the solar panels shown on the drawing.
16. The Council seeks a condition to ensure that the units are constructed to Lifetime Homes Standard *to the satisfaction of the local authority*. Such a condition is unreasonably vague as to what has to be achieved and I will not impose it. The appellant indicates that the building has been designed to achieve Lifetime Homes Standard. The Council also seeks a Site Waste Management Plan indicating how demolition and construction waste will be recovered and reused on site or elsewhere. Policy SU13 of the local plan seeks to minimise construction waste and the Council's supplementary guidance on the matter requires all applications over 5 dwellings to include such a plan at the application stage. This requirement was met within the Design and Access Statement. Given the small building to be demolished and the minimal site excavation required, I consider that submission of further details is not justified. I consider that no other conditions are required.

Simon Emerson

INSPECTOR



Appeal Decision

Site visit made on 29 September 2008

by **Roger Mather MA Dip Arch RIBA FRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
21 October 2008

Appeal Ref: APP/Q1445/A/08/2073223

Land behind No's 67-81 Princes Road, Brighton BN2 3RH

- 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 brought by Carelet Ltd against Brighton & Hove City Council.
- The application (Ref: BH2007/04444) is dated 30 November 2007.
- The development proposed is 8 houses (two & three-storey) with private & communal gardens, a street level lift 'Gate House' and a new access off Prince's Road.

Decision

1. I dismiss the appeal and refuse to grant planning permission for 8 houses (two & three-storey) with private & communal gardens, a street level lift 'Gate House' and a new access off Princes Road, Brighton.

Main Issues

2. The appeal site is a rectangular parcel of land behind a row of terraced houses that step down the slope from west to east and is at a significantly lower level. It is located in the Round Hill Conservation Area, characterised by Victorian and Edwardian terraced houses and villas, in a variety of architectural styles. The Brighton to Lewes railway line and the Centenary Industrial Estate mark the boundary of the Conservation Area as well as the northern and eastern site boundaries. There is a Tree Preservation Order on a Horse Chestnut tree on the Prince's Road frontage. The appellant company would build a terrace of two and three-storey houses parallel to houses on Princes Road, a 'gatehouse' attached to 81 Princes Road and an off-road parking space for a Car Club.
3. The Council has indicated that had it reached a decision on the proposed development, within the statutory time period, its main objections would have been over development of the site, resulting in overlooking and cramped living conditions for future occupants; poor appearance, harmful to the character and appearance of the Conservation Area; the detrimental effect of an off-road parking space and crossover on the Conservation Area; on-street parking stress; overlooking and loss of outlook for existing households; the loss of a Greenfield site of significant ecological interest; insufficient information to assess the scheme against policies for renewable energy and energy efficiency; and, the effect on the protected Horse Chestnut tree.
4. From this, the written representations and my inspection of the site and surrounding area, the appeal raises seven main issues. The first is whether in principle the loss of a Greenfield site of significant ecological interest is acceptable. The second is the effect of the proposed development on the

character and appearance of the Round Hill Conservation Area. The third is the effect on on-street parking. The fourth is whether the scheme would provide acceptable living conditions for future occupants, particularly in relation to overlooking and loss of privacy. The fifth is the effect on the living conditions of existing households, particularly in relation to outlook, overlooking and loss of privacy. The sixth is whether prevailing policies for renewable energy and energy efficiency would be compromised. The seventh is the effect on the protected Horse Chestnut tree on the Princes Road frontage.

Reasons for Decision

5. National housing policies encourage local planning authorities to make the most efficient use of land, including building at higher residential densities, particularly on previously developed land in sustainable locations. Moreover, the principle of residential use has been accepted previously through consideration of earlier applications (Refs: BH2004/03605/FP; BH2005/02279; and BH2006/03214) and an appeal decision (Ref: APP/Q1445/A/05/1178381). The Council no longer view the land as previously developed and include it within an open space, sport and recreation study, currently being prepared to inform the Local Development Framework. However, until the findings of the Study are complete, little weight can be given to it.
6. The site has been cleared of significant vegetation and now provides little or no natural habitat. In these circumstances, I am inclined to agree with the Council's ecologist that a completely cleared site is unlikely to support anything other than a relict population of slow-worm. Having regard to nature conservation features that were lost, the ecologist has proposed three achievable nature conservation enhancement measures that could be required as a condition of permission. That would satisfy Policy QD17 of the Local Plan.
7. In these circumstances, there is no material change in circumstances sufficient to compel me to conclude on the first issue that the development of the site for housing is no longer acceptable in principle.
8. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15) represents well-established Government policy on the historic environment. Moreover, good design is clearly an integral and important element of local development plan policies and an important element of Planning Policy Statement 1: Delivering Sustainable Development (PPS1), and thus an important element of planning policy generally. PPS1 introduces two separate tests: design, which is inappropriate in its context, should not be accepted; and, design that fails to take opportunities available for improving the character and quality of an area should not be accepted. PPS1 is thus consistent with the statutory duty.
9. This somewhat unsightly parcel of land lies on the very edge of the Conservation Area, not easily visible from Princes Road but seen clearly in views from outside the Conservation Area to the north and east. Nevertheless, its location within the Conservation Area coupled with its prominence in the wider area demands that new development would fit entirely naturally into the

scene. A design that is appropriate will most likely sit comfortably and harmoniously alongside its neighbours. In this case, I fully understand that the topography and shape of the site has influenced the layout in terms of height and bulk but there would be two significant consequences.

10. The first is that squeezing eight houses into the site and the consequent lack of space for significant planting would harm visual amenity in relation to the green spaces characteristics of the Conservation Area as well as views into the Conservation Area from the north. Secondly, while I share the view of the previous Inspector that a building of contrasting contemporary design would not necessarily harm the character and appearance of the Conservation Area, the stepping up and down, with two-storey houses in the middle and at one end, would contrast sharply with existing houses on Princes Road, which step down with the natural gradient of the land. Consequently, the design in terms of bulk and form of development falls short of that necessary to preserve the prevailing character of the Conservation Area. It would create entirely the wrong effect by emphasising an inappropriate form that would be a clear breach of the distinctive character of the existing terraces as well as being disruptive in its setting, seen from the north. Consequently, it would fail to match the form of development to the quality of the historic setting.
11. The design of the gatehouse on the Princes Road frontage would read as an extension to 81 Princes Road, which would neither interfere with nor breach any clearly identifiable pattern, such as to harm the character and appearance of the Conservation Area. However, the car space in front of the gatehouse would introduce an open-fronted feature into a street characterised by boundary walls and front gardens. It would thereby erode the character of the street and by doing so change the important relationship of front garden space to building at 67-81 Princes Road. That would harm the street scene. This matter could, however, be addressed by a Grampian style condition to bring forward proposals to secure a Car Club space on the highway.
12. I conclude on the second issue that the proposed development would neither preserve nor enhance the character or the appearance of the Round Hill Conservation Area. To permit the development in these circumstances would be to disregard the historic context that led to the designation of the Conservation Area as well as the duties imposed by the Act, national guidance in PPG15, paragraph 34 of PPS1 and saved Policies QD1, QD2, QD4 (e) and HE6 contained in the Brighton & Hove Local Plan that was adopted in 2005.
13. Earlier applications were not refused on their traffic impacts but the previous Inspector, when dismissing an appeal against a refusal to grant planning permission for 30 flats, considered that the lack of a guaranteed traffic-free scheme reinforced his view that the proposed development was unacceptable. The appellant company contends that its vehicle parking beat survey identified sufficient on-street parking for occupants of the houses, within easy walking distance, that would not give rise to any material harm or inconvenience to existing residents. However, observations during the visit lead me to believe that there is merit in the argument that inadequate on-site parking would lead to further on-street parking, in an area suffering a degree of parking stress.

14. It does seem to me that it is stretching credibility to suggest that there is sufficient on-street space to provide for travel demand from eight family houses, estimated at seven cars, based on one beat survey undertaken during the early hours, on one weekday in August. Moreover, the Survey showed only 8 spaces available within 100m of the site. A further 16 were available within a 400m walk of the site. I think that would be woefully inadequate to mitigate the harm at other times, outside the holiday season, when demand would be expected to increase. It flows from this that in the absence of controls to ensure a genuinely car free scheme, one Car Club space would be inadequate.
15. I conclude on the third issue that without a guarantee that the development would be genuinely car free, it would be likely to exacerbate parking stress in the area, sufficient to warrant withholding planning permission. The requirements of Local Plan Policies TR19 and HO7 (b) would not be satisfied.
16. The layout of new houses is designed to adhere to a back-to-back distance of 20m separations but overlooking is a concern, particularly at the western end of the site. Occupants of houses on Princes Road would have a clear view into first and second floor terraces/balconies below, immediately outside main living areas, where future occupants would most value privacy and seclusion. Two small communal areas would be overlooked too. The loss of privacy would not be overcome by screen planting, sufficient to mitigate the harm, due to the height of the neighbouring houses and the topography. On the northern side, a consequence of over development is that there is insufficient space to mitigate the poor outlook towards the recently completed waste transfer station, but on its own, this would not warrant withholding permission.
17. Consequently, I conclude on the fourth issue that the proposed development would not achieve acceptable living conditions for future occupants only in relation to overlooking and loss of privacy. That would conflict with saved Policy QD27 of the Local Plan.
18. I am mindful of the last appeal decision in which the Inspector concluded that a development of five and six storeys in height would be significantly overbearing on the outlook of existing households and overlook their gardens. Residents are equally concerned about the effect of the current proposal but the significant reduction in height, coupled with terrace planting and privacy screening, would reduce the perceived impact sufficiently to minimise any overlooking or perception of overlooking from below. The reduced height of the proposed development would also ensure no material impact on outlook. Consequently, I conclude on the fifth issue that the impact on existing households, in terms of living conditions, would be acceptable. The requirements of saved Local Plan Policy QD27 would be satisfied.
19. Council policies require new development to demonstrate a high level of efficiency in the use of water, energy and materials and minimise construction waste and re-using it. The appellant company's comprehensive technical report shows that the scheme would comfortably achieve a satisfactory rating. That would satisfy Policies SU2 and SU13 of the Local Plan.
20. The Horse Chestnut tree at the site entrance makes a significant contribution to the street scene and is protected by a Tree Preservation Order. Despite the

comprehensive tree report submitted by the appellant company, the Council's arboriculture officer remains concerned that its survival is not guaranteed. However, the concern that it might suffer long-term effects that would shorten its useful lifespan, thereby harming its amenity value, would justify a 'hand-dig' construction method specification to minimize potential damage within the root protection area, rather than conventional construction methods, for access and underground services. That could be a requirement of a planning condition, which together with other appropriate protection measures, would safeguard the tree during construction. I therefore conclude on the seventh issue that the implications for the retention and health of the Horse Chestnut tree would be acceptable. Policy QD16 of the Local Plan would be satisfied.

21. Overall, while there are some factors in favour of the proposed development, I find that the scheme would seriously compromise the character and appearance of the Round Hill Conservation Area, giving rise also to increased parking stress, as well as impairing the living conditions of future occupants. These considerations are of overriding importance and outweigh all others. Consequently, I further conclude that the appeal should not succeed.
22. I have considered all of the other matters raised, including the various examples of developments in the wider area that have been drawn to my attention. There are significant differences between the settings of those developments and that of the appeal site and each case has to be considered on its individual merits in relation to the development plan and all other material considerations. Whether or not it demonstrates inconsistency, the existence of development elsewhere does not provide justification for a harmful form of development at the appeal site. Consequently, neither this nor any of the other matters raised is of such significance as to outweigh the considerations that led to my overall conclusions on the main issue.

Roger Mather
INSPECTOR



Appeal Decision

Site visit made on 12 September 2008

by **J A B Gresty MA MRICS**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 October 2008

Appeal Ref: APP/Q1445/A/08/2068168 **99 North Road, Brighton BN1 1YE**

- 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 ASA Consortium Ltd against Brighton & Hove City Council.
- The application, Ref BH2007/04427, is dated 20 November 2007.
- The development proposed is change of use of first and second floors from retail (A1) to offices (B1), infill extension at second floor level on Vine Street elevation, insertion of new window at first floor North Road elevation, new shop front.

Decision

1. I allow the appeal, and grant planning permission for change of use of first and second floors from retail (A1) to offices (B1), infill extension at second floor level on Vine Street elevation, insertion of new window at first floor North Road elevation, new shop front at 99 North Road, Brighton BN1 1YE in accordance with the terms of the application, Ref BH2007/04427, dated 20 November 2007, and the plans (Drawing No 1171-SK01 Revision B and No 1171-SK02) submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) The external finishes of the development hereby permitted shall match the material, colour, style, bonding and texture of the existing building.
 - 3) The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been implemented and made available for use. These facilities shall thereafter be retained for use at all times.
 - 4) The development hereby permitted shall not be occupied until details of secure cycle parking facilities have been submitted and approved in writing by the Local Planning Authority. Prior to occupation of the development these facilities shall be implemented in full and made available for use and shall be retained for use at all times.
 - 5) No vehicular deliveries shall be taken at or despatched from the property between the hours of 9 pm and 7 am on Mondays to Saturdays or at any time on Sundays or Bank Holidays.
 - 6) Prior to the start of works, details of joinery including 1:20 sample elevations and 1:1 joinery profiles of the shop front shall be submitted to and approved in writing by the Local Planning Authority. The scheme

shall be implemented in accordance with the agreed details and maintained as such thereafter.

- 7) Notwithstanding the details shown on the approved plans, details of the proposed entrance door to the shop from North Road shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and maintained thereafter in accordance with the approved details.
- 8) The development shall be implemented in accordance with the Waste Minimisation Statement contained in the Planning, Design and Access Statement accompanying the application.

Procedural Matter

2. The Council has confirmed that it would have approved the application had it issued its decision before the expiry of the statutory time limits. Accordingly the Council does not object to the appeal proposal.

Main Issue

3. I consider the main issue in this case to be whether the proposed development would preserve or enhance the character or appearance of the North Laine Conservation Area.

Reasons

4. The appeal property is a two and three storey building situated on the corner of North Road and Vine Street and is in the North Laine Conservation Area. A notable characteristic of this part of the Conservation Area is its variety of style and size of buildings and the mixture of residential and commercial uses. Until recently the appeal property had been occupied as a shop with associated storage.
5. The proposal includes the extension of the building to infill the gap at second floor level between the appeal property and the adjoining property on Vine Street. Whilst this gap provides a variation in heights of the buildings that provides some visual interest to the street, the extension would not replicate the decorative moulding of the host building and it would be a visually distinct extension that would maintain the variation in appearance of the front elevations of the properties on Vine Street, maintaining the variety of style of buildings that is a characteristic of the area. Policies QD1 and QD2 of the Brighton & Hove Local Plan 2005 (LP) are general design policies that seek to ensure that new development is well designed and takes into account local characteristics including height, scale and architectural detailing. I consider that the extension would meet the requirements of these policies.
6. The properties on Vine Street are mostly terraced and I consider that the proposed infilling at second floor level would not have a significant effect on Vine Street with regard to the terraced appearance of the street. The development would, therefore, accord with LP Policy QD14 which, amongst a number of criteria, requires extensions to retain an appropriate gap between buildings to prevent a terracing effect where it would be detrimental to the character of the area.
7. LP Policy QD10 requires shop front proposals in conservation areas to preserve

or enhance the special appearance or character of the area. The proposed new timber shop front, with equally-proportioned windows and lower stall-risers, would be more in keeping with the style of the host building than the existing shop front and would therefore meet the aims of LP Policy QD10 by enhancing the appearance of the area.

8. LP Policy QD3 seeks the efficient use of development sites. The proposed development would make efficient use of an existing site whilst both maintaining and improving the appearance of the host building. Consequently, I consider the proposed mixture of office and retail use would be in keeping with the character of the locality. Overall, I conclude the development would preserve and enhance the character and appearance of the North Laine Conservation Area.

Other Matters

9. The building is close to existing commercial properties and, whilst the existing retail use of the ground floor would be maintained, I concur with the Council that the office use would be unlikely to generate significant noise that would be a disturbance to nearby residents. Accordingly the proposal would be in keeping with the aims of LP Policy QD27.
10. The Council indicates and I accept that there is a need for small office units in this part of Brighton and that the proposed scheme would contribute towards meeting this demand. Consequently the proposed scheme meets the aims of LP Policy EM4 which indicates that planning permission will be given for business uses where, amongst a number of criteria, there is a demonstrable need.

Conclusion

11. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted.

Conditions

12. In order to ensure the satisfactory appearance of the development I impose conditions requiring the external surfaces of the extension to match the appearance of the existing building (2), for details of the design of the new shop front (6) to be submitted to and approved by the Council and for the provision of refuse storage and recycling facilities (3). Further, the design of the proposed new door onto North Road does not complement the host building so I impose a condition (7) requiring detailed plans of the door to be submitted to and approved by the Council. Although the site is in a location close to public transport I impose a condition (4) requiring the provision of cycle storage as indicated by LP Policy TR14. In order to prevent disturbance of nearby residents I impose a condition (5) limiting the times when vehicular deliveries to and from the site can be made. Finally, I impose a condition (8) to minimise construction waste from the development of the site as encouraged by LP Policy SU13.

J A B Gresty

INSPECTOR



Appeal Decision

Site visit made on 7 October 2008

by **R J Marshall** LLB Dip TP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
24 October 2008

Appeal Ref: APP/Q1445/A/08/2076723 101, North Road, Brighton BN1 1YE

- 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 Zelgrain Ltd. against the decision of Brighton & Hove City Council.
- The application Ref BH2006/03707, dated 23 October 2006, was refused by notice dated 25 April 2008.
- The development proposed is described as "Change of use from A1 to A4 (relating to application: BH2006/00707)".

Decision

1. I allow the appeal, and grant planning permission for Change of use from A1 to A4 at 101, North Road, Brighton BN1 1YE in accordance with the terms of the application, Ref BH2006/03707, dated 23 October 2006, and the plans submitted with it, subject to the conditions on the attached annexe.

Procedural matters

2. I have taken the application description, given in the bullet points above, from the planning application form. The application is best simply described as "Change of use from A1 to A4" and hence this is how it is described in the decision.

Reasons

3. The main issue in this appeal is the effect of the proposed development on the living conditions of those nearby with particular reference to noise and disturbance. As the site is in the North Laine Conservation Area I shall also have regard to the effect of the proposal on the character and appearance of this area.
4. North Road, off which the appeal site is located, is not far removed from Brighton town centre. This road and the surrounding area, especially to the south, is a vibrant and busy area containing many restaurants, pubs, cafes and shops. To the north, lies a generally quieter and more exclusively residential area.
5. The appeal property comprises a notably small building. It adjoins a public house of a modest size recently granted planning permission. The intention is to combine the 2 properties to create a slightly larger establishment.

6. Given the small scale of the appeal building, and character of much of the surrounding area, the proposed development should not give rise to a substantial increase in activity in the vicinity of the appeal site such that would be likely to cause unacceptable noise and disturbance. In arriving at this view I have taken into account concerns about an open seating area adjoining a house in Cheltenham Place to the north of the site. However, the seating area already exists and I consider it unlikely that the proposed development would result in it being used to a significantly greater extent.
7. I conclude that the proposed development would not cause unacceptable harm to those nearby with particular reference to noise and disturbance. There would thus be no conflict with Policies QD27, SU9 and SU10 of the Brighton and Hove Local Plan 2005.
8. Given the character of existing uses nearby, and the potential to improve the rather rundown appearance of the appeal building, the proposed development would preserve or enhance the character and appearance of the North Laine Conservation Area. Government Guidance on the protection of such areas would thus be complied with.
9. As I am minded to allow the appeal I have considered what conditions should be imposed in addition to the standard time limit for the commencement of development. To protect the living conditions of neighbours I shall restrict the hours of use of the premises. For consistency I shall impose the same hours that apply to the adjoining public house rather than the lengthier period that the appellant appears to seek. Also to protect the living conditions of neighbours I shall limit hours of delivery and require the submission and approval of a scheme to prevent the unacceptable transmission of noise from within the appeal property to neighbouring properties. For the same reason, and also to ensure sustainable development, I shall require the submission and approval of the details of refuse storage and recycling.
10. I shall not impose the suggested condition that no amplified music or other entertainment noise from within the premises shall be audible at any adjacent residential premises. I consider it unnecessary in light of the noise condition referred to above. It would also be insufficiently precise and difficult to enforce. Nor, without clearer evidence that cycle storage would be feasible on such a small site shall I require the provision of cycle storage facilities.
11. For the reasons given above I conclude that the appeal should be allowed.

RJ Marshall

INSPECTOR

Conditions annexe

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The premises shall not be open or in use other than between the hours of: -
08.00 - Midnight, Mondays to Thursdays
Fridays and Saturdays 08.00 – 00.30 the following morning
09.00 – 23.00 Sundays and Bank Holidays.
- 3) No deliveries shall be taken at the site outside the following times: 07.00 – 19.00 hours, nor at any time on Sundays and Bank Holidays.
- 4) Prior to commencement of the use hereby permitted a scheme for protecting neighbouring properties from noise generated within the appeal premises shall be submitted and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the use hereby permitted is commenced and shall thereafter be retained.
- 5) Prior to commencement of the use hereby permitted a scheme for refuse storage and recycling shall be submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the use hereby permitted is commenced and shall thereafter be retained.



Appeal Decision

Site visit made on 28 October 2008

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
6 November 2008**

Appeal Ref: APP/Q1445/C/08/2075588

Land at 117 Havelock Road, Brighton, BN1 6GN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms C Sturdy against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0428. The notice was issued on 21 April 2008.
- The breach of planning control as alleged in the notice is *Without planning permission the replacement of timber sliding sash windows to the front ground floor of the property with uPVC.*
- The requirements of the notice are *1. Remove uPVC windows from ground floor front elevation and replace same with painted timber sliding sash windows to match those at first floor level.* The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)[a] and [c] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal fails, as set out in the Formal Decision.

The appeal on ground (c)

1. An appeal on the legal ground (c) is that there was no breach of planning control. The Appellant's case is that she was told that planning permission was not required for window replacement on a "like for like basis". A letter from her contractor states that this is what was quoted for and installed. Like for like is not a statutory definition but may be intended to reflect Section 55(2)(a) of the Act which excludes from development works for the maintenance, improvement, or other alteration of any building which affect only its interior or "... do not materially affect the external appearance of the building". That is the relevant legal test.
2. In this case sliding sash wooden windows have been replaced by uPVC windows. In addition to this change to materials, the opening parts are top hung. The use of uPVC has resulted in elements of the frame being more bulky than previously. This is shown by comparison with the wooden sliding sash windows that remain at first floor level above the appeal windows. The change to the ground floor front windows is clearly visible from the street, and is the more noticeable by reason of the contrast with the windows at first floor level. I have concluded that the change to the windows has materially affected the external appearance of the building. The appeal on ground (c) fails.

The appeal on ground (a) – the deemed planning application

3. No.117 is within the Preston Park Conservation Area. From my inspection of the site and area, and consideration of the representations made, I have concluded that the main issue is the effect of the windows upon the character

and appearance of the building and the Conservation Area. Well established planning policies referred to in the representations reflect the legal requirement in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, that decision makers pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In 2001 the Council by an Article 4(2) Direction withdrew certain permitted development rights so that single dwellinghouses, as well as buildings in use as flats, had to obtain planning permission for various developments including that subject of the present appeal. The Council states that this was done to halt the erosion of features such as sliding sash windows and traditional materials. A Council document entitled *Preston Park Article 4(2) Direction. Introduction of additional planning restrictions* states in part that *Planning permission is not required ... to replace features "like for like" eg ...replacing timber sliding sash windows with matching sliding sash windows...*.

4. The mid-terrace appeal building is typical of many in Conservation Areas in that while it is of no outstanding architectural merit in itself, combined with the similarly designed late Victorian buildings nearby it helps form an area that has a reasonable consistency if not a uniformity of design. This produces a pleasant character and appearance part of which is due to the traditional design of the wooden sash windows where these have been retained or sympathetically replaced over the years. Though the Appellant and others have drawn attention to the many examples of different window treatments and other distinctive features of buildings, having walked around the area I have concluded that there is enough of the original character for it to be appropriate to protect what remains. In the case of the appeal building this is particularly so as the front first floor windows are of the original type to which the enforcement notice would require the appeal windows to conform.
5. In all these circumstances I have concluded on the main issue that the change from the original sash windows to ones of uPVC having a different appearance and balance between the parts has been harmful to the appearance of the building and the character of the Conservation Area.
6. The appeal windows are likely to provide better insulation than those they replaced, but it is a feature of the planning process that some of the objectives being sought by the community may be in competition or even potentially in conflict. Planning policies provide guidance as to which objectives should prevail in particular circumstances and areas, and I consider it clear that character and appearance is intended to have particular weight in Conservation Areas. I have concluded that the appeal on ground (a) should fail.

FORMAL DECISION

7. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V F Ammoun



Appeal Decision

Site visit made on 1 September 2008

by **R C Shrimplin**
MA(Cantab) DipArch RIBA FRTPi FCI Arb MIL

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
18 November 2008

Appeal Reference: APP/Q1445/A/08/2071643 Land at 334 Dyke Road, Brighton BN1 5BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of the Council to give notice, within the prescribed period, of a decision on an application for planning permission.
- The appeal is made by Mr C Lyall against Brighton and Hove City Council.
- The application (reference BH2007/04384) is dated 7 November 2007.
- The development proposed is the erection of a "single storey rear and side extension, double storey rear and side extension, new front boundary wall, double garage set into slope of garden".

Decision

1. I dismiss this appeal and refuse to grant planning permission for the proposed development.

Main issues

2. I have concluded that there are two main issues to be determined in this appeal. The first is the effect that the project would have on the streetscene, while the second is its effect on neighbouring residents, particularly their privacy.

Reasons

3. Dyke Road is a busy through route, a wide road with a spacious character, in a generally residential, suburban locality. Number 334 is a modest dwellinghouse, by comparison with others in the vicinity, set on a relatively large plot, on the main road frontage, and the scheme which is the subject of this appeal has the aim of converting and extending the house to create a much more substantial dwelling.
4. The proposed extensions and alterations would change the existing house profoundly. It is not a particularly large house, by comparison with its nearest neighbours and, at present, it presents a placid, mock Tudor, elevation to Dyke Road. The extended house would evidently be rather larger than the existing and the new design is rather modern in character. Nevertheless, the setting is not so sensitive, in my view, that a larger house, to a modern design, would necessarily be out of place, if well conceived and executed.
5. The materials and basic forms of the construction (with relatively small building elements and a pitched main roof) would follow through in the new design but a new image would be created, by the use of different materials and the introduction of some more quirky elements. Thus, although a main vertical emphasis would be introduced on the front elevation, by large window features,

- this centrality is drawn apart by the creation of large horizontal windows at first floor, pulled to the outer corners of the building. The main gable would have an odd asymmetry, because the inequality is only slight, and the upper part of the gable on the front elevation would sit awkwardly on the lower floors, because of the change in scale of the openings and the variation in materials, as well as the asymmetrical pattern that does not obviously derive from the structure below.
6. The design of the proposed rear elevation is more successful, because it is more coherent, though here, too, the asymmetry of the roof strikes a jarring note.
 7. At the front of the house, moreover, the scheme would introduce a new garage, with a limited turning and garden area, inserted in front of the ground floor study window of the altered house, albeit at a lower level. I am aware that other garages exist in a similar relationship to their plots, elsewhere in Dyke Road, and that the turning diagrams that have been presented demonstrate that the garage would be accessible for motor cars. Nevertheless, I have concluded that the forecourt area and garage would create a cramped development of the site that would alter the character of the setting in an unsatisfactory way, notwithstanding the relatively high hedges and walls that mark the front boundaries of a number of the plots along Dyke Road.
 8. In short, and considering the project as a whole, I have formed the opinion that the impact of the design in the streetscene would be so awkward that it would cause unacceptable visual harm, in planning terms, and that it ought not to be allowed. In my opinion, it would conflict with planning policies in the Development Plan aimed at maintaining high standards of design and protecting the visual amenities of the city.
 9. Turning to the issue of residential amenity, I have noted the proposal to incorporate a roof terrace on the rear part of the proposed extensions. While the impact of the terrace could be limited by the construction of side parapet walls (controlled by conditions), I am not convinced that such walls would be sufficient to protect the privacy of neighbours, in their gardens. For this reason, also, therefore, I am convinced that the scheme which is the subject of this appeal is undesirable in planning terms and contrary to residential policies in the Development Plan.
 10. I have considered all the other matters raised in the representations, including the desirability of extending and improving the existing house, but I have found nothing to cause me to alter my decision.
 11. In reaching these conclusions, I have considered whether the appeal could be allowed but subject to conditions to address the design issues that I have identified. I have formed the opinion, however, that any such condition or set of conditions would be so complex and onerous as to be unreasonable and that therefore the appeal must be dismissed.

RC Shrimplin

INSPECTOR



Appeal Decision

Hearing held on 8 October 2008
Site visit made on 8 October 2008

by **R J Marshall** LLB Dip TP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
5 November 2008

Appeal Ref: APP/Q1445/A/08/2070157

Land to rear of 57 Shirley Drive, Hove

- 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 Windelmist Ltd. against the decision of Brighton & Hove City Council.
- The application Ref BH2007/02609, dated 6 July 2007, was refused by notice dated 4 October 2007.
- The development proposed is for two semi-detached houses, one three-bedroom, one four-bedroom.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues in this appeal are:

first, the effect of the proposed development on the character and appearance of the surrounding area;

second; its effect on neighbours' living conditions with special reference to loss of light, visual impact and privacy;

third, whether satisfactory living conditions would be provided for the scheme's future occupants with reference to outdoor amenity space; and

fourth, whether the proposal would be acceptably energy efficient.

Reasons

Character and appearance

3. The appeal site is in an attractive suburban area. Development here is made up mainly of large detached dwellings on fairly substantial plots. The appeal site is part of the large rear garden of No. 57 Shirley Drive, a house currently being subdivided into 2 dwellings. Onslow Road runs down the side boundary of this property and it is onto this road that the proposed development would face. Many of the dwellings in this road appear to date from the 1930s, though a few in the vicinity of the site are from more recent periods.
4. Policy QD3 of the Brighton and Hove Local Plan 2005 promotes the efficient and effective use of land. To this extent of the Council has no objection to some form of development on the appeal site. Indeed permission has recently granted on it for a single detached house. However, explanatory text to this

Policy says that making more efficient use of land should not lead to "town cramming" and to a deterioration of the environment. Local Plan Policies QD1 and QD2 require positive contributions to the visual quality of the environment.

5. The proposed development is a more contemporary design than most houses in the area, and would in part be 3 storey's high. I have no objection to a contemporary design per se, and the lie of the land should ensure that the 3-storey part of the proposal would not be readily apparent.
6. However, the semi-detached form of the proposed houses would make them appear out of keeping amongst the detached dwellings that front this part of Onslow Road. The proposed development would also, due to its greater plot coverage than the permitted house and its proximity to the lengthy rear elevation of No. 57 Shirley Drive, have an uncharacteristically cramped appearance. This would be most noticeable in oblique views towards the appeal site from Onslow Road. Adding to this cramped appearance would be the fact that 2 car parking spaces would occupy a relatively narrow strip of land between the proposed houses and the highway.
7. There has been some new residential development in the area. However, given the lack of substantial evidence on these schemes, and their distance from the appeal site, they are not greatly material to my decision.
8. I conclude that the proposed development would harm the character and appearance of the surrounding area. As such it would be contrary to Local Plan Policies QD1, QD2 and QD3.

Neighbours' living conditions

9. No. 17 Onslow Road to the east of the site has large windows to habitable rooms in its side elevation facing the appeal site. I am satisfied that there would be no unacceptable loss of light to these windows, and nor would this neighbouring property be unacceptably overlooked. However, the lengthy side elevation of the proposed development would make it appear unacceptably intrusive in views from the rearmost of these windows in particular. On similar grounds harm would arise in views from the rear elevation and garden of No. 57 Shirley Drive. In this case the lie of the land would add to that harm. The permitted house being less deep and further removed from these neighbouring houses does not cause such harm.
10. The proposed development would back onto the rear garden of No.55 Shirley Drive. The Council raised no concerns on the effect of the proposal on this property. However, the top floor bedroom window and balcony in the rear elevation of the house on plot 2 would be quite close to the boundary with No. 55. Although a substantial hedge lies on this boundary its retention is not guaranteed. Indeed, deep excavations required for the house on plot 2 could result in its eventual loss. In those circumstances the rear garden of the neighbouring house would be severely overlooked.
11. I conclude that the proposed development would have a detrimental effect on neighbours' living conditions with special reference to visual impact and privacy. As such it would conflict with Local Plan Policy QD3 which seeks to ensure that new development does not harm the quality of life.

Living conditions for future occupants

12. The Council has no Local Plan requirement or policy guidance on the size of gardens for new development. However, Planning Policy Statement 3 (PPS3): Housing indicates that good access to outside amenity space such as gardens and balconies is important to the achievement of high-quality housing.
13. The proposed houses would have reasonably sized gardens and the provision of balconies would add to the usable area of outdoor amenity space. However, with the rear and side garden of the dwelling on plot 2 being on excavated land outlook from these areas would be limited to an extent that would make them unattractive to use. The tall hedge on the rear boundary and limited garden width proposed at the side would add to this harm.
14. I conclude that satisfactory living conditions would not be provided for future occupants of the proposed development with regard to outdoor amenity space. This would be contrary to Government Guidance seeking high quality development.

Energy efficiency

15. Local Plan Policy SU2 requires new development to have high levels of energy efficiency. The appellant confirmed that the proposed dwellings were designed to meet the rating in the Code for Sustainable Homes sought by the Council.
16. The Council retained a residual concern that the bathrooms in the proposed houses would require internal lighting at all times when in use, thus leading to the use of more energy than would otherwise be the case. However, this one aspect of the scheme should not stand against it given the high overall standards of energy efficiency that would be met.
17. I conclude that the proposed development would be acceptably energy efficient and comply with Local Plan Policy SU2.

Other matters

18. Given Government Guidance on reducing reliance on the car sufficient on site parking would be provided for the proposed development. Adequate space would exist to ensure the usability of the proposed parking spaces. There is no substantial evidence to support concerns on surface water run-off.

Overall conclusions

19. Harm on the first 3 issues outweighs the lack of harm on the fourth issue and lack of harm on the "other matters" referred to above.
20. For the reasons given above I conclude that the appeal should be dismissed.

RJ Marshall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S Bareham BSc Hons DipTP Of Lewis and Co. Planning
MRTPI

Mr D Webb RIBA Of Alan Phillips Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Hawkes BA Hons Planning Officer
MRTPI(student)

Mr W Nee BSc Assistant Planner

INTERESTED PERSONS:

Dr J Murdoch 17, Onslow Road, Hove.
Mr and Mrs J Lawn 55, Shirley Drive, Hove.
Mr R Allden (Representing CPRE) 87, New Church Road,
Hove.

DOCUMENTS

- 1 Letter of notification of appeal and those notified.
- 2 Proposed elevations marked up to provide additional information.
- 3 Proposed plans marked up to provide additional information.
- 4 Council's SPG 16 "Renewable Energy and Energy Efficiency in Developments".
- 5 Council's Supplementary Planning Document 08 "Sustainable building design".
- 6 Schedule of Local Plan saved Policies.
- 7 Council's Annual Monitoring Report.
- 8 Council document - Transition from SPG to SPDs.
- 9 Adopted SPDs.
- 10 Written observations of Dr Murdoch.



Appeal Decisions

Site visit made on 4 November 2008

by **John Papworth** DipArch(Glos) RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
6 November 2008

Appeal A: APP/Q1445/E/08/2082294

87 St James Street, Brighton BN2 1TP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Sawadee Thai Restaurant against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00436, dated 9 February 2008, was refused by the Council by notice dated 7 April 2008.
- The works proposed are kitchen extract flue.

Appeal B: APP/Q1445/A/08/2082293

87 St James Street, Brighton BN2 1TP

- 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 Sawadee Thai Restaurant against the decision of Brighton & Hove City Council.
- The application Ref BH2008/00437, dated 9 February 2008, was refused by the Council by notice dated 7 April 2008.
- The development proposed is kitchen extract flue.

Decision Appeal A

1. I allow the appeal, and grant listed building consent for kitchen extract flue at 87 St James Street, Brighton BN2 1TP in accordance with the terms of the application Ref BH2008/00436, dated 9 February 2008 and the plans submitted with it, subject to the following conditions:
 - 1) The works hereby authorised shall begin not later than three years from the date of this consent.
 - 2) Before the commencement of the works, details of the appearance, surface finish and fixing methods of the proposed extraction fan, filtration system, any silencers and anti-vibration mounts together with any vents and flues or other extract equipment, shall be submitted to and approved in writing by the Local Planning Authority. The installation shall be carried out and maintained in strict accordance with the approved details.
 - 3) The installation shall be retained for as long as the use of the premises remains as a restaurant or similar requiring kitchen extract equipment. The installation shall be removed and the fabric and finishes of the building made good within three months of any change of use away from restaurant or similar use to one not requiring kitchen extract equipment, unless otherwise agreed by the Local Planning Authority.

Decision Appeal B

2. I allow the appeal, and grant planning permission for kitchen extract flue at 87 St James Street, Brighton BN2 1TP in accordance with the terms of the application, Ref BH2008/00437, dated 9 February 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Before the commencement of the development, details of the type and specification of the proposed extraction fan, filtration system, any silencers and anti-vibration mounts together with any vents and flues or other extract equipment, with details of sound attenuation and noise levels and a written maintenance regime shall be submitted to and approved in writing by the Local Planning Authority. Details shall also be submitted of any interim arrangements for extraction during the removal of the old system and the installation of the new one. The installation shall be carried out and be operated and maintained in strict accordance with the approved details and the equipment shall not be brought into use until the approved works are completed in their entirety unless otherwise agreed as part of the interim measures.
 - 3) Before the commencement of the development, details of the appearance and surface finish of the ducting shall be submitted to and approved by the Local Planning Authority and the development shall be carried out as the approved details.
 - 4) The installation shall be retained for as long as the use of the premises remains as a restaurant or similar requiring kitchen extract equipment. The installation shall be removed and the fabric and finishes of the building made good within three months of any change of use away from restaurant or similar use to one not requiring kitchen extract equipment, unless otherwise agreed by the Local Planning Authority.

Reasons

3. The appeal property is listed Grade II and the main issue is the effect of the proposals on the architectural or historic interest of the building and its setting within the East Cliff Conservation Area. I have also received a comment from a neighbouring resident as to the ineffective nature of the present extract system which appears to vent into a mostly enclosed courtyard, open only to the air above and situated at basement level.
4. Planning Policy Guidance Note 15 "*Planning and the Historic Environment*" (PPG15 1994) provides advice on listed buildings and paragraph 3.8 states that generally the best way of securing the upkeep of historic buildings is to keep them in active use. The guidance further requires at paragraph 3.4 that applicants should be able to justify their proposals and show why works that affect the character of the building are desirable or necessary. Local Plan Policies HE1 and HE6 have similar aims to the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 with regard to listed buildings and conservation areas.

5. It appears to me that the restaurant is attractive and makes good use of the corner site on this busy commercial street. There are signs of less attractive uses of buildings in the street and I attach significant weight to the continued beneficial use of the listed building. I am of the view that in order to continue operating in these premises the restaurant needs to find a way of improving the kitchen ventilation. I understand that a second scheme having less effect on the listed building found favour with the conservation officer but not with the environmental health officer. As the appellant states, they are now in an awkward position of having an enforcement notice served under the Environmental Protection Act 1990, but have been unable to satisfy the conservation requirements.
6. I am clear as to the main nearby locations from where the extract terminal would be seen above the eaves as proposed, that being in parts of Margaret Street and Camelford Street, and approaching from the north on High Street near the Ranelagh public house. I consider those views fleeting and the terminal would be among similar works, chimney pots, fire escapes and the other paraphernalia of a busy commercial area. I do not consider the addition of this item to cause real harm to the character or appearance of the conservation area or the setting of the listed building.
7. Conditions could ensure control of colour, material and particularly the performance of the extract, a matter which I consider weighs in favour of allowing the proposal in this case. On this last point, it is my view that the ventilation equipment details should include maintenance provision to ensure continued performance as designed, to avoid harm developing through worn parts and inefficient or dirty filtration. Also, in view of the balance of considerations that lead to me decision, I consider it reasonable to require the installation to be removed if the use of the premises changes away from one requiring kitchen extract equipment.
8. Listed building considerations are not restricted to only those things that the public may see. However, the proposed extract would make use of the existing opening at basement level, and fixing to the face of the wall could be minimal and covered by condition. I conclude that the proposed extract system would have only a limited effect on the interest of the listed building or its setting in the wider conservation area, that the continued use of the building is beneficial and appropriate and that together with the benefits to the environment of neighbouring occupiers, the benefits justify the proposals and outweigh the limited effects, in line with advice in PPG15, and accord with the aims of Local Plan policies and the 1990 Act. For the reasons given above I conclude that the appeal should succeed.

S J Papworth

INSPECTOR

NEW APPEALS RECEIVED

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

PATCHAM

BH2008/00925

Maycroft & Parkside London Road & 2 4 6
& 8 Carden Avenue Patcham

Demolition of existing buildings and
development of residential care home.

APPEAL LODGED

27/10/2008

Planning Committee

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ROTTINGDEAN COASTAL

BH2008/00797

114 Lustrells Vale Saltdean

First floor rear extension including balcony.

APPEAL LODGED

27/10/2008

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ST. PETER'S & NORTH LAINE

BH2008/02433

24 Beaconsfield Road Brighton

Replacement UPVC windows.

APPEAL LODGED

05/11/2008

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

and 1 no. 2 bedroom flat.

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

STANFORD

BH2008/01945

211 Old Shoreham Road Hove

Conversion to form 2 no.1 bedroom flats

APPEAL LODGED

05/11/2008

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

MOULSECOOMB & BEVENDEAN

BH2008/02619

15 Leybourne Road Brighton

First floor extension to residential property.

APPEAL LODGED

06/11/2008

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WESTBOURNE

BH2008/01965

26 Cowper Street Hove

Room in roof with rear dormer and front rooflights.

APPEAL LODGED

05/11/2008

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

HANGLETON & KNOLL

BH2008/02956

34 Poynings Drive Hove

Single storey rear extension.

APPEAL LODGED

05/11/2008

Delegated

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 3 December 2008

This is a note of the current position regarding Planning Inquiries and Hearings

Norfolk Court, Norfolk Square

Planning application no: BH2007/02515
Details of application: Gambrel roof extension to form 1 bedroom flat and external alterations to existing building.
Decision: Delegated
Type of appeal: Hearing
Date: 2 December 2008
Location: Committee Room 2 Hove Town Hall

Site Address: 2 Northgate Close Rottingdean

Planning application no: BH2008/00177
Description: First floor and side extensions. Retrospective.
Decision: Delegated
Type of appeal: Hearing
Date: 3 December 2008
Location: Hove Town Hall

87 Cowley Drive, Woodingdean, Brighton

Planning application no: BH2008/00443
Description: Outline application for a detached dwelling.
Decision: Delegated
Type of appeal: Hearing
Date: 4 December 2008
Location: Hove Town Hall

Land east of 55 Highcroft Villas

Planning application no: BH2007/03843
Description: Erection of an apartment building containing 24 flats with parking and access.
Decision: Committee
Type of appeal: Public Inquiry
Date: 9 – 12 December
Location: Brighton Town Hall

7 Welesmere Road Rottingdean Brighton

Planning application no: BH2008/00892
Description: Change of use of an existing 'granny annex' to a detached dwelling.
Decision: Delegated
Type of appeal: Hearing
Date: 16 December 2008
Location: Hove Town Hall

46-48 Kings Road, Brighton

Planning application no: BH2007/03924
Details of application: Display of externally illuminated advertisement banner.
Decision: Delegated
Type of appeal: Hearing

Date:
Location:

Bali Brasserie, Kingsway Court, First Avenue, Hove

Planning application no: BH2007/04314
Details of application: UPVC canopy to rear of building to provide smoking shelter
(retrospective)
Decision: Delegated
Type of appeal: Hearing
Date:
Location:

Bali Brasserie, Kingsway Court, Queens Gardens Hove

Planning application no: Enforcement case 2007/0547
Details of application: Construction of smoking shelter.
Decision: N/A
Type of appeal: Hearing
Date:
Location:

128 Church Road Hove

Planning application no: BH2007/02378
Details of application: Change of use of first floor with second floor extension, with additional
accommodation in the roof space to form five flats.
Decision: Delegated
Type of appeal: Hearing
Date:
Location:

124 Church Road Hove

Planning application no: BH2007/02379
Details of application: Alterations and extensions to form part 2, part 3 storey building with
roof accommodation to form four flats above existing retail.
Decision: Delegated
Type of appeal: Hearing
Date:
Location:

5 The Sett Portslade

Planning application no: BH2008/00585
Description: Proposed 2 storey side extension.
Decision: Delegated
Type of appeal: Hearing
Date:
Location:

69-70 Queens Head, Queens Road, Brighton

Planning application no: BH2007/03632
Description: Partial change of use of 1st and 2nd floors from solely A4 (incorporating
staff accommodation) to mixed use A3, A4 and sui generis. Also proposed
new 3rd floor mansard roof with A4 use.
Decision: Delegated
Type of appeal: Hearing
Date:
Location:

Planning application no: BH2007/01679
Details of application: Erection of four detached houses.
Decision: Against non-determination
Type of appeal: Public Inquiry
Date:
Location:

128 Longhill Road Ovingdean Brighton

Planning application no: BH2008/01353
Details of application: Construction of four houses. Existing dwelling to be demolished.
Decision: Delegated
Type of appeal: Public Inquiry
Date:
Location:

Maycroft & Parkside London Road & 2 4 6 & 8 Carden Avenue Patcham

Planning application no: BH2008/00925
Details of application: Demolition of existing buildings and development of residential care home.
Decision: Planning Committee
Type of appeal: Public Inquiry
Date:
Location:

Royal Alexandra Hospital 57 Dyke Road Brighton

Planning application no: BH2007/04453
Details of application: Demolition of existing buildings and erection of 156 residential units and 751 square metres of commercial floor space (doctor's surgery and pharmacy). Associated access, parking and amenity space (including a public green). (Resubmission of BH2007/02926.)
Decision: Committee
Type of appeal: Public Inquiry
Date:
Location:

Royal Alexandra Hospital 57 Dyke Road Brighton

Planning application no: BH2007/04462
Details of application: Conservation Area Consent for demolition of existing buildings (former children's hospital) (resubmission of BH2007/02925).
Decision: Not determined
Type of appeal: Public Inquiry
Date:
Location:

