



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	18 March 2009
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)</p>
Contact:	<p>Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk</p>

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AGENDA

206. 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.

207. MINUTES OF THE PREVIOUS MEETING

1 - 18

Minutes of the meeting held on 25 February 2009 (copy attached).

208. CHAIRMAN'S COMMUNICATIONS

209. PETITIONS

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

210. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 11 March 2009)

No public questions received by date of publication.

211. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 11 March 2009)

No deputations received by date of publication.

PLANNING COMMITTEE

212. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received at date of publication.

213. LETTERS FROM COUNCILLORS

No letters have been received at date of publication.

214. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

215. APPEAL DECISIONS

19 - 56

(copy attached).

216. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

57 - 60

(copy attached).

217. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

61 - 64

(copy attached).

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

219. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST : 18 MARCH 2009

(copy circulated separately).

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

221. 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

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.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

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.

WEBCASTING NOTICE

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Therefore by entering the meeting room and using the seats around the meeting tables you are deemed to be consenting to being filmed and to the possible use of those images and sound recordings for the purpose of web casting and/or Member training. If members of the public do not wish to have their image captured they should sit in the public gallery area.

If you have any queries regarding this, please contact the Head of Democratic Services or the designated Democratic Services Officer listed on the agenda.

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, 10 March 2009

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm, 25 FEBRUARY 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Allen, Carden (Opposition Spokesperson), Mrs Cobb, Davey, Hamilton, Kennedy, K Norman, Smart, Steedman, and C Theobald.

Co-opted Members: Mr J Small (CAG Representative)

PART ONE

190. PROCEDURAL BUSINESS

190A Declarations of Substitutes

190.1 Councillors Allen and Cobb attended as substitute Members for Councillors McCaffery and Barnett respectively.

190B Declarations of Interest

190.2 Councillors Carden and Hamilton declared a personal and prejudicial interest in application BH2008/03117, 323-325 Mile Oak Road. The applicant was a sponsor of Mile Oak Football Club of which Councillor Hamilton was Chairman and with which Councillor Carden also had connections. It was their intention to leave the meeting during consideration of the application and to take no part in the discussion or voting thereon.

190.3 Councillor Hamilton also declared a personal but not prejudicial interest in Application BH 2008/03045, 19 Bennett Drive, Hove. He had taught the applicant's wife a number of years previously. However he was of a neutral mind and had not predetermined the application and therefore intended to remain present during the discussion and voting thereon.

190C Exclusion of the Press and Public

190.4 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.

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

191. MINUTES OF THE PREVIOUS MEETING

191.1 **RESOLVED**-That the Chairman be authorised to sign the minutes of the meeting held on 4 February 2009 as a correct record.

192. PETITIONS

192.1 It was noted that petitions had been received from Councillors Bennett (28 signatures), Mrs Brown (150 signatures) and Davis (20 signatures) setting out residents objections to the proposed development at Park House, Old Shoreham Road ,Application BH2008/03640, to be considered as an application on that afternoon's Plans List (for copy of report see minute book).

193.2 **RESOLVED** -That the petitions be received and noted.

193. CHAIRMAN'S COMMUNICATIONS

Web-casting of Planning Committee Meetings

193.1 The Chairman explained that afternoon's meeting of the Planning Committee was being web-cast as part of the on-going pilot study which would run until June 2009. Members were reminded to speak directly into the 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.

193.2 Correspondence sent to those wishing to make representations to speak at meetings included information to ensure that they were aware that meetings were being web-cast and guidance was given on use of equipment available in the meeting room including operating instructions for the microphones.

Design Tour

193.3 The Chairman confirmed that the next scheduled "Design Tour" was due to take place on 5 June 2009. Further details would be submitted nearer to the date of the visit.

Visit by Members and Officers of Winchester City Council

193.4 The Chairman explained that a group of Members and Officers of Winchester City Council would be visiting the city's New England Quarter and Jubilee Library on 5

March 2009. Following their visit a light lunch would be provided at Hove Town Hall from 11.30am. Members of the Committee were invited to meet and greet these visitors on their return. to Hove Town Hall

Visit to Hove Fire Station

193.5 Arrangements for the visit on 17 March 2009 had been finalised and details forwarded to all Members of the Committee.

193.6 **RESOLVED** – That the position be noted.

194. PUBLIC QUESTIONS

194.1 There were none.

195. DEPUTATIONS

195.1 It was noted that a deputation had been forwarded from the meeting of Council held on 29 January 2009 in connection with Park House, Old Shoreham Road, Application BH2008/03640, which was put forward for consideration on that afternoon’s Plans List (for copy of report see minute book).

195.2 **RESOLVED**-That the deputation be received and noted.

196. WRITTEN QUESTIONS FROM COUNCILLORS

196.1 There were none.

197. LETTERS FROM COUNCILLORS

197.1 There were none.

198. NOTICES OF MOTION REFERRED FROM COUNCIL

198.1 There were none.

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

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

*BH2008/03963, Medina House, King’s Esplanade
Development Control Manager

*BH2008/03121, 25–28 St. James’ Street
Development Control Manager

*BH2009/00048, 3-5 Vernon Gardens, Denmark Terrace
Development Control Manager

*BH2008/02816, Land Adjacent, Eastern Breakwater, Brighton Marina
Development Control Manager

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

200. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST DATED 25 FEBRUARY 2009

(i) SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM COUNCIL POLICY: 25 FEBRUARY 2009

A. Application BH2008/03640, Park House, Old Shoreham Road, Hove – Demolition of former residential language school and erection of 5 storey block of 72 flats.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Planning Officer gave a presentation detailing the constituent elements of the scheme including plans, elevational drawings and photomontages and the rationale for the recommendation that the application be refused. Reference was also made to additional representations received which were set out in the late representations list and to further representations received from the Badger Trust, Sussex .
- (3) Ms Paynter spoke on behalf of neighbouring objectors stating that in addition to the grounds for refusal set out in the report there were issues relating to ownership, access and rights of way across and adjacent to the site which were complex. The applicant had submitted no material to indicate how the development would meet the requirements of relevant wildlife and animal protection acts. Information provided by local residents indicated that an extensive clan of badgers was living in the area and that adequate protection measures needed to be put into place. As a consequence of the lack of human activity an unofficial wildlife corridor existed.
- (4) Mr Parsons spoke on behalf of the applicants in support of their application .They had sought to make the development highly sustainable and would ensure that measures were in place to ensure that parking provision would not give rise to problems and that any badgers and other wildlife in the vicinity would be protected. It was considered that the development would provide a modern iconic building.
- (5) Councillors Bennett and Mrs Brown spoke in their capacity as Ward Councillors, Councillor Davis spoke as a neighbouring Ward Councillor. They concurred with the concerns expressed by objectors that overall the scheme was detrimental and would result in overdevelopment of the site.
- (6) Mr Small (CAG) sought confirmation regarding the materials and finishes to be used. Councillor Kennedy enquired whether pre-application discussions had taken place and the rationale for the on site parking and the children's play area being shared space.

The applicant's representative explained that this had been included in order to meet the requirements of the Council's own policies. The Planning Officer responded that the requirement referred to related to applications in a "Home Zone" and were not relevant to this application.

- (7) Councillor Norman sought details of the numbers of bathrooms which were internal. The plans displayed appeared to indicate that this would be so in most of the units. It was explained that bathrooms of 6-8 of the units would have a window; the others would have internal lighting.
- (8) Councillor Smart enquired regarding accessibility of the site to sustainable modes of transport such as buses. Councillor Steedman sought confirmation as to the level of sustainability anticipated for the scheme.
- (9) Councillors Mrs Theobald and Wells considered the building to be ugly and box like and to represent an overdevelopment of the site. Councillor Kennedy concurred in that view also considering that access arrangements and sustainability of the scheme had not been addressed adequately. The level of amenity space proposed was insufficient.
- (10) Councillor Davey stated that he considered that transportation issues needed to be addressed. The site was not well served by public transport as bus routes operating in the vicinity were infrequent. In his view the scheme needed to be of a more modest scale. Councillor Carden agreed, the need for affordable housing was recognised and he was hopeful that the applicant would submit a more suitable scheme.
- (11) Councillor Allen welcomed the level of affordable housing proposed, 43%, which would provide much needed housing. Whilst considering the appearance of the scheme to be generally acceptable, he considered that it would benefit from some amendment, particularly to the top floor.
- (12) A vote was taken and on vote of 11 with 1 abstention planning permission was refused.

200.1 **RESOLVED** -That having taken into consideration and agreeing with the reasons for the recommendation, planning permission be refused for the reasons set out below:

1. The scale and amount of development is considered excessive on this site. The long facades, height, bulk and scale of the building would appear incongruous and not sit comfortably with adjoining buildings and would dominate views of the site, especially from a distance and when approaching the site from the west. As such the development would be detrimental to visual amenity and would detract from the character of the area. The proposal does not meet the objectives of policies QD1, QD2, QD3 and QD4 of the Brighton & Hove Local Plan, which require development to take into account the scale, height and bulk of existing buildings; the prevailing townscape; and the impact on distance views respectively.
2. The design, detailing and external appearance of the buildings, in particular the structures on the top floors, would present incongruous features in the street scene and the relationship between the lower floors and the top floor

accommodation is discordant in visual terms. Notwithstanding a small degree of tree screening, the development would detract from the established character of the area to the detriment of visual amenity and is contrary to the objectives of policies QD1, QD2 and QD3 of the Brighton & Hove Local Plan.

3. By reason of their height, bulk massing and position in relation to the streets of Goldstone Crescent and Old Shoreham Road the development would have an overbearing and unduly dominant impact, being harmful to the setting of Hove Park and detracting from the sense of space and enclosure in this well established urban area. As such the proposal conflicts with policies QD2 and QD3 of the Brighton & Hove Local Plan which require development to take into account local characteristics including the layout of streets and spaces and the design and quality of spaces between buildings.
4. The occasional play space proposed would also be used as a vehicle parking and manoeuvring area and raises highway safety concerns. In addition the amount of play space within the site does not meet the standard reasonably expected by the Council. As such the application is contrary to the aims of policy TR7 of the Brighton & Hove Local Plan and does not meet the requirements of policy HO6 of the Brighton & Hove Local Plan.
5. The application comprises a major development in a prominent park -side location but does not include adequate provision for renewable energy production on site in order to maximise the energy efficiency of the development and realise the full potential for reductions in harmful emission, and as such does not fully comply with policy SU2 of the Brighton & Hove Local Plan.

Informative:

1. This decision is based on the Lighting Scheme and Lighting Pollution Assessment; Sun Path Diagrams; Desk-based Archaeological Assessment; Phase 1 Habitat Survey, Protected Species Surveys; Bats: Emergence/Activity Survey; Arboricultural Implications Assessment; Site Photographs and Photo Montages; Code for Sustainable Homes Pre-Assessment Report; Transport Statement; Waste Minimisation Statement and Site Waste Management Data Sheet; Heritage Statement; Biodiversity checklist; Lifetime Homes Standards checklist; PPG24 Assessment Concerning Road Traffic Noise; Statement of Community Engagement; Daylight Analysis; Sustainability checklist; and Building Survey submitted on 20 November, 15 December and 16 December 2008; and drawing nos. PL(00)001; PL(00)002 Rev A; PL(00)004; PL(00)005; PL(00)006; PL(00)007 Rev A; PL(00)009; PL(00)010 Rev C; PL(00)011 Rev C; PL(00)012 Rev B; PL(00)0123 Rev B; PL(00)014 REV B; PL(00)015 Rev B; PL(00)016 Rev B; PL(00)017; PL(00)018 Rev A; PL(00)019 Rev A; PL(00)020; PL(00)021; PL(00)022; PL(00)023; PL(00)024; PL(00)101; PL(00)102; PL(00)103; PL(00)104; PL(00)105; PL(00)106; PL(00)107; PL(00)108; and PL(00)109 submitted on 20 November 2008.

Note: Councillor Allen abstained from voting in respect of the above application.

- B. Application BH2008/03440, 7-17 Old Shoreham Road** - Change of use of car showroom and workshops to garden centre with ancillary parking and new crossover. Extension to petrol filling station forecourt shop and extension to link "display area" building with the proposed coffee shop. Associated internal and external alterations.
- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
 - (2) The Planning Officer gave a detailed presentation detailing the scheme and the rationale for the recommendation that the application be refused.
 - (3) Mr Tate, the applicant spoke in support of his application explaining that this family run business had been trading since 1919 and had diversified over that time in order to cater for changing market needs. The car dealership and petrol filling station operating from the site had closed due to lack of business and consultation with local residents had indicated both a local need and a preference for a garden centre. It seemed unlikely that an alternative use could be found for the site which would then become derelict. The applicant had sought to address any concerns of local residents and was prepared to undertake any mitigation measures required in order to address potential contamination of the site caused by its previous use.
 - (4) Councillor Hamilton stated that he was aware that the applicant had worked closely with local residents to address their concerns and that in consequence, significant amendments had been to the scheme including provision of an acoustic fence to the rear of the site and landscaping. Councillor Hamilton sought confirmation that officers were in possession of the latest amendments. The Planning Officer responded that further plans and documents had been received but that they did not address all of their concerns.
 - (5) In answer to questions by Councillors Smart and Wells it was explained that officers had been unable to establish whether the previous use had resulted in contamination of the site or, if so, to ascertain to what level the applicant had failed to provide sufficient information.
 - (6) Councillor Smart stated that he was in agreement with the applicant that the comprehensive service provided by a garden centre was different from that associated with chains such as B&Q, Homebase etc. Councillor Allen concurred considering that the scheme and ancillary café restaurant use was acceptable. Councillor Smart also enquired regarding potential impact on Southwick Nursery. The applicant responded that in his view the services provided by the nursery would be significantly different to their own and that both business uses could therefore be sustained.
 - (7) Councillors Norman, Smart and Mrs Theobald also sought confirmation regarding means of access and egress from the site and Councillor Davey sought clarification regarding the level of employment provided by the previous use and that which would be provided by the proposed use if granted.
 - (8) Councillor Cobb queried whether confirmation had, been received from the Environment Agency regarding any impact the sites previous use could have had on the water table. The Planning Officer explained that the Environment Agency had

responded that they had been provided with insufficient information to enable them to comment.

- (9) Councillor Kennedy stated that she would have grave concerns if planning permission were to be granted in advance of detailed information being received regarding the level of contamination, if any, which had arisen from the previous use and receiving assurance regarding measures to be undertaken in order to address any problems that had been identified. Councillors Davey and Steedman concurred in that view.
- (10) Councillors Steedman and Davey proposed that consideration of the application be deferred pending resolution of the matters referred to in (9) above. However, this proposal was lost.
- (11) A vote was taken and on a vote of 7 to 4 with 1 abstention minded to grant planning permission was agreed in the terms set out below.

200.2 **RESOLVED** -That minded to grant planning permission be approved subject to conditions, informatives and a Section 106 Agreement (if appropriate). These to be agreed by the Development Control Manager in consultation with the Chairman, Deputy Chairman and Opposition Spokesperson. Conditions to include measures to mitigate any potential contamination of the site. This is in order to ensure that the site is returned to an acceptable use which will provide employment opportunities.

Note: A recorded vote was taken. It was proposed by Councillor Wells and seconded by Councillor Cobb that minded to grant planning permission be given in the terms set out above. Councillors Allen, Cobb, Hamilton, Norman, Smart, Mrs Theobald and Wells voted that minded to grant planning permission be given. Councillors Carden, Davey, Kennedy and Steedman voted that planning permission be refused. Councillor Hyde the Chairman abstained.

C. Application BH2008/02854, Varndean College, Surrenden Road – Demolition of existing college with erection of replacement college and nursery (D1) with associated car parking and landscaping.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Planning Officer gave a detailed presentation setting out the constituent elements of the scheme to replace the existing college buildings and 9 portacabins, which although intended as temporary structures had now been in situ for a number of years. Reference was made to plans, visuals and photomontages, including elevational drawings. The site was also shown from various perspectives and from a number of neighbouring vantage points.
- (3) In answer to questions the Planning Officer explained that English Heritage had not considered the main building worthy of listing. Its design based around interconnecting quadrangles was common for educational establishments of the period when it had been built. The appearance of its frontage had been compromised by the insertion of unsympathetic replacement windows. The footprint of the buildings was shown; this

would be very similar to the existing, although a small element of the main building would be of three storeys in height.

- (4) Mr Small (CAG) sought clarification of the materials to be used. It was explained that mesh covered banding over vertical translucent glass panels would be used on the main frontage. A green roof would also be provided. Councillor Allen stated that untreated Cedar panelling had been used at various locations across the City but had not weathered well. The Planning Officer explained that untreated Larch Panels were proposed which would weather in gradually over time and would be relatively maintenance free.
- (5) In answer to questions of Councillors Cobb, Norman and Mrs Theobald the Planning Officer explained that although it was understood that the option of altering and refurbishing the existing builds had been explored this had not been pursued as they were no longer considered fit for purpose, nor able to accommodate the additional numbers of students attending the college. The applicants had sought to provide buildings which were sustainable and of a contemporary design which would be set down into the contours of the site and would not be discordant with the surrounding green open space. A waste minimisation statement had been submitted with the application and strict control of demolition waste would be required by condition. The Committee were required to determine the application as submitted.
- (6) Councillors Allen and Davey enquired regarding linkage between the facilities to be provided e.g. the hydro-therapy pool and the neighbouring Downs Link special needs college. It was explained that arrangements would be in place for these facilities to be used by the Downs College. Councillor Steedman enquired regarding the impact of the proposed scheme when seen in longer views. The Planning Officer explained as a result of the screening provided by the trees on site and the configuration of the buildings themselves there would be little impact on longer views.
- (7) Councillor Smart enquired whether the travel plan referred to, related to all of the educational establishments ranged around the green open space. It was explained that they related to the scheme for Varndean College only. In answer to further questions it was confirmed that car share arrangements would be encouraged as appropriate and that the applicants considered that the number of car parking and pick up/drop off points were adequate. The scheme would be self-enforcing and permits for use would be issued by the college. The Traffic Engineer confirmed that he had no objections to the proposed arrangements.
- (8) Councillor Mrs Theobald sought clarification as to the elements of the scheme which would be of three storeys in height, and whether the number of children attending the on-site nursery had been included in the figure for the overall increase in the number of attendees at the college and also in respect of the dropping off/picking up and access/egress arrangements for those using the nursery or visiting the college. She stated that in her view retention of the existing buildings would have been preferable and arrangements for bringing children to or collecting them from the nursery by car were inadequate.
- (9) In answer to questions by Councillor Kennedy it was confirmed that the earlier concerns of the Urban Design Panel had been addressed. It was proposed to provide

good quality modern buildings which were fit for purpose, with good linkage between the buildings themselves and the neighbouring special needs college. Councillor Kennedy stated that on balance she supported the scheme.

- (10) Councillor Norman enquired whether the facilities proposed would be able to be accessed by those with a range of physical as well as learning disabilities. It was confirmed that they would. He considered it regrettable that it was not proposed to retain the existing buildings. Councillors Wells and Norman also expressed concern that it appeared the replacement buildings would have a relatively short lifespan (60 years).
- (11) Councillor Allen considered that strong views had been expressed both in support of the scheme and against, seeking retention of the existing buildings. Ultimately he was in agreement that the façade of the existing building had been compromised by the later addition of replacement windows and was not therefore worthy of being listed. He also concurred that the existing buildings were inadequate and could not be refurbished to provide the necessary facilities. Councillor Steedman concurred noting that no one had registered to speak as an objector to the application. Councillor Davey whilst supporting the scheme was of the view that it was very important to ensure that an effective sustainable travel plan system was put into place.
- (12) A vote was taken and on a vote of 8 to 3 with 1 abstention minded to grant planning permission was approved.

200.3 **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 it is minded to grant planning permission subject to the completion of a Section 106 Obligation in the terms set out in the report.

Note: Councillors Norman, Mrs Theobald and Wells voted that the application be refused. Councillor Hyde the Chairman abstained.

(ii) **DECISIONS ON MINOR APPLICATIONS WHICH VARY FROM THE RECOMMENDATIONS SET OUT IN THE PLANS LIST (MINOR APPLICATIONS) DATED 25 FEBRUARY 2009**

D. Application BH2008/03453, 10 Western Road, Hove - Variation of Condition 1 of BH2005/05358 to read: the premises shall not be open or in use except between the hours of 09.00 and 01.30 on Sunday to Thursday, and 9.00 and 02.30 on Friday and Saturday.

- (1) Councillor Mrs Theobald referred to the fact that a number of objections had been received relating to noise nuisance occurring during the existing hours of operation. Under such circumstances she did not consider it appropriate to grant any extension to the existing hours at the present time. It was noted that the necessary licensing approvals would also be required.
- (2) Councillor Norman sought clarification regarding the earliest date at which the applicant would be able to apply for a further variation should any extension to the current hours of operation be granted. The Development Control Manager explained

that an applicant could apply to vary the terms of any permission granted as frequently as they wished.

- (3) A vote was taken and on a vote of 6 to 3 with 3 abstentions planning permission was refused on the grounds set out below.

200.4 **RESOLVED** - That planning permission be refused on the grounds that it would result in loss of amenity and give rise to an additional potential noise nuisance and would therefore be contrary to policies SU10 and QD27 of the Brighton & Hove Local Plan.

Note: A recorded vote was taken. It was proposed by Councillor Steedman and seconded by Councillor Norman that planning permission be refused on the grounds set out above. Councillors Cobb, Hyde, (Chairman), Norman, Smart, Steedman and Mrs Theobald voted that planning permission be refused. Councillors Allen, Carden and Hamilton voted that planning permission be granted. Councillors Davey, Kennedy and Wells abstained

I. **Application BH2008/03502, Unit 1, 132-135 Lewes Road, Brighton** -Change of use from retail (A1) to hot food takeaway (A5) including installation of cash machine (ATM) to shop front and erection of extract flue to rear elevation.

- (1) The Area Planning Manager (West) gave a presentation setting out the planning history of the site and the rationale for the recommendation that planning permission be refused. It was not considered that any increased footfall resulting from the ATM would be sufficient to mitigate against the break in the existing shopping frontage which would result from the A5 use.
- (2) Mr Bareham spoke on behalf of the applicant in support of their application. He referred to the previous use of the site as a monumental stonemasons and confirmed in answer to questions that the applicant anticipated that the ATM would produce an additional footfall of up to 150 people per day. The premises had been marketed since May 2006 and no interest had been shown in an A1 use.
- (3) In answer to questions by Councillor Mrs Theobald it was explained that the adjacent unit was in use as a pizza delivery shop. Councillor Hamilton enquired whether as the premises appeared to be a new unit it had ever had any other use. It was explained that two units including the application site had been created from the previous stonemason shop.
- (4) Members made reference to the proximity of other ATMs in the vicinity and in answer to questions the applicant's agent reiterated that it was anticipated that use would generate the level of additional footfall indicated.
- (5) A vote was taken and on a vote of 6 to 4 with 2 abstentions planning permission was granted in the terms set out below.

200.5 **RESOLVED** - That planning permission be granted for change of use from retail (A1) to (A5) hot food takeaway including installation of cash machine (ATM) to shop front and erection of extract flue to the rear elevation. Notwithstanding that this would create a gap of more than 15 metres in the shopping frontage it was considered that

increased footfall resulting from the ATM would mitigate against any loss. The hot food take away use would return an otherwise empty unit to a viable use.

The following conditions to be imposed:

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
2. The restaurant shall not be open or in use except between the hours of 8am until 10.30pm on Sunday (including bank holidays).
Reason: To safeguard the amenities of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan
3. No development shall commence until a scheme for the fitting of odour control equipment to the unit has been submitted and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.
Reason: To safeguard the amenity of the occupiers of adjoining properties and to comply with policy QD27 of the Brighton & Hove Local Plan.
4. No development shall commence until a scheme for the sound insulation of the odour control equipment referred to in the condition set out above has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
5. No development shall commence until a scheme for a suitable treatment of all plant and machinery against the transmission of sound and/or vibration has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
6. The hereby approved A5 use shall not be commenced until the ATM has been installed and is fully operational. The ATM shall be maintained throughout the period of use of the unit as an A5 take-away.
Reason; To ensure that the vitality and viability of the District Shopping Centre is maintained in accordance with policy SR5 of the Brighton & Hove Local Plan.

Note: A recorded vote was taken. It was proposed by Councillor Smart and seconded by Councillor Cobb that planning permission be granted in the terms set out above. Councillors Cobb, Hyde (Chairman), Norman, Smart, Mrs Theobald and Wells voted

that planning permission be granted. Councillors Carden, Davey, Kennedy and Steedman voted that planning permission be refused. Councillors Allen and Hamilton abstained.

(iii) **OTHER APPLICATIONS**

E. Application BH2008/03117, 323-325 Mile Oak Road, Portslade – Construction of 3 storey block to create nine flats following demolition of existing building

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Planning Officer gave a presentation showing photographs of the existing development in relation to its neighbours. Reference was made to the previous application also for 9 flats; this had been approved by the Committee but had been unable to be implemented. Reference was also made to representations in support of the scheme received from Councillor Alford. Notwithstanding that the footprint of the building had been reduced slightly, the development was considered excessive and refusal was therefore recommended for the reasons set out in the report.
- (3) A vote was taken and on a vote of 9 with 1 abstention the application was refused.

200.6 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for refusal set out in the report.

Note: Having declared personal and prejudicial interests in respect of the above application Councillors Carden and Hamilton left the meeting during its consideration and took no part in the discussion or voting thereon. Councillor Smart abstained from voting.

F. Application BH2008/03045, 19 Bennett Drive, Hove - Demolition of existing property and construction of a new two storey four bedroom detached house.

- (1) Councillor Mrs Theobald requested to see plans and photographs of the proposed development once completed.
- (2) A vote was taken and Members voted unanimously that planning permission be granted.

200.7 **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.

G. Application BH2008/03942, 21 Bennett Drive, Hove – Demolition of existing two-storey detached house and construction of new two-storey detached house and construction of new two and half storey 5 bedroom house, with basement level parking and waste storage facilities.

- (1) Councillor Mrs Theobald requested to see elevational drawings of the proposed development. Councillor Smart sought confirmation that the development would be

located on a corner plot. Councillor Steedman referred to the fact that Level 5 sustainability was being sought. This was welcomed and he requested that a condition be added to any permission granted to ensure that this was achieved. The Development Control Manager confirmed that this could be done.

- (2) A vote was taken and Members voted unanimously that planning permission be granted.

200.8 **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 including that referred to in Paragraph 1 above.

H. Application BH2008/03826, Alliance Pharmacy, 105 St George's Road, Brighton - Display of externally illuminated fascia sign and projecting sign.

- (1) The Area Planning Manager (East) gave a presentation detailing the proposals and showing photographs indicating the current and proposed appearance of the premises.
- (2) A vote was taken and on a vote of 9 with 3 abstentions advertisement consent was granted.

200.9 **RESOLVED** - That the Committee has taken into consideration and agrees with the recommendation set out in Paragraph 8 of the report and resolves to grant advertisement consent subject to the conditions and informatives set out in the report.

Note: Councillors Davey, Kennedy and Steedman abstained from voting in respect of the above application.

J. Application BH2008/02772, William IV Gateway, Royal Pavilion, Church Street, Brighton – Installation of new wrought and cast iron secondary vehicular gates and gate piers with automated electronic control gear and removal of existing central roadway bollard; re-surfacing of existing tarmac with second-hand granite setts and Yorkshire pavings.

- (1) The Area Planning Manager (East) gave a presentation indicating the location of the proposed structure behind the existing gateway. In answer to questions it was explained that the gates would be open during the day and would replace the existing rising bollards which were not considered to be working effectively.
- (2) Councillor Davey asked questions regarding the current bollard arrangements. Councillor Steedman queried whether an application for planning permission would also be required and whether pedestrian access could be considered in concert with it. The Area Planning Manager explained that it would. It was understood that a planning application had been submitted recently. Councillor Mrs Theobald that she had concerns in respect of the current shared pedestrian/vehicular access and considered that it would be appropriate to consider the planning and listed building applications together. Councillor Cobb concurred stating that she was confused regarding the precise arrangements proposed and how they would operate in practice. In her view it

would be beneficial for Members to carry out a site visit prior to determining the application.

- (3) A vote was taken and Members voted unanimously to consider the planning and listed building applications together and to carry out a site visit prior to the meeting at which the applications were to be considered.

200.10 **RESOLVED-** That consideration of the above application be deferred pending a site visit. The site visit to take place at such time as the planning application may be considered in concert with the listed building application.

K. Application BH2008/03389, Land Rear of 95 The Ridgway, Woodingdean – Proposed erection of new two storey dwelling.

- (1) The Planning Officer gave a presentation detailing the scheme and setting out the rationale for the recommendation that planning permission be granted.
- (2) Councillor Simson spoke in her capacity as a Local Ward Councillor on behalf of neighbouring objectors. Although not a planning consideration the applicant had failed to carry out works previously agreed. The proposal was considered an over development of the site by reason of its siting, backland location, development form and visual relationship to the dwellings in Kipling Avenue. Overall it was considered that the proposal would compromise the visual amenity of the street scene in which it would be read (Kipling Avenue) and would be harmful to the character and appearance of the locality.
- (3) Councillor Cobb considered that statements regarding sustainability of the scheme appeared to be conflicting and sought confirmation of the sustainability rating anticipated. Mr Small (CAG) enquired regarding the materials proposed. It was explained that the building would be of brick and tile construction to match neighbouring properties. Condition 6 as proposed would require samples to be submitted and approved.
- (4) Councillors Cobb and Mrs Theobald sought confirmation regarding the location of the application site in juxtaposition to the front/back gardens of neighbouring dwellings. They also enquired regarding access arrangements for emergency vehicles and in respect of refuse collection arrangements.
- (5) Councillor Wells requested that a condition be added to any permission granted to seek to prevent disruption and disturbance of neighbouring amenity which could result if access was to be permitted via Kipling Avenue during the construction process. The Solicitor to the Committee sought confirmation of the extent of public highway adjacent to the site. It was established that as the land referred to by Councillor Wells was not public highway, a condition could be added to ensure that access was via the “parent” property during the construction process.
- (6) Councillor Mrs Theobald stated that she regarded the proposal as ugly and of inappropriate height. It would set a precedent for other backland developments. It was noted that that planning permission had already been granted for several similar

developments in the vicinity. Councillor Steedman welcomed the provision of a family home.

- (7) A vote was taken and on a vote of 7 to 3 with 2 abstentions planning permission was granted.

200.11 **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 and to the additional condition set out in (5) above.

Note: Councillors Cobb, Norman and Mrs Theobald voted that planning permission be refused. Councillors Hyde (Chairman) and Wells abstained.

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

200.12 **RESOLVED** –Those details of 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 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 should 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].

201. 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

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

*BH2008/03963, Medina House, King's Esplanade
Development Control Manager

* BH2008/03121, 25-28 St James' Street
Development Control Manager

*BH2009/00048, 3-5 Vernon Gardens
Development Control Manager

*BH2008/02816, Land Adjacent Eastern Breakwater, Brighton Marina
Development Control Manager

BH2008/02772, William IV Gateway, Royal Pavilion, Church Street
Councillors Cobb and Steedman

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

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

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

203. APPEAL DECISIONS

203.1 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.

204. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

205. INFORMATION ON INFORMAL HEARINGS/ PUBLIC INQUIRIES

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

The meeting concluded at 6.45pm.

Signed

Chairman

Dated this

day of

APPEAL DECISIONS

Page

A. WITHDEAN WARD

Application BH2008/01109, 22 Tongdean Rise, Brighton. Appeal against refusal to grant planning permission for two storey rear extension and front porch extension to existing dwelling **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **21**

B. WITHDEAN WARD

Application BH2008/01109, Land East of 55 Highcroft Villas, Brighton Appeal against refusal to grant planning permission for erection of an apartment building containing 24 flats together with parking and access. **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **25**

C. ST. PETER'S & NORTH LAINE WARD

Application BH2008/02421, Diplocks Yard, 73 North Road and land at rear, Brighton. Appeal against refusal to grant planning permission for construction of new part single storey, part two storey offices. **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **49**

D. QUEEN'S PARK WARD

Applications (a) BH2008/00303 and (b) BH2008/00302, 43 George Street, Brighton. Appeal against refusal to grant conservation area consent and planning permission for (a) demolition of the existing building and erection of an office with flats over and (b) redevelopment of the site to provide an office building with 4 self contained flats over (Delegated Decision) **APPEAL DISMISSED** (Copy of the letter from the Planning Inspectorate attached). **53**



Appeal Decision

Site visit made on 27 January 2009.

by **B C Scott BA(Hons) Urban & Regional Planning MRTPI**

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

The Planning Inspectorate
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Decision date:
10 February 2009

Appeal Ref: APP/Q1445/A/08/2085686

22 Tongdean Rise, Brighton, East Sussex, BN1 5JG.

- 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 Gary Becarevic against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/01109, dated 27 March 2008, was refused by notice dated 7 July 2008.
- The development proposed is two storey rear extension & front porch extension to existing dwelling.

Procedural Matters

1. Further to the description of development given in the appeal application (in the head note, above), the Appellant adopts the Council's description *part single storey, part two storey rear extension with roof terrace, single storey front extension and new roof with roof lights and alterations to windows*, which I use as it is more informative.
2. The appeal scheme before me is followed by two revisions. The Appellant asks me to consider the first revision (drawing no. RFA 08/42/02 A), which was submitted before (but did not result in) the Council's decision, in which balcony screening has been added, an external staircase removed and alterations made to the design of the porch extension. The second revision (drawing no. RFA 08/42/02 B) has all those things but a different roof form (i.e. one without the stepped ridgeline shown in the appeal application) and was submitted in a second planning application that has recently been granted planning permission by the Council (BH2008/02342). The Appellant points out that the only element of the appeal scheme that has not been granted permission is the stepped ridgeline.
3. A proposed car parking space is indicated on the submitted Block Plan (the application drawing no. RFA/08/42/02) but is not shown in any detail. The Appellant confirms that this is no longer part of the appeal scheme and it is not shown in the amended drawings.
4. In submissions, the Council asserts that it is not appropriate for the Appellant to request significant alterations to the appeal scheme that significantly affect its appearance. In the officer's report, however, the Council states that amended plans were not accepted because they did not overcome concerns regarding the design and appearance of the appeal scheme.
5. The impact of the alterations on the appeal scheme with the first revision would be largely confined to the appearance of the porch. I am mindful that the

nature of the proposed development in the appeal application is a remodelling of the entire appeal house. In my opinion, that would remain very much the same as with the first revised scheme, which would thereby not amount to a material alteration to the nature of the appeal application. Moreover, those alterations would have the same effect, by themselves or on the whole, as those upon which Third Parties have been consulted with the second revision and application. In other words, Third Parties have been consulted upon the alterations shown in the amended drawing of the first revision by another means and would not be prejudiced by consideration of it.

6. In the circumstances, I deal with the appeal on the basis of amended drawing no. RFA 08/42/02 A, the first revised scheme. Furthermore, given the fallback position of the permitted second revised scheme, I focus on the main element in dispute between the Parties; namely the proposed stepped ridgeline.

Decision

7. I allow the appeal, and grant planning permission for part single storey, part two storey rear extension with roof terrace, single storey front extension and new roof with roof lights and alterations to windows at 22 Tongdean Rise, Brighton, East Sussex, BN1 5JG, in accordance with the terms of the application Ref: BH2008/01109, dated 27 March 2008, and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The balcony screen walls with obscure glazed panels as indicated on drawing no. RFA08/42/02 B shall be installed before the terrace is brought into use. The screen walls and panels shall be retained as such thereafter.

Main Issue

8. I consider the main issue in this case to be the effect of the proposed development on the character and appearance of the area.

Reasons

9. The appeal house is a commonplace detached dwelling, amongst others in a built-up residential area of mixed appearance. It sits on ground steeply sloping away from the road, such that the eaves are barely above the road level. The proposed development would raise the ridge height over part of its length in connection with a wholesale remodelling to facilitate a rear extension and an inverted floor layout.
10. The thrust of policies in the Brighton & Hove Local Plan 2005 (LP) is to require a high standard of design that makes a positive contribution to the visual quality of the area, with particular reference to such things as height and topography.
11. The appeal location is not recognised for its townscape. There is no question that the distinctive feature of the visual quality of the area is the striking topography; comprising high ground, steep slopes and commanding views over

the city. I saw that in such an environment many of the adjoining properties in the surrounding area are relatively drab and uninteresting and do not amount to a good reference for well designed development, as ordinarily expected by LP Policy QD14.

12. LP Policy QD1 discourages the replication of existing styles and gives encouragement to new buildings and areas of distinction on suitable sites. Owing to the topography, I am in no doubt that this is such a location for that to apply fully.
13. The most prominent feature of the appeal house from the road, as with others, is its simple roof plane at eye level. Having regard particularly to the requirements of LP Policy QD2 and given the distinctive topography, I see no reason why the proposed development should relate to the general pattern of roof heights about it and be precluded from a variation that reflects the particular circumstances (steeply sloping ground) of this location. The increase in height would be proportionate to those circumstances and would not look out of place. In my opinion, a stepped roof line is more likely to contribute to the local character than that in the extant scheme involving a contrived flat roof element to achieve the appearance of a single ridge.
14. I find that the proposed development would achieve a high standard of design resulting in positive visual quality, in tune with local distinctiveness. I conclude that it would not be harmful to the character and appearance of the area, in accordance with the requirements of the above policies of the Development Plan. I have considered all other matters raised, but none alters my conclusion on the main issue that the appeal be allowed.

Conditions

15. Other than the standard condition concerning time limit, the Council suggests no additional conditions yet attaches three others to the extant permission, which I have examined. In view of the original concerns with the appeal application about privacy, I impose the Council's condition concerning screen walls and obscure glazing in the terrace panels shown in this first revised scheme. I do not impose a condition for obscure glazing to flank windows because they would be set at high level. The extant scheme is well underway and it is now unnecessary to impose on this subject appeal permission a requirement concerning waste contractors.

B C Scott
INSPECTOR



Appeal Decision

Inquiry held on 9-11 December 2008
Site visit made on 12 December 2008

by **K Nield BSc(Econ) DipTP CDipAF MRTPI**

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

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Decision date:
21 January 2009

Appeal Ref: APP/Q1445/A/08/2081266

Land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT

- 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 Kingsbury Estate Ltd against the decision of Brighton and Hove City Council.
- The application Ref BH2007/03843, dated 12 October 2007, was refused by notice dated 24 January 2008.
- The development proposed is the erection of an apartment building containing 24 flats together with parking and access.

Decision

1. I allow the appeal and grant planning permission for the erection of an apartment building containing 24 flats together with parking and access at land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT in accordance with the terms of the application (Ref BH2007/03843, dated 12 October 2007) and the details submitted therewith as amended by Dwg. nos. P302E and P303E and subject to conditions set out at Annexe A to this decision.

Procedural Matters

2. At the Inquiry an application for costs was made by Kingsbury Estate Ltd against Brighton and Hove City Council. This application is the subject of a separate Decision.
3. Subsequent to the determination of the appeal application the appellant company has prepared drawings (Dwg. nos. P302E and P303E) providing an amendment to the internal layout to comply with the Council's requirements set out in policy HO13 of the adopted Brighton and Hove Local Plan (LP) that all new residential development should be built to a Lifetime Homes standard and for an agreed proportion of all new dwellings to be built to wheelchair accessible standards.
4. At the commencement of the Inquiry the appellant company requested that the revised scheme drawings be taken into account in the determination of the appeal. In my view the amendments satisfy the tests laid down by the Courts in *Wheatcroft V SSE*¹ in that the proposed modifications would not materially alter the nature of the application and interested persons would not be prejudiced by not having the opportunity to be consulted on the amendments at this stage. Consequently, I ruled that the amended layout be considered in

¹ Reported in Journal of Planning Law, 1982, P37

the determination of the appeal. The Council accepted² that the amended scheme drawings overcame the Council's reason for refusal in those regards set out in Reason 3 of the Council's Decision Notice and that the matters could be secured through a planning condition if all other matters were found to be acceptable. In the light of this it is not necessary for me to consider further evidence in respect of this matter.

Preliminary Matters

5. The application form does not identify whether the application is in outline or in respect of an application for full planning permission. As the Council dealt with the scheme as a full application I shall determine the appeal on the same basis.
6. A signed and dated Unilateral Undertaking (UU) prepared under the provisions of Section 106 of the Town and Country Planning Act, as amended, was submitted by the appellant company to the Inquiry³ which, in the event of the appeal being allowed, would provide for the provision of financial contributions to the Council towards the improvement of open space provision, sustainable transport and education facilities in the vicinity of the appeal site. In addition the UU makes provision for a financial contribution to allow the translocation of slow-worms from the appeal site to another site in the Council's ownership and for the provision of 10 affordable dwellings within the scheme. I am satisfied from the submissions made at the Inquiry that the UU meets the tests set out in Circular 05/2005: *Planning Obligations*.
7. The Council confirmed at the Inquiry that, on the basis of the provisions of the UU in respect of the translocation of slow-worms it would withdraw its objection set out at Reason 2 of its Decision Notice. In the light of this it is not necessary for me to consider further evidence in respect of this matter.
8. The Council objected to the provisions of the UU in respect of the proposed arrangements for affordable housing and I have therefore included this issue as part of my consideration of the merits of the proposal.
9. The site is currently being used for the siting of accommodation portacabins for contractors carrying out the demolition of the Old Pullman Shed on adjoining railway land to the north. The lawfulness of this activity and consequent effects for nature conservation interests on the site was questioned by the Council and some local residents at the Inquiry. There are measures within the Planning Acts that can be taken to establish the lawfulness of various activities but that is not a matter for me to consider in this appeal.

Main Issues

10. In the light of my remarks above in respect of the proposed arrangements for the translocation of slow-worms and for the scheme to be built to a Lifetime Homes standard with an agreed proportion of the new dwellings to be built to wheelchair accessible standards the only issue remaining from the Council's reasons for refusal is the effect of the proposed development on the provision of open amenity space in the locality. However a number of other issues are raised by the evidence which I intend to consider. These are:

² P Earp: Evidence

³ Document 3

- (i) the effect of the development on the character and appearance of the locality,
- (ii) its effect on housing supply, and
- (iii) whether the UU makes appropriate provision for affordable housing.

Reasons

Background

11. The appeal site formed part of the curtilage of the railway until it was sold to the appellant company. Evidence was provided to the Inquiry by the parties and some local residents that the site had been used prior to its sale as private allotments for railway workers but that activity had ceased at least ten years ago. I have no reason to reach a different view. At my visit I noted the remains of several sheds connected with that activity.
12. A recent appeal decision (Ref: APP/Q1445/A/07/2047264, dated 20 March 2008⁴), in respect of another site within the inner urban area of Brighton, considered a similar use of land adjacent to the railway. That Inspector stated (paragraph 52) that "*Notwithstanding the site's more recent history as allotments and, according to the Council, a managed "wildlife site", I do not question that it has, in the past, been part of the railway curtilage and thus fulfils the definition of previously developed (brownfield) land set out in Planning Policy Statement 3:Housing (PPS3)*". I take a similar view to that Inspector in respect of this appeal site. There is no cogent evidence before me to suggest that the use of the site as allotments was other than an ancillary use of operational railway land by railway employees which, as indicated above, ceased some years ago.
13. Outline planning permission was granted on appeal for residential development of the appeal site (Ref: T/APP/Q1445/A/99/1033742/P7 dated 20 June 2000). There is no dispute between the parties that that permission lapsed shortly before the purchase of the site by the appellant company. The previous Inspector considered that the main issue in that appeal was whether the use of the appeal site to meet any unsatisfied need for allotments in the area could be realised, having regard to the relevant development plan policies and all material considerations.
14. That Inspector concluded (paragraph 18) that "*the use of the appeal site to meet an unsatisfied need for allotments in this inner urban area is not going to be realised*". The Inspector further concluded (paragraph 21) that the development plan policies she had been referred to "*do not prevent the use of the appeal site for residential purposes*". Although that permission has lapsed it is, nevertheless, fairly recent in provenance and the underlying considerations in the appeal scheme before me remain broadly the same. I shall, therefore, attach substantial weight to it. The appellant company subsequently made further planning applications for residential development of the site although none has been approved.

⁴ M Pickup Evidence: Appendix 9

Character and appearance

15. The locality of the site is predominantly residential in character and it contains houses of varying styles, ages and form. Dwellings to the west and south-west of the appeal site are mainly substantial semi-detached dwellings, some converted to flats, whilst there are modern blocks of flats to the south (Highfield Lodge) and further along Highcroft Villas to the south-east. This assessment is in line with the description of the Prestonville Character Area contained in the Council's Urban Characterisation Study for Tivoli and Prestonville.⁵ This also indicates that the area as a whole has a medium high density of housing.
16. The proposed development would have a density of 120 dwellings per hectare. This would accord with the government's housing objectives in PPS3 which require the effective use of land that has been previously developed. The appeal scheme would have a contemporary design form and appearance with a staggered footprint on the site and varying roof heights. The appeal site has a slope from south to north and is at a lower elevation than the road. In consequence, the building would be four-storey in height at its front elevation to Highcroft Villas but six-storey at the rear.
17. Viewed from points along Highcroft Villas it would have a similar height to the adjacent dwellings to the west. Existing trees along the frontage and proposed landscaping would soften its appearance. Whilst substantial in form I do not consider that the proposed building would appear unduly prominent in the street scene. Several residents criticise the scale, mass and height of the building and consider it inappropriate to the locality, however, the Council did not raise objection to the proposed appearance of the scheme. I agree with the Council's assessment⁶ that the elevation of the building to Highcroft Villas would provide an attractive frontage to the street without compromising the character of the area.
18. The appeal scheme would be visible in views from the railway and from viewpoints within Preston Park but it would be seen in the context of the higher form of Highcroft Lodge to its rear and other substantial buildings in the locality and, consequently, it would not appear unduly prominent or dominant in longer views. I conclude on this issue that the scheme would not have a harmful effect on the character and appearance of the locality.

Open amenity space

19. Planning Policy Guidance Note 17: *Planning for Open Space, Sport and Recreation* (PPG17) indicates⁷ that existing open space should not be built on unless an assessment has been undertaken which clearly shows that the open space is surplus to requirements and that such an assessment should take into account all the functions that open space can perform. LP policy QD20, whilst not stipulating the need for an assessment, provides a similar restriction on the use of open space and states that planning permission will not be granted for proposals that would result in the loss of areas of public or private open space

⁵ M Pickup Evidence: Appendix 7

⁶ Included in Officer Report to Planning Committee 23 January 2008

⁷ PPG17: paragraph 10

- that are important to people because of their recreational, community, historical conservation, economic, wildlife, social or amenity value.
20. The appeal application overlapped the determination of an application⁸ along similar lines to that previously allowed on appeal for the same site. At a late stage in the determination of that application the Council raised the issue of the effect of the scheme on open space provision indicating that an assessment of open space provision in Brighton would be required as none was available to the Council. A similar consideration was applied to the appeal scheme.
 21. As the land had not been identified as open space by the Council prior to the submission of the application (either in the LP or any other published document) and, taking into account other material factors including the site's planning history and former status as operational railway land, there was no clear need, in my opinion, for the appellant to initiate or undertake such an assessment in respect of the use of this land. Against that background I consider that it was unrealistic for the Council to indicate⁹ that the appellant should have raised in pre-application discussions with the Council the lack of a city-wide assessment of open space as an issue and then to expect the appellant to instigate a city-wide assessment of open space, a major task which the Council had not itself fully undertaken since the publication of PPG17 in 2002.
 22. Although not known to the appellant at the time¹⁰, the Council had commenced an audit of open space and the appeal site was viewed by an officer in July 2007. The Council confirmed¹¹ at the Inquiry that the purpose of the audit was to inform an *Open Space, Sport and Recreation Study* (PMP Study) being undertaken by consultants to the Council which would eventually be part of the Local Development Framework. That study has recently (May 2008) been issued as a draft for internal consideration by Council officers and is at an emerging stage only. In those circumstances I can attach very little weight to it. The study is not site specific (at the request of the Council officers¹²) but one of its functions is to derive an aggregate total of the amount of open space within the city at present and to make recommendations for action based on that assessment.
 23. The Council's audit was not made public and has not been subject to any public consultation. The Council did not produce the audit as part of its own evidence but it was included in that of the appellant. However, the Council confirmed at the Inquiry that it relied upon the audit as its only evidence of the identification and value of the appeal site as open space. The site is identified on a plan accompanying the audit as Natural or Semi-Natural Urban Greenspace (NSN). The PMP study does indicate that Brighton is well provided with NSN compared to other cities of comparable size.
 24. English Nature (now Natural England (NE)) has issued *Providing Accessible Natural Greenspace in Towns and Cities – A Practical Guide to Assessing the Resource and Implementing Local Standards for Provision*. That guidance

⁸ Application BH2007/03333

⁹ P Earp: Cross examination

¹⁰ M Pickup: Evidence

¹¹ E Thomas: Cross examination

¹² Open Space, Sport and Recreation Study - Brighton and Hove City Council – A draft report by PMP – Executive summary (vi)

suggests that for practical reasons a minimum size threshold of 0.25 hectare (ha) should apply to an assessment. The appeal site is below that threshold size. The NE guidance also requires that greenspace be both natural and publicly accessible to meet NE's classification of greenspace, neither of which applies to the appeal site.

25. From my site visit I agree with the appellant that there are significant doubts about the accuracy of the recorded audit information in respect of the appeal site which significantly reduces its worth and, consequently, the weight I can afford it. The audit records the site as being in good landscape condition whereas a significant portion of it is covered in a type of roadstone¹³. It is also described as providing limited access when there is no dispute between the parties that there is no public access to the site. Despite those factors, the audit notes in the comments section that it was hard (for the officer) to see the whole of the area and only part of the site could be viewed. In the light of the inaccuracies identified in the audit notes of the site I am not persuaded that I should attach other than very limited weight to its contents.
26. The Council confirmed¹⁴ that, in practice, its strict application of LP policy QD20 in effect denied the alternative use of any land identified by the Council as being open space. To my mind, such a strict application of the policy is at odds with the justification for the policy set out in the LP¹⁵ which suggests that the Council will seek to balance the competing claims of different land uses and the community's long term requirements for open space. In addition PPG17 notes that not all open space is of equal merit and some may be available for alternative uses. Both the justification for LP policy QD20 and PPG17, to my mind, require a robust assessment of the value of identified open space together with consultation with the local community in order to gauge whether it could be utilised for alternative purposes.
27. With expected population increase in the city to 2017 and assuming there is no increase during that period in the formation of open space, the PMP study shows that open space provision would continue to exceed the NE standard of provision (2 hectares of accessible natural greenspace per 1000 population¹⁶). The Council, however, indicated its intent to set a higher standard based on maintaining the present level of open space provision taking into account population increases. The justification for the Council's position in this regard is not clear to me from the evidence and as it is not an adopted policy I do not attach significant weight to it.
28. The appeal site is clearly appreciated by a significant number of local residents and the Prestonville Community Association for the amenity it provides. The Council did not, however, classify the site as amenity greenspace in its audit, only as NSN. In my opinion the site provides little actual amenity value to the locality. The majority of the site is difficult to see from Highcroft Villas being at a lower elevation than the road and is for the most part an area of overgrown vegetation. I note in this respect that the Council did not dispute the appellant's assessment that the site had extremely limited amenity value.

¹³ Visible on an aerial photograph produced by M Pickup

¹⁴ E Thomas: Cross-examination

¹⁵ Brighton and Hove Local Plan 2005: paragraph 3.90

¹⁶ English Nature: Providing Accessible Natural Greenspace in Towns and Cities: A Practical Guide to Assessing the resource and Implementing local Standards for Provision. (Page 2)

29. The site is appreciated by residents for the space it provides adjacent to the road to allow views over the railway and over areas of the city to the north and north-east. However, the appeal scheme would not remove those views in their entirety with views retained to each side of the proposed building. I noted at my visit the proximity of the appeal site to the extensive recreation area at Dyke Road Park, about 5-10 minutes walk from the appeal site.
30. Whilst there is some limited conflict with LP policy QD20 and PPG17 I conclude on this issue that the proposed development would not have a materially harmful effect upon the provision of open amenity space in the locality.

Housing supply

31. PPS3 indicates¹⁷ that where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable housing sites they should consider favourably planning applications for housing. The Council did not regard the provision of additional housing at the site to be an issue in the appeal and the effect of the scheme on housing supply did not form a reason for its refusal of the scheme. Nevertheless, the Council accepted that it could not identify a five year supply of deliverable housing sites in the city¹⁸. Its most recent assessment was the May 2008 Strategic Housing Land Availability Assessment (SHLAA). The Council accepted that the SHLAA does not reflect recent national and local changes in the housing market, nor does it take account of proposed modifications from the Secretary of State to increase housing provision in the City.
32. In the past the Council relied upon a flow of windfall planning permissions for housing to make up identified shortfalls and it considers that is likely to continue in the future. However, that approach does not accord with advice in PPS3¹⁹ which indicates that allowances for windfalls should not be included in the first 10 years of land supply unless Local planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified. No such evidence is before me. Nevertheless, the appeal site represents a site that could itself contribute to the windfall provision of housing in Brighton and that to my mind is a factor that should be weighed in the balance of considerations.
33. The scheme would provide 10 affordable housing units. Council members who gave evidence to the Inquiry indicated that the scale of provision would be "a drop in the ocean" in terms of meeting the demand for affordable accommodation in comparison with much larger schemes coming forward in the city²⁰. Whilst I accept that the appeal scheme itself would not significantly reduce the need for such accommodation it would provide some local provision and that benefit should be taken into account in the balance of considerations.
34. I conclude on this issue that the appeal scheme accords with the aims of PPS3 in contributing towards a five year supply of deliverable housing and providing affordable housing.

¹⁷ Planning Policy Statement 3: Housing, paragraph 71

¹⁸ Confirmed in closing statement of Council

¹⁹ Planning Policy Statement 3: Housing, paragraph 59

²⁰ Councillor Kennedy: Statement to the Inquiry

Provisions of the Unilateral Undertaking for Affordable Housing

35. The Council raised objections in respect of two aspects of the submitted UU. Firstly it indicated that the mix of dwelling types did not meet its brief to the appellant as it did not include provision for a 3 bed flat to meet anticipated demand.
36. The appellant explained at the Inquiry that the internal layout and design of the building did not lend itself to such provision. No counter evidence in that regard was presented and the Council did not produce any cogent evidence to support its specific requirement. I consider in this regard that the suggested mix of unit sizes proposed in the scheme would meet a clear need for affordable accommodation in the area.
37. Secondly, the Council did not accept the proposed arrangements for transferring ownership to a Registered Social Landlord (RSL)²¹. Under the appellant's UU the Council's nominated RSLs would have a period of 12 months to take up the provision after which, if not taken up, they would be offered more widely to RSLs up to a period of 36 months after practical completion of the relevant dwelling unit. After the expiry of that period the appellant would be free to dispose of the units on the open market. The Council considers that the period of offer to RSLs should continue indefinitely beyond the specified 36 months.
38. I consider that the appellant's proposed arrangements allow a reasonable time for RSLs, whether nominated by the Council or others, to make suitable arrangements without the dwellings remaining unoccupied beyond 36 months and the proposed arrangement in the UU does not run counter to the aims of PPS3. Moreover the Council did not produce any cogent evidence to indicate why the proposed arrangement would not be acceptable.
39. In respect of both the matters raised by the Council I consider that the provisions of the UU make appropriate arrangements for the provision of affordable housing in the scheme.

Other Matters

40. I acknowledge the strongly felt concern of some residents regarding the stability of the appeal site and the potential consequences for stability from construction work at the site. The Council did not raise specific concerns regarding this matter and it was agreed by the principal parties that, subject to all other matters being acceptable, this could be adequately addressed by a planning condition to require a report from an appropriately qualified person in respect of the stability of the land. Amongst other matters, that would consider the impact of the scheme on the role the land plays in supporting the highway at Highcroft Villas and the impact of the development on the stability of the railway embankment. I consider that this is an appropriate way of dealing with this matter.
41. A number of residents raised concerns regarding highway safety along Highcroft Villas particularly in respect of children attending the nearby schools.

²¹ Unilateral Undertaking – Schedule 1(4)

The proposed access to the scheme from Highcroft Villas would be in reasonably close proximity to the school access on the opposite side of the road. I observed the traffic along Highcroft Villas at both school start and school leaving times noting that whilst the road was busy at both periods with pedestrians and cars there appeared to be reasonable opportunity for on-street parking for parents dropping off or collecting children.

42. The appeal scheme would provide adequate off street parking for occupants of the flats and I do not consider that the scheme would lead to an increase in the need for on-street parking or give rise to increased highway safety issues. I note that the highway authority has not raised concerns regarding these matters.
43. I have had regard to other matters raised including the impact on living conditions of occupants of 55 Highcroft Villas, water supply capacity, the effect on Network Rail operations and on Fire and Rescue Services but none alters my view as to the main issues upon which my decision turns.
44. The Council raised concerns about a precedent being set regarding alternative uses of land which it identifies as open space within Brighton if the appeal is allowed. I have no details of any similar schemes coming forward which raise similar issues but, in any event, I have determined the appeal on its individual merits.

Conditions

45. The parties jointly suggested²² a number of conditions in the event that the appeal is successful. I agree that conditions to require the approval of details and samples of materials to be used in the external surfaces of the building and also in respect of the provision and maintenance of landscaping, including hard surfacing, planting of the development, and details of any trees/shrubs to be retained, together with measures for their protection in the course of development are necessary to protect the visual amenity and character of the area. A condition is also necessary for similar reasons to require details of boundary fencing and other means of enclosure.
46. A condition is suggested to require the submission of a report to the Local Planning Authority in respect of the stability of the land and the effect of the proposed development upon the stability of the land and in supporting the highway, amongst other matters. I agree that such a condition will ensure that the scheme does not have an adverse effect on the stability of the land and minimises potential risks to users of the building and to property.
47. Conditions to require the approval of a scheme for protecting the building and its occupants from noise and vibration from the neighbouring railway line will protect the living conditions of future occupants of the building. In addition conditions to require obscure glazing in the bathroom windows and in balcony screens in the west (side) elevation of the building will prevent overlooking of windows and garden areas to the rear of 55 Highcroft Villas.
48. I also agree that a condition is required in respect of the temporary construction period to a scheme of working, including hours of working, the

²² Contained in the Statement of Common Ground

provision of wheel cleaning apparatus, details of parking for site operatives and visitors, details of the siting of temporary buildings and stacking of materials. This condition will help to safeguard the amenities of nearby residents and be in the interests of highway safety.

49. Conditions to require details of solar roof panels and in respect of the proposed green roof to the building, the provision of cycle storage facilities, a Site Waste Management Plan in respect of demolition and construction waste, the provision of refuse and recycling storage facilities and to require the approval of details of the sustainability level of the dwellings are all reasonable and necessary in respect of meeting sustainability objectives.
50. Finally a condition to require the approval of details of the proposed road, surface water and foul drainage and lighting will help to ensure that the development has adequate infrastructure and provide a satisfactory living environment.

Overall Conclusions

51. Although I have found some limited conflict with LP policy QD20 and PPG17 in respect of the loss of open space I do not consider that the proposed development would have a materially harmful effect upon the provision of open amenity space in the locality. Any harm to open space policy considerations would be outweighed by benefits to the locality in providing housing to contribute towards the five year supply of deliverable housing and in providing affordable housing for which there is an accepted need. These factors amount to considerations which lead to a determination otherwise than in accordance with the development plan to the extent that limited conflict exists.
52. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed.

Kevin Nield

INSPECTOR

ANNEXE A

SCHEDULE OF CONDITIONS FOR APP/Q1445/A/08/2081266

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
3. The cycle storage details shown on the approved drawings shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.
4. No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority which details measures to ensure that the development hereby approved will achieve a Code of Sustainable Homes rating of "Level 4" or higher or an equivalent level of performance if an alternative independently assessed means of sustainability assessment is used. The agreed scheme shall be implemented in strict accordance with the approved details prior to the occupation of the development.
5. No development shall take place until a written statement consisting of a Site Waste Management Plan, confirming how demolition and construction waste will be recovered and reused on site or at other sites, has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with the approved details.
6. The development hereby permitted shall not commence until a working method statement in respect of the demolition and construction period of the proposed development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall specify hours of working, the provision of wheel cleaning apparatus, details of parking for site operatives and visitors, details of the siting of temporary buildings and stacking of materials. The development shall be carried out in accordance with the working method statement so approved.
7. No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a scheme for landscaping, which shall include hard surfacing, planting of the development, and details of any trees/shrubs to be retained, together with measures for their protection in the course of development.
8. Prior to commencement of the development hereby permitted, details of fencing to be provided around the boundaries of the site and any other means of enclosure shall be submitted to and approved in writing by the

Local Planning Authority and the scheme so approved by the Local Planning Authority shall be erected prior to the first occupation of the site and retained thereafter to the approval of the Local Planning Authority.

9. All planting, seeding, or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority give written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.
10. The development shall not commence until fences for the protection of trees to be retained have been erected to a specification and in positions to be agreed in writing by the Local Planning Authority. These fences shall be maintained in good repair until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.
11. The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
12. Prior to the commencement of the development the applicant shall submit to the Local Planning Authority a written report from an appropriately qualified person, advising upon the stability of the land, most particularly, but not exclusively, in relation to its impact on the role the land plays in supporting the highway at Highcroft Villas and the impact of the development on the stability of the railway embankment and any works (including works of drainage) as may be necessary to ensure the stability of the land, building and services and any neighbouring land or buildings. Details of any stabilisation work to be carried out as a result of the report shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The works shall not be carried out otherwise than in accordance with the approved details.
13. Prior to the commencement of works details of nesting boxes shall be submitted to and approved in writing by the Local Planning Authority. The boxes approved by the Local Planning Authority shall be erected prior to the occupation of the building and thereafter maintained.
14. Prior to the commencement of works details of the green roof to the first floor hereby approved, which should be vegetated with a chalk grassland mix, shall be submitted to and approved in writing by the Local Planning Authority. The details thereby approved shall be carried out and thereafter maintained in accordance with the specification.

15. Construction work shall not begin until a scheme for protecting the proposed development from noise and vibration from the neighbouring railway line has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details regarding any ventilation measures that may be necessary and all works which form part of the approved scheme shall be completed before any part of the development is occupied.
16. The bathroom windows within the west (side) elevation of the building hereby approved shall be glazed with obscure glass and thereafter permanently retained as such.
17. The balcony screens to the west (side) elevation of balconies shall be obscure glazed and 1.5m in height. The screens shall be provided before occupation of the dwellings and thereafter be permanently retained as such.
18. Details of the solar roof panels shall be submitted to and approved in writing by the Local Planning Authority before works commence. The panels thereby approved shall be installed before the units are occupied and thereafter retained as such.
19. Prior to the commencement of development on site, detailed drawings, including levels, sections and constructional details of the proposed road, surface water and foul drainage, and lighting to be provided, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with the approved details prior to the first occupation of the dwellings.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ginika Ogidi	Solicitor, Brighton and Hove City Council, King's House, Grand Avenue, Hove, BN3 2LS.
She called Paul Earp, BTP, MRTPI	Senior Planning Officer, Brighton and Hove City Council, Hove Town Hall, Norton Road, Hove, BN3 3BQ
Elizabeth Thomas, BA(Hons), MCD, MRTPI	Planning Consultant, c/o Brighton and Hove City Council, Hove Town Hall, Norton Road, Hove, BN3 3BQ

FOR THE APPELLANT COMPANY:

Jonathan Clay, of Counsel	Instructed by Michael D Pickup, Town and Country Planning Solutions, Sandhills Farmhouse, Bodle Street Green, East Sussex, BN27 4QU
He called Michael D Pickup, BA(Hons), MRTPI	Proprietor, Town and Country Planning Solutions, Sandhills Farmhouse, Bodle Street Green, East Sussex, BN27 4QU

INTERESTED PERSONS:

Deborah Marsh	25 Highcroft Villas, Brighton, BN1 5PS
Councillor Kevin Allen	92 Reigate Road, Brighton, BN1 5AG
Stephen Plaice	83 Stanford Road, Brighton, BN1 5PR
Councillor Amy Kennedy	c/o Brighton and Hove City Council, King's House, Grand Avenue, Hove, BN3 2LS
Ian Smith	32 Highcroft Villas, Brighton, BN1 5PS
Mrs J Nolan	Garden Flat, 53 Highcroft Villas, Brighton, BN1 5PT
Katherine Bligh	18D Highcroft Villas, Brighton, BN1 5PS
Sally Griffin	74A Park Crescent Road, Brighton, BN2 3HS

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 The Council's Inquiry Notification letter dated 10 September 2008 and list of consultees
- 2 Statement of Common Ground agreed by the principal parties (including suggested conditions)
- 3 Copy of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended)
- 4 Letter from Martin Moore, Trustee of Prestonville Community Association in respect of the authorisation of Deborah Marsh to speak on behalf of the Association
- 5 Written statement of Deborah Marsh
- 6 Table: Quantity Standards set out in draft Open Space Study (May

- 2008)
- 7 Open Space Audit: Record sheet
- 8 Brighton and Hove City Council, Annual Monitoring Report 2006-2007
- 9 Extract from Brighton and Hove Housing Needs Survey Final Report 2005
- 10 Copy of letter from Director of Planning, South-East England Regional Assembly dated 22 October 2008.
- 11 Documents submitted by Stephen Plaice in respect of stability of land
- 12 Photographs submitted by Ian Smith



Costs Decision

Inquiry held on 9-11 December 2008
Site visit made on 12 December 2008

by **K Nield** BSc(Econ) DipTP CDipAF MRTPI

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

The Planning Inspectorate
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Decision date:
21 January 2009

Costs application in relation to Appeal Ref: App/Q1445/A/08/2081266 Land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Kingsbury Estate Ltd for a full award of costs against Brighton & Hove City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the erection of an apartment building containing 24 flats together with parking and access.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Appellant

1. The application refers to paragraphs 7, 8 and 11 of Annex 3 of Circular 8/93 and is for a full award of costs.
2. Of the 3 reasons for refusal of the application the Council must have known that Reasons 2 and 3 (in respect of nature conservation interest and the Council's requirement that all new residential development should be built to a Lifetime Homes standard and for an agreed proportion of all new dwellings to be built to wheelchair accessible standards) could have (and have) been dealt with by a condition attached to a planning permission or by Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended).
3. The Council's position in respect of the appeal scheme was unreasonable given the long planning history set out by the appellant's agent. That background and the way the Council dealt with the previous (outline) application¹ indicate that, notwithstanding the 2000 appeal decision to allow residential development on the site, the Council was not willing to allow the proposed residential development to proceed.
4. The appellant draws attention to the way the application was dealt with by the Council indicating that matters were raised that were ill founded and sprung on the appellant at a late stage. The whole of the background to the scheme should have been taken into account by the Council.
5. In respect of the first reason for refusal (regarding open space) no assessment had ever been undertaken by the Council identifying the site as open space that should be protected as such by policy QD20 of the adopted Brighton and Hove Local Plan (LP). In two previous Officer's reports in respect of planning

¹ Application BH2007/03333

- applications on the appeal site (both post-adoption of the LP) conflict with LP policy QD20 had not been identified as a reason for refusal.
6. Reason 1 of the Council's Decision Notice required the appellant to have provided a city-wide assessment of open space, compliant to Planning Policy Guidance Note 17: *Planning for Open Space, Sport and Recreation* (PPG17), a task which the Council agreed would be onerous. That requirement of the appellant was unreasonable. It was compounded by the failure of the Council to provide any reasoned evidence as to the value of the site as open space. Mrs Thomas accepted that she had not made such an assessment and only relied on the audit produced within the appellant's evidence. That was the only evidence to the Inquiry that the site was of value.
 7. However, that evidence is inadequate in that it contains several inaccuracies and it cannot constitute cogent evidence. Mr Pickup's evidence as to the low value of the open space was unchallenged. The reasons given as to the lack of assessment of the site's value by the Council was that they treat all identified open space the same, irrespective of value and that triggers an exclusion on the use of such land for alternative purposes because of what the Council claims is a shortfall of open space across the city.
 8. The Council has taken a wholly unreasonable approach based on a flimsy and superficial assessment of the site and on a consultant's report² which does not adopt or reflect any site specific assessments in the audit of open space.
 9. The Council had received a clear warning in the recent appeal decision for the Springfield Road site³ that in the absence of a valid assessment that was compliant with PPG17, redevelopment of an open space for alternative uses was not precluded.
 10. The Council has placed obstacles in the path of the application which should have been permitted and has failed to take all material considerations into account. A key consideration should have been to weigh the benefits of the proposal as a sustainable location for housing (including affordable housing for which the Council acknowledged there was a compelling need). No evidence was presented by the Council on those matters and the housing case for the appellant was not challenged.
 11. In respect of housing supply the Council placed reliance on an out of date Strategic Housing Land Availability Assessment (SHLAA) as the only basis for indicating there is no need for new housing. That is unacceptable as a measure of need and the Council's reference to a current 4 year supply of housing is recognition of failure. It conflicts with paragraph 8 of Annex 3 (of Circular 8/93) that relevant national planning policy and guidance has been taken into account. It is clear in this case that the Council is unable to demonstrate a 5 year housing supply and therefore the presumption in favour of housing development⁴ should apply. The Council has relied on a history of delivery of windfall housing sites but there is no robust evidence to the Inquiry of local

² Space, Sport and Recreation Study- Brighton and Hove City Council – A draft report by PMP

³ Ref: APP/Q1445/A/07/2047264, dated 20 March 2008

⁴ Planning Policy Statement 3: *Housing* – Paragraph 71

circumstances that would prevent specific housing sites being identified to comply with PPS3⁵.

12. In conclusion the appellant indicates that the appeal was unnecessary and, consequently, the costs associated with it were unnecessary.

The Response by the Council

13. The Council disagrees with the appellant's case for an award of costs.
14. In respect of the matters dealt with in Reasons 2 and 3 of the Council's Decision Notice the Council considers that the appellant's agent had adequate time to overcome the Council's objections but did not.
15. The appellant's agent had access to the Council's housing policies and the previous appeal decision but did not identify a site for translocation of the slow-worms. Although the first reason for refusal is still outstanding agreement with the appellant has now been reached in respect of Reasons 2 and 3.
16. In addition the content of the section 106 Obligation is not agreed by the Council and the appellant has refused to fulfil the Council's requirements in respect of the provision of affordable housing. The outstanding matters in that regard could have been confirmed by the appellant before or during the Inquiry.
17. The Council is required to produce substantial evidence to substantiate its refusal of planning permission and its case (in respect of Reason 1) is based upon the scheme not complying with LP policy QD20 and the requirements of PPG17.
18. The appellant acknowledged that the Council has produced evidence but the outstanding issue to the Council is a consideration as to whether the site is open space. The Council indicates that it was reasonable to refuse the application as it was unacceptable in principle assessed against PPG17.
19. The Council has produced evidence as to why the development could not be permitted and in that regard it is clear that it conflicts with LP policy QD20 and PPG17. Mrs Thomas, cross-examined by Mr Clay, indicated that the site is open space and has value to the community. The Council's evidence and that of local residents has proved its value. The Council considers the views of residents and these have provided a firm basis for the reason for refusal supported by substantial evidence. The application was determined on its planning merits.
20. The appellant indicates that no survey of open space was carried out, however, PPG17 states that applicants may wish to carry out their own assessment and may want to consult with local communities. In this case the appellant did not carry out an assessment or show evidence of consultation.
21. This application was made after previous applications so the appellant cannot claim ignorance of LP policy QD20 or PPG17 and could have raised the issue of need for the open space with Council officers.

⁵ Planning Policy Statement 3: *Housing* – Paragraph 59

22. The appellant relies heavily on the previous appeal decision but it should be recognised by the appellant's agent that that planning permission from that decision had lapsed by the time the appeal application was submitted and the policy situation had changed so that the scheme should now be assessed against current development plan policy.
23. The appellant stated that the Council's evidence was based on flimsy reasons and assessments without a specific assessment of sites. However Mrs Thomas' evidence shows a shortfall of open space in Brighton. The PMP study⁶ was reliable but had not been adopted by the Council. The audit carried out by the Council did include the appeal site as open space.
24. The appellant indicated that the Council had not been prepared to let the application succeed. The Council contends that its determination of the application was based on sound planning grounds and was not dictated by ulterior motives and was not irrational.
25. The Council had a duty to examine all aspects of a scheme before determination of an application and that is what Council members did in this case. The appellant failed to prove the case for the planning merits of the site.
26. The appellant claims that the Council did not consider housing need. It is clear that the Council did not refuse the application on the basis that it conflicted with housing policy but it provided evidence⁷ in the form of the SHLAA and monitoring report which revealed that the Council was meeting its housing targets. Although the appellant claims the SHLAA is out of date the Council contends it is up to date and shows how much housing is needed for Brighton and would shortly be reviewed. Council members are aware that this development would only provide 10 units of affordable housing. Housing need is for the Council to decide and where the Council decision is based on relevant planning policies there should not be grounds for an award of costs. Housing can be provided on other sites but once the open space is lost it cannot be replaced.
27. The appellant's agent did not offer an explanation of why he had not taken account of relevant policies and confirmed that he acted in the best interests of his client. The Council contends that even though the officer had not raised the issue of open space with the appellant the application could reasonably have been refused.
28. The question of operational land is not dealt with fully in the appellant's proof of evidence and there is no evidence regarding Network Rail retaining an interest in the use of the land for operational purposes. The present use of the land may be unlawful and result in litigation.
29. The Council believes it has not acted unreasonably and has provided substantial evidence in respect of the reasons for refusal. All reports requested by the appellant have been produced.

⁶ *Open Space, Sport and Recreation Study* undertaken by PMP

⁷ Mrs Thomas: Evidence

Conclusions

30. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
31. Annex 3 indicates (at paragraph 8) that the authority will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations.
32. In respect of Reasons 2 and 3 of the Council's Decision Notice the issues could have been resolved through appropriate planning conditions if all other matters were found to be acceptable. In the event, in respect of the nature conservation interest (Reason 2) the proposed translocation of slow-worms is dealt with in the Unilateral Undertaking. In the previous appeal decision this matter had been dealt with by a condition and it should have been clear to the Council that a similar approach would be appropriate. It is unreasonable of the Council to suggest that the appellant had not suggested a suitable site for translocation when the Council is itself providing such a site. Appropriate information was before the Council to deal with this issue at the application stage.
33. In respect of Reason 1 the Council relied upon the effect of LP policy QD20 and PPG17 leading to a different consideration of housing development than had existed at the time of the 2000 appeal. To that extent I accept there had been a material change in planning policy since the previous appeal. Both LP policy QD20 and PPG17 depend to a large extent on the identification and assessment of land as open space and an understanding of its role and value to the community.
34. The Council applies a strict application of LP policy QD20 to any land it considers as open space in effect providing a complete restriction to its use for an alternative purpose whatever the merits of that might be. At the time the application was determined the Council had commenced an audit of open land but its contents and any conclusions were not in the public domain and it did not form part of any adopted or approved document of the Council. No consultation had been undertaken by the Council on the findings of the audit.
35. Nevertheless that audit is the only basis upon which the Council has determined that the land is open space and should fall for consideration within LP policy QD20. As I note in my decision there are a number of factual errors in the audit entry for the appeal site which significantly reduces the audit entry's value and the reliance that can be placed upon it. Without a PPG17 compliant audit of open space the effectiveness of LP policy QD20 is reduced. This had been clearly pointed out to the Council in the Springfield Road appeal decision⁸ produced in the evidence
36. The Council did not produce the audit as evidence, nevertheless it relied upon it when produced by the appellant. The Council contended that the appellant's agent should have raised the lack of a PPG17 compliant assessment of open

⁸ Appeal Ref; APP/Q1445/A/07/2047264 dated 20 March 2008 (M Pickup – Appendix 9)

space with the Council officer that he was in dialogue with and should have undertaken a city-wide survey to ascertain whether the land was surplus to requirements. The Council agreed at the Inquiry that the assessment would be a major undertaking. The Council's site assessment is dated 18 July 2007 but the existence of the audit was not made known to the appellant until after the application had been determined. Its existence was not referred to in the Officer's report to the Planning Committee in January 2008 which described the site as a private allotment site, a use ancillary to the former railway use and which had ceased over ten years previously. The site had been described by the previous Inspector in 2000 as, for the most part, former operational land but the Council has considered it as if it were a greenfield site.

37. Against the context of the site's previous planning permission for housing, the previous Inspector's conclusion that the use of the site to meet a need for allotments would not be realised and bearing in mind the private and inaccessible nature of the site to the public I consider that the Council's approach to the proposed development was both impractical and unreasonable.
38. The Council did not attach weight to the contribution the appeal scheme would make towards meeting housing supply and affordable housing in Brighton. Although the Council contended that it had adequate housing sites this depended on a continuation of windfall sites coming forward as it had in the past. No cogent evidence of an up to date five year supply of deliverable sites was provided by the Council and no robust evidence to the Inquiry of local circumstances that would prevent specific housing sites being identified to comply with PPS3. The evidence presented to the Inquiry by the Council was not up to date and the Council's assumptions regarding windfall sites have not been tested at an Examination in Public. In those circumstances I consider there was a clear need for the Council to weigh in the balance of considerations the contribution the site could make towards housing supply and the mix of dwellings. The Council's failure to consider those factors was unreasonable behaviour.
39. The Council also did not consider the contribution the scheme would make to the provision of affordable housing in the context of an accepted significant demand. Although the provision of ten affordable units would not be large against the accepted need it would make a significant local contribution. I consider that it was unreasonable for the Council not to take this factor into account in the balance of considerations.
40. In the light of the foregoing I conclude that the Council, when determining the application, failed to properly consider whether, notwithstanding any identified conflict with the development plan, material considerations nonetheless indicated a determination other than in accordance with the plan. I consider that the Council failed to produce evidence to substantiate its reasons for refusal; and that consequently the appellant was put to the expense of pursuing an appeal which should not have been necessary. I conclude that this amounted to unreasonable behaviour on the part of the Council.

Formal Decision and Costs Order

41. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other

powers enabling me in that behalf, I HEREBY ORDER that Brighton and Hove City Council shall pay to Kingsbury Estate Ltd the full costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission for the erection of an apartment building containing 24 flats together with parking and access at land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT.

42. The applicant is now invited to submit to Kingsbury Estate Ltd, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Kevin Nield

INSPECTOR



Appeal Decision

Site visit made on 20 January 2009

by **Elizabeth Fieldhouse** DipTP DipUD
MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
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Decision date:
10 February 2009

Appeal Ref: APP/Q1445/A/08/2086874

Diplocks Yard, 73 North Road and land at the rear, Brighton BN11YD

- 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 Mr John Blake against Brighton & Hove City Council.
- The application Ref BH2008/02421 is dated 11 July 2008.
- The development proposed is the construction of new part single storey, part two storey offices.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this appeal are whether the proposed development would serve to preserve or enhance the character or appearance of the North Laine Conservation Area and the effect of the proposed development on the amenities of neighbouring occupiers.

Reasons

Character and appearance

3. The appeal site lies within the North Laine Conservation Area and was used for the storage of market barrows many years ago. More recently it has had a variety of temporary uses but was a vacant space at the time of my visit. The proposed use would be compatible with the range of uses in the area and would bring a vacant site back into operational use for offices. In respect the business use, I consider that the applicable parts of policy EM4 of the Brighton & Hove Local Plan 2005 (LP) would be met.
4. The appeal site is a narrow strip of land between 40-46 Queens Gardens and 40-42 Upper Gardner Street and is accessed through an entrance under the neighbouring dwelling from North Road. The appellants indicate that they own the appeal site but do not have ownership of the building adjoining and under which the site is accessed. The Queens Gardens properties are 19th century dwellings with rear additions that extend to the appeal site. The property on Upper Gardner Street is a former school that has been developed for a mixture of houses, flats and community hall.
5. The proposed building would provide 310sqm floorspace with 207sqm on the ground floor and 103sqm on the mezzanine floors with the whole of the site (7.5m by 39m) utilised to provide four office units of varying sizes. Access

- would be via a gated entrance from North Road that would pass the proposed meter cupboard, compactor, refuse store, and disabled toilet on one side with bicycle storage on galvanised hoops on the other side. I note that the proposed ground floor plan indicates parking for five cycles with an area of landscaping adjoining the building whereas proposed long section EE provides for seven cycle hoops and less landscaping. The application form indicates five spaces would be provided and I have taken this as the proposed level of cycle parking provision.
6. Access to the individual offices would be via a path adjoining the boundary with properties accessed off Upper Gardner Street. Only the final unit would span the full width of the site. Mezzanine floors would be provided in all units other than that which would be opposite flats to the east which abut, and are screened by slatted timber brise soleil from the appeal site. Natural lighting to the offices would be mostly provided by large areas of glazing in the top of the barrel vaulted roof structure with roof lights provided in the flat sedum roof to the unit without a mezzanine floor.
 7. In my opinion, a building of the scale proposed could be accommodated without harm to the character or appearance and I find no harm in the use of a barrel roofed structure only part of which would be apparent from North Road through the entrance arch. Nevertheless, I am concerned about the detailing of the development, particularly those parts that would be viewed from North Road or neighbouring dwellings. A previous proposal for a three storey office block was refused planning permission in 2007 (BH2007/01780). In considering that proposal, the Council had found the colour coated metal standing flat roofing acceptable but considered that, if a flat roofed design was to be pursued, it should be concealed behind parapet walls rather than having fascias. I do not find this comment provides a justification for the use of corrugated aluminium roofing, corrugated aluminium or western red cedar cladding and galvanised steel grills to bin stores, meter cupboard and entrance gate. Such materials, particularly the corrugated aluminium sheeting would be reflective and uncharacteristic of its context or the prevailing pallet of materials.
 8. In addition, the North Road entrance would be closed by a galvanised steel grill entrance door and vertical western red cedar cladding. Although the materials may be locally sourced, in my opinion, galvanised steel and western red cedar is not characteristic of the area and would not only be discordant in the street scene, but the galvanised entrance gate would look utilitarian and lack interest. In my opinion, the proposed exterior treatments of the building and associated elements would be harmful to the visual quality of the area, particularly those parts terminating the view in from North Road and framing the entrance.
 9. I am mindful of the provision in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and for the reasons given, I consider that the proposal would not preserve or enhance the character or appearance of the area, and would fail to meet the provisions of LP policies HE6 and QD1. For this reason the appeal should fail. I do not find the benefit of bringing a vacant and redundant site back to life a justification for the harm I have identified.
 10. There would be minimal potential for soft landscaping but the hard landscape would be very visible through the entrance grill. Although a pallet of surfacing

materials has been suggested, they do not reflect the character of the area or the historic context of the site. However, I consider final details of landscaping could be adequately covered by condition. Nevertheless, this does not overcome the harm I have already identified.

Neighbouring occupiers' amenities

11. The appellants provide an analysis of the sunlight, daylight and overshadowing effect of the proposal. The report concludes that right to light of the rear of the properties surrounding Diplocks Yard would not be infringed, with improved transmissivity for the section of roof adjacent to 40 Queens Gardens and an improved wall reflectance of the new development of 0.833. The report also found that there would be minimal overshadowing of the ground floor windows at the spring equinox to 39, 40 and 41 Queens Gardens. Therefore the report concluded that the proposal would not cause a significant amount of overshadowing to the existing properties. The impact on daylighting to properties, particularly the brise soleil apartments, would be minimised by lowering the building which is reflected in the flat roof part of the proposal.
12. The report states that overall daylight levels to existing properties were not high, however by lowering the new development and improving the reflectance properties the impact on day light levels would be minimised. Therefore I consider that suitably clad the proposed development would not harm neighbouring occupiers' amenities by reason of loss of sunlight, daylight or overshadowing. Nevertheless, I have not found all the proposed materials acceptable and, without appropriate reflective materials, I consider that there would be some loss of light, harming neighbouring occupiers' amenities.
13. The dwelling that forms the frontage to the street under and between which the access passes has a door at the rear that opens onto the area where bicycle parking is proposed, with proposed section EE showing a cycle hoop in front of the door and the proposed ground floor plan indicating cycle parking immediately outside that entrance. Proposed elevation JJ indicates that the cycle hoops would be at right angles to the entrance which would result in the bikes obstructing part of the entrance path to the development but potentially leaving the back door to the dwelling clear. In any event, the private garden to the dwelling is shown to be fenced off from the appeal site but no access to the area is shown and I saw no door in the rear elevation to the dwelling. In my opinion, details of rear access from the property and entrance into its amenity space have not been fully considered. This adds to the harm I have already identified in the proposal.

Conclusion

14. In the light of the submitted details and the design and access statement, I am satisfied that matters relating to sustainable development could be adequately covered by condition. I have had regard to other developments in the area, but do not find any a justification for the proposal which I have considered on its merits in the light of the development plan and all material considerations. For the reasons given above, I conclude that the appeal should be dismissed.

Elizabeth Fieldhouse

INSPECTOR



Appeal Decisions

Site visit made on 20 January 2009

by **Elizabeth Fieldhouse** DipTP DipUD
MRTPI

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

The Planning Inspectorate
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Decision date:
10 February 2009

Appeal A Ref: APP/Q1445/E/2084843

43 George Street, Brighton BN2 1RJ

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by Portland Properties against Brighton & Hove City Council.
- The application Ref BH2008/00303 is dated 11 January 2008.
- The demolition proposed is the demolition of the existing building and erection of office with flats over.

Appeal B Ref: APP/Q1445/A/08/2084829

43 George Street, Brighton BN2 1RJ

- 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 Portland Properties against Brighton & Hove City Council.
- The application Ref BH2008/00302, is dated 11 January 2008.
- The development proposed is the redevelopment of the site to provide office with 4 no. self contained flats over.

Decisions

1. I dismiss the appeals and refuse conservation area consent for the demolition of the existing building and erection of office with flats over and planning permission for the redevelopment of the site to provide office with 4 no. self contained flats over.

Main issues

2. I consider the main issues in respect of appeal B are whether the proposed development would serve to preserve or enhance the character or appearance of the East Cliff Conservation Area; whether the proposed residential units would provide a satisfactory standard of accommodation for future occupiers; the effect of the proposal on the amenities of neighbouring residential occupiers; and whether the proposal would represent sustainable development. The issue in respect of appeal A is whether the loss of the appeal building would serve to preserve or enhance the character or appearance of the area.

Reasons – Appeal B

Character or appearance

3. The appeal site currently comprises a double-height, single-storey commercial building on the east side of George Street backing onto Dorset Gardens. It was

last used for vehicle repairs. The surrounding area is mixed. There are mainly two-storey dwellings with rooms within the roof opposite, and on the same side of the road a three-storey bay fronted terrace with ground floor retail/commercial uses to the south and a large two-storey retail/commercial building to the north. At the rear there is a small park, Dorset Gardens, over which the rear of the appeal property is clearly viewed from the road at the other side of the gardens.

4. Planning permission was refused and the appeal dismissed in April 2005 (ref. APP/Q1445/A/04/1164918) for a similar building to that proposed except that two live work units and three flats would have been provided and the depth of the building would have been less. That Inspector found an unacceptable loss of employment premises but did not consider that the local street scene would be adversely affected by the proposal.
5. I consider that the proposed ground floor office use would preserve an active street frontage and therefore the provisions of policy QD5 of the Brighton & Hove Local Plan 2005 (LP) would be met. Although there would be a reduction in the business use floor area, employment uses would be retained. I find no harm from the loss of some employment floorspace and consider that the provisions of LP policy EM6 would not be compromised by the proposal.
6. The Council's supplementary planning document (spd 02) *shop front design* adopted in 2005 requires details of the shop front to be provided at 1:20 scale. I consider that without these details the full impact of the proposed 'shop' front on the character or appearance of the conservation area cannot be adequately assessed. In view of the impact of the 'shop' front on the street scene, I consider that this is a matter that could not be left to be required by condition.
7. The proposal would provide four residential units on the two upper floors and, in line with the advice in Planning Policy Statement 3 *Housing*, it would make efficient use of previously developed land in a sustainable location. Nevertheless, the Government policy indicates that the more efficient use of land should be without compromising the quality of the local environment.
8. The proposed building would be three storeys high topped by a substantial pitch roof. By reason of its height, I consider that the proposed building would dominate the street scene with the upper floors some 1.2m forward of those in the three-storey bay fronted terrace to the south. Therefore the detailing of the building is important and necessary in assessing whether the proposal preserves or enhances the character or appearance of the conservation area.
9. The proposed window details are not adequately shown on the submitted drawings. I consider that opening details can change the visual emphasis of the window and thereby the appearance of the building. Therefore, due to the impact of building detailing on the character and appearance of the building and thereby the conservation area, I consider that it is detailing that is necessary and could not reasonably be covered by condition.
10. In addition, the Dorset Gardens face of the proposal would only be 1m back from the boundary compared to the approximately 3m set back of the terrace to the south and the approximately 1.8m set back in the previous appeal. In my opinion, the proposal would appear overbearing and fail to enhance the setting of the open space. By reason of its scale, depth and lack of adequate

detailing, I consider that the proposal would fail to preserve or enhance the character or appearance of the conservation area contrary to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the provisions of LP policy HE6. For this reason appeal B should fail.

Standard of residential accommodation

11. The Council advise that the minimum size for a single bedroom under the Housing Act 1985 is 6.56sqm whereas the proposed second bedroom in each flat would provide 6.435sqm of space. Nevertheless, the single bedroom would have a fitted wardrobe which internally measures about 0.7 by 0.5 and could be incorporated into the room. Therefore, although the second bedroom would be of limited size, I consider that it would not result in an unsatisfactory standard of accommodation for future occupiers. I find no harm in terms of LP policy QD27 in this respect.

Neighbouring occupiers' amenities

12. Due to the set back of the terrace to the south at the rear, there would be no adverse impact on neighbouring occupier's amenities from the proposed balconies. The Council is concerned that there would possible loss of light to neighbouring occupiers from the proposed building projecting about 2.2m further to the rear than the terrace to the south. The road rises from the south with the neighbouring terrace at a lower level than the proposed flats. As a result of the depth of the proposed development, I consider that there could be some loss of light/aspect to immediate neighbouring occupiers to the south. Nevertheless, due to the appeal site lying to the north of these windows and the open aspect of Dorset Gardens at the rear, I do not consider this would be sufficient to withhold planning permission.

Sustainability

13. In February 2008 the Government confirmed that from 1 May 2008 it would be mandatory for all new homes to be rated against the Code for Sustainable Homes. The Code replaces BREEAM EcoHomes standards which are no longer relevant for housing. LP policy SU2 provides for efficiency of development in the use of energy, water and materials. In the design and access statement, the appellants made no mention of development being carried out to any particular sustainable criteria. The Council does not have a development plan policy requiring new dwellings to be designed to meet the Code. Paragraph 33 of the Supplement PPS1 *Planning and Climate Change* advises that requirements should be set out in a DPD. The Supplement goes on to advise in paragraph 39 that before the development plan is updated to reflect policies in the PPS Supplement, developments should be consistent with the policies in the Supplement.
14. The Supplement to PPS1 and Ministerial Statements refer to the importance of sustainable development. Nevertheless, paragraph 42 of the Supplement to PPS1 indicates that new development should comply with adopted DPD policies unless it can be demonstrated among other points that compliance is not feasible or viable. The Code is not mandatory at present and imposing a requirement to build to Code level 3 that is not backed by a DPD policy or supported by the appellants, would not be consistent with the approach set out in the Supplement to the PPS. There is no alternative to the Code for

Sustainable Homes in relation to residential development and, without the developers' agreement that the homes can be designed to meet the standards, it is not possible to cover the matter by condition.

15. LP policy SU13 provides, among other points, that planning permission will not be granted for developments which cannot demonstrate that the minimisation and reuse of construction industry waste has been sought in an effective manner. The proposal would require the demolition of an existing fairly sizeable building and I have found no details of the reuse of the construction industry waste. Therefore in respect of both these matters appeal B fails and this adds to the harm I have already identified.

Appeal A

16. The double height former garage contributes little to the streetscene or the wider conservation area. Nevertheless, Planning Policy Guidance 15 *Planning and the Historic Environment* (PPG15) advises that consent should not be given unless there are acceptable and detailed plans for any redevelopment. Therefore, as I have found that appeal B should fail, I consider that conservation area consent for the demolition of the building in the absence of an approved scheme should not be granted and to do so would be contrary to LP policy HE8 and the advice in PPG15.
17. For the reasons given above I conclude that the appeal A should fail and appeal B be dismissed.

Elizabeth Fieldhouse

INSPECTOR

PLANNING COMMITTEE

Agenda Item No 216
Brighton & Hove City Council

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ST. PETER'S & NORTH LAINE

BH2008/02671

24 Albert Road, Brighton

Demolition of existing garage & erection of a 2 storey side extension to form separate 2 bedroom dwelling (part retrospective).

APPEAL LODGED

09/02/2009

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

QUEEN'S PARK

BH2007/02655

Brighton Sea Life Centre, Madeira Drive Brighton

Removal of conditions 4 and 5 of

BH2005/06570/FP.

APPEAL LODGED

10/02/2009

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

QUEEN'S PARK

BH2007/02654

Brighton Sea Life Centre, Madeira Drive Brighton

Removal of Conditions 4 and 5 of

BH2005/06566/LB.

APPEAL LODGED

10/02/2009

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ST. PETER'S & NORTH LAINE

BH2008/02670

24 Albert Road, Brighton

Two storey side extension.

APPEAL LODGED

09/02/2009

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

ROTTINGDEAN COASTAL

BH2008/01903

2 Longhill Road, Brighton

Extension of single garage to form double garage. Creation of balcony on first floor front elevation.

APPEAL LODGED

APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

23/02/2009
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

ROTTINGDEAN COASTAL
BH2008/03403
St. Edmunds, Steyning Road, Rottingdean
Two storey rear extension with pitched roof and incorporating roof terrace.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
20/02/2009
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION
APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

SOUTH PORTSLADE
BH2008/01110
9 Benfield Close, Portslade
Single storey rear extension (retrospective).
APPEAL LODGED
23/02/2009
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION
APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

WITHDEAN
BH2008/02194
16 Hazeldene Meads, Brighton
Demolition of existing garage and construction of two storey detached dwelling (resubmission).
APPEAL LODGED
24/02/2009
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION
APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

GOLDSMID
BH2008/01741
Kitilear Court, Lansdowne Road, Hove
Construction of additional storey containing 4 studio flats.
APPEAL LODGED
20/02/2009
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

CENTRAL HOVE
BH2008/02651
The Blind Busker, 75-77 Church Road, Hove
Two new jumbrellas to front decked area and new half glazed timber screen to perimeter of existing decking.
APPEAL STATUS APPEAL LODGED

APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

24/02/2009
Delegated

WARD

APPLICATION NUMBER
ADDRESS

WISH

BH2008/02586
Gala Bingo Hall & Adjacent Carpark, 193
Portland Road, Hove

DEVELOPMENT DESCRIPTION

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, part 4 and part 5 storey building, including 16 affordable units (40%). Surface car parking and landscaping at rear. (Resubmission of withdrawn application BH2008/00600).

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
23/02/2009
Environmental Services Planning Committee

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

WESTBOURNE

BH2008/03041
23A & E Coleridge Street, Hove
Change of use from B1 offices to 6 no. self-contained flats.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
25/02/2009
Delegated

WARD

APPLICATION NUMBER
ADDRESS

SOUTH PORTSLADE

BH2008/03701
Portslade County Infants School, Locks Hill
Portslade

DEVELOPMENT DESCRIPTION

Display of 2 no. illuminated hoardings for commercial advertisement.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
25/02/2009
Delegated

INFORMATION ON HEARINGS / PUBLIC INQUIRIES
18th March 2009

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

PLANNING & ENFORCEMENT APPEAL 20-26 York Place, Brighton

Planning application no: BH2008/01562
Description: Regularisation of development as built (commercial on ground floor with residential above). Specifically regularisation of the roof and alteration to architectural adornments to parapet walls.
Linked appeal against enforcement notice. The notice alleges "Various works were carried out without the grant of planning permission".
Decision: Delegated
Type of appeal: Public Inquiry
Date: **AWAITING NEW DATE AFTER CANCELLATION**
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: **WITHDRAWN**
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: **WITHDRAWN**
Location:

Royal Alexandra Hospital, 57 Dyke Road, Brighton

Planning application no:

- BH2007/04462
- BH2008/02095

Details of application:

- Conservation Area Consent for demolition of existing buildings (former children's hospital) (resubmission of BH2007/02925).
- Demolition of all existing buildings. Erection of 149 residential units comprising 40% affordable units and 807.20 square metres of commercial floor space for a GP surgery (including 102 square metres for a pharmacy) together with associated access, parking, amenity space (including a public garden) and landscaping.

Decision: Committee
Type of appeal: Public Inquiry
Date: 12th – 15th May 2009 61

Location: Council Chamber, Brighton Town Hall

PLANNING & ENFORCEMENT APPEAL: Starbucks Coffee Co. (UK) Ltd, 115 St James's Street, Brighton

Planning application no: • BH2008/01039
Enforcement no: • 2008/0250
Details of application: • Change of use from use class A1 (retail) to mixed A1/A3 coffee shop
Details of enforcement: • Alleged unauthorised change of use to mixed A1/A3 use.
Planning Decision: Delegated
Type of appeal: Public Inquiry
Date: 10-12th June 2009
Location: Council Chamber, Brighton Town Hall

14 Langdale Gardens, Hove

Planning application no: BH2008/02759
Description: Loft conversion to form self-contained flat to include hip to gable end and dormer extension.
Decision: Delegated
Type of appeal: Informal Hearing
Date:
Location:

MyHotel 17 Jubilee Street, Brighton

Planning application no: BH2008/02283
Description: Extension of ground floor restaurant, new mid floor terrace seating with glass balustrade and change of use for pair of adjoining mews houses to a hotel.
Decision: Delegated
Type of appeal: Informal Hearing
Date:
Location:

24 Albert Road, Brighton

Planning application nos: • BH2008/02670
• BH2008/02671
Description: • Two storey side extension.
• Demolition of existing garage & erection of a 2 storey side extension to form separate 2 bedroom dwelling (part retrospective).
Decision: Committee
Type of appeal: Informal Hearing
Date:
Location:

23A & E Coleridge Street, Hove

Planning application no: BH2008/03041
Description: Change of use from B1 offices to 6 no. self-contained flats.
Decision: Delegated
Type of appeal: Informal Hearing
Date:
Location:

Gala Bingo Hall & Adjacent Carpark, 193 Portland Road, Hove

Planning application no: BH2008/02586
Description: 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, part 4 and part 5 storey building,

including 16 affordable units (40%). Surface car parking and landscaping at rear. (Resubmission of withdrawn application BH2008/00600).

Decision: Committee
Type of appeal: Informal Hearing
Date:
Location:

9 Benfield Close, Portslade

Planning application no: **BH2008/01110**
Description: Single storey rear extension (retrospective).
Decision: Delegated
Type of appeal: Informal Hearing
Date:
Location:

