



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	22 July 2009
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Cobb,Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman, and C Theobald Co-opted Members: Mr J Small (CAG Representative)
Contact:	Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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AGENDA

49. 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.

50. MINUTES OF THE PREVIOUS MEETING

1 - 10

Minutes of the meeting held on 1 July 2009 (copy attached).

51. CHAIRMAN'S COMMUNICATIONS

52. PETITIONS

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

53. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 15 July 2009)

No public questions received by date of publication.

54. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 15 July 2009)

No deputations received by date of publication.

PLANNING COMMITTEE

55. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

56. LETTERS FROM COUNCILLORS

No letters have been received.

57. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

58. APPEAL DECISIONS

11 - 48

(copy attached).

59. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

49 - 52

(copy attached).

60. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

53 - 54

(copy attached).

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

62. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST :22 JULY 2009

(copy circulated separately).

63. 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

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

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.

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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, 14 July 2009

PLANNING COMMITTEE	Agenda Item 50 Brighton & Hove City Council
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BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 1 JULY 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Mrs Cobb, Davey, Hamilton, Hawkes, Kennedy, Pidgeon, Smart and Steedman

Co-opted Members Mr J Small (CAG Representative)

Officers in attendance: Jeanette Walsh (Development Control Manager), Hamish Walke (Area Planning Manager(East)), Liz Hobden (Local Development Team Manager), Steve Reeves (Principal Transport Planner), Kathryn Boggiano (Senior Planning Officer), Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

PART ONE

33. PROCEDURAL BUSINESS

33A Declaration of Substitutes

33.1 Councillors Hawkes and Pidgeon were in attendance for Councillors McCaffery and C Theobald respectively.

33B Declarations of Interest

33.2 Councillor Pidgeon explained that he had been invited by the applicants to visit the Asda site, Application BH2009/00508 in his capacity as a Ward Councillor. In answer to questions by the Solicitor to the Committee he confirmed that he had not predetermined the application, remained of a neutral mind and intended to remain at the meeting during the discussion and voting thereon.

33C Exclusion of Press and Public

33.4 In accordance with Section 100a of the Local Government Act 1972 ("The Act"), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it was likely, in view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of (The Act).

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

34. MINUTES OF THE PREVIOUS MEETING

34.1 **RESOLVED** - That the Chairman be authorised to sign the minutes of the meeting held on 10 June 2009 as a correct record.

35. CHAIRMAN'S COMMUNICATIONS**Web casting**

35.1 The Chairman explained that afternoon's meeting of the Planning Committee was being web cast. 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 in the public gallery above.

Status of the Existing Local Plan and Formulation of Core Strategy Update

35.2 The Local Development Team Manager updated Members regarding the status of the existing Local Plan and progress in developing the Core Strategy. Copies of the Local Plan were tabled including a list detailing the 9 policies which were no longer "saved" as part of the plan, either because they had already been implemented or fell within national policy guidance.

35.3 Following initial consultation significant amendments had been made to 8 of the policies contained within the Core Strategy, due in part to changes to the national park boundary. A further "draft" document had been circulated to amenity groups and others for comment as part of the further consultation process. The period for comment on this further consultation was due to expire at the end of August. Changes had been effected to the following areas:

- Shoreham Harbour;
- the Marina (future developments not to exceed the height of the cliff);
- the London Road corridor;
- the urban fringe

35.4 The Local Development Team Manager referred to the existing urban fringe stating that this area could be used as a contingency in the event the City's housing targets to be attained by 2020 could not be met.

Questions/Matters on Which Clarification was Sought

- 35.5 Councillor Smart enquired whether the Core Strategy document was based on the national park boundaries as finalised and it was confirmed that they did.
- 35.6 Councillor Wells sought confirmation whether references to lower density for any future development(s) at the Marina related to the number of dwellings or to the height of development(s). The Local Development Team Manager confirmed that this related to the height of any proposed development and that any development for which there was extant planning permission was unaffected by this change.
- 35.7 Councillor Hamilton asked how these changes would impact on any appeals which had already been lodged. The Solicitor to the Committee explained that when considering any appeal a Planning Inspector would consider it in the context of then current planning policies. The weight given to these policies was greater as they came closer to adoption/were adopted.
- 35.8 The Development Control Manager confirmed that Members would receive a further briefing following expiry of the current consultation exercise.
- 35.9 **RESOLVED** - That the position be noted.

36. PETITIONS

- 36.1 There were none.

37. PUBLIC QUESTIONS

- 37.1 There were none.

38. DEPUTATIONS

- 38.1 There were none.

39. WRITTEN QUESTIONS FROM COUNCILLORS

- 39.1 There were none.

40. LETTERS FROM COUNCILLORS

- 40.1 There were none.

41. NOTICES OF MOTION REFERRED FROM COUNCIL

- 41.1 There were none.

42. APPEAL DECISIONS

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

43. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

43.1 The Committee noted the list of planning appeals which had been lodged as set out in the agenda.

44. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

44.1 The Committee noted the list of planning appeals set out in the agenda relating to Informal Hearings and Public Inquiries.

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

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

Application	Site visit requested by:
BH2009/00761, Sackville Road Trading Estate	Development Control Manager
BH2009/00737, Longhill School, Falmer Road	Development Control Manager

46. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST: 1 JULY 2009

(i) TREES

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

(2) The Chairman requested that where possible in future trees be referred to by their common names e.g., beech, sycamore in addition to their Latin forms.

(3) Councillor Smart stated that following his attendance at the site visit he was of the view that the beech tree, one of the trees included in the application, appeared to be in perfect physical condition, improved the amenity of the neighbouring street scene and should be retained. Other Members concurred in that view and in consequence the Chairman took separate votes in respect of the three trees proposed to be felled.

(4) A vote was taken and on a vote of 9 with 3 abstentions permission to fell the beech tree was refused. Members voted unanimously for the other trees included in the application to be felled.

- 46.1 **RESOLVED** – (1) That the Committee has taken into consideration and agrees with the reasons for the recommendation in Paragraph 7 and resolves to grant permission to fell the following trees covered by a TPO subject to the conditions set out in the report:

Application BH2009/01030, 2a Croft Road, Brighton –
the holly tree; and
the sycamore tree

(2) That the Committee has taken into consideration but refuses to grant permission to fell the beech tree included in Application BH2009/01030, 2a Croft Road on the grounds that it is considered to be a specimen in perfect physical condition, is located at a sufficient distance from the side of 2a Croft Road and adds amenity value both to that dwelling and to the neighbouring street scene.

Note: Councillor Smart proposed that felling of the beech tree be refused, this was seconded by Councillor Wells. On a recorded vote Councillors Hyde (Chairman), Caulfield, Cobb, Hamilton, Hawkes, Kennedy, Pidgeon, Smart and Wells voted that permission to fell the tree be refused. Councillors Carden, Davey and Steedman abstained. Therefore on a vote of 9 with 3 abstentions permission to fell the tree was refused.

(ii) **SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM COUNCIL POLICY:
1 JULY 2009**

A. Application BH2009/00508, Asda Store, Crowhurst Road, Brighton – Extension to existing store to provide 1,676 square metres of additional gross floor space.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposed extension to the existing store in order to provide an improved shopping environment for its existing customer base. The applicants had submitted sufficient supporting evidence to show that they were over trading within their current floor space. It was considered that there would be no adverse impact to other shopping centres, as there were none located nearby.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Steedman sought clarification of the term “overtrading”. In his view if the same amount of retailing took place within a smaller floor area that was to be welcomed and was preferable to its dispersal across a larger area.
- (4) Councillor Smart enquired regarding the percentage of overtrading and the percentage of food and non food goods. The Senior Planning Officer explained that the store was currently overtrading by some 31.5 %, the majority of which related to the sale of non food goods.

- (5) Councillor Pidgeon referred to the number of disabled parking spaces provided asking whether this represented a reduction to the number currently available. The Senior Planning Officer explained that a reduction from 34 to 28 was proposed but that this was still above the recommended minimum standard.
- (6) Councillor Hawkes also enquired regarding the number and location of car parking spaces proposed and sought confirmation that these were considered sufficient in relation to the increased trading area.

Debate and Decision Making Process

- (7) Councillor Steedman stated that he was not convinced of the need for additional retail trading space and also had concerns regarding the appearance of the proposed extension which he considered was ugly and of a poor quality design. Notwithstanding that the site was located on an industrial estate a better design solution was needed than that which had been submitted. Mr Small (CAG) concurred in that view.
- (8) Councillor Hawkes stated in her view that the extension's design was appropriate to its industrial setting.
- (9) A vote was taken and on a vote of 8 to 4 planning permission was granted.

46.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report and to the additional conditions and informative set out below:

Additional Conditions

Additional condition requiring replacement landscaping and tree planting to compensate for the trees being lost through the construction of the extension of the store;

Plus, complimentary conditions in relation to maintenance and implementation
BH11.02

Additional Informative:

Members of the Planning Committee expressed concern in relation to the quality and scale of the signage shown illustratively on the plans submitted with the application. Any application for signage in relation to the store should address these concerns.

Note: Councillors Davey, Kennedy, Smart and Steedman voted that the application be refused.

B. Application BH2009/00655, Covers Yard, Melbourne Street, Brighton – Demolition of existing yard buildings and erection of 3 storey terrace along eastern boundary of the site, and 4 and 7 storey apartment building along northern boundary of the site, providing a total of 39 residential units, cycle and car parking to rear.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

- (2) The Area Planning Manager (East), Mr Walke gave a presentation detailing the constituent elements of the scheme by reference to floor plans and photomontages. Notwithstanding that the overall design of this scheme was considered to be an improvement on the previous one, it was considered that the scale and design of the development remained unacceptable and was too much for the site. The applicant had made reference to the neighbouring Sainsbury's and Enterprise Point in justification of the development. However, the height of both of those buildings was considered an anomaly which was out of keeping with the prevailing street scene.
- (3) The level of on-site amenity provision was also considered inadequate as was the close proximity of the ground floor dwellings to the rear of the footway. The proposal that this be addressed by use of obscure glazing was considered unacceptable as these units would have a poor outlook. It was also noted that the site had been split and was smaller than that put forward in respect of the earlier refused mixed development.
- (4) Mr Ings spoke on behalf of the applicant in support of their application. The scheme would provide much needed affordable accommodation via a registered social landlord. The scheme would be within a designated tall buildings corridor and a provision was proposed in order to off-set the lack of on-site amenity/play provision although additional amenity space would be provided by the roof top gardens.

Questions/Matters on Which Clarification was Sought

- (5) Councillor Smart and Mr Small (CAG) enquired regarding the location of the stairways to the top floor maisonettes and the materials from which these would be constructed. It was explained that they would be of timber with a powder coated steel framework and supports.

Debate and Decision Making Process

- (6) Councillor Wells stated that he concurred with the Officer agreeing that the scale of the proposed development would be ugly and out of scale with the prevailing street scene, the resulting dwellings particularly those with obscure glazing would provide an unacceptable standard of accommodation.
- (7) Councillor Caulfield concurred stating that she was concerned that insufficient amenity/play space had been provided bearing in mind that some family units were to be provided. Overall she considered that the number of family units were too few. A number of one bedroom units were available across the city. One of the highest areas of identified need was for affordable family dwellings.
- (8) Councillor Kennedy concurred with Councillor Caulfield, also stating that the density of the proposed development was too high.
- (9) Councillor Hawkes stated that in her view the development was acceptable and would provide much needed affordable accommodation. She also considered that off-site provision towards children's play space was acceptable.

(10) A vote was taken and on a vote 9 to 3 planning permission was refused.

46.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse planning permission for the reasons and subject to the informative set out in the report.

Note: Councillors Carden, Hamilton and Hawkes voted that planning permission be granted.

C. Application BH2007/02413, 44-46 Harrington Road, Brighton - Removal of condition 6 of planning permission 92/0099/fp to allow the residential unit to be used for storage and staff facilities (retrospective).

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

46.4 **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.

D. Application BH2008/03122, 25-26 St James' Street, Brighton – Installation of new shop front to front and side elevations and alterations to Dorset Street façade.

(1) The Senior Planning Officer, (Ms Boggiano) gave a presentation detailing appearance of the proposed shop front and indicating the arrangements for deliveries to be made. It was noted that minded to grant planning permission had been granted in March 2009 for a residential development of 24 flats including 13 affordable flats over 4 floors above the existing retail unit. Approval to erect an ATM had been granted under Officers' delegated powers.

Questions/Matters on Which Clarification was Sought

(2) Councillor Davey enquired whether conditions could be included to control either/both the hours during which trading took place within the store itself or, the period during which deliveries were permitted to take place. The Development Control Manager explained that the application before the Committee related to the shop front, as the A1 use was established and no conditions had been imposed on any earlier permissions, it was not possible to do so.

(3) Councillor Steedman requested to see visuals of the doors to the new delivery area and sought details regarding access/egress arrangements via Dorset Gardens in order to ascertain the impact on the amenity of neighbouring residents. Councillors Smart and Wells sought further details in this respect expressing concern regarding the potential detrimental impact this could have.

Debate and Decision Making Process

(4) Councillor Wells expressed concern that the delivery arrangements proposed could result in Dorset Gardens becoming blocked when deliveries took place. The Senior

Planning Officer explained that deliveries to these premises had been made via Dorset Gardens for a number of years, it was an established use.

- (5) The Principal Transport Planner, Mr Reeves explained that it was proposed that the existing delivery doors would be moved a distance of 12.5 metres and that it was not envisaged that this would give rise to congestion or impede the flow of traffic.

A vote was taken and on a vote of 8 with 4 abstentions planning permission was granted.

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

Note: Councillors Hawkes, Smart, Steedman and Wells abstained from voting in respect of the above application.

47. 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

- 47.1 **RESOLVED** - That the following site visits be undertaken prior to determination of the application:

Application	Site visit requested by:
BH2009/00761, Sackville Road, Trading Estate	Development Control Manager
BH2009/00737, Longhill School, Falmer Road	Development Control Manager

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

Decisions on Applications Delegated to the Director of Environment

- 48.1 **RESOLVED** - That those details of applications determined by the Director of Environment under delegated powers be noted.

Note 1: All decisions recorded in this list 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 had been submitted for printing, was circulated to Members on the Friday preceding

the meeting (for copy see minute book). Where the 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 the Resolution 147.2 of the then Sub Committee on 23 February 2005.

The meeting concluded at 3.45pm

Signed

Chairman

Dated this

day of

APPEAL DECISIONS

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A. GOLDSMID PATCHAM WARD

Application BH2008/01741, Kitilear Court, Lansdowne Road, Hove. Appeal against refusal to grant planning permission for construction of a new additional storey to an existing building with the new floor to comprise four studio flats. (Committee Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **13**

B. CENTRAL HOVE WARD

Application BH2008/02651, Blind Busker Public House, 75 - 77 Church Road, Hove. Appeal against refusal to grant planning permission for two new jumbrellas to the front decked area and the erection of a new half-glazed timber screen to the perimeter of the existing decking. (Committee Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **17**

C. REGENCY WARD

Application BH2008/01784, 9 Hampton Place, Brighton. Appeal against refusal to grant planning permission for roof extensions at second floor level to provide additional living accommodation for an existing first floor flat. (Delegated Decision). **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **19**

D. STANFORD WARD

Application BH2008/01385, 49 Hill Drive, Hove. Appeal against refusal to grant planning permission for an additional storey to form 4 bedrooms. (Committee Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **23**

E. HOLLINGBURY AND STANMER WARD

Application BH2008/03054, 21 Nanson Road, Brighton. Appeal against refusal to grant planning permission for construction of a new dwelling (Delegated Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **25**

F.QUEEN'S PARK WARD

Applications (A) BH2008/01039 and (B) BH2008/01039, 115 St James's Street, Brighton Appeals against (A) an enforcement notice against unauthorised change of use from A1(Retail) to A1/A3 mixed use following planning refusal BH2008/01039, dated 21/05/08 and (B)Appeal against refusal to grant planning permission for change of use from Use Class A1 (retail) to mixed A1/A3 Coffee Shop(sui generis) (Committee Decision) **APPEALS ALLOWED** and planning permission granted subject to conditions(copy of the letter from the Planning Inspectorate attached). **29**



Appeal Decision

Site visit made on 18 June 2009

by **J D Westbrook BSc(hons) MSc MRTPI**

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

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

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

**Decision date:
23 June 2009**

Appeal Ref: APP/Q1445/A/09/2097936

Kitilear Court, Lansdowne Road, Hove, BN3 1FY

- 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 Kitlea Estates Ltd against the decision of Brighton and Hove City Council.
- The application (Ref BH2008/01741), dated 15 May 2008, was refused by notice dated 27 August 2008.
- The development proposed is the construction of a new additional storey to an existing building with the new floor to comprise four studio flats.

Decision

1. I allow the appeal and grant planning permission for the construction of a new additional storey to an existing building with the new floor to comprise four studio flats at Kitilear Court, Lansdowne Road, Hove, BN3 1FY, in accordance with the terms of the application Ref. BH2008/01741, dated 15 May 2008, and the plans submitted therewith, including plan ref: PL-03 Rev A, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) The development hereby permitted shall not commence until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. These facilities 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) The development hereby permitted shall not be commenced until details of sustainability measures have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials. The development shall be carried out in accordance with the approved details.

Main issue

2. I consider the main issue in this case to be the effect of the proposed additional storey on the character and appearance of Lansdowne Road, including the effect on the Brunswick Town Conservation Area.

Reasons

3. Kitilear Court is a three-storey block of flats situated on the north side of Lansdowne Road, which slopes down from east to west in the vicinity of the appeal site. The south side of Lansdowne Road marks the boundary of the Brunswick Town Conservation Area. Within the Conservation Area, the majority of the roads run on a north-south axis, and the south side of Lansdowne Road is typified by the side elevations of properties fronting these roads. The north side of Lansdowne Road comprises a wide variety of types of property with a range of architectural styles and no obvious prevailing character.
 4. Kitilear Court is a three-storey, brick built property with a flat roof. The adjacent property to the west, No 17 Lansdowne Road, is a two-storey semi-detached house with a hipped roof, the ridge of which is at approximately the same height as the appeal property. Somerhill Lodge, to the east, is a relatively modern block of flats comprising a basic three-storeys in red brick with a complex arrangement of one- and two-storey residential units above this base. This block forms a terminal vista when looking north along Lansdowne Place. The configuration of units on the top of Somerhill Lodge, combined with the effect of the slope along this part of Lansdowne Road, results in Somerhill Lodge appearing significantly higher and bulkier than Kitilear Court in the streetscene.
 5. The development proposed would involve the addition of a further floor to Kitilear Court. This would be contained within a mansard roof stepped in some 600mm from the current brick elevations, and partly hidden behind an extended rendered band above the third floor windows. This band would reflect a similar band at the top of the third floor of Somerhill Lodge. The windows within the front (south-facing) elevation of the mansard roof would be set centrally above the windows in the existing front elevation.
 6. In my opinion, the current appearance of Kitilear Court as a somewhat plain rectangular block with a flat roof, adds nothing to the existing character of this part of Lansdowne Road. I consider that the construction of an extra floor within a mansard roof would add some interest to its appearance, and would help to create a more appropriate stepped down approach to the roof line between Somerhill Lodge and No 17 Lansdowne Road. Views of the appeal property from both directions along Lansdowne Road are limited by virtue of the dominance of Somerhill Lodge and the existence of mature and semi-mature trees along the north side of the road. Furthermore, from the Conservation Area in general, and from Lansdowne Place in particular, it is Somerhill Lodge that is the dominant visual feature, and there is only a limited view of the appeal property from the very northern end of Lansdowne Place.
 7. For the above reasons, I find that the proposed development would enable Kitilear Court to integrate well into its immediate surroundings and would not harm the character and appearance of this part of Lansdowne Road. Furthermore, I have had regard to the fact that the appeal site lies adjacent to the northern boundary of the Brunswick Town Conservation Area and the requirements under Section 72 of the Planning (Listed Buildings and
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Conservation Areas) Act 1990 that special attention be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. In this specific case, I do not consider that the proposed additional storey would have any adverse effect on the setting of the Conservation Area, and to that extent would preserve its character.

8. In the light of the above, I find that the proposal would not conflict with saved policies QD1, QD2, QD14, or HE6 of the Brighton and Hove Local Plan 2005 (LP). I have added a condition relating to the materials to be used in the development in order to protect the visual amenities of the area. I have also added a condition relating to sustainability measures to be incorporated into the design of the additional flats, in order to ensure that the proposed design, including measures outlined in the design and access statement, makes the development sustainable and resource efficient. I do not consider a specific condition relating to Lifetimes Homes Standards to be necessary in this case.

Other Matters

9. The Council has suggested a condition relating to the provision of sustainable transport infrastructure. In the context of a development of the scale proposed, I find the wording of this condition unacceptably vague. It would appear from a consultation reply provided by the transport planning section of the Council that this relates to a Local Transport Plan and policies within the LP of which I have no copy. The consultation reply indicates that small-scale developments might be expected to contribute towards the provision of sustainable transport infrastructure dependent on the scale of the development and its likely impact on the existing transport infrastructure. However, it is not possible to require a financial contribution by way of a planning condition. A Section 106 obligation would be needed in such a case.
10. Circular 05/2005: *Planning Obligations*, advises that they are intended to make acceptable a development which would otherwise be unacceptable in planning terms. I have been given no explanation of the impact that the formation of the additional units would have on existing transport facilities, although the Council has indicated that the development would not be significantly harmful to highway safety. In the light of the limited information before me, and no evidence of negotiations between the Council and the appellants on the matter, I am not persuaded in this case that contributions are necessary to make the proposal acceptable. I have, however, added a condition relating to the provision of cycle parking, in the interests of encouraging travel by means other than private motor vehicles.
11. Concern has been expressed by the occupier of 17 Lansdowne Road that the additional storey would result in increased overshadowing of her property. The appellants have provided "Sun studies" that indicate that any additional overshadowing would be insignificant. The Council concurs with these findings and, in the light of the orientation of the property together with the slope and set-back design of the mansard roof, so do I.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 18 June 2009

by **J D Westbrook BSc(Hons) MSc MRTPI**

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

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

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

Decision date:

Appeal Ref: APP/Q1445/A/09/2097789

Blind Busker Public House, 75-77 Church Road, Hove, BN3 2BB

- 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 Bay Restaurant Group Ltd against the decision of Brighton and Hove City Council.
- The application (Ref BH2008/02651), dated 4 August 2008, was refused by notice dated 5 January 2009.
- The development proposed is two new jumbrellas to the front decked area and the erection of a new half-glazed timber screen to the perimeter of the existing decking.

Decision

1. I dismiss the appeal.

Main issue

2. I consider the main issue to be the effect of the proposed screen and jumbrellas on the character and appearance of The Avenues Conservation Area.

Reasons

3. The appeal property is a bar/restaurant situated within a terrace of properties on the north side of Church Road. Church Road is a busy commercial street with a range of retail units, as well as a number of A3, A4 or A5 units. The property also lies within The Avenues Conservation Area. The Conservation Area in general comprises a variety of architectural styles, but typical features include bays, balconies and canopies, with boundaries marked by low walls – many with railings above. Properties either side of the Blind Busker exhibit a number of these features.
4. The Blind Busker is a double-fronted bar/restaurant with a horizontal fascia above new and redesigned bay windows. Above the fascia, the upper two floors appear as original and match those of the neighbouring buildings. There is a raised wooden decking area, with seats and tables, to the front of the property across approximately two thirds of its width. The boundary of the decking area with the rear of the pavement is marked by flower boxes, whilst the boundaries with neighbouring properties are marked by low railings and wooden trellis panels. The proposal would involve the erection of a wood and glazed screen around the decking area, and the fixing of two jumbrellas on the decking. The panels would be some 1.5 metres high.
5. In my opinion, the proposed screen, which would have a wood base with glazed panels above, would be out of character with other boundary treatments in the vicinity in terms of height, design and materials used. I find, therefore, that it would be detrimental to the character and appearance of The Avenues Conservation Area.

6. There is an existing planning permission, granted in 2007, for the addition of two retractable canopies to the front elevation. These would apparently extend to provide cover to the whole of the external seating area. At the time of my inspection, there were a number of units along Church Road that had canopies extended, and this would appear to be a feature of the commercial area along the road. By way of contrast, I consider that the jumbrellas would represent a modern-looking and alien feature, out of keeping with the character and appearance of the area.
7. The appellants contend that the umbrellas would be necessary to provide cover for customers using the external seating area, and that they would cover a smaller area than the canopies. However, I note the existence of the fall-back situation of the canopies, that would apparently serve the same purpose as the jumbrellas. Furthermore, despite the greater coverage of the canopies, I consider that they would be in keeping with the context of the Church Road part of the Conservation Area, and would comply with advice in the Council's adopted Supplementary Planning Document: *Shop Front Design*.
8. The appellants have provided an alternative plan showing the decking area without the boundary screen, but including jumbrellas with portable bases. The omission of the boundary screen would clearly overcome the harm that it would cause to the Conservation Area, but this would still leave the issue of the unsympathetic appearance of the jumbrellas. The appellants contend that they might be able bring mobile jumbrellas onto the decking without planning permission. If that were to be the case, then that would be an option open to them but, for my reasons stated above, I consider that fixed jumbrellas would be a feature out of keeping with the area.
9. I conclude, therefore, that the proposals would be harmful to the character and appearance of The Avenues Conservation Area, and would conflict with saved policies QD14 and HE6 of the Brighton and Hove Local Plan.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 18 June 2009

by **J D Westbrook BSc(Hons) MSc MRTPI**

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

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

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

Decision date:
3 July 2009

Appeal Ref: APP/Q1445/A/09/2098885

9 Hampton Place, Brighton, BN1 3DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Houlihan against the decision of Brighton and Hove City Council.
 - The application (Ref: BH2008/01784), dated 16 May 2008, was refused by notice dated 3 September 2008.
 - The development proposed is roof extensions at second floor level to provide additional living accommodation for an existing first floor flat.
-

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this case to be the effect of the proposed extensions on:
 - The character and appearance of Hampton Place, including the effect on the character and appearance of the Montpellier and Clifton Place Conservation Area, and
 - The living conditions of the occupiers of No 11 Hampton Place, by way of outlook and privacy.

Reasons

3. The appeal property comprises a tea-rooms on the ground floor and two residential units on the first floor. Access to the residential units is from the side of the property, alongside of which runs an access road to a Waitrose supermarket car park located to the rear. The residential unit to the front of the first floor is apparently a studio flat. The residential unit that is the subject of this appeal is to the rear of the first floor and is described as a two-bedroom flat, though the plans of the property as existing do not indicate any living room. In my opinion, the flat would be more accurately described as having one-bedroom.
 4. The property is L-shaped, and wraps around the rear of No 11 Hampton Place. The rear portion has a single storey element, shown as a dining area for the tea-rooms on the ground floor, and a two storey element that contains the one-bedroom flat. The dining room has a sloping glazed roof. The submitted plans show this as being converted to a flat roof or terrace. The living room of the proposed extended flat would have a window overlooking this flat
-

roof/terrace, though since there has not been any north-facing elevations submitted, it is not clear whether this window would be full length or somewhat smaller.

5. The development proposed would involve the construction of an additional floor above the existing one-bedroom flat to provide two bedrooms and a bathroom. This floor would be contained within a mansard roof that would have four dormer windows to both north and south elevations. The south elevation of the mansard roof would be partly set behind a raised façade that would have a rendered wall and feature panels. Although there is no north elevation supplied, from the rear elevation drawing submitted, it would appear that the north elevation of the mansard roof could be similarly set behind a raised façade. The south facing façade would be raised by somewhat over 1 metre to continue the existing line of the top of the side elevation at the front portion of the property. The height of the existing chimney in the centre of the property would be raised by a little over 0.5 metres to bring it above the level of the proposed mansard roof. Another chimney to the rear of the property would be removed.
6. No 9 Hampton Place lies outside of the Montpellier and Clifton Place Conservation Area, although the adjacent No 11 is within the conservation area and is also a listed building. Hampton Place slopes down from north to south, such that the properties are stepped down the slope towards the appeal site. This is a characteristic feature of the area. There is also a slight slope running down the side of No 9 from east to west, and the rear portion of the property is lower and appears subservient to the front portion when viewed from Hampton Place. The addition of the second floor would raise the height of the rear portion of the property to a level above that of the front portion and, in my opinion, this would alter the relationship of the two portions of the property to an extent that would be detrimental to the stepped-down character of the northern end of Hampton Place.
7. The appellant contends that the listed buildings in the vicinity of No 9, and within the conservation area, are significant only for their front façade. Nevertheless, the buildings as a whole create a consistent character to Hampton Place and, although No 9 is outside of the conservation area, I consider that its setting at the southern end of the terrace, on the western side of the road, is important to the context of the area. It would appear that most of the properties on the western side of Hampton Place have extensions at the rear, but that these are small in scale. By contrast, the proposed additions at No 9 would appear over-dominant when seen in the context of the front portion of the property, and also when seen from the rear against the rear elevations of the adjacent buildings within the conservation area.
8. The appellant also contends that the design of the mansard roof conforms to recommendations in the Council's Supplementary Planning Guide note 1: *Roof alterations and extensions*. The design may well conform to these guidelines, but this does not alter my finding that the proposed additional floor in the roofspace would create an over-dominant element within the context of the area as a whole. In this respect, I consider that the proposal would be detrimental to the character and appearance of the Montpellier and Clifton Place Conservation Area, and Hampton Place in particular. It would conflict

with saved policies QD1, QD2, QD14 and HE6 of the Brighton and Hove Local Plan (LP), and would not preserve or enhance the character or appearance of the Conservation Area.

9. With regard to the effect on the living conditions of the occupiers of No 11, I note the comments of the appellant that the mansard roof would be set back from the existing elevation. However, it would appear that in the vicinity of the rear patio and decking of No 11, this set back would be only some 0.5 metres at a maximum. Furthermore, although there has been no north elevation submitted, it would appear from the rear elevation drawing that the mansard roof could be set behind a raised wall, and that, if this were the case, then the occupiers of No 11 would have a view of a much higher blank wall with part of a mansard roof above. I consider that, with or without the raised side wall, this would be harmful to their living conditions by way of an overbearing outlook and would conflict with saved policies QD14 and QD27 of the LP.
10. Concern has been expressed that residential use of the proposed flat roof/terrace, shown on the submitted plans at the rear of the property, could also result in loss of privacy to the occupiers of No 11. Without a north elevation I am unable to determine whether or not there would be easy access to this area for the occupiers of the proposed extended flat. Such access could potentially be controlled by condition, but in the absence of the necessary information on the plans, I cannot comment further other than to state that the potential for such use of the flat roof/terrace merely adds to my concerns about the likely effects of the proposal on the living conditions of the occupiers of No 11.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 19 June 2009

by **J D Westbrook BSc(hons) MSc MRTPI**

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

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

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

Decision date:
22 June 2009

Appeal Ref: APP/Q1445/A/09/2096350 49 Hill Drive, Hove, BN3 6QL

- 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 Rob Starr against the decision of Brighton and Hove City Council.
- The application (Ref BH2008/01385), dated 3 April 2008, was refused by notice dated 29 July 2008.
- The development proposed is an additional storey to form 4 bedrooms.

Decision

1. I allow the appeal and grant planning permission for an additional storey to form 4 bedrooms at 49 Hill Drive, Hove, BN3 6QL, in accordance with the terms of the application Ref. BH2008/01385, dated 3 April 2008, and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the south-west and north-east elevations.

Main issue

2. I consider the main issue in this case to be the effect of the proposed additional storey on the character and appearance of Hill Drive.

Reasons

3. No 49 is a detached house located on the south-eastern side of Hill Drive. Hill Drive slopes steeply up from south-west to north-east. The properties in the vicinity of No 49 slope steeply down from the rear of the plot to the road. There is considerable variation in the design of the dwellings along Hill Drive and, in the vicinity of the appeal site, there is no clearly established building line, although most properties are set well back from the road. There is, however, a consistent stepped down nature of the roof lines along the road, albeit with a wide variety of roof types and styles.

4. The main body of No 49 is effectively a bungalow following an approximate building line formed by Nos 47 to 53. There are two projecting front extensions to the appeal property which, because of the sloping nature of the plot, are two storeys high, and have half-hipped roofs with ridge lines at the same height as that of the main body of the dwelling. These projections follow an approximate building line formed by Nos 35 – 41. No 47 is currently under construction and, although it would appear that work has been halted for some time, if the property were to be completed it would appear from the approved plans that it would be a 2/3 storey house with a ridge line at approximately the same level as that of the current No 49. No 51 is a two-storey house set some 2 metres above the level of No 49.
5. Since the site slopes up significantly from the road, the front projections of No 49 appear prominent, and the ridge of the main body of the house is seen as lower than the roofs of the forward extensions. The proposed additional storey would result in the property having a new two-storey element following the approximate building line of Nos 47 and 51. The proposed new roof would result in the roof profile attaining a more balanced stepped down appearance between Nos 51 and No 47. Furthermore, the pitch of the hipped element of the roof would reflect the pitch of the roofs over the front projections.
6. In my opinion, the proposed addition would not appear prominent in the street scene due both to the distance of the addition from the front boundary of the site, and also to the fact that from road level, the front projections would break up the view of the new roof and reduce its visual impact. Moreover, the design of the roof of the additional storey would be in keeping with the rest of the property in terms of pitch and proportion. Finally, I consider that the proposal would result in a greater degree of consistency in the stepped pattern of the roof profile along this part of Hill Drive.
7. In conclusion, therefore, I find that the proposal would not be detrimental to the character or appearance of Hill Drive, and that it would not conflict with policies QD1 or QD14 of the Brighton and Hove Local Plan, or with advice in the Council's Supplementary Planning Guidance note 1: Roof Alterations and Extensions.
8. The Council has accepted that the proposal would not result in any significant detriment to the living conditions of the occupiers of neighbouring dwellings by way of privacy, and I concur with that view. I have, however, added a condition to restrict the construction of windows in the side elevations of the addition, in order to protect the future residential amenities of the occupiers of these dwellings. I have also added a condition relating to the materials to be used in the construction of the proposed addition, in order to safeguard the character and appearance of the area in the vicinity of No 49.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 19 June 2009

by **J D Westbrook** Bsc(Hons) MSc MRTPI

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

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

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

Decision date:
29 June 2009

Appeal Ref: APP/Q1445/A/09/2099278

21 Nanson Road, Brighton, BN1 9GJ

- 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 Ms Joyce Edmond-Smith against the decision of Brighton and Hove City Council.
- The application (Ref BH2008/03054), dated 15 October 2008, was refused by notice dated 10 December 2008.
- The development proposed is the construction of a new dwelling.

Decision

1. I allow the appeal and grant planning permission for the construction of a new dwelling at 21 Nanson Road, Brighton, BN1 9GJ, in accordance with the terms of the application Ref. BH2008/03054, dated 15 October 2008, and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no extension, enlargement or other alteration of the dwelling hereby permitted shall be carried out without the express permission of the Local Planning Authority.
 - 3) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of the dwelling hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the dwelling hereby permitted and shall thereafter be retained for use at all times.
 - 4) The dwelling hereby approved shall not be occupied until a Building Research Establishment issued Final Code Certificate confirming that the dwelling as built has achieved a Code for Sustainable Homes rating of Code Level 3 has been submitted to, and approved in writing by, the Local Planning Authority.

Main issue

2. I consider the main issue in this case to be the effect of the proposed dwelling on the character and appearance of the area around Nanson Road and Ashburnham Drive.

Reasons

3. No 21 Nanson Road is a semi-detached house located at the junction of Nanson Road with Ashburnham Drive. It has a large side garden and the proposed dwelling would be sited within this garden area. The general area around Nanson Road and Ashburnham Drive is steeply sloping down from west to east. Nanson Road itself slopes down from south to north from its junction with Reeves Hill. It then levels out around the junction with Ashburnham Drive before rising again to the north. Dwellings in the vicinity are largely semi-detached and stepped down the slopes. There is a variety of designs of houses in the area. The junctions of Nanson Road with Reeves Hill/Wolseley Road and Ashburnham Drive have large triangular areas of grass that create a somewhat open feel to the area.
4. The proposed dwelling would be of a different design from any of the surrounding houses and would have a number of modern features, including a range of energy-saving and "environmentally friendly" features, such as solar panels, photovoltaic cells and green roofs. The appellant has indicated that the aim of the dwelling is to achieve Level 4 of the Code for Sustainable Homes, although it would appear that this cannot be guaranteed without further study. It would be a detached house with a part pitched roof and part "green" flat roof, and it would be approximately the same height as No 21, with a similar volume and floorspace.
5. Although most of the dwellings in the vicinity are stepped down the slopes, including Nos 21 and 23 Nanson Road, the appeal site itself is relatively level. Furthermore, because of the amount of open green space around the complex junction area, the proposed house would not be readily seen in the same context as any other houses except Nos 21 and 23. I do not consider, therefore, that the fact that the proposed house would not be stepped down from No 21, would be harmful to the visual appearance or character of the area. Furthermore, the house would be of a similar scale, massing and height to No 21, and would not be out of character in this respect either.
6. The Council contends that the house would not respect the established building lines of Nanson Road or Ashburnham Drive. In my opinion, because of the configuration of the dwellings around the road junctions in the area, the building lines in the vicinity are effectively only formed by one pair of semi-detached houses on Nanson Road (Nos 21 and 23) and one pair on Ashburnham Drive (Nos 37 and 35). The proposed dwelling would be forward of the building lines formed by these particular properties, but there are a range of building lines along different parts of these roads, and I do not consider that the siting of the proposed house would have any significant adverse effect on the character of the area in this respect. Moreover, the visibility of the house from Ashburnham Drive, below Nos 37 and 35, would in any case be limited by the topography and the existence of mature trees to the rear of the plot.
7. The appeal site is prominent within the area, but this is not a reason to refuse permission for a well designed house. There is already a relatively new detached house on a small but prominent corner plot at No 36A Wolseley Road. Whilst the proposed dwelling would be of a more modern and unusual

design than that of No 36A, I consider that it would be equally appropriate on its plot, and that it would make a positive statement for sustainable design principles in a prominent position, without adversely affecting the basic character or appearance of the area.

8. I conclude that the proposed dwelling would not be out of scale with its surroundings, and that its design would be appropriate for its site and location, particularly bearing in mind the significance of encouraging a more sustainable design of dwellings in the future. It would not be detrimental to the character or appearance of the area around Nanson Road and Ashburnham Drive and would not conflict with saved policies QD1, QD2 and QD3 of the Brighton and Hove Local Plan.
9. I have added conditions relating to the removal of permitted development rights and to the Code for Sustainable Homes in the interests both of protecting the visual amenities of the area, and also because the permitted design, as indicated on the submitted plans, is inextricably linked to principles of resource efficiency and sustainability which should be continued in any future developments on the site.
10. The Council has suggested a condition relating to the provision of sustainable transport infrastructure. In the context of a development of the scale proposed, I find the wording of this condition unacceptably vague. It would appear from a consultation reply provided by the transport planning section of the Council that this relates to a Local Transport Plan of which I have no copy and only relatively little information. The consultation reply indicates that small-scale developments might be expected to contribute towards the provision of sustainable transport infrastructure dependent on the scale of the development and its likely impact on the existing transport infrastructure. However, it is not possible to require a financial contribution by way of a planning condition. A Section 106 obligation would be needed in such a case.
11. Circular 05/2005: *Planning Obligations*, advises that they are intended to make acceptable a development which would otherwise be unacceptable in planning terms. I have been given no explanation of the impact that the construction of the dwelling would have on existing transport facilities, although the Council has raised no objection on highway issues. In the light of the limited information before me, and no evidence of negotiations between the Council and the appellants on the matter, I am not persuaded in this case that contributions are necessary to make the proposal acceptable. I have, however, added a condition relating to the provision of cycle parking, in the interests of encouraging travel by means other than private motor vehicles.

J D Westbrook

INSPECTOR



Appeal Decisions

Inquiry held on 10, 11 & 12 June 2009
Associated site visits made on 9 & 12
June 2009

by **N P Freeman BA(Hons) Dip TP MRTPI
DMS**

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

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

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

**Decision date:
30 June 2009**

Appeal A: APP/Q1445/C/08/2092192 115 St James's Street, Brighton, BN2 1TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Starbuck Coffee Co. (UK) Ltd against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is BH2008/01039.
- The notice was issued on 1 December 2008.
- The breach of planning control as alleged in the notice is the "Unauthorised change of use from A1 (Retail) to A1/A3 Mixed Use following planning refusal BH2008/01039, dated 21/05/08".
- The requirements of the notice are:
 1. Remove all customer seating from the public areas;
 2. Remove all customer tables from the public areas;
 3. Completely cease the A3 operation in that there should be no sales of food and drink for consumption on the premises;
 4. Restore the use of the property back to an A1 retail use in that all sales are for consumption off the premises.
- The period for compliance with the requirements is 6 weeks after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in the terms set out below in the Formal Decision.

Appeal B: APP/Q1445/A/08/2090672 115 St James's Street, Brighton, BN2 1TH

- 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 Starbuck Coffee Co. (UK) Ltd against the decision of Brighton & Hove City Council.
- The application Ref. BH2008/01039, dated 18 March 2008, was refused by notice dated 21 May 2008.
- The development proposed is the change of use from Use Class A1 (retail) to mixed A1/A3 Coffee Shop (sui generis).

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

The enforcement notice

1. There is agreement between the main parties that the wording of the allegation should be varied to read "Unauthorised change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop". I consider that this simplifies the

allegation in a satisfactory fashion and the variation in this respect would cause no injustice to the parties. I will vary the wording accordingly.

2. In terms of the requirements, I will address these under ground (f) should I get to that point. However, I consider that to get the notice in order the fourth requirement should be deleted. This is at odds with the authority of *Lipson v SSE [1976] 33 P & CR 95* where it was held that a notice cannot require a former use to be revived only the unauthorised use to cease and any works carried out solely to facilitate the unauthorised development to be removed. It seems to me that the first three requirements fall into the latter categories. A variation of the notice removing the fourth requirement is therefore appropriate, irrespective of any arguments on ground (f).

The appeal premises and surroundings

3. The appeal premises comprise a 2 storey building located on the corner of St James's Street and Charles Street, within the prime frontage of the St James's District Shopping Centre and the East Cliff Conservation Area. The ground floor is in use as a coffee shop/café, with a preparation area at the rear, and the upper floor is used for ancillary purposes as staff, storage and meeting rooms. The customer entrance is on the corner and there is a separate staff/trade entrance at the end of the Charles Street frontage. Advertisement consent for the existing signs was granted on appeal on 27 October 2008. Planning permission for 4 air-conditioning condensing units, which are located at roof level, was granted on 1 May 2009, subject to conditions concerning noise emissions and acoustic screening. I observed that a screen has already been erected.
4. The use by Starbucks commenced in May 2008 (following completion of a 10 year lease at the beginning of April 2008) and has continued ever since. Until early January 2008 the unit was in use as stationers and had been for a number of years. From the totality of the evidence before me, including information on itemised sales (till receipts), I have no doubt that it is presently operating as a mixed A1/A3 use, with a combination of café and take out trade. I understand that some other local planning authorities may have interpreted Starbucks's use as being solely an A1 use or solely an A3 use. However, I am dealing with the circumstances of this case based on the facts before me. Both the Council and the appellant submit that the use is a mixed A1/A3 use and I have no reason to dispute this or come to any alternative conclusion.
5. No. 115 is located towards the centre of the shopping centre, which is linear in form, and its façade projects forward of the terrace to the west (Nos. 116-121) which makes it more prominent in the street scene than some shops when viewed from Old Steine to the west. It has one of the wider frontages (10.97m¹) onto St James's Street and the floor level is below that of pavement level, particularly at the eastern end. There are also 2 windows facing onto Charles Street. The shopping centre contains a considerable variety of retail and non-retail uses, including a number of convenience goods stores. Planning permissions for the mixed use redevelopment of Nos. 24, 25/26 and 29/30 St James's Street have been granted and the likely developer/occupier of 25/26 is Tesco. Work has not yet commenced on any of these schemes.

¹ Statement of Common Ground (SoCG) – para 7.5

6. There are only a few vacant units, some of which are being marketed. At the times my visits around midday/early afternoon the street had a vibrant air with significant numbers of pedestrians on both sides of St James's Street. Levels of pedestrian activity appeared to tail off from west to east and this is consistent with the western end being closer to the town centre and other local attractions, such as The Brighton Pavilion.

S78 appeal and Ground (a) of S174 appeal

Main issue

7. I consider that the main issue, in terms of the merits arguments, is the impact on the vitality and viability of the St James's Street (SJS) District Shopping Centre and whether the proposal would materially harm its retail function. I will consider this issue in the context of the prevailing local and national planning policies of relevance.
8. I am conscious of the weight of local objection which includes a number of petitions and individual letters. These objections make reference to the claimed harm in retail terms to the shopping centre which I will address under the main issue heading. However, objections are also raised for a number of other reasons, including the multi-national nature of the appellant (not an independent local business), competitive advantage and 'fair trading' policy. Whilst I appreciate that objectors feel strongly about these matters and have a right to express their views upon them, they do not form part of the planning policy tests before me². In this case, I am dealing with the nature of the use and not the particular user or company. The arguments, apart from those bearing on the main issue defined above, are therefore not material to my decision.

Planning policy

9. The development plan includes the Regional Spatial Strategy (RSS) for the South East - the South East Plan - adopted in May 2009. This provides general support for town centres in terms of promoting their vitality and viability and encouraging a wide range of services in a good environment, accessible to all. Brighton itself is identified as a regional hub.
10. The development plan also includes the Brighton and Hove Local Plan (LP) 2005. A number of policies from this plan have been mentioned in evidence, but it was agreed by the main parties that Policy SR5, concerning Town and District Shopping Centres, is the key policy for my consideration. This policy has been 'saved' by a direction of the Secretary of State dated 4 June 2008. The aim of this policy is to maintain and enhance the defined prime frontage of a number of shopping centres, including SJS. It goes on to set out 4 criteria to be applied when considering changes of use from Class A1 (retail) to A2 and A3 uses in the prime frontage. I will examine these below.
11. Supporting text to Policy SR5 is set out in paragraphs 6.25 and 6.26 of the LP. Paragraph 6.25 indicates that Town and District Centres serve community needs in terms of shopping and a range of non-retail uses such as cafes. A

² Paragraph 1.7 of PPS6 states "It is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation"

more flexible approach is advocated, due to economic downturns and increased competition from out-of-centre retailing to help maintain and enhance vitality and viability. However, there should still be a predominance of at least 50% of retail (Class A1) units retained. I take this as applying to the centres as a whole and no other figure is given for parts of centres.

12. There is no other amplification of how to apply the policy and I understand that there is no Supplementary Planning Guidance (SPG) or Document (SPD) which provides further details or explanation of how Policy SR5 should be interpreted. I can therefore only interpret the policy on the basis of its actual wording and the supporting text.
13. I have taken account of the national policy guidance of relevance especially that contained in Planning Policy Statement (PPS) 6: Planning for Town Centres. The Government's key objective for town centres is to promote their vitality and viability³ and other objectives which flow from this are to enhance consumer choice by providing a range of shopping, leisure and local services for the entire community and to support efficient, competitive and innovative uses of this type⁴. Of particular relevance is paragraph 4.4 of PPS 6 which is headed "Measuring Vitality and Viability : Health Checks" which I shall consider below.
14. I have had regard to the consultation paper PPS 4: Planning for Prosperous Economies. This is intended to replace PPS6 but is only in draft form at present and cannot therefore outweigh the current extant advice in PPS6 at this time. Nevertheless, I do not see any specific tension between these two documents as applies to this development and the advice in PPS4 is consistent with the thrust of PPS6 in advocating the definition of primary and secondary frontages in town centres with policies making clear which uses will be permitted in such locations. Primary frontages should contain a high proportion of retail uses while secondary frontages provide a greater opportunity for flexibility and diversity of uses. In my view, Policy SR5 of the LP is generally consistent with the wording of both PPS6 and draft PPS4.

Reasons

15. The approach I shall adopt is to look firstly at Policy SR5 and the criterion applying to changes of use from A1 retail. It is common ground between the main parties that this is the development plan policy against which the development needs to be judged. It is also common ground that failure to meet any one of the 4 criteria would amount to a breach of policy and that, applying the statutory test⁵, the appeal should then be dismissed unless material considerations indicate otherwise. Having considered the policy in the light of the evidence submitted, I will then move on to look at other material considerations, including the mixed nature of the use, the health check guidelines from PPS6 and the attitude of the Council towards other mixed A1/A3 uses in the District Centre.

³ Para 1.3 of PPS6

⁴ Para 1.4 of PPS6

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004

Policy SR5

Criterion (d)

16. I will start by dealing with criterion (d) which concerns the amenities of nearby occupiers. It is no part of the Council's case that this is contravened. Some local residents, including the occupier of 5 Charles Street who spoke at the inquiry, raised concerns about noise nuisance emanating from deliveries to the premises and the air-conditioning units. On the latter, I note that planning permission has now been given for these units subject to conditions which in my opinion provide the necessary degree of control and can be enforced. As I have already said, an acoustic screen has been erected as a baffle to noise emissions. On the former, the appellant is agreeable to a condition which restricts loading and unloading to SJS to certain times. This would preclude the use of Charles Street for deliveries which I understand has been a source of significant disturbance in the early hours of the morning. I will return to the details of any condition below but I am satisfied that a conditional planning permission would ensure that the requirements of criterion (d) are met.

Criterion (a)

17. I turn then to criterion (a) which requires a clear predominance of Class A1 uses to be maintained. There were conflicting submissions on the interpretation and scope of this test. For the Council it is argued that clear predominance should be applied to the prime frontage as a whole and also in the sense of parts of that frontage, where concentrations of non-retail use may exist. This was said to be justified on the basis of the professional approach adopted by the Council's experienced policy officers. For the appellant, the submission is that nowhere in the policy or any supporting text or any SPG is the interpretation that the test applies to parts of the centre or sections of the frontage made out. The Council draw attention to a previous appeal decision at 128 SJS to support their contention. Both main parties are in agreement that the comment in paragraph 6.25 that there should still be a predominance of at least 50% of retail units retained, applies to the District Centre as a whole.
18. Helpfully Sections 7.3 and 7.4 of the SoCG provide some agreed figures on the numbers of units in the centre as a whole and the prime frontage in retail and non-retail use. These figures have then been converted into percentages. Starting with the centre as a whole the present position, on the basis that No.115 has a present lawful use for A1 purposes, is that 58%⁶ of the units are in retail use. Should this appeal be allowed the swapping of one unit from retail to a mixed use would reduce the number of units in A1 use to 57%. Both main parties accept that this equates to a predominance of over 50% in line with the supporting text at paragraph 6.25.
19. As far as the prime frontage as whole is concerned the number of units in A1 use presently stands at 64%⁷. Should the appeal be allowed the percentage figure in retail use would drop to 63%. The planning witness for the Council said that her interpretation of 'clear predominance' would be a figure ideally of

⁶ 131 units in total in SJS District Centre of which 76 are in A1(retail) use and 55 in non-retail use (vacant units included in these figures)

⁷ 91 units in total in SJS prime frontage of which 58 are in A1 (retail) use and 33 in non-retail use (vacant units included in these figures)

- over 60% or at least approaching that figure. In my view this has to be a matter of personal interpretation as there is nothing within the policy which actually sets down a numerical limit. However, the fact that the policy at criterion (a) uses the words "clear predominance" as opposed to just "predominance" suggests to me that the percentage should be more than just over 50%. In this case I consider that the figure of 63% would still show a clear predominance of A1 uses in the prime frontage as a whole – a view which is consistent with both the appellant's and the Council's submissions.
20. Turning to the final argument put forward by the Council in respect of this criterion, namely the need to examine parts of frontages, I can find no support whatsoever for this in the policy itself or the supporting text. The Council may wish to apply this test but the question that I need to answer is whether the policy provides any clear justification for such an approach. I can find none. The assertion that the Council's professional officers "drill down" in order to apply the test and in so doing exercise judgement, which they are quite used to doing, is no defence. For the policy to be applied and bite as the Council wish it would need to say so. It does not. The Council may wish that it did but it cannot simply make up tests to suit its arguments which seems to me to be what it is doing. In my opinion there is no requirement under criterion (a) to look at parts of frontages and I agree with the submission for the appellants that do so is confusing the application of criterion (b) with that of criterion (a). Consequently, I am inclined to conclude that criterion (a) would be met if planning permission were granted.
21. I have taken account of the views of the Council's Planning Policy Team in terms of consultation responses recorded in the officer's reports on both the planning application by the appellant and the pursuit of enforcement action. Response on the former indicates that criterion (a) is satisfied for the prime frontage as a whole but that there is some concern with the level of non-retail frontage in the area surrounding the appeal site. Response on the latter (by Carly Dockerill) only refers to non-compliance with criterion (b) of Policy SR5 with no mention of criterion (a). The Council submit that this is not a complete statement of her response but I have not been presented with any e-mail or formal note which contains broader comments. The purpose of both reports is to inform the decision-maker when making statutory decisions under the Act and should therefore be comprehensive in identifying harm. The policy comments in both reports do not state in terms that criterion (a) is contravened and this adds weight to my conclusion that it is met.
22. Despite this finding, I have gone on to consider what the percentage breakdown would be if the frontage between Old Steine and Madeira Place is chosen, which I find to be a totally arbitrary length of frontage to pick. The corrected figure as accepted by both main parties is that, if the appeal were allowed, there would be 10 units in retail use and 10 in non-retail use (50%) each. Whilst this would not be a clear predominance (which I have already concluded is not the policy test for parts of the prime frontage) it would still leave half the units remaining in retail use.
23. My attention was drawn to a decision of a colleague Inspector who dismissed an appeal for the expansion of the amusement centre at 126/127 SJS into No. 128. At paragraph 9 of her decision she looks at a section of SJS at the western end (Nos. 122-130) of which 4 out of the 7 units were in non-retail
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use. She also comments on the length of non-retail frontage measuring 25m out of 46m. Her expressed opinion is that a predominance of A1 uses does not presently exist in this part of the prime frontage. Notwithstanding my view that there is no rationale for this approach when applying criterion (a), the situation before me is not the same as a 50/50 split remains even if the frontages chosen by the Council are considered rather than the majority being in non-retail use. Overall, I find that the Council's approach, even allowing for the appeal decision on No.128, is contrived. Bringing these points together, I conclude that criterion (a) would be met if planning permission were granted.

Criterion (b)

24. The application of criterion (b) has also led to differences of opinion as to the length of shopping frontage that should be measured. No definition of the words "shopping frontage" is given in the policy itself or the supporting text so this does not assist. The Council submit that the length of frontage should be limited to the continuous terraces or parades between streets and should not be carried over where streets intervene causing breaks. My attention was drawn to the Council's plan showing the defined prime frontages which do not include the streets in support. For the Council it is asserted that the calculations of frontage length should be carried across intervening streets but that the width of the street itself should be excluded. As I pointed out, a third alternative would be to include the street width as well but no party suggested that this approach should be followed.
25. As I have already said there is no guidance at the local level that I can apply and I do not consider it would be right to import the guidelines from other local planning authorities as was suggested for the appellant (Westminster City Council's framework). There is nothing at the national level which assists in terms of the specifics of calculation. I am inclined to favour the Council's approach bearing in mind that a street in itself causes a break in frontage continuity which would add to the overall gap between retail uses, where non-retail uses separate. On this basis, it was accepted as common ground that the combined width of the non-retail frontage would be 15.29m⁸. The road width of Charles Street at 5.27m is excluded. Criterion (b) requires the non-retail frontage to not exceed 15m. It was conceded for the appellant that if the Council's approach to calculating frontage length was accepted then this criterion was breached and this in itself amounted to conflict with Policy SR5. I agree, and find that this is the case. The fact that the breach is only of the order of 0.29m does not mean that it can be ignored but I will have regard to the quantum of this figure when looking at other material considerations.
26. I deal here with one other related point. The appellant cites an earlier appeal decision relating to 118 SJS where the Inspector referred to the 15m limit as a "useful guideline". I am conscious, however, on reading this decision as a whole that it was taken at a time when the LP was at a draft stage. The policy at that time was numbered SR6, which became Policy SR5, but when the decision was made it did not have the status of an adopted policy as now applies in terms of SR5. This has a significant bearing in that the present

⁸ No.115 (Starbucks) = 10.97m; No.114 (hot food take-away on opposite corner of Charles Street) = 4.32m; total 15.29m

policy is not just a "useful guideline" but an adopted policy with the full weight afforded by s38(6) of the Act.

Criterion (c)

27. The final criterion to consider is (c) which states that it (*the development*) would have a positive effect on the shopping environment of the area by encouraging combined trips and attracting pedestrian activity to the centre. For the appellant, I have been provided with surveys of pedestrian flows in SJS and relative patronage of 7 outlets, including Starbucks⁹. I also have details of pedestrian flows and patronage at the Hertford and Swindon branches of the company. Whilst they have some general relevance as background material, as the circumstances there are accepted as not being the same, I do not place any significant weight on the findings in these locations. I also have on behalf of the appellant results of a questionnaire survey of 200 customers conducted within the appeal premises.
28. The Council have provided no survey information of their own. For the third party objectors I have details of a questionnaire survey of 46 passers-by conducted by Cllr. Fryer at different dates and times. There is also some survey information from her and another local resident seeking to assess the breakdown between drink/eat in and take out trade. Set against this I have records of till receipts provided by the appellant for the period from June 2008 to March 2009 giving a breakdown of drink/eat in and take out sales¹⁰.
29. I start by analysing figures on pedestrian flow and patronage. The survey conducted for the appellant on 2 days in March shows that just over 2,000 people were passing the appeal premises on each of these days with an average of 13% visiting to make a purchase (patronage). In terms of footfall this figure compares favourably with results of footfall outside the other 3 A1 shops on the south side of SJS¹¹. It was argued for the Council that the footfall fell between the Sussex Beacon Charity Shop (No.130) at the western end of SJS to that outside the appeal premises but then rose again at the chemists (No.109) to the east. I do not consider that there is a marked drop and the range is limited with the pedestrian flows being from around 2,000 to 2,400 outside all 4 units surveyed on the south side of the street. On this basis alone I consider that the use by Starbucks is not acting as a material deterrent to pedestrian flow. Indeed, the footfall measured is generally consistent with what is occurring outside other shops in the street.
30. I have considered the much higher levels of footfall measured outside the 3 shops on the north side of the street¹². However, it appears that more people are using this side of the street for a number of reasons (wider pavement, pedestrian crossing point of Old Steine (from town centre) leads into north side, location of national chains/multiples, longer frontages). It is not therefore appropriate to compare these figures as they are not representative of the

⁹ Survey carried out by PMRS on Tuesday 24th and Wednesday 25 March 2009 between 09.00 and 17.00 – The survey points were outside 3 outlets on the north side of SJS (MIND charity shop, Boots chemists & The Money Exchange) and 4 on the south (Sussex Beacon charity shop, Stephen Bower chemists, a bakers and the appeal premises); the positions are spread from one end to the other of the Centre

¹⁰ SoCG – App 13

¹¹ The range of footfall is from 2,034 (Starbucks – Tues 24th) to 2,374 (Stephen Bower chemists – Wed 25th)

¹² The range of footfall (north side units) is from 10,092 (MIND charity shop – Tues 24th) to 3,574 (The Money Exchange – Wed 25th)

characteristics prevailing on the south side. It is also a reasonable conclusion based on the survey information and my own observations that there are higher flows and more pedestrian activity at the western end of SJS, closer to Brighton Town Centre and Brighton Pavilion, which are major attractors.

31. In terms of patronage, the average for Starbucks is 13% of passing footfall which is the second highest of all 7 outlets surveyed with only Sussex Beacon Charity shop showing a higher figure at 20%. I do not consider this to be surprising given the position of the latter at western edge of the Centre, closest to Old Steine. For the Council, there was some criticism of the types of shop or use chosen but I consider that the units surveyed are a reasonable mix of uses found within the Centre. I agree with the conclusion for the appellant that the results show that the appeal use is a significant attractor of pedestrian activity in SJS and that the patronage levels are relatively high compared to other uses surveyed. As a consequence, the use can only realistically be seen as one which contributes to pedestrian activity and vitality during the normal working day. Certainly, there is no evidence that the use has acted as a deterrent to pedestrian flows or that pedestrian activity has been stifled since its introduction.
32. As far as encouraging linked shopping trips is concerned, I have had regard to the customer survey carried out for Starbucks¹³. This was conducted by a market research expert and I have no reason to doubt the credibility of the methodology or the results. As I have already mentioned, the Council have produced no survey information of their own to set against these findings. The Council have commented that the survey reveals that only 6% were visiting SJS to shop. This is not correct. The 6% (or 12 people) is in answer to Qu.2a "What is the main purpose of your visit to SJS". 35% answered for work, 22.5% for leisure purposes and 18% to visit Starbucks. Qu.2b asked "What else will you be doing in SJS today". The answer to this included a variety of responses but 42 (21%) said for shopping/supermarket and a few other responses mentioned browsing/window shopping (3) and visiting a post office (2), off licence (1) or photo shop (1). So I conclude that over 20% of customers of Starbucks were also intending to visit shops in SJS and I consider that this amounts to a number of combined trips. It should also be noted that it is the vitality and viability of the Centre as a whole that I am concerned with and that combined trips were also noted in respect of other attractors in SJS (e.g. language school, dentist).
33. I have noted the high response (Qu.6a - 83.5%) of customers who consider that Starbucks adds to the vitality of the street but this has to be tempered by the fact that they are customers and presumably the vast majority are supportive of their presence and what is offered. Similarly, I am not surprised that 39% said they would visit SJS more often if they are actual customers already.
34. I have had regard to the survey of Cllr. Fryer which she says excludes those she knows signed the petition opposing the development and anyone she saw entering or leaving the premises. It is not clear to me exactly when these responses were obtained or how objectively the survey was conducted and it was not undertaken by a market research specialist. I accept from the

¹³ KJK Market Research Services conducted 200 interviews of customers on 5th and 6th May 2009

generality of the responses that the majority who live in the area (80% with BN2 postcode) were not in favour of another coffee shop of this size in SJS and wanted more shops. There were also a number of negative comments on the effects of Starbucks on the area. It is claimed by the objectors that this survey shows that the vast majority of local people do not feel that Starbucks has a positive effect on the area. I cannot except this as being the case given the limited number of people interviewed and the fact that those who might have just used or be about to use Starbucks were excluded.

35. Bringing these points together, the test under criterion (c) is whether the use has had a positive effect on the shopping environment encouraging combined trips and pedestrian activity. From the evidence before me this appears to be the case. I have no doubt there are those who would never frequent Starbucks in SJS or anywhere else for that matter for whatever reasons. However, because some feel that way should not be taken as a reason for prohibiting the choice of others. Criterion (c) does not require every person or even a majority to be attracted only for combined trips and pedestrian activity of a material amount to be generated. The evidence supports such a conclusion.
36. I have considered the argument for the Council that the use presents a dead frontage to SJS. I cannot agree. Whilst the goods for sale are not displayed in the window, the presence of people sitting and conversing inside does not present a bland or blank frontage which is typical of some non-retail uses such as an office where screens are erected behind the window to shield workers. I accept that looking down from pavement level into the café may deter some passers-by from lingering but overall the presence of people visible from the street adds to the overall vibrancy and vitality of the area. Moreover, the pedestrian flow figures before me do not suggest that people are avoiding walking past or into the premises. Hence, I do not consider that the dead frontage argument is made out.

Conclusions on Policy SR5

37. In concluding on Policy SR5, I find that the policy is satisfied in all respects save criterion (b) where the limit of 15m of non-retail frontage is exceeded by 0.29m. This means that the development is in conflict with the terms of the policy to this degree and it is necessary to examine other material considerations to see whether they outweigh the harm caused.

Other material considerations

Mixed use – retail element

38. The appellant's evidence on till receipts examined over a 9 month period is that 51% of trade is take out and 49% drink/eat in. I raised the question of whether one take out sale would be recorded as the same as a group sale to say 6 people staying in. However the figures used are monetary values and not individual transactions. On this basis it is clear that retail sales amount to about half of the total sales. Whilst this may primarily be in the form of hot coffee sales (as accepted for the appellant) it is still categorised as a retail use if the drink is taken away. I note that the proportion of take out trade appears to be considerably higher than some of the Starbucks operations or competing coffee outlets in other towns but I have no sound basis for questioning the authenticity of the figures before me, as accepted by the Council.

39. The objectors have carried out their own assessments. Cllr. Fryer's was limited to 7 people seen entering/leaving the premises of which she considers only 2 were purchasing take-out items. I cannot afford this ad hoc survey of 7 people the same weight as the detailed till receipts supplied by the appellant. Another objector (Mr Barrenechea) produced a survey carried out by 2 colleagues standing opposite the appeal premises on 30 April 2009 between 11.27 am and 12.47 pm. Of the 29 persons observed it is estimated that about 24% were taking away and 76% drinking/eating in. Again the sample number is limited and, as submitted for the appellant, confined to a particular time of day which may exclude a greater proportion of take out trade in the early morning.
40. Applying a level of rigour to the evidence presented, I consider that greater weight should be afforded to the more comprehensive survey for the appellant of actual sales. Moreover, even if I was to take the figure of 24% take out trade this is still significant and shows that the use contains a genuine element of retail use. In my view the degree of retail use shown, which is likely to be of the order of about 50%, is a material factor which weighs in favour of granting permission. This opinion accords with that of some other Inspector's whose decisions on coffee shops in other locations have been produced and where the proportion of retail trade was a lower percentage.

Health Check guidelines – PPS6

41. These are found at paragraph 4.4 (p.28) of PPS6. I have already dealt with pedestrian flows and the proportion of retail and non-retail uses. I consider that the centre shows a high diversity of uses with a good range of retail, eating/drinking, leisure and service businesses. I consider that the presence of at least 3 redevelopment sites where planning permissions have been obtained, including one for a Tesco store, demonstrates the potential capacity for growth in retail floorspace and other appropriate District Centre uses. These schemes may not have commenced but I consider that they show a level of investor confidence. Moreover, it was accepted by the Council that Tesco has now obtained a liquor licence and that the redevelopment planned at Nos. 25/26 is likely to proceed.
42. There are not a lot of major multiple retailers in the street but this is the nature of a District Centre; a concentration of such operators is not expected as they would be more likely to be represented in Brighton Town Centre. Nevertheless, the presence of Boots, Somerfield, the Co-op and the likely arrival of Tesco all goes to show that there is representation of some national retailers; there are also a number of independent convenience and comparison goods shops, including a large grocers store at the western end of the street. Vacancies are few (only 6 units out of 131 recorded with the possibility of others at Nos. 84 & 96). A number of these are being marketed (sales boards evident) and 3 of the largest in floorspace terms are subject to the permitted redevelopment schemes, which could preclude any long term letting/occupation.
43. My perception of the Centre is that it is vibrant and lively with few signs of any deterioration or decay. In saying that I am mindful from comparing the Council's 1996 and 2006 Retail Studies that economic performance in SJS has improved dramatically since the mid-1990's not least due to the investment in environmental improvements that have taken place. In 1996 the number of vacancies stood at 30 in the Centre as a whole of which 20 were in the prime

frontage; 22% of the premises were judged to be in poor condition. I also agree with the submission for the appellant that the change in fortunes is likely in some part to be due to the introduction of a more flexible and relaxed policy (as suggested in the 1996 Retail Study) in terms of permitting changes of use from retail to A3 uses.

44. In terms of rents, Cllr. Fryer said she spoke to 2 local traders who claimed that the rent quoted by the appellant (£50,000 p.a.) seemed to be high. One of these traders is said to have commented that another trader opposite the appeal premises running an off-licence was only paying £7,000 which was estimated to have about a quarter of the floor area of No.115. This is second or third hand evidence from people who were not called to give evidence at the inquiry to substantiate their claims. I have no objective analysis to show that the rent paid by Starbucks is excessive compared to others in SJS. Moreover, even using the figures given, a proportionate figure of rent for a quarter of the floorspace would be £12,000. The nature of No.115 with its broad frontage and projecting façade may provide good reason for why this unit attracts a higher proportionate rent of this order.
45. There is no evidence to show that since the introduction of Starbucks, rents have risen dramatically or that local traders have been forced out of business as a consequence. The level of vacancies (about 5-6%) is low and this suggests that interest in retail units in this location remains high. It was not suggested that there are long term problems in re-letting floorspace and, as I have already said a significant number of the vacant units are awaiting redevelopment which is under active consideration.
46. I have been presented with some anecdotal evidence regarding conversations between Cllr. Fryer and traders from 6 shops in SJS about current trading conditions. Again, as they did not appear to speak at the inquiry, I can only afford the claimed comments limited weight. 3 indicated that sales had remained the same over the past year, one that sales had dropped slightly and the other 2 that sales had gone down by about 50%. It has to be borne in mind that this is in a climate of severe recession; that 4 traders have either maintained their position more or less suggests that SJS is a relatively good trading location to be in at present. Overall, and bearing in mind that there could be many reasons for trade declining at the other 2 shops, I do not find this evidence as being indicative of harm to trading caused by the presence of Starbucks.
47. In conclusion, my findings on the application of the health checks is that they reveal that SJS has a relatively high level of vitality and viability and there is little sign of this being undermined by the presence of Starbucks over the past 12 months. The Centre appears to me to be robust and is a location where considerable investment is currently being contemplated. This is not a failing centre in any sense but one which I consider is performing remarkably well given the present national economic circumstances. These findings weigh in favour of granting planning permission.

Other mixed A1/A3 uses in SJS District Centre

48. The appellant's agent has drawn attention to the existence of 4 premises¹⁴ within the Centre which appear to contain a significant level of eat in café trade. Three of these have no planning permission for anything other than A1 use and another (No.100) had an appeal dismissed for A3 use but subsequently obtained conditional permission for a mixed A1/A3 use subject to the A3 use being confined to the rear garden. I have evidence from the appellant of the number of covers or seats provided within these premises all of which are significant and in my view go well beyond what could reasonably be argued as ancillary to A1 use.
49. I made my own observations at the premises. The Tea Cosy describes itself as a "Tea Room" and I could see a substantial number of tables and chairs through the window. It was said for the Council that 'memorabilia' is sold but I gained the impression from the described use and layout that it is functioning primarily as a café. I should add that the fact that it is independent and sells mainly tea rather than coffee is not a good reason for drawing a distinction from Starbucks in terms of the application of planning policy.
50. Options Deli had 5 tables and 5 bar stools in the front of the premises and therefore is providing considerable scope for eat in trade beyond what could reasonably be seen as *de minimis*. The Cherry Tree provides about 10 seats and 4 people were eating a meal at the time of my visit. Again this is indicative of an element of A3 use. Destination 100 appears to be operating in conflict with the imposed use condition as there are 5 tables and 10 chairs for eat-in customers in the front part of the shop, clearly visible through the window.
51. I am not considering the lawfulness of the uses taking place and it remains a matter for the Council to consider whether it is expedient to take enforcement action. Nevertheless, the circumstances I observed suggest that the Council may be acting inconsistently in its application of its retail policies in SJS. The fact that the planning authority appears to be tolerating significant levels of A3 use in other shops, including one where a previous appeal for such a use was dismissed and the conditional permission subsequently granted is not being complied with, does smack of partiality. Putting it another way, the Council does not appear to be unduly troubled by the existence of these mixed A1/A3 uses in the Centre and this adds weight to the argument in favour of a similar mixed use at the appeal premises.
52. I have taken account of the lack of marketing that took place of the appeal premises after the stationers vacated and before Starbucks moved in, having entered into a lease. I agree with the Council that this did not give any opportunity for interest in re-occupation by an A1 use to be considered. It may be that such a use would have come forward and the relative good health of the Centre suggests that this was certainly a possibility. I say this notwithstanding the general views of surveyors representing the appellant on current difficult letting conditions in Brighton as a whole¹⁵. However, there is no policy which says that No.115 must remain in retail use or that a diversity of uses cannot be beneficial to the Centre as a whole in terms of vitality and

¹⁴ The Tea Cosy - 3 George St; Options Deli - 117 SJS; The Cherry Tree Deli - 107 SJS; Destination 100 - 100 SJS

¹⁵ Letter dated 11 May 2009 from Monatgu Evans to Mr G Thomas (Estates and Construction Manager), Starbucks

viability. Paragraph 36 of C03/2005 concerning the Use Classes Order indicates that coffee shops should be considered on a case by case basis and there is no embargo on such uses in prime frontages.

53. I accept that SJS appears to be well provided with cafés, coffee shops and other eating and drinking establishments. There is no crying need for such a use but that does not mean that another is necessarily unacceptable. The appellant's agent was at pains to say why Starbucks provided a special 'offer' but it seemed to boil down to comfortable seating and leg room. I am not convinced that they offer something so unique that it cannot be found or provided in other establishments and I do not find that this in itself represents a persuasive reason for allowing the appeals. I would accept, however, that Starbucks does provide an attractive café environment (patronage bears this out) which appeals to a number of people, including local people and this adds to the overall vitality of the centre.
54. I have taken account of the number of people who have signed petitions opposing the development, which is said to number of just over 3,000, and the individual letters of objection sent at the application stage (400+). The addresses given show the vast majority living in this part of Brighton. However, it is clear to me that the nature of the appellant, being a multi-national company has generated a lot of animosity for a number of reasons and led to regular protests outside the premises since Starbucks opened. A campaign has been well orchestrated to oppose the use continuing. Notwithstanding these facts, and the potentially intimidatory presence of objectors outside, customers have still chosen to frequent the premises. It was also accepted that even 3,000 signatories is only about 10% of the adult population of the ward (Queen's Park). The remaining 90% are not registered as objectors. They may not support the development but they have not signalled their opposition. Finally, the weight of objection is not in itself a reason for dismissing the appeals. It is a question of the basis or grounds for objection in planning terms which I believe I have carefully considered above.

Overall conclusions on s78 and ground (a) appeals - conditions

55. The development fails to comply with criterion (b) of Policy SR5 of the LP and this conflict weighs against the granting of planning permission. Set against this the use taking place includes a significant element of retail use and makes a positive contribution towards pedestrian activity and the overall vitality of SJS District Centre which appears in a robust condition at present. There is no clear evidence of any material harm being caused to retailers by the presence of Starbucks trading in the Centre over the past year. In carrying out the necessary balancing exercise under s38(6) of the Act of weighing the harm flowing from the conflict with policy against other material considerations, I am mindful that the breach of policy is limited.
56. Notwithstanding the submissions for the Council, I consider that the extent of any breach should be carefully considered. In this case, the frontage length of non-retail use is only 0.29m above the limit of 15m. This is a very small excess and one which would be barely discernible to passers-by. I appreciate that another Inspector dismissing the appeal for A1/A3 use at 100 SJS¹⁶ where

¹⁶ APP/Q1445/A/06/2032138 – 100 St James's Street – Appeal dismissed 22 May 2007

the length of non-retail frontage was similar (15.3m) said the upper limit was absolute. However, he records that none of the other circumstances which had been brought to his attention outweighed the harm identified. In this case I consider that there are number of other material considerations which weigh in favour of granting permission. Based on my assessment above I find that there is no conflict with any other part of SR5 or any other local or national policy of relevance. I also have found no other demonstrable harm has arisen or would be likely to arise and that the vitality and viability of the Centre and its retail function is unlikely to be materially prejudiced should planning permission be granted and the use continues.

57. I have had regard to the statutory test in s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the East Cliff Conservation Area. I am satisfied that the use and the associated physical features (shopfront, signs, etc) meet this test by preserving the character and appearance of the conservation area.
58. Taking account of all these conclusions, I am satisfied that although some conflict with Policy SR5 is identified other material considerations indicate that the granting of conditional planning permission is justified and that a departure from strict adherence to this policy is warranted. I do not consider that this would set an unfortunate precedent as the policy itself remains and would still apply when considering any future proposals of a similar nature on their merits. I have had regard to all the other decisions referred to in Brighton, Hove and other towns but none of these alter my conclusions on this particular case.

Planning conditions

59. A list of agreed conditions (with the exception of unloading time restrictions) was tabled at the inquiry. I agree that it is necessary to limit the use of the building to avoid the upper floor being used for customer seating and to restrict the types of food sold to light refreshments only, to accord with the thrust of the retail policies applying. I will impose conditions to this effect. Restrictions on the hours of opening and a requirement that deliveries are confined to St James's Street (not Charles Street) between certain times are also necessary in the interests of the living conditions of nearby residents. As the loading/unloading could only take place in SJS, a busy commercial street containing uses open in the evening, and not the residential side roads, I consider that a reasonable restriction on delivery hours would be between 07.00 and 22.00. A condition is necessary to require details of refuse collection and I will expand this to include a 'backstop' of an appeal in the event that no details are agreed within a requisite period. I do not consider that conditions relating to the air-conditioning units are needed as they have already been imposed on the earlier planning permission that applies to this plant.
60. For the reasons given above I conclude that the appeals under s78 and ground (a) of s174 should succeed and conditional planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered. I will vary the wording of the notice, as described in paragraphs 1 and 2 above, before quashing it.

Formal Decisions

Appeal A: APP/Q1445/C/08/2092192

61. I direct that the enforcement notice be corrected at Section 3 by the deletion of the words under the heading "THE BREACH OF PLANNING CONTROL ALLEGED" and the substitution of the words "Unauthorised change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop". I also direct that the fourth requirement at Section 5 of the notice be deleted in its entirety.
62. Subject to these corrections I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop on the land at 115 St James's Street, Brighton, BN2 1TH subject to the following conditions:
- 1) The first floor of the premises shall only be used for purposes ancillary to the approved A1/A3 mixed use and shall not be used for additional customer seating or floor space.
 - 2) The premises shall only be used for the sale of hot and cold drinks, sandwiches and light refreshments for consumption on or off the premises. No primary cooking of unprepared food shall be carried out on the premises.
 - 3) The premises shall only be open to the public between the hours of 07.00 to 22.00 on Mondays to Saturdays and the hours of 08.00 and 20.00 on Sundays.
 - 4) Loading and unloading of vehicles delivering goods to the premises shall only take place in St James's Street and no other side streets, including Charles Street. The loading and unloading shall only take place between to the hours of 07.00 and 22.00 on any day.
 - 5) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 1 month of the date of this decision details of refuse and recycling storage shall have been submitted for the written approval of the local planning authority;
 - ii) within 9 months of the date of this decision the details shall have been approved by the local planning authority or, if the local planning authority refuse the details, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State;
 - iv) the approved details shall have been carried out and completed within 1 month of receiving written approval and be retained thereafter so long as the use continues.
-

Appeal B: APP/Q1445/A/08/2090672

63. I allow the appeal, and grant planning permission for the change of use from A1 (retail) to the A1/A3 mixed use at 115 St James's Street, Brighton, BN2 1TH in accordance with the terms of the application, Ref BH2008/01039, dated 18 March 2008, and the plans submitted therewith, subject to the same conditions as set out in paragraph 62 above.

N P Freeman

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Morgan of Counsel, instructed by Pegasus Planning Group LLP, 2-10 Kings Parade, Clifton, Bristol, BS8 2RE

He called:

Mr J R Tarzey MRTPI Partner at Pegasus Planning Group LLP

FOR THE LOCAL PLANNING AUTHORITY:

Harriet Townsend of Counsel, instructed by the Head of Law, Brighton & Hove City Council

She called:

Mrs E Thomas MRTPI Senior Planning Officer (Planning Strategy & Projects team) with the Council

Mr C Smith Senior Planning & Investigation Officer with the Council

INTERESTED PERSONS:

Cllr. R Fryer City Ward Councillor (Queen's Park)

Mr J Barrenechea

Dr J Thomas

Mr Edmonds

Mr J Goodey

DOCUMENTS SUBMITTED AT THE INQUIRY

Doc 1 Council's letter of notification dated 20 May 2009 and listed of persons to whom it was sent

Doc 2 Statement of Common Ground (SoCG)

Doc 3 Opening statement on behalf of appellant

Doc 4 Vacant premises schedule (Council)

Doc 5 Letter from Head of Law at the Council (Hilary Woodward) to Pegasus Planning dated 5 June 2009 with attached planning permission re. 29 & 30 SJS dated 16 January 2008

Doc 6 Transcript (Council) re. *R oao Nero Holdings Ltd v SoS*

- Doc 7 Planning permission re. 100 SJS dated 25 February 2009
- Doc 8 Schedule of agreed application drawings
- Doc 9 E-mail from Chris Elphick (DC Planner) to Carly Dockerill (Policy Planner) dated 1 May 2008
- Doc 10 Submissions of Cllr. Fryer (statement and appendices)
- Doc 11 Submissions of Mr Barrenechea (statement, appendices and petition)
- Doc 12 Statement of Dr Thomas
- Doc 13 List of recommended planning conditions
- Doc 14 Closing submissions for the Council
- Doc 15 Closing submissions for the appellant

PLANS SUBMITTED AT THE INQUIRY

Plan A Ground floor internal layout plan - No.115 (Council)

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

Photos showing the interior of No.115 (Council)

NEW APPEALS LODGED

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

WITHDEAN

BH2008/03665
3 Withdean Crescent, Brighton
Loft conversion incorporating 3 no. dormers, 1
no. rooflight, roof lantern, solar panels and sun
pipe.
APPEAL LODGED
17/06/2009
Delegated

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

GOLDSMID

BH2008/02452
Garages at rear of 90 Cromwell Road, Hove
Demolition of existing single storey garages and
construction of one 2-bedroom mews house.
APPEAL LODGED
15/06/2009
Environmental Services Planning Committee

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

STANFORD

BH2009/00189
69 Dyke Road Avenue, Hove
Erection of ground floor rear extension and first
floor side extension.
APPEAL LODGED
17/06/2009
Delegated

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

ROTTINGDEAN COASTAL

BH2007/03454
Land at Brighton Marina
Demolition of Asda superstore to create 3 -10
storey building with enlarged store (3112 sqm
increase) and 2,025 sqm of other Class A1-A5
(retail/restaurant/drinking) uses on ground floor
with 779 residential units above and community
all and new pedestrian/cyclist bridge link from
cliff to roof of building and associated
engineering works. Demolition of petrol
filling station to create 28 storey building with
182 sqm of Class A uses at ground floor and
148 residential units above. Demolition of
McDonalds restaurant to create 5 - 16 storey
building with enlarged drive-thru restaurant
(285 sqm increase) and 131sqm of other Class

A uses and 222 residential units above. Demolition of estates office to create 3-4 storey building of 35 residential units. Demolition of western end of multi-storey car park to create 6-11 storey building adjacent to western breakwater of 117 residential units with stair access from breakwater to Park Square. Demolition of part of the eastern end of multi-storey car park to create single storey petrol filling station, pedestrian footbridge and new lift and stair access. Total: 1301 residential units. Associated car parking spaces (805 residential, 666 commercial), cycle parking (1907 residential, 314 in public realm), servicing, plant, refuse, CHP unit, public and private amenity space, hard & soft landscaping and outdoor recreation areas. Change of use of two A1 retail units (524 sqm) within Octagon to medical use (Class D1). Alterations to vehicular, pedestrian and cyclist access and circulation, including new roundabout and transport interchange behind Waterfront.

APPEAL LODGED
18/06/2009
Environmental Services Planning Committee

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

QUEEN'S PARK
BH2008/03269
14 Dorset Gardens, Brighton
First floor extension and enlargement of dormer. Front and rear rooflights; replacement of casement windows to rear elevation with timber box sash units. Renewal with front elevation units with matching timber box sash windows. Recovering of front roof slope with natural slates. Removal of rear doors to basement and replace with casement windows. Internal alterations to layout of dwelling including installation of bathrooms and kitchens (part retrospective).

APPEAL LODGED
22/06/2009
Delegated

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

ROTTINGDEAN COASTAL
BH2009/00651
25 Oaklands Avenue, Saltdean, Brighton
Outline Application for construction of new two bedroom bungalow with pitched roof.

APPEAL LODGED
25/06/2009
Delegated

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

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

BH2008/03611

41 The Cliff Brighton

Extension to create 2 additional storeys with flat roof over including rooflights, solar panels and roof terrace.

APPEAL LODGED

26/06/2009

Delegated

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

BH2008/03193

39 Roedean Road, Brighton

Demolition of existing three-storey house and erection of three-storey block comprising 7no residential flats with covered underground parking. (Resubmission of BH2007/02824)

APPEAL LODGED

30/06/2009

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****ST. PETER'S & NORTH LAINE**

BH2009/00429

Smart News, 33 Sydney Street, Brighton

Installation of ATM Cash Machine (Retrospective).

APPEAL LODGED

01/07/2009

Delegated

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

BH2009/00626

144 Mackie Avenue, Brighton

Conversion of maisonette (C306) into 4 no. flats (C305).

APPEAL LODGED

29/06/2009

Delegated

WARD**APPEALAPPNUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****PATCHAM**

BH2009/00873

144 Mackie Avenue, Brighton

Erection of a single storey rear extension with roof lights and installation of a new shop front.

APPEAL LODGED

26/06/2009



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES
22nd July 2009

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

46 Dyke Road, Brighton

Planning application no: BH2007/04469

Description: Partial demolition and alterations to existing house and erection of a two storey detached house to the rear.

Decision: Committee

Type of appeal: Informal Hearing

Date: 28th July 2009

Location: Hove Town Hall

107 Boundary Road, Hove & Land to rear 107 Boundary Road, Portslade

Planning application no: • BH2008/03442

• BH2008/03449

Description: • Demolition of existing house and construction of 2-storey building with pitched roof and lightwell to form 7 flats. (Amended Description).

• Construction of new partially sunken 3 bedroom single storey dwelling with flat roof and rooflights.

Decision: Committee

Type of appeal: Informal Hearing

Date: 4th August 2009

Location: Hove Town Hall

Land at Brighton Marina

Planning application no: BH2007/03454

Description: Demolition of Asda superstore to create 3 -10 storey building with enlarged store (3112 sqm increase) and 2,025 sqm of other Class A1-A5 (retail/restaurant/drinking) uses on ground floor with 779 residential units above and community hall and new pedestrian/cyclist bridge link from cliff to roof of building and associated engineering works. Demolition of petrol filling station to create 28 storey building with 182 sqm of Class A uses at ground floor and 148 residential units above. Demolition of McDonalds restaurant to create 5 - 16 storey building with enlarged drive-thru restaurant (285 sqm increase) and 131sqm of other Class A uses and 222 residential units above. Demolition of estates office to create 3-4 storey building of 35 residential units. Demolition of western end of multi-storey car park to create 6-11 storey building adjacent to western breakwater of 117 residential units with stair access from breakwater to Park Square. Demolition of part of the eastern end of multi-storey car park to create single storey petrol filling station, pedestrian footbridge and new lift and stair access. Total: 1301 residential units. Associated car parking spaces (805 residential, 666

commercial), cycle parking (1907 residential, 314 in public realm), servicing, plant, refuse, CHP unit, public and private amenity space, hard & soft landscaping and outdoor recreation areas. Change of use of two A1 retail units (524 sqm) within Octagon to medical use (Class D1). Alterations to vehicular, pedestrian and cyclist access and circulation, including new roundabout and transport interchange behind Waterfront.

Decision: Committee
Type of appeal: Public Inquiry
Date:
Location:

6 Cliff Approach, Brighton

Planning application no: BH2008/03090
Description: Demolition of existing detached house. Erection of apartment building comprising 7 no. self-contained flats, with provision for communal garden, cycle parking and car parking facilities (Resubmission of BH2007/03867).

Decision: Non determination
Type of appeal: Informal Hearing
Date:
Location:

Land rear of 140 – 146 Springfield Road, Brighton

Planning application no: BH2008/03194
Description: Erection of a terrace of 4 no. two bedroom dwellings.

Decision: Committee
Type of appeal: Public Inquiry
Date:
Location:

Garages at rear of 90 Cromwell Road, Hove

Planning application no: BH2008/02452
Description: Demolition of existing single storey garages and construction of one 2-bedroom mews house.

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