



**Brighton & Hove  
City Council**

# Planning Committee

Title:	<b>Planning Committee</b>
Date:	<b>3 February 2010</b>
Time:	<b>2.00pm</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<b>Councillors:</b> Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Cobb, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and C Theobald.  <b>Co-opted Members:</b> Mr J Small (CAG Representative)
Contact:	<b>Penny Jennings</b> Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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## AGENDA

### 198. 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.*

### 199. MINUTES OF THE PREVIOUS MEETING

1 - 16

Minutes of the meeting held on 13 January 2010 (copy attached).

### 200. CHAIRMAN'S COMMUNICATIONS

### 201. PETITIONS

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

### 202. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 27 January 2010)

No public questions received by date of publication.

### 203. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 27 January 2010)

No deputations received by date of publication.

## **PLANNING COMMITTEE**

### **204. WRITTEN QUESTIONS FROM COUNCILLORS**

No written questions have been received.

### **205. LETTERS FROM COUNCILLORS**

No letters have been received.

### **206. NOTICES OF MOTION REFERRED FROM COUNCIL**

No Notices of Motion have been referred.

### **207. APPEAL DECISIONS**

**17 - 42**

(copy attached).

### **208. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE**

**43 - 44**

(copy attached).

### **209. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES**

**45 - 46**

(copy attached).

### **210. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS**

### **211. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST: 3 FEBRUARY 2010**

(copy circulated separately).

### **212. 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**

### **213. 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](http://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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For further details and general enquiries about this meeting contact Penny Jennings, (01273) 291065, email [penny.jennings@brighton-hove.gov.uk](mailto:penny.jennings@brighton-hove.gov.uk) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk).

Date of Publication - Tuesday, 26 January 2010



**BRIGHTON & HOVE CITY COUNCIL**

**PLANNING COMMITTEE**

**2.00pm 13 JANUARY 2010**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Cobb, Davey, Hamilton, Kemble, Kennedy, McCaffery, 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)), Zachary Ellwood (Interim Senior Team Planner), Steve Reeves (Principal Transport Planning Officer), Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

**PART ONE**

**182. PROCEDURAL BUSINESS**

**182A. Declaration of Substitutes**

182.1 Councillor Kemble was in attendance as substitute Member for Councillor C Theobald.

**182B. Declarations of Interest**

182.2 Councillor Kemble stated that he had been approached in relation to Application BH2009/02169, Cambridge Works, Cambridge Grove. He had however not expressed an opinion in relation to the application and remained of a neutral mind and therefore intended to remain present at the meeting during the discussion and debate thereon.

**182C. Exclusion of the Press and Public**

182.3 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 is 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).

**183. MINUTES OF THE PREVIOUS MEETING**

183.1 Councillor Smart referred to page 9 of the minutes stating that he had referred to the advice received from the Environmental Health Department. In his view this was ambiguous regarding potential; health risks and should either be qualified or removed. He wished a statement to that effect to be added to the minutes.

183.2 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 16 December 2009 as a correct record subject to the amendment set out above

**184. CHAIRMAN'S COMMUNICATIONS**

**Web casting**

184.1 That 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.

**Member/Officer Working Group**

184.2 The Chairman explained that a Member/Officer Working Group was being set up to improve the smooth running of the Committee's business and to ensure that Members were involved in planned changes to the planning process. Details would be forwarded to Members.

**Pre Application Meetings**

184.3 The Development Control Manager explained that in order to facilitate consideration of major applications where appropriate, applicants would have the opportunity to give presentations to Members regarding proposed schemes at the pre application stage. It was proposed that presentations would be given following planning site visits in those instances where this was considered applicable. Details would be forwarded to Members.

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

**185. PETITIONS**

185.1 There were none.

**186. PUBLIC QUESTIONS**

186.1 There were none.



**187. DEPUTATIONS**

187.1 There were none.

**188. WRITTEN QUESTIONS FROM COUNCILLORS**

188.1 There were none.

**189. LETTERS FROM COUNCILLORS**

189.1 There were none.

**190. NOTICES OF MOTION REFERRED FROM COUNCIL**

190.1 There were none.

**191. APPEAL DECISIONS**

191.1 The Committee noted the content of the letters received from the planning inspectorate advising of the results of planning appeals which had been lodged as set out in the agenda.

**192. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE**

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

**193. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES**

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

**194. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS**

194.1 Mr Small, CAG, considered that it might be applicable to pay a visit to application site BH2007/04074, Land adjoining 24 Tower Road, Brighton in view of its close proximity to a listed building. Members decided to see the Officer's presentation first however and considered once they had seen it that they had sufficient information to determine the application without the need for a site visit.

194.2 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determining the applications:

Application:	Site Visit Requested by:
BH2009/02331, Land East of West Pier, Esplanade, King's Road (Brighton O Wheel)	Development Control Manager

BH2009/01722, Cardinal Newman School, The Upper Drive, Hove	Development Control Manager
BH2009/01746, Land R/o 43-45 Norway Street, Portslade	Councillor Hyde(Chairman)/Councillor Hamilton
BH2009/02231, Land R/o 21-22 Queen's Road	Councillor Davey

**195. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST: 13 JANUARY 2010**

**(i) SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM COUNCIL POLICY**

**A. Application BH2009/02331, The Brighton O, Land East of West Pier Lower Esplanade, King's Road, Brighton** – Temporary use of land for stationing of 60 metre high spokeless observation wheel (The Brighton O) including a dedicated area for the secure storage of boats.

(1) The Chairman explained that further information had been received from the applicant and that consideration of the application had been deferred in order to enable that information to be evaluated.

195.1 **RESOLVED** – that the position be noted.

**(ii) MINOR APPLICATIONS**

**B. Application BH2009/02939, Land Adjacent to , Recreation Ground, Patcham By Pass, Brighton** - Installation of a 12.5 metre high monopole supporting 3, O2 antennas and 3 Vodaphone antennas, and the installation of 2 equipment cabinets at ground level adjacent to monopole.

(1) The Area Planning Manager (East), Mr Walke detailed the considerations made in relation to the application and its past planning history including the decision of the Planning Inspectorate in relation to an earlier appeal relating to the placing of a mast in the same location. He also made reference to 7 further letters of objection which had been received after the late list had closed. The only considerations in this case were the siting and appearance of the proposed development. Those instances where health concerns could represent a material consideration were set out in the report.

(2) He explained that permission had been granted on appeal earlier that year for a 10m high monopole with 3 antennas and 1 equipment cabinet. The Inspector had found that the proposal would result in no material harm to the living conditions of local residents or visitors, with particular reference to health and safety. The approved development had not been implemented and the current mast sharing application would supersede it. A technical justification had been given for siting the mast at its proposed location. A diagram was displayed showing the areas where signal coverage was greatest.

- (3) Prior to a submission being given by a representative speaking on behalf of local objectors the Solicitor to the Committee responded to points notified by the same objector in advance of the meeting referring to a case which the representative considered held that loss of property value was a material planning consideration. She had looked at the case R. (on the application of Nunn) v First Secretary of State (2005). The case concerned a local planning authority (lpa) whose notice of refusal of prior approval under Part 24 GPDO was received after the 56 day limit. Dr Nunn had claimed that her Article 6 Human Rights Act rights (right to a fair hearing) had been infringed as her representations on health concerns and loss of property value had been ineffective. Although the lpa had accepted that approval should be refused this determination was ineffective because the notice was ineffective. The Court had agreed that Dr Nunn's Article 6 rights had been infringed but the case did not hold that loss of property value was a material planning consideration.
- (4) Mr Lothian spoke on behalf of local objectors referring to the major health and other concerns raised by local residents. Planning Inspectors were not democratically appointed nor in his view independent, whereas Members of the Committee were. Members had refused the previous application having taken account of the overwhelming views of local residents. He urged them to do the same on this occasion, disregard the earlier appeal decision and head the overwhelming weight of public opinion.

#### **Debate and Decision Making Process**

- (5) Councillor Smart referred to the comments received from the Environmental Health Department notably that "the Government recognises that there can be indirect adverse effects on the well being of people in some cases." He remained of the view that this statement implied that there might be an adverse impact, if it was not relevant it should not be included.
- (6) Councillor Wells expressed concern regarding additional on-street furniture, especially the associated equipment cabinets which could cause obstruction or a reduction in the available footway. The Area Planning Manager referred to actual location of the proposed equipment cabinets, their distance from the kerb edge and from the proposed mast. He explained that photographs displayed by the objector did not show anything currently on site.
- (7) A vote was taken and on a vote of 3 to 2 with 7 abstentions Members voted that prior approval was not required.

195.2 **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 that prior approval is not required for the proposed development.

**Note:** Councillors Smart and Wells voted that prior approval was required. Councillors Caulfield, Davey, Hyde (Chairman), Kemble, Kennedy, McCaffery and Steedman abstained. Therefore on a vote of 3 to 2 with 7 abstentions the Committee agreed that prior approval was not required.

**C. Application BH2009/02071, R/o 183 Ditchling Road, Brighton** - Demolition of the 20 existing single storey garages. Construction of 3 two storey, two bedroom dwellings. Conversion of existing storage building to form a further two storey, two bedroom dwelling. To include altered pedestrian/bicycle access and associated landscaping.

- (1) The Area Planning Manager (East), Mr Walke gave a presentation detailing the constituent elements of the scheme by reference to photographs and drawings and sectional drawings, showing the configuration and layout of the site in relation to neighbouring dwellings. He explained that it was considered that the previous reasons for refusal had been overcome and minded to grant approval was therefore recommended. It was noted that the sustainable transport requirement would be £6,000 not £3,000 as set out in error in the report.

#### **Questions/Matters on Which Clarification was Sought**

- (2) Councillor Kemble requested to know the depth of the site in relation to neighbouring dwellings and referred to the narrowness of the access road onto the site and enquired why the fire authority had not been consulted in respect of the application. The Development Control Manager explained that the development would need to meet building control regulations and that on minor developments it had been agreed with the fire authority that they would not be consulted as a matter of course.
- (3) Councillor Kemble also requested to see plans relating to the previously refused scheme and the current one (minded to grant) and to be shown the differences between the two.
- (4) Councillor McCaffery expressed concern regarding potential difficulties for emergency vehicles entering the site and regarding the fact that as no on-site parking was proposed any vehicles associated with the development would be displaced onto neighbouring streets. Confirmation was regarding the current status of the garages and whether they were still in use. She also had concerns given the former use of the site as to whether any measures were required to ameliorate any potential land contamination that might have occurred.
- (5) Councillors Hamilton and Smart sought confirmation regarding current levels of usage of the garages on site and regarding their ownership and whether any works were proposed to the gate piers /walls to the frontage of the roadway onto Ditchling Road. It was explained that the garages had been in single ownership but were sub let and that no works were planned to the piers/walls referred to.
- (6) Councillor Smart also sought confirmation regarding the rationale for no vehicle parking being provided on site. It was explained that parking was not proposed due to the narrow access width which although it had been used in association with the garage use in the past did not meet current safety standards for access/egress nor would there be sufficient space on site to provide an adequate turning circle.
- (7) Councillor Cobb sought confirmation regarding the arrangements and siting of receptacles for collection of refuse from the development. Also, regarding the configuration and dimensions of living accommodation within the proposed units.

Confirmation was also sought regarding the number of residents who would occupy the completed dwellings, but it was explained that this could not be confirmed.

### **Debate and Decision Making Process**

- (8) In view of the number of questions raised by Members relating to the configuration of the site Councillor Hyde, the Chairman enquired whether Members wished to carry out a site visit prior to determining the application but they decided that they did not.
- (9) Councillor Kemble stated that he would be happier to support the application if the applicant could be required to provide a sprinkler system on site. The applicant's agent who was present at the meeting confirmed that they were prepared to explore this option. The Solicitor to the Committee stated that the applicant could not be compelled to provide sprinklers but that their willingness to pursue that option was noted.
- (10) Councillor Smart whilst having some concerns in respect of access/egress arrangements and lack of on-site parking noted that the number of vehicles associated with the proposed residential development would be far fewer than generated by the 20 garages previously on the site.
- (11) Councillor Steedman commended the scheme which he considered represented clever use of a small site, he was happy to support it.
- (12) Councillor Cobb stated that she had a number of concerns, considering that the application represented over development of a dense site which would result in unacceptable levels of noise and light pollution to neighbouring residents whilst constituting loss of the open space in front of the existing garages. In her view it would set a precedent, she also had concerns relating to drainage/removal of sewage and displacement of vehicles associated with the site which would need to park in nearby roads.
- (13) Councillor Caulfield felt unable to support the application as she had grave concerns in respect of access/egress from the site, particularly for emergency vehicles. She did not consider that the proposed dwellings would meet acceptable lifetime homes standards.
- (14) A vote was taken and on a vote 9 to 2 with 1 abstention minded to grant planning permission was given.
- 195.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Obligation and to the conditions and informatives set out in the report. It be noted and approved that the sum to be provided towards sustainable transport is £6,000.

**Note:** Councillors Caulfield and Cobb voted that the application be refused. Councillor McCaffery abstained.

**D. Application BH2009/02391, Land R/o 183 Ditching Road, Brighton – Demolition of 20 existing single storey garages.**

- (1) A vote was taken and on a vote of 10 to 1 with 1 abstention conservation area consent was granted.

195.4 **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 conservation area consent subject to the conditions and informatives set out in the report.

**Note:** Councillor Cobb voted that the application be refused. Councillor McCaffery abstained.

**E. Application BH2009/02169, Unit C, Cambridge Works, Cambridge Grove, Hove – Application for variation of Condition 2 of application 3/85/0104 which states that “the premises shall be used for industrial finishing specialising in plastic and powder coating only” in order to allow the use of the premises for testing, servicing, repair and maintenance of motor vehicles only.**

- (1) The Interim Senior Team Planner, Mr Ellwood gave a presentation detailing the scheme. He referred to the comment received from the Station Manager at Preston Circus Community Fire Station and to the response to it set out in the Late Representations List. It was considered that the proposal would not result in a significant impact on the amenities of neighbouring occupiers or adversely affect the setting of the adjacent Willett Estate Conservation Area. The scheme compensated for the demand for travel which it created and would not result in a significant impact on parking in the area. Following circulation of the Late Representations List 7 further letters of support for the scheme had been received.
- (2) It was explained that the current application related only to the proposed change of use. A further separate application for a canopy was awaited.
- (3) Mr Spurell spoke as an objector to scheme. He referred to the un-adopted status of the roadway in Cambridge Grove and to the responsibility of freeholders to maintain that highway and to the fact elements of this had been sold off to two commercial owners (including the applicant) some 7 years previously. There were grave concerns that the road (which was in a poor state of repair) was not designed to take the additional traffic generated by this use and that damage could be sustained to the Victorian gas mains beneath the surface. In that event legal action could be taken against the Council as it had previously refused to adopt the road. The use would also exacerbate existing access, on–street parking problems.
- (4) Mr Bareham spoke on behalf of the applicant in support of their application. He explained that the proposed use would not result in any increase in the number of vehicles using the site. Vehicles being checked prior to receiving an MOT would now also be able to receive their MOT service on site rather than this taking place

elsewhere with the vehicle being returned later. The entire process would be able to take place on site. This use would provide full time employment for four staff.

#### **Questions/Matters on Which Clarification was Sought**

- (5) Councillors Kennedy, Smart and Wells expressed concern regarding the potential for any legal action to be taken against the Council enquiring whether that represented a material planning consideration. The Solicitor to the Committee explained that freehold ownership/maintenance issues were not material planning considerations. If a claim was lodged against the Council it would be resisted.
- (6) Councillor Steedman enquired whether proposed Condition 3 would be sufficient to control the noise being produced when an engine was revved at full acceleration as required for part of the MOT test. This was different from the noise generated by plant and machinery.
- (7) Councillor Kemble stated that he was aware that the period during which an engine was at full acceleration was very brief. He was unsure whether it would be practicable for that to be conditioned.

#### **Debate and Decision Making Process**

- (8) The Interim Senior Team Planner stated that Members could amend Condition 3 if they were so minded. He also suggested that an additional condition (5) be added to ensure that no activities took place outside the building in order to seek to avoid any potential noise nuisance.
- (9) Councillor Carden stated that he was familiar with the site and considering that the proposed use would not generate unacceptable noise levels. He supported the application.
- (10) A vote was taken and the proposal that Condition 3 be amended was lost on a vote of 3 to 9. A further vote was taken and Members agreed on a vote of 11 with 1 abstention that an additional condition (5) be added.

195.5 **RESOLVED** - That the Committee has taken into consideration and agrees with the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the conditions and informatives set out in the report and to the additional condition set out below.

**Condition 5:** No testing, servicing, repair or maintenance of vehicles shall take place outside of the building for which this approved use inures.

**Reason:** To protect the amenities of the occupiers of neighbouring property in accordance with the provisions of policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

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

**F. Application BH2009/01746, Land R/o 43-45 Norway Street, Portslade -**  
Construction of a new 3 storey building comprising 4 self-contained flats with roof lights and rear dormers.

(1) Members agreed that it would be beneficial to carry out a site visit prior to determining the application.

195.6 **RESOLVED** - That the above application be deferred pending a site visit.

**G. Application BH2009/02310, 61 Hill Brow, Hove –** Addition of first floor to create a two storey dwelling.

(1) The Interim Senior Team Planner, Mr Ellwood gave a presentation detailing the proposed scheme by reference to elevational drawings and floor plans. The impact of the proposed first floor addition on the character and appearance of the building, the street scene and on the amenity of adjoining properties was considered.

#### **Questions/Matters on Which Clarification was Sought**

(2) Councillor Kemble requested details of the differences between the current application and the previously refused scheme. It was explained that insufficient information had accompanied the previous application to enable an assessment of the impact on neighbouring dwellings to be made; the proportions of this scheme had also been scaled back.

(3) Councillor Smart referred to the issues raised by objectors in relation to the impact and inconvenience caused by scaffolding associated with the works, it was explained that these were not material planning considerations and were civil matters to be addressed outside the Committee's remit.

(4) In answer to further questions by Councillor Smart it was explained that conditions regulating the hours during which building works could be carried out were not usually applied to domestic dwellings, this was consistent with the approach adopted by other local planning authorities. Any noise or other nuisance could be addressed by Environmental Health legislation.

#### **Debate and Decision Making Process**

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

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



**H. Application BH2009/02648, Kingsmere, London Road, Brighton – Construction of 5 additional garages.**

- (1) The Interim Senior Team Planner, Mr Ellwood stated that an additional condition was proposed in order to address the concerns of neighbouring objectors and to ensure that the garages were not used for non-domestic purposes.

**Questions/Matters on Which Clarification was Sought**

- (2) Councillor McCaffery enquired whether the proposed condition would preclude the garages from being used to park commercial vehicles. It was explained that anyone living in the development who owned a commercial vehicle would be able to park it in their on-site garage.
- (3) A vote was taken and Members voted unanimously that planning permission be granted.

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

**Condition 4:** The garages hereby permitted shall be used solely for parking of vehicles and for other domestic purposes and shall at no time be used for any business or commercial purposes, including commercial storage.

**Reason:** To protect the amenities of the surrounding area in accordance with the provisions of policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

**I. Application BH2007/04074, Land Adjoining 24 Tower Road, Brighton – Construction of one new dwelling house attached to 24 Tower Road.**

- (1) The Area Planning Manager (East), Mr Ellwood gave a detailed presentation in respect of the application, showing photomontages of the proposed development in relation to the neighbouring dwellings within the conservation area and its relationship to and impact on the listed building. The scheme was considered to be acceptable and the earlier reasons for refusal to have been overcome.

**Questions/Matters on Which Clarification was Sought**

- (2) The Chairman, Councillor Hyde, requested to see views taken from the south showing the site's relationship with the listed building.
- (3) Councillor Smart referred to the tree located immediately beyond the curtilage of the site requesting confirmation as to its species and enquiring whether it could be protected. Councillor McCaffery echoed those concerns. It was confirmed that the tree was a bay and that a condition could be added to seek to ensure its protection.
- (4) Councillor Kennedy referred to the concerns raised, requesting that as the proposed development would now be set further down into the site whether it could be ensured that the trees roots were protected during the excavation works to create the basement

level. Councillor Cobb raised the same matter. It was confirmed that this could be done and that the comments received from the arboriculturist did relate to the current application.

### **Debate and Decision Making Process**

- (5) Councillor Hyde, the Chairman sought confirmation whether Members required a site visit prior to determining the application and they agreed that they did not.
- (6) Mr Small, CAG referred to the comments received from CAG that the proposed development would have a detrimental effect on views of the only surviving Barry Villa (the listed building) and that in view of that impact it would be inappropriate in principle to develop this site.
- (7) Councillor Kennedy whilst noting CAG's comments considered that the setting of the listed building had already been damaged by the existing 1970's terrace. In her view the proposed development would not exacerbate the existing situation.
- (8) Councillor Davey commended the scheme which he considered was a bold architectural statement which would provide a positive contribution to the street scene.
- (9) Councillor Wells considered the proposed scheme to be acceptable although he would have preferred it if "curved" corner treatments had been used.
- (10) In response to the points raised the Area Planning Manager (East) suggested that additional conditions could be added in order to seek to ensure protection of all relevant on-site trees. Members indicated that they were minded to do so.
- (11) A vote was taken and Members voted unanimously that they were minded to grant planning permission subject to additional condition(s) in the terms discussed.

195.9 **RESOLVED-** That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Obligation, in the terms set out in the report, to the conditions and informatives also set out in the report and to the deletion of condition 13 (as it stands in the report) and to two additional conditions as follows:

Condition 13. No development shall commence until there is agreement in writing from the Local Planning Authority in relation to the trees to be protected or removed on or adjacent to the site. A tree protection scheme (which meets the standards in BS 5837 [2005] shall be submitted which identifies tree protection measures for those trees to be retained including the Elm trees and the Bay tree located on and adjacent to the site.

**Reason:** To protect two elms and a bay tree located adjacent to the site, in the interests of visual amenity of the area and to comply with policies QD1, QD16 and QD27 of the Brighton & Hove Local Plan.

Condition 14: The tree protection measures agreed under condition 13 shall be implemented in accordance with the approved scheme and shall be retained until the completion off the development.

**Reason:** To protect the trees which are to be retained on site and in the interest of the visual amenities of the area and to comply with QD1, QD16, and QD27 of the Brighton & Hove Local Plan.

Additional Informative: Members of the Planning Committee were very concerned that the xx tree on the frontage of the site could be protected during construction if possible. Conditions 13 and 14 have been attached to allow the issue to be considered when the protection measures are submitted.

**J. Application BH2009/01058, Land Adjacent to 10 Ainsworth Avenue, Brighton –**  
Erection of a new family dwelling.

- (1) The Area Planning Manager (East), Mr Walke gave a presentation detailing the constituent elements of the scheme. Views were shown indicating the relationship between the site and neighbouring properties. Floor plans and elevational drawings were also shown.

**Questions/Matters on Which Clarification was Sought**

- (2) Councillor Smart sought clarification regarding protection of the hedge surrounding the site. It was confirmed that it was understood that both the hedge and a number of on-site trees would be retained.
- (3) Councillor Cobb enquired regarding how the sum requested towards sustainable transport would be spent. The Principal Transport Planning Officer, Mr Reeves explained that it was not possible to determine precisely how such monies would be spent in advance of a scheme being agreed. Monies had to be spent within five years having been agreed by the Cabinet Member for Environment. Ward Councillors were consulted regarding where they would want such monies to be spent.
- (4) Councillor Wells sought confirmation that any monies agreed would be spent within the area and it was confirmed that they would.
- (5) The Development Control Manager concurred with the explanation given by the Principal Transport Planning Officer and explained that in future it was intended that reports would indicate the type of schemes to which such monies would be allocated. Councillor McCaffery stated that this was welcomed.
- (6) A vote was taken and Members voted unanimously that they were minded to grant planning permission.

195.10 **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 that it is minded to grant planning permission subject to the applicant entering into a Section 106 Obligation and to the conditions and informatives set out in the report.

**K. Application BH2009/02228, 28 Marine Drive, Rottingdean** – Demolition of existing dwelling and erection of a block of six flats and two town houses (8 units in total) together with associated parking and bin store.

(1) Councillor Hyde, The Chairman explained that representatives on behalf of the applicant were unable to attend that days meeting due to a family bereavement and that exceptionally therefore it had been agreed that consideration of the application would be deferred until the next meeting of the Committee.

195.11 **RESOLVED** - That consideration of the above application be deferred for consideration at the next scheduled meeting of the Committee.

**L. Application BH2009/02231, Land R/o 21-22 Queen’s Road, Brighton** - Erection of 2 three storey semi detached dwellings with new ironwork entrance gates (part retrospective).

(1) Members agreed that it would be beneficial to carry out a site visit prior to determining the application.

195.12 **RESOLVED** – That consideration of the above application be deferred pending a site visit.

**196. 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**

196.1 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determining the applications:

Application:	Site Visit requested by:
BH2009/02331, Land East of West Pier, Esplanade, King’s Road (Brighton O Wheel)	Development Control Manager
BH2009/01722 Cardinal Newman School, The Upper Drive, Hove	Development Control Manager
BH2009/01746, Land R/o 43-45 Norway Street, Portslade	Councillor Hyde (Chairman)/Councillor Hamilton
BH2009/02231, Land R/0 21-22 Queen’s Road, Brighton	Councillor Davey

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

197.1 **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 by Members on the Friday preceding the meeting (for copy see minute book). Where representations are received after that time they should be reported to the Chairman and Deputy Chairman and it would be at their discretion whether these should in exceptional cases be reported to the Committee. This is in accordance with resolution 147.2 of the then Sub Committee on 23 February 2006.

The meeting concluded at 4.55pm

Signed

Chairman

Dated this

day of



**APPEAL DECISIONS**

	<b>Page</b>
<b>A. SOUTH PORTSLADE WARD</b>	
Application BH2007/00622, Harbour Motors, 62-66 Station Road, Portslade. Appeal against enforcement action for breach of planning controls, change of use without planning permission. (Committee Decision) <b>APPEAL DISMISSED</b> (copy of the letter from the Planning Inspectorate attached).	<b>19</b>
<b>B. WISH WARD</b>	
Application BH2009/01174, Land R/o 240 Portland Road, Hove. Appeal against refusal to grant planning permission for proposed construction of a single storey building for D1 medical or educational use with resurfacing of the access from Hogarth Road (Delegated Decision) <b>APPEAL DISMISSED</b> (copy of the letter from the Planning Inspectorate attached).	<b>23</b>
<b>C. GOLDSMID WARD</b>	
Application BH2008/02452, Garages at Rear of 90 Cromwell Road, Hove. Appeal against refusal to permit demolition of existing single storey garages and construction of one mews house. (Committee Decision) <b>APPEAL ALLOWED</b> (copy of the letter from the Planning Inspectorate attached).	<b>25</b>
<b>D. STANFORD WARD</b>	
Application BH2009/00901, 30 Bishops Road, Hove. Appeal against refusal to grant planning permission for construction of rear terrace incorporating storage for rainwater harvesting and garden equipment. (Delegated Decision) <b>APPEAL DISMISSED</b> (copy of the letter from the Planning Inspectorate attached).	<b>31</b>
<b>E. PATCHAM WARD</b>	
Application BH2009/01809, 22 Hartfield Avenue, Brighton. Appeal against refusal to grant planning permission to erect a new detached garage. (Delegated Decision) <b>APPEAL DISMISSED</b> (copy of the letter from the Planning Inspectorate attached).	<b>33</b>

## **F. QUEEN'S PARK WARD**

Application BH2009/00890, 218 Freshfield Road, Brighton. Appeal against proposed Condition 4 of planning permission relating to rear first floor extension, granted on 8 December 2008. (Delegated Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **35**

## **G. ROTTINGDEAN COASTAL WARD**

Application BH2008/02502, 28/30 Newlands Road, Rottingdean. Appeal against refusal to grant planning permission to erect a three storey nursing and care home on the site of 28 Newlands Road. (Delegated Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **37**





# Appeal Decision

Site visit made on 25 November 2009

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

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

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**Decision date:  
2 December 2009**

## **Appeal Ref: APP/Q1445/C/09/2111091**

### **Harbour Motors, Unit C, 62-66 Station Road, Portslade, Brighton BN41 1DF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr R Lynn Murray Mitchell against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0622 – ENF/ML.
- The notice was issued on 21 July 2009.
- The breach of planning control as alleged in the notice is *without planning permission, change of use of that part of the Land hatched black on the attached plan from car repair and ancillary car wash, a Class B2 use, to use for the purpose of hand car wash and valeting ("the New Use")*.
- The requirements of the notice are 1. *Ensure that the New Use is operated only within the area hatched black on the plan;* 2. *Within the area hatched black on the plan, ensure that no more than one jet washing water lance is in use or operation at a time;* 3. *Within the area hatched black on the plan, ensure that no more than one vacuum cleaner is in use or operation at a time;* 4. *Ensure that any electrical generators providing electricity for the New Use within the area hatched black on the plan shall be enclosed so that any noise emitted from within the enclosure does not exceed 5dB(A) below background (expressed as an L90) level, 1 metre from the window of the nearest residential premises;* and 5. *Ensure that the New Use shall only operate between the hours of 0730 and 1830 Mondays to Fridays and between 0800 and 1300 on Saturdays. The New Use shall not be operated on Sundays and Bank Holidays.*
- The period for compliance with the requirements is one week.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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

#### **Preliminary matters**

1. Since the failure to pay the prescribed fees within the specified period referred to in the headnote above, the Appellant has sought to add an appeal on ground (a) and thereby have a deemed planning application considered and have the opportunity to obtain planning permission for the alleged new use. The Inspectorate has, however, explained that it does not have the statutory power to remedy the failure to pay the prescribed fee within the specified period. Accordingly and for the avoidance of doubt I confirm that while I have noted all the representations made, including but not confined to those representations from local residents objecting to the use, my decision relates only to the legal ground of appeal (c), which is the claim that the matters enforced against do not constitute a breach of planning control.

2. The Council acting under its environmental health powers has issued a Noise Abatement Notice relating to the water jet spraying machines that are used to clean vehicles. A letter dated 8 October 2009 from the Council's Environmental Health Manager suggests that the Appellant is actively seeking to comply with the requirements of the Notice, and I saw that a wooden barrier had been erected with the evident intention of reducing potential noise nuisance. The abatement notice and compliance therewith is, however, a separate matter from the enforcement notice subject of this appeal.

**The appeal on ground (c)**

3. In February 2009 the Council issued a Certificate of Lawful Use or Development (LDC) for the premises as a *car body shop/repair garage with ancillary car wash and cleaning business*, on the basis that it had continued for a sufficient period to have become lawful. The enforcement notice applies to a "New Use", and is intended to leave the LDC use unaffected by the notice. For the Appellant it is pointed out that this reflects the difficulty of distinguishing between car wash/cleaning covered by the LDC and that subject of the enforcement notice. Whether or not this is so, I consider that a car wash and cleaning business that is ancillary to a car body shop/repair garage is distinguishable as a matter of fact and degree from one which is not.
4. It is suggested that the reference to a *business* in the LDC indicates that the car wash and cleaning activity can be a separate enterprise, but whatever the ownership/management arrangements I consider that it remains necessary for the activity to be *ancillary* for it to come within the ambit of the LDC. There is, however, no evidence from the Appellant to establish that the present use is indeed ancillary. The evidence from the Council is that it is a separate business, run by different persons from the proprietor of the car body shop/repair garage, and that it was previously located at 11-13 Shelldale Road, Portslade. More significantly, there is no evidence of a functional link between the garage and the present cleaning business, such as where persons who have a vehicle repaired get it cleaned and valeted afterwards. This link is a feature of the LDC use, as the Appellant has stated in a 2 January 2008 letter *...re car washing this is always carried out after repairs ... I have always offered this service albeit not advertised ...* The present cleaning business is separately advertised and run on a drive through basis, with vehicles entering from Station Road and leaving via East Street, and significantly more vehicles are washed than are repaired. I have concluded that the appeal use is not the ancillary activity for which an LDC was granted.
5. Turning to whether the presence of the present use as a non ancillary separate hand car wash and valeting business constitutes a material change of use, it is argued for the Appellant that any intensification of the car washing operation or change of operator needs to be material in a planning context. It is pointed out that this context includes several other businesses conducted from premises adjoining or near to the appeal use, including the lawful car body shop/repair garage itself. At my site inspection I heard metal grinding or shaping work taking place at the garage so loudly that it clearly outweighed any noise from the car washing activity that was taking place at the same time. There is, however, no evidence to establish that the volumes of noise which I experienced were the normal working noise levels of the garage, or that the hours/days of noise generating work of the garage and the appeal use fully

coincided. On the other hand the fact that complaints have been made by local residents about the car washing business for two years strongly suggests that its effects were noticed and distinguishable from those of the repair garage. Also taking into account the other features of the new use, including that it attracts vehicles to the site that are not being repaired, the presence of a dedicated portacabin, and the apparently separate employment of those working at the garage and those cleaning the cars, I have concluded as a matter of fact and degree that the new use is indeed material in a planning context, and that there has been a material change of use. Planning permission has not been given for this use, and as stated above it does not benefit from the LDC. The appeal on ground (c) fails.

6. For completeness I record a matter raised in the initial grounds of appeal, but not put forward as part of the subsequent professional representations for the Appellant. The Appellant had initially interpreted one of the Council's reasons for enforcement action as indicating that the appeal use was a lawful change of use from Class B2 car repair to Class B1 hand car wash and valeting. The Council's statement was, however, qualified by reference to the requirement for inclusion within Class B1 that such a use be one that can be carried out in any residential area without detriment to the amenity of that area. There is, however, direct and in my assessment convincing evidence from several local residents of harm to their residential amenity. I have concluded that the appeal use was not, at the time enforcement action was taken, within Class B1.

#### **FORMAL DECISION**

7. I dismiss the appeal and uphold the enforcement notice.

*V F Ammoun*





# Appeal Decision

Site visit made on 4 January 2010

by **Michael Evans BA MA MPhil DipTP MRTPI**

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for Communities and Local Government

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**Decision date:**  
**12 January 2010**

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## Appeal Ref: APP/Q1445/A/09/2109627

### Land at rear of 240 Portland Road, Hove BN3 5QT

- 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 Chris Constable against the decision of Brighton and Hove City Council.
- The application Ref: BH2009/01174, dated 29 April 2009, was refused by notice dated 3 July 2009.
- The development proposed is the construction of a single storey building for D1 medical or educational use with resurfacing of the access from Hogarth Road.

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### Decision

1. I dismiss the appeal.

### Main issues

2. I consider that the main issues in this appeal are:
  - The effect of the proposal on the character and appearance of the area.
  - The effect on the living conditions of the occupiers of adjacent dwellings.
  - The implications for highway safety.

### Reasons

3. The appeal site comprises part of the land to the rear of the property at 240 Portland Road, which is reached by an existing vehicular access off Hogarth Road. Including that at 240 there are ground floor commercial uses in Portland Road. The development would be adjacent to but outside the predominantly residential area to the south of the access and be closely related to the adjacent commercial uses. As a result the proposed use would be appropriately located despite the introduction of a separate use into the land to the rear of the frontage buildings in Portland Road.
4. There is a dilapidated and somewhat unsightly garage at the appeal site that would be removed to accommodate the development. The new building would have a greater footprint and scale than the existing garage and extend closer to Portland Road but these factors do not, in themselves, equate to a harmful impact. In any case, the flat roof single storey height would be below that of the ridge of the existing garage. The floor area of about 26 sq m would also be relatively modest. These factors would ensure that the new building was subordinate in scale to the adjacent two and three storey buildings in the neighbouring streets and it would not be overly dominant.

5. As a result of these factors, I conclude that the proposal would not harm the character or appearance of the area. In this regard the proposal complies with Brighton and Hove Local Plan 2005 policies QD2, QD3, and HO19, which seek to prevent such adverse effects.
6. A condition controlling the hours at which the proposed use would be open to customers would ensure related movements did not occur at particularly unsocial times of the day. Subject to this control I consider that the vehicle and pedestrian activity associated with the use need not result in undue noise and disturbance given the existing levels of activity in this urban environment. The proposal would not therefore be harmful to the living conditions of the occupiers of the adjacent dwellings and complies with Local Plan policies QD27 and HO19, which seek to avoid such detrimental effects.
7. There would be insufficient space within the site for vehicles to turn so that motorists would need to either reverse into or out of the site. This would result in unacceptable conflict with vehicles and pedestrians in Hogarth Road. In the context of such a relatively busy urban location and despite the existing crossover, I consider this to be inherently unsafe. It has been suggested that parking in the site would be prevented by the use of bollards but no plans showing this have been provided. In any event, the track is shared and there is a nearby garage so that it is not clear how customers of the proposed use would be prevented from driving into the application site while retaining access for the adjacent properties.
8. Furthermore, visitors would be encouraged to drive into the site because the nearby on street parking is pay and display or residents only. The Appellant acknowledges that there has been little vehicular activity at the site for some time. There is no reason to believe that were the appeal dismissed this would be likely to change. I am therefore satisfied that the introduction of the new use would result in a significant intensification in the use of the access. In consequence, I conclude that the proposal would unacceptably compromise highway safety in conflict with the aims of Local Plan policy TR7.
9. A unilateral undertaking regarding a payment towards sustainable transport measures has been submitted. However, there is no information before me that would justify the need for this payment so that this document can not be accorded any significant weight. The permitted development on land to the rear of 60-62 Boundary Road appears to have had more space within the site to enable vehicles to turn and therefore lends no significant support to the appeal. The proposal would be located in a relatively sustainable and accessible urban location. Nevertheless, I conclude that none of the above, or any other matter raised, including the absence of harm in relation to character and appearance and living conditions would justify permitting a proposal that would have such a detrimental effect on highway safety. For all the above reasons and taking account of all other matters raised, the appeal is dismissed.

*M Evans*

INSPECTOR

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# Appeal Decision

Site visit made on 15 December 2009

by **Philip Willmer BSc Dip Arch RIBA**

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for Communities and Local Government

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**Decision date:**  
**15 January 2010**

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## Appeal Ref: APP/Q1445/A/09/2106208

### Garages at the rear of 90 Cromwell Road, Hove, East Sussex, BN3 3EG.

- 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 Miss Pauline Whitcomb against the decision of Brighton and Hove City Council.
- The application Ref BH2008/02452, dated 15 July 2008, was refused by notice dated 15 December 2008.
- The development proposed is the demolition of existing single storey garages and construction of one mews house.

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## Decision

1. I allow the appeal and grant planning permission for the demolition of existing single storey garages and construction of one mews house at the rear of 90 Cromwell Road, Hove, East Sussex, BN3 3EG in accordance with the terms of the application Ref BH2008/02452, dated 15 July 2008, and the plans submitted therewith, subject to the conditions set out at the end of this letter.

## Procedural matters

2. I note from the appeal papers that there is a dispute between the appellant and neighbours in respect of land ownership and rights of access. However, these matters are not planning issues and I shall therefore proceed to consider the appeal on the basis of the application determined by the Council.

## Main Issues

3. I consider the two main issues to be: firstly, the effect of the proposed development on the character and appearance of the area; and secondly, its impact on the living conditions of neighbouring residential occupiers.

## Reasons

### *Character and appearance*

4. The appeal site, located to the rear of number 90 Cromwell Road, consists of a block of four unattractive and utilitarian flat roofed garages, associated forecourt and an access ramp alongside number 90 leading to the road. 90 Cromwell Road, now converted into five self-contained apartments, is one half of a semi-detached villa facing the road but with views to the rear over the County Cricket Ground. The surrounding area is characterised by substantial villas to either side of the road interspersed by more contemporary multi-



storey residential blocks. The appeal site falls outside, but can be seen from, the Willett Estate Conservation Area.

5. The appellant proposes the demolition of the garage block and its replacement with a detached two bedroom mews style dwelling. Like the garages it would replace, it would abut the rear and two side boundaries. The north façade of the proposed dwelling has been designed so as to give the appearance of a traditional coach house with accommodation over. The south elevation, on the other hand, would in contrast have a more contemporary appearance and be reflective of the character of some of the structures around the cricket ground, incorporating, amongst other features, a balcony, vertical glazing and a living roof.
6. Overall I find the design to be imaginative and of a high quality. In my view the approach the architect has taken would produce a building that would respect the character and context of the location.
7. The proposed building would be deeper than the existing garage block and higher, by virtue of the proposed first floor accommodation. It would therefore, be a little more pronounced than the existing garage block when viewed from numbers 90 and 91 as well as both Cromwell Road and Palmeria Avenue. However, having regard to the built up urban setting, the scale of neighbouring development and as it would be set down below road level, I do not consider that it would be unduly prominent, or detrimental to either the setting of neighbouring properties or the conservation area.
8. The new building would be visible from both the cricket ground and also, between buildings, from Eaton Road (on the far side of the cricket ground). However, as I saw, it would be seen against a backdrop of the larger properties fronting Cromwell Road. Accordingly, I do not consider that it would disturb in any significant material way either the layout or the rhythm of the existing development in the area. Furthermore, because of its high quality design it would not, as suggested by the Council, be an inappropriate addition to the visual environment but would add visual interest to the street scene.
9. I conclude in respect of the first main issue that the proposed development would not be detrimental to the character and appearance of the area. It therefore accords with the objectives of Policies QD1, QD2 and HE6 of the Brighton and Hove Local Plan (LP) in this respect.

#### *Living conditions*

10. The introduction of a slightly larger building would change the outlook from the ground and first floor flats within number 90 and would, to some limited extent, impact on existing views of the cricket ground. However, given the separation distance of a little over 21.0 metres between the rear façade of number 90 and the proposed dwelling, the overall height of the new dwelling, the existing trees on the boundary of the site shown to be retained and the general built up nature of this urban site, I do not consider that the replacement dwelling would have any significant detrimental impact on neighbouring occupiers' living conditions in terms of being either overbearing or leading to a significant loss of outlook. In addition, and while having regard to the full length glazed doors serving the proposed new ground floor bedrooms, I
-



do not believe, for the reasons stated, that the proposal would lead to significant overlooking or loss of privacy.

11. I concur, however, with the Council's view that the balcony to the southern façade would offer some limited views into neighbouring residential gardens. However, as it suggests, this could be suitably mitigated by the privacy screening to either side of the balcony area. In the event that I am minded to allow this appeal I could include a suitably worded condition to this effect.
12. Concerns have been raised in respect of the potential for noise and disturbance emanating from increased vehicular and pedestrian movements. In my opinion the noise and disturbance emanating from the new dwelling, even if one or more additional bedrooms were over time to be created by subdivision and alteration as suggested, is likely to be less than would be caused by the more intensive use of the four garages if let or sold individually.
13. The increased height of the building over that of the existing single storey garages would, because of the orientation, lead to some overshadowing of the neighbouring gardens to the north and west. However, in my judgement such overshadowing is not likely to be significantly greater than that presently cast by the trees along the boundary.
14. In respect of the second main issue, I conclude that the proposed development would not cause harm to the living conditions of either existing or future residential occupiers. The proposal therefore accords with the aims of LP Policy QD27.

### **Other considerations**

15. In relation to the possibility of setting a precedent, I have concluded that on the basis on which I have considered the case the scheme would comply with the objectives of planning policy. Although all sites are different, and all cases fall in the first instance to be considered by the local planning authority, proposals which fall within the terms of planning policy would not lead to the creation of an unacceptable precedent.
  16. A third party has drawn to my attention that the owners of the County Cricket Ground propose to construct a new building close to the boundary of the appeal site. However, in support of the contention that it would impact on the living conditions of future occupiers of the proposed house, no drawings other than a small scale site plan have been provided. Accordingly, I am not in a position to judge the potential impact if any of the proposed structure. Based on this limited evidence, and as there is no certainty that the development even if approved by the Council would proceed, I can give this consideration limited weight.
  17. Reference is made by the representative of the Sussex County Cricket Club to the desirability of maintaining a buffer zone between the cricket ground and surrounding residential properties as well as the potential impact of the proposed development on the function of the cricket ground as the head quarters of County cricket. However, no details have been provided as to the rationale for such a buffer zone, its present status if any or the feared impact.
-

I can therefore give these considerations little weight in the determination of this appeal.

18. I acknowledge that if this development were to go ahead then there would, even though it is currently not fully utilised, be an overall loss of parking provision. However, the site is located in a sustainable urban area with access to local facilities and public transport. Accordingly, I do not consider the potential loss significant in this case.
19. The proposed development includes for a single garage along with outside parking and turning. However, I am not persuaded that this provision in itself would, as suggested, automatically encourage car use. Having regard to the unit's design to Lifetime Homes Standards, the dwelling may be suitable for someone, such as a mobility impaired person, who already has or may at a later date require access to a private car. Therefore it seems to me to be reasonable to make some provision that also provides flexibility to allow for secured covered parking for two wheel forms of transport that are popular alternatives to the car in urban locations where roads are congested and parking restricted.

### **Conditions**

20. The Council has not provided a list of suggested conditions. However, the officer's/committee report makes reference to a number of detailed items that I shall take into account. In addition to the standard time condition, to ensure a high quality development, I have included a condition about building materials.
21. Further, the appellant has indicated that to meet the aims of LP Policy SU2 the development seeks to achieve the Building Research Establishment (BRE) Code for Sustainable Homes Level 3. However, as noted by the Council, only limited information has been provided in respect of this claim. Accordingly, I shall include a condition requiring, prior to occupation, a BRE Final Code Certificate to be submitted confirming that code level 3 has been achieved.
22. The scheme has been designed to Lifetime Homes Standards. However, I note from the evidence that the Council's Accessibility Consultant requires some minor revisions to ensure full compliance. I shall therefore condition this element of the design to be approved before work starts.
23. As noted by the Council the submitted construction and demolition waste minimisation statement is rather generic. Therefore, and as the development may fall outside of the scope of the Site Waste Management Plans Regulations 2008 because of its size, I consider that it is reasonable to require further details to be approved to ensure compliance with LP Policy SU13.
24. In order to protect the living conditions of neighbouring residential occupiers, I shall require the detail of the screens to the first floor balcony to be approved.
25. The Council in its evidence has made reference to the Traffic Manager seeking an unspecified financial contribution towards public transport infrastructure in the surrounding area. Circular 05/2005 *Planning Obligations* states at paragraph B9 that "*developers may reasonably be expected to pay for or contribute to the cost of all, or part of, additional infrastructure provision which*

would not have been necessary but for their development". However, the Council has not indicated what additional provision would be required as a result of this development. Accordingly, in formulating appropriate conditions I cannot give this consideration any weight.

### **Conclusions**

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

*Philip Willmer*

INSPECTOR

### *Schedule of 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 and details 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 samples and details.
- 3) Unless otherwise agreed in writing by the local planning authority, the residential unit hereby approved shall not be occupied until a Building Research Establishment Final Code Certificate has been issued confirming that the unit 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.
- 4) No development shall take place until detailed drawings at a scale of not less than 1:100 showing that the new dwelling has been designed to Lifetime Homes Standards have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a written Waste Minimisation Statement, confirming how demolition and construction waste will be recovered and reused on site or at other sites, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until detailed drawings at a scale of not less than 1:20 showing the detail for the screens to the balcony at first floor level has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.





# Appeal Decision

Site visit made on 13 November 2009

by **Keith Manning BSc (Hons) BTP MRTPI**

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

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**Decision date:**  
**17 November 2009**

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## Appeal Ref: APP/Q1445/D/09/2112412 30 Bishops Road, Hove, East Sussex BN3 6PN

- 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 Groves against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00901, dated 16 April 2009, was refused by notice dated 22 June 2009.
- The development proposed is construction of rear terrace incorporating storage for rainwater harvesting and garden equipment.

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### Decision

1. I dismiss the appeal.

### Main issue

2. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers at No 28 Bishops Road with regard to privacy and outlook.

### Reasons

3. The proposed development is for the most part a carefully designed enhancement of the utility and appearance of the rear elevation and garden of No 30 Bishops Road. The existing ability to overlook the neighbouring property at No 28 from the sun room at No 30 would be reduced by the brick wall along the boundary that would be an integral part of the proposed development. Moreover, at around 1.8 metres in height above the level of the proposed terrace, this part of the proposed wall would prevent overlooking from the intervening elevated terrace that would be created.
4. That said, the outer part of the proposed terrace would afford its users a significant opportunity to look directly down into the garden of No 28 and back into the windows of certain of its habitable rooms, because the boundary wall in this location, including a narrow area that appears intended to accommodate some ornamental planting, would be only around one metre in height above the indicated level of the proposed terrace. Although stepping the wall down in this fashion would acknowledge the topography and help prevent it from being unduly overbearing within the garden of No 28, it would also render it largely ineffective as far as the necessary screening of the outer part of the proposed terrace is concerned.

5. The consequential harm to the privacy of occupiers of No 28 is a significant flaw in an otherwise acceptable scheme that would give rise to harmful conflict with the intentions of saved policies QD14 and QD27 of the Brighton & Hove Local Plan, both of which aim to protect amenity. As far as the general standard of design is concerned, the overall approach displays quality and imagination and I do not therefore consider it would give rise to unacceptable conflict with saved policy QD1 as the Council maintains in its refusal. In visual terms, I consider the proposed development would not be harmful to the outlook of occupiers of No 28.
6. While I acknowledge that the current occupier of that property has confirmed a lack of objection to the proposed development, I am conscious that future occupiers may be less accommodating of potentially intrusive overlooking and would have little choice other than to instigate significant and possibly unsightly screening measures.
7. While I accept that the context in this case includes an elevated recessed balcony area at the appeal site which affords the potential to overlook the rear garden of No 28, this is an established situation that is in any event more akin to the usual outlook from bedroom windows than the more intimate proximity of an elevated terrace alongside a garden boundary that the proposed development would involve. I also accept that the terrace at No 32 Bishops Road demonstrates that privacy can be achieved relative to an adjoining occupier; but that is by virtue of an established screen and no such comprehensive screening is proposed in this instance.
8. I have given consideration to whether the harm that I have identified could be overcome by the imposition of a planning condition but, in the context of what is proposed, the necessary modification to the scheme could be substantial enough to warrant further comment from interested parties and hence contrary to the advice of Circular 11/95.
9. For the reasons given above, and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

*Keith Manning*

Inspector



# Appeal Decision

Site visit made on 7 December 2009

by **David Prentis BA BPI MRTPI**

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

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**Decision date:**  
**16 December 2009**

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## Appeal Ref: APP/Q1445/D/09/2115695 22 Hartfield Avenue, Brighton BN1 8AE

- 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 Paul Salucci against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01809, dated 27 July 2009, was refused by notice dated 17 September 2009.
- The development proposed is a new detached garage.

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### Decision

1. I dismiss the appeal.

### Main issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. The appeal property is located in a suburban residential area characterised by semi-detached houses. The character of the area is much influenced by its sloping terrain. The appeal property, together with other houses on the same side of the road, is set at a level well above Hartfield Avenue. The houses are set back from the road with predominantly open front gardens bounded by low retaining walls. This layout results in an open and spacious character.
4. The proposed garage would be just 0.9m from the back edge of the footway. In a less prominent location its steel door and flat roof would be unremarkable. I note that the flank walls would be partially hidden by the rising ground on either side and that the proposed brickwork would match the existing house. Nevertheless, it is my opinion that, in this very prominent location, the garage would appear as a stark and utilitarian structure. Moreover, the back of the garage would be relatively close to the house and its roof would be at a level similar to the ground floor window sills. I consider that the garage would dominate the front garden resulting in a cramped effect.
5. The appellant argues that the garage would be partially screened by a hedge on the boundary with the adjoining property. However, I do not think that a garden hedge can be relied on as a permanent feature. In any event, the hedge would only provide screening from certain angles.

6. My attention has been drawn to various examples of flat-roofed garages in the locality. Not all of these are comparable with the appeal scheme in that they are sited alongside houses rather than in front gardens. There are 3 examples within Hartfield Avenue which I regard as broadly comparable. The Council has explained that all of these gained planning permission in the 1960s, well before current planning policies were in place. Consequently, I do not think that these planning decisions set a precedent for the current appeal. Whilst the 3 garages undoubtedly have an impact on the street scene, to my mind the prevailing character of Hartfield Avenue is the open character I have described above. I saw that there is a concentration of similar garages in part of Lyminster Avenue but these examples do not form part of the immediate setting of the appeal site and I therefore attach only limited weight to them.
7. I conclude that the proposal would result in an unduly prominent feature which would detract from the open character and appearance of the area. It would be contrary to Brighton and Hove Local Plan 2005 Policy QD1 which states that all proposals for new buildings must demonstrate a high standard of design and make a positive contribution to the visual quality of the environment. It would also be contrary to Policy QD2 which states that developments should take account of local characteristics, including the layout of streets and spaces.
8. I note that there have been no objections from neighbouring residents but have formed my own assessment of the proposal, having regard to the development plan. I have considered all other matters raised but find nothing to alter my conclusion.

*David Prentis*

Inspector





# Appeal Decision

Site visit made on 25 November 2009

by **Elaine Benson BA (Hons) Dip TP MRTPI**

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

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**Decision date:**  
**15 January 2010**

## Appeal Ref: APP/Q1445/A/09/2108714

### 218 Freshfield Road, Brighton, East Sussex BN2 9YD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Wayne Russell against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00890, dated 8 December 2008, was approved on 18 June 2009 and planning permission was granted subject to conditions.
- The development permitted is a rear first floor extension.
- The condition in dispute is No 4 which states that: 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 window, dormer window, rooflight or door other than those expressly authorised by this permission shall be constructed without planning permission obtained from the Local Planning Authority.
- The reason given for the condition is: to safeguard the amenities of the occupiers of nearby properties and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.

## Decision

1. I allow the appeal, and vary the planning permission Ref BH2009/00890 for a rear first-floor extension at 218 Freshfield Road, Brighton, East Sussex, granted on 18 June 2009 by Brighton & Hove City Council, deleting condition 4 and substituting for it the following condition:
  - 1) 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 or doors other than those expressly authorised by this permission shall be constructed on the side elevations of the extension facing onto 216 and 220 Freshfield Road.

## Main issue

2. The main issue in this appeal is whether the disputed condition is reasonably imposed to prevent overlooking and a loss of privacy to the neighbouring properties at 216 and 220 Freshfield Rd.

## Reasons

3. The planning history for the appeal site includes a series of applications for a dormer window and first-floor extension which were refused planning permission. Following the October 2008 changes to the General Permitted Development Order, the appellant claimed that planning permission for the

dormer window element of the proposal was no longer required and stated that it would be constructed under permitted development rights. The appeal proposal was therefore submitted for the first-floor extension alone. Planning permission for the extension was granted subject to the condition set out above.

4. Development orders are designed to give a freedom from detailed planning control which is acceptable in the great majority of cases. Although it is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order, there is a general presumption against such restrictions. Circular 11/95 paragraph 87 states that 'Save in exceptional circumstances, conditions should not be imposed which restrict .... permitted development rights granted by development orders.' Such conditions are normally considered unreasonable unless there is clear evidence that the works excluded would have serious adverse effects on amenity.
5. The Council's evidence is that it sought to control the future construction of windows or doors in the side elevations of the extension in order to be able to assess their impact on the living conditions of the adjacent occupiers at that time. I have had regard to the side facing window on the neighbouring property, No 216, and the relationship between the appeal property and its two neighbours. I understand the Council's reason for seeking to prevent side facing windows or doors in the extension to preclude overlooking or loss of privacy. However, the wording of the imposed condition would also prevent the construction of any other dormer window, window or door in the property. To my mind, the disputed condition 4 goes beyond what is reasonably related to the proposal and is more onerous than can or has been justified by the Council. Furthermore, there is little evidence that that the works excluded by condition 4 would have serious adverse effects on amenity.
6. I conclude that the imposition of condition 4 is unnecessary, not relevant to the approved extension and unreasonable. It does not comply with the tests set out in Circular 11/95 and I therefore allow the appeal for its removal. However, as I have identified a need to prevent the construction of side facing windows or doors in the extension to prevent overlooking or loss of privacy, I have substituted the disputed condition 4 with a condition to protect the living conditions of the neighbouring occupiers.

*Elaine Benson*

INSPECTOR



# Appeal Decision

Site visit made on 17 November 2009

by **Philip Willmer BSc Dip Arch RIBA**

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

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**Decision date:**  
**7 January 2010**

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## Appeal Ref: APP/Q1445/A/09/2095225

**28/30 Newlands Road, Rottingdean, East Sussex, BN2 7GD.**

- 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 John Breeds against the decision of Brighton and Hove City Council.
- The application Ref BH2008/02502, dated 10 July 2008, was refused by notice dated 6 November 2008.
- The development proposed is described as "three storey nursing and care home on the site of 28 Newlands Road."

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### Decision

1. I dismiss the appeal.

### Procedural matters

2. The appellant has submitted drawings for a revised scheme design that has not been considered by the Council. It is for the Council to consider it in the first instance and I shall therefore confine my considerations to the proposed development as determined by the local planning authority.

### Main Issues

3. I consider the main issues to be firstly, the design in terms of height, mass, form, site coverage and appearance having regard to the character and appearance of the surrounding area. Secondly, whether the proposal would result in the loss of a dwelling contrary to the objectives of the development plan. Thirdly, the effect of the proposed development on the living conditions of neighbouring residential occupiers. Fourthly, whether the development would provide adequate amenity space for residents.

### Reasons

#### *Character and appearance*

4. The appeal site comprises number 28 Newlands Road, a bungalow with a single detached garage, and the Rottingdean Nursing Home, numbers 30-32 Newlands Road, a substantial three storey detached property on the corner of Newlands and Steyning Road. Newlands Road, which is part of a larger suburban area, is characterised by a mix of large detached dwellings set on rising ground on the east side of the road. Although the properties are fairly uniformly spaced, due to the variety of roof forms there is a general sense of spaciousness between them.

5. The proposed development is for the demolition of the existing bungalow and garage and the erection of a three storey, 15 bedroom, nursing home as an extension to the Rottingdean Nursing Home, a residential nursing and care home. I saw that number 26 is the only bungalow on the east side of the road and in that respect it stands out in the street scene because of its uncharacteristic diminutive form. Accordingly, having regard to the scale of the neighbouring development, I do not consider its replacement with a three storey building would in principle be detrimental to the character and appearance of the area. To my mind, the eaves line and overall ridge height would reflect the topography of the site and the constraints imposed on the design by the massing of the neighbouring properties.
6. Policy QD1 requires new buildings to demonstrate a high standard of design and to make a positive contribution to the visual quality of the area. In this respect it accords with the objectives of Planning Policy Statement 3 (PPS3) *Housing* which at paragraph 13, records that "*good design should contribute positively to making places better for people. Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.*"
7. The design proposes a simple gable to gable roof form. This design would, in my opinion, make the building appear more bulky than necessary. Further, it would significantly reduce the visual gap to the neighbouring buildings on either side.
8. Generally, although the houses on the east side of the road are tall and prominent they have been designed with a strong horizontal emphasis. This is exemplified by the eaves line, window proportions etc. which also tend to reflect their residential function. The proposed building would, however, in direct contrast have an uncharacteristic strong vertical emphasis due to the window proportions, projecting narrow bays and the recess in front of the motor room. This significant change in emphasis would, in my judgement, make this building appear as a prominent alien addition in the street scene.
9. I conclude in respect of the first main issue that, because of its design, the proposed development would be detrimental to the character and appearance of the area, contrary to the aims of PPS3 as reflected in Brighton and Hove Local Plan (LP) Policies QD1, QD2 and QD4.

#### *Loss of a dwelling*

10. Due to a strict limitation on the number of new sites available for housing development in Brighton and Hove the local plan, at Policy HO8, identifies the need to make the best use of sites and properties that are available and goes on to state that it is important to retain existing houses, flats and other residential accommodation.
  11. I concur with the Council that this proposal does not meet the five tests set out in LP Policy HO8. However, from the consultations undertaken at application stage with Adult Social Care and Housing I note that there is a shortage of nursing home provision, which may be one form of *other residential accommodation* referred to in the policy, within the city.
-

12. The development would result in the loss of a single family dwelling unit. However, no evidence has been advanced by the Council to suggest that there is a shortage of the type of family dwelling it considers the site currently provides, nor do they challenge the need for the 15 additional nursing home bed spaces. It would seem to me therefore that in this instance, on balance, the proposal as well as helping to meet a recognised shortfall in local nursing home provision, would also go some way towards meeting the underlying objectives of LP Policy HO8 in terms of seeking to make the best use of the site in providing a form of residential accommodation.
13. I conclude in respect of the second main issue that while the proposal would result in the loss of a single dwelling it would nevertheless, in this case, meet the objectives of the development plan.

*Living conditions*

14. The proposed building would be similar in height but deeper than number 26. However, notwithstanding the limited separation distance between flank walls, I do not consider that it would be significantly overbearing in scale, due to the lack of windows in the flank wall of number 26 and the form of the roof proposed to the new building.
  15. The scheme design proposes projecting bay windows to the rear elevation of the new block serving residents' bedroom accommodation on all three floors. As illustrated by the furniture layout for the first floor, these bay windows would make attractive sitting spaces for future residents. This would, however, lead to the potential for overlooking of the private rear garden of number 26. Having regard to the suburban location, I consider that some mutual overlooking is to be expected. However, as it is likely that the bedrooms would generally be continually occupied and intensively used by residents and staff, the design of the windows in the rear elevation may well lead to a significant loss of privacy for the occupier of number 26.
  16. I do not share the Council's concern that the side facing windows to bathroom/stair lobbies would be un-neighbourly as, by condition, these could be required to be obscure glazed and fixed shut to avoid overlooking and loss of privacy. Further, due to the overall depth of the retained rear garden, I do not believe that the development would lead to significant overlooking of the rear gardens of the properties to the east of the appeal site.
  17. Concerns have been raised by the Council's Environmental Health team that there is a potential for noise from the lift impacting on neighbours' quiet enjoyment of their homes. However, in my opinion, a suitably worded condition would be appropriate to overcome any concerns in this regard.
  18. I do not share the Council's unease in respect of the development being overbearing, or for the windows in the flank wall to be un-neighbourly. However, in my judgement the rear projecting box bay windows could lead to overlooking and a loss of privacy because of the nature and use of the development. I therefore conclude in respect of the third main issue that the proposed development would have a detrimental impact on the living conditions of the residential occupiers of number 26 Newlands Road. In this respect the proposal would not accord with the aims of LP Policy QD27.
-

### *Amenity space*

19. Policy HO11 requires adequate amenity space to be provided for residents. It goes on to suggest a minimum depth of 10.0 metres and not less than 25 square metres per resident, although lower standards, not specified, may apply to nursing homes.
20. From an inspection of the site plan I see that the depth of the rear garden area behind the proposed building would be some 34.0 metres or thereabouts and the width approximately 10.6 metres. This would give an area of approximately 24.0 square metres or so per resident, excluding any additional amenity space that may also be available to the front.
21. I appreciate that the new home would straddle the existing boundary and there would be a marginal loss of amenity space to the existing nursing home. In my judgement, and as there is no evidence before me to suggest that even a marginal loss of amenity space to the Rottingdean Nursing Home would be detrimental, I conclude in respect of the fourth main issue that the proposal would provide adequate amenity space, given that the proposal is for a nursing/care home where a lesser standard than 25.0 square metres is considered acceptable. The proposal therefore accords with the objectives of LP Policy HO11.

### **Other matters**

#### *Travel demands*

22. The Council's Traffic Manager, when consulted at the application stage, indicated that he had no objection to the proposed development subject to the secure, covered and lit cycle parking and the vehicle parking provision shown being provided before occupation. The local planning authority indicated that although a design was not before them for cycle parking, there were opportunities within the site for this to be provided. This matter could therefore be addressed by condition. From what I have seen and read I have no reason to reach a contrary conclusion.
23. The Traffic Manager, however, went on to request, by way of a section 106 agreement, a sum of £10,000.00 as a contribution towards accessibility to bus stops, pedestrian facilities and cycling infrastructure in the area of the site. The appellant has indicated in his evidence that he is agreeable to making a contribution on the basis of a fair assessment.
24. My attention has been drawn to Policy QD28 which sets out various aims but does not show how the contribution requested was calculated. Circular 05/2005 *Planning Obligations* states at paragraph B9 that "*developers may reasonably be expected to pay for or contribute to the cost of all, or part of, additional infrastructure provision which would not have been necessary but for their development*". However, at paragraph B35 it indicates that "*standard charges and formulae should not be applied in blanket form regardless of actual impacts*".
25. Although some additional facilities might arise, in direct proportion to the population increase resulting from the development, the local planning



authority has not shown why the contribution is necessary or, to my mind, provided adequate justification for such a requirement as a result of this proposal. Indeed the provision of accommodation for an additional 15 residents may well result overall in the need for less travel more generally within the area. It would therefore seem to me that there is no certainty that the required contribution fairly and reasonably relates in scale and kind to this development. The weight that I can give this consideration is therefore reduced.

26. As the Council has not shown how the need for new facilities directly arises from this proposal, I cannot conclude in respect of this issue that the proposal would necessarily conflict with LP Policy QD28.

*Acceptable standards of sustainability*

27. LP Policy SU2 states that planning permission, subject to other policy considerations, will be granted for proposals which demonstrate a high standard of efficiency in the use of energy, water and materials. The policy goes on to require the applicant to demonstrate how the design has addressed a number of factors including reduced fuel use, greenhouse gas emissions, etc.
28. From the appeal papers I see that the appellant completed a sustainability checklist and submitted this with the application. I agree with the Council that this is limited and does not address in a satisfactory manner the requirements of LP Policy SU2. Nevertheless, in my opinion the Council, having regard to the benchmark status attributed to this policy, might have been more proactive in seeking the detailed information required.
29. I note from the appellant's evidence that it is his intention that the development would be sustainable and in this respect lists a number of features proposed. I accept that the drawings show a building that would be naturally lit and ventilated. However, having regard to the requirements of the policy, details of these measures, some of which are fundamental to the building's design, should form an integral part of the design submission and not be considered as an adjunct to it, even at the planning application stage. I therefore find in respect of this issue that the appellant has failed to demonstrate that the development would meet acceptable standards of sustainability. The proposal therefore does not accord with LP Policy SU2.
30. I have seen the print out of the Council's standard online checklist which I believe was completed by the appellant after determination of the application. However, to my mind, this checklist, whenever submitted, is in my judgement insufficient to show how the design would meet the high standard of efficiency which is the overriding concern of the policy.

*Construction waste minimisation strategy*

31. LP Policy SU13 requires development proposals to show that regard has been given to the minimisation and reuse of construction waste and appears to have similar objectives to the requirements of the Site Waste Management Plans Regulations 2008 (SWMPR).

32. The appellant has carried out an initial assessment and sets out a number of key objectives. This has gone some way towards meeting the requirements of the policy. My attention has been drawn to a supplementary planning document *Construction and Demolition Waste*. I appreciate that this calls for significantly more detail than that provided with the proposal. However, it is not clear that this document has been the subject of any form of public consultation. Accordingly, I can afford it only limited weight.
33. Having regard to the likely cost of this project I believe that it would fall within the scope of the SWMPR which would in any event require a full and detailed SWMP to be in place before any work begins. Accordingly, and while having regard to the introduction of the Regulations in April 2008, it seems to me that it would now and in these particular circumstances be reasonable to condition this matter, requiring the SWMP to be submitted to and approved by the Council before work commences.
34. I conclude in respect of this matter that although the appellant has provided only limited detail the aims of Policy SU13 could be addressed by a suitably worded condition.

### **Conclusions**

35. I have concluded that although the proposed development would result in the loss of a dwelling, overall it would in these circumstances nevertheless meet the aims of the development plan by providing additional residential accommodation. The development would provide adequate amenity space for future residential occupiers. I have also found that by condition the construction waste minimisation strategy could be satisfactory met. Finally, I am not convinced that the financial contribution sought fairly and reasonably relates in scale and kind to the proposed development. However, I consider that the proposal would harm the character and appearance of the area and be detrimental to the living conditions of neighbouring residential occupiers. Further, the appellant has failed to demonstrate that the development would meet acceptable standards of sustainability. To my mind these are compelling objections and therefore for these reasons and having regard to all other matters raised, I conclude that the appeal should not succeed.

*Philip Willmer*

INSPECTOR



**NEW APPEALS RECEIVED**

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**HANOVER & ELM GROVE**

BH2009/00963

18A Totland Road, Brighton

Replacement of existing windows with UPVC double glazing windows.

APPEAL LODGED

22/12/2009

Delegated

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**MOULSECOOMB & BEVENDEAN**

BH2009/00792

79 & 81 Riley Road, Brighton

Alterations and extension to form an additional 2 bed dwelling unit and to include change of use of ground floor from B1 offices to C3 residential.

APPEAL LODGED

22/12/2009

Delegated

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**ST. PETER'S & NORTH LAINE**

BH2009/01600

169 North Street, Brighton

Change of use from hairdresser (A1) to restaurant (A3).

APPEAL LODGED

17/12/2009

Delegated

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**PATCHAM**

BH2009/01718

Land Adjacent To 1 Warmdene Way, Brighton

Demolition of existing garage and erection of a two bedroom detached bungalow.

APPEAL LODGED

29/12/2009

Delegated

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**NORTH PORTSLADE**

BH2008/03981

9 Southon Close, Portslade

Excavations to rear garden and erection of

APPEAL STATUS raised decking (retrospective).  
APPEAL LODGED  
APPEAL RECEIVED DATE 24/12/2009  
APPLICATION DECISION LEVEL Delegated

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**WARD** **GOLDSMID**  
APPLICATION NUMBER BH2009/01995  
ADDRESS 5 Wilbury Gardens, Hove  
DEVELOPMENT DESCRIPTION Proposed crossover and vehicle hard standing.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 04/01/2010  
APPLICATION DECISION LEVEL Delegated

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**WARD** **HANOVER & ELM GROVE**  
APPLICATION NUMBER BH2009/00655  
ADDRESS Covers Yard, Melbourne Street, Brighton  
DEVELOPMENT DESCRIPTION Demolition of existing yard buildings and erection of 3 storey terrace along eastern boundary of 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.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 05/01/2010  
APPLICATION DECISION LEVEL Environmental Services Planning Committee

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**WARD** **STANFORD**  
APPLICATION NUMBER BH2009/00838  
ADDRESS 40 Tongdean Avenue, Hove  
DEVELOPMENT DESCRIPTION Erection of 3 storey residential dwelling on land between 36 & 40 Tongdean Avenue.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 11/01/2010  
APPLICATION DECISION LEVEL Environmental Services Planning Committee

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**WARD** **STANFORD**  
APPLICATION NUMBER BH2009/02152  
ADDRESS 55 Dyke Road Avenue, Hove  
DEVELOPMENT DESCRIPTION Two storey side extension to replace existing side garage.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 13/01/2010  
APPLICATION DECISION LEVEL Delegated

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**INFORMATION ON HEARINGS / PUBLIC INQUIRIES**  
**3<sup>rd</sup> February 2010**

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**This is a note of the current position regarding Planning Inquiries and Hearings**  
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**Park House, Old Shoreham Road, Hove**

Planning application nos:      • BH2008/03640  
  • BH2009/01464  
Description:                 • Demolition of former residential language school and erection of 5 storey block of 72 flats.  
  • Demolition of former residential language school and erection of part 4 storey and part 5 storey block of 72 flats.  
Decision:                     Committee  
Type of appeal:             Public Inquiry  
Date:                         2<sup>nd</sup> – 4<sup>th</sup> March 2010  
Location:                    Hove Town Hall

**ENFORCEMENT HEARING: 18 Hampton Place**

Enforcement nos:         • 2003/0319  
  • 2006/0428  
Description:                 • Metal Flue Erected at the rear of the property without listed building consent.  
  • Various unauthorised works to a listed building.  
Decision:                    N/A  
Type of appeal:             Informal Hearing  
Date:                         21<sup>st</sup> April 2010  
Location:                    Council Chamber, Brighton Town Hall

**PLANNING & ENFORCEMENT INQUIRY: The Hyde, Rowan Avenue, Hove**

Planning application no: • BH2009/01249  
Enforcement no:         • BH2009/0450  
Description:                 • Proposed construction of two blocks of 2 and 3 storeys to provide a total of 27 new sheltered housing units with associated caretaker's flat, support and recreation areas including private landscaped gardens and car and cycle parking facilities.  
  • Unauthorised land use and loss of amenity.  
Decision:                    Committee  
Type of appeal:             Public Inquiry  
Date:                         25<sup>th</sup> – 27<sup>th</sup> May 2010  
Location:                    Hove Town Hall

**Covers Yard, Melbourne Street, Brighton**

Planning application no: BH2009/00655

Description: Demolition of existing yard buildings and erection of 3 storey terrace along eastern boundary of 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.

Decision: Committee

Type of appeal: Public Inquiry

Date: TBC

Location: TBC