





**Brighton & Hove  
City Council**

# Planning Committee

Title:	<b>Planning Committee</b>
Date:	<b>17 March 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

### 230. 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.*

### 231. MINUTES OF THE PREVIOUS MEETING

1 - 18

Minutes of the meeting held on 24 February 2010 (copy attached).

### 232. CHAIRMAN'S COMMUNICATIONS

### 233. PETITIONS

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

### 234. PUBLIC QUESTIONS

19 - 20

(The closing date for receipt of public questions is 12 noon on 10 March 2010)

A public questions received has been received from Miss P Tompkins – Report of the Director of Strategy and Governance (copy attached)

### 235. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 10 March 2010)

No deputations received by date of publication.

## **PLANNING COMMITTEE**

### **236. WRITTEN QUESTIONS FROM COUNCILLORS**

No written questions have been received.

### **237. LETTERS FROM COUNCILLORS**

No letters have been received.

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

No Notices of Motion have been referred.

### **239. APPEAL DECISIONS**

**21 - 54**

(copy attached).

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

**55 - 56**

(copy attached).

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

**57 - 58**

(copy attached).

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

### **243. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST:17 MARCH 2010**

(copy circulated separately).

### **244. 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**

### **245. 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.

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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, 9 March 2010



**BRIGHTON & HOVE CITY COUNCIL**

**PLANNING COMMITTEE**

**2.00pm 24 FEBRUARY 2010**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Cobb, Davey, Hamilton, Kemble, Kennedy, McCaffery, Smart and C Theobald

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

**Officers in attendance:** Jeanette Walsh (Head of Development Control), Hamish Walke (Area Planning Manager(East)), Zachary Ellwood (Interim Area Planning Manager (West)), Andrew Renaut (Head of Transport Planning Policy), Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

**Apologies:** Apologies were received from Councillor Steedman

**PART ONE**

**214. PROCEDURAL BUSINESS**

**214A. Declaration of Substitutes**

214.1 Councillor Kemble was in attendance as substitute Member for Councillor Caulfield.

**214B. Declarations of Interest**

214.2 Councillors Hyde (Chairman) and C Theobald declared a non-prejudicial interest in Application BH2009/02354, The Old Music Library, 115-116 Church Street, Brighton. Both had considered an application for the same premises when an application had come before a Licensing Panel for determination. However, the two sets of legislation and considerations to be taken were separate and they remained of a neutral mind in respect of the planning application. Therefore, both intended to remain present during its consideration and to take part in the discussion and voting thereon.

214.3 Councillor Davey declared a personal and prejudicial interest in Application BH2009/02943, 123-125 Portland Road, Hove. As he lived close to the application site he stated that he would withdraw from the meeting during its consideration and would take no part in the discussion or voting thereon. Councillor Cobb referred to the same application stating that as the site was located within her Ward she had received correspondence from a number of local residents. She had not expressed an opinion in relation to the application remained of a neutral mind and would therefore remain present during its consideration and intended to take part in the discussion and voting thereon.

#### **214C. Exclusion of Press and Public**

214.4 In Accordance with Section 100A of the Local Government Act 1972 ("The Act"), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it 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").

#### **215. MINUTES OF THE PREVIOUS MEETING**

215.1 Councillor Smart referred to Paragraph (8) of the minute relating to Application BH2009/02228, 28 Marine Drive, Rottingdean stating that he had enquired whether the scheme could proceed without use of the public car park.

215.2 Councillor Smart also referred to Paragraph (6) of the minute relating to Application BH2009/02970, Community Base, 113 Queen's Road, Brighton stating that he also enquired whether there were any extant permissions in place in relation to the site.

215.3 **RESOLVED** – That subject to the amendments set out above the Chairman be authorised to sign the minutes as a correct record.

#### **216. CHAIRMAN'S COMMUNICATIONS**

##### **Web casting**

216.1 The Chairman explained that afternoon's meeting of the Planning Committee was being web cast. Members were reminded to speak directly into the microphones and to switch them off when they had finished speaking in order to ensure that they could be heard clearly.

##### **Health Impact Assessment of the Licensing Act 2003**

216.2 The Chairman explained this matter had been referred to the Committee from the Licensing Committee for their information and would subsequently be forwarded to the Cabinet Member for Environment.

216.3 The Council had commissioned a health impact assessment of the Licensing Act 2003 and the direct implications arising from the final report for the planning authority were:



To control the impacts of the introduction of flexible alcohol licensing hours through the land use classifications and to use the test of public amenity;

To review planning policy with the aim of using the planning system to develop and maintain a balance between the establishment and extension of large chains of licensed premises and that of small businesses including small local public houses;

To ensure that any change of use to an external area associated with licensed premises is subject to planning permission (e.g. waste storage area to beer gardens);

To consider using planning gain to fund the provision of community facilities that provide alternatives to drinking, especially for young people;

To enforce the land-use designations made in planning applications;

Enforcement officers should challenge any change to the implementation of land-use category A4 when the category A3 was applied for and granted planning permission;

To integrate strategies for the licensing of sales of alcohol and planning, ensuring that planning and licensing authorities work together.

216.4 The Chairman went on to explain that the planning system and supplementary planning policy may be used to achieve some measures to improve public health matters arising from development of the licensed trade.

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

**217. PETITIONS**

217.1 There were none.

**218. PUBLIC QUESTIONS**

218.1 There were none.

**219. DEPUTATIONS**

219.1 There were none.

**220. WRITTEN QUESTIONS FROM COUNCILLORS**

220.1 There were none.

**221. LETTERS FROM COUNCILLORS**

221.1 There were none.

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

222.1 There were none.

**223. APPEAL DECISIONS**

223.1 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 .

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

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

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

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

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

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

<b>Application:</b>	<b>Site Visit Requested by:</b>
BH2009/03038, Saunders Glass, Sussex Place	Head of Development Control
BH2009/03155, Unit 1 Fairway Trading Estate, Eastergate Road	Head of Development Control
BH2009/0377 & BH2009/03078, Former Thwaites Garage Site, 33 Mighell Street	Head of Development Control

**227. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST : 24 FEBRUARY 2010:**

**(i) TREES**

(1) Councillor Smart referred to the sycamore tree positioned very close to the retaining wall adjoining the public footpath at Brighton & Hove High School. He enquired whether it would be possible to require re-instatement works to be carried out. Councillor Wells referred to the crack in the paving (shown in the photograph submitted with the report) enquiring whether removal of the tree had been requested on those grounds.

(2) The Arboriculturist explained that although guidance could be sought regarding retaining the trees and rebuilding the wall around the trees as the trees themselves were not fine specimens it was recommended that they be replaced.

227.1 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 7 of the report and resolves to grant consent to felling the trees referred to subject to the conditions set out in the report as follows:

BH2010/00291, Brighton & Hove High School, Montpelier Road, Brighton

227.2 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 6 of the report and resolves to grant consent to fell the tree subject to the conditions set out in the report as follows:

BH2009/03029, The Pantiles, Shirley Drive, Hove

(ii) **SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM POLICY**

**A. Application BH2009/02941, Arts D & E Buildings, University of Sussex, Falmer –** Demolition of existing Arts D & E Buildings, removal of temporary Russell Building and construction of new 4 storey academic building, new 2 storey lecture theatre and associated landscaping.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Area Planning Manager (East), Mr Walke, gave a presentation detailing the constituent elements of the scheme. a model was also on display. Elevational drawings were shown as were views across the site including those taking in the adjacent AONB.

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

- (3) Councillor Smart enquired loss of car parking and sought clarification of the location of the new replacement car park.
- (4) Mr Small, CAG referred to the submitted drawings which indicated obscure glazing on some elevations and sought clarification regarding the location of these mesh panels. The Head of Development Control explained that different materials were proposed on different elevations of the building.
- (5) Councillor Cobb sought further details regarding the public art contribution requesting information regarding the form it was proposed this would take and its location. It was explained that the provision of art in the public realm on its campus was managed by the University itself and was not a planning consideration.
- (6) Councillor McCaffery enquired whether the replacement buildings would be as high as the existing. It was explained that although they would be as high, the bulk of the development would be lower than the highest part of the existing building. In answer to further questions it was explained that the lecture theatre would be of brick with an accessible green roof. Details were given of the location of coloured glazed and solid

panels. Whilst supporting the application Councillor McCaffery considered it disappointing that the use of more brick was not proposed.

- (7) Councillor Kemble sought clarification regarding the location and type of cycle racks to be used.

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

- (8) Councillor Mrs Theobald stated that she considered the proposals would provide better buildings which would be more fit for purpose than the existing.
- (9) Councillor McCaffery re-iterated that she considered it regrettable that the use of more brick was not proposed.
- (10) A vote was taken and Members voted unanimously that minded to grant planning permission be given.

227.3 **RESOLVED** - That the Committee has considered and agrees with the reasons for the recommendation set out in paragraph 10 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.

**B. Application BH2009/02911, Roedale, Burstead Close, Brighton** – Demolition of residential home and the development of a 5 storey building containing twenty four affordable flats with 24 parking spaces.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Area Planning Manager (East), Mr Walke gave a presentation detailing the proposed scheme. He explained that one parking space per unit would be provided on site and that there were also good links to local public transport.
- (3) Mr Munt spoke on behalf of neighbouring objectors. In their view the proposed building would be too tall, overbearing and would result in loss of privacy and amenity for those living in the neighbouring blocks. It would also represent overdevelopment of this small close and would have a detrimental impact on views to the adjoining open space.
- (4) Mr Hawkins and Ms Houlton spoke on behalf of the applicants in support of their application, stating that the scheme had been amended in order to address objections received and to seek to ensure that the development was in keeping with the neighbouring backdrop of Hollingbury Golf Course/Hill Fort and Burstead Woods and adjoining land designated as open countryside and a local nature reserve which fell within the boundary of the South Downs National Park.
- (5) Councillor Lepper spoke in her capacity as Local Ward Councillor re-iterating the points made on behalf of neighbouring objectors. Whilst supporting the principle of development she considered that this development would be too high and would be intrusive and overbearing and detrimental to existing green setting as it was set on raised ground at the end of a small cul-de-sac. Reduction in the coloured panelling to

the side elevation would not reduce its height, she also had concerns regarding potential water run-off drainage difficulties which could arise.

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

- (6) Councillor C Theobald enquired whether the existing on-site children's playground would be retained and it was explained that a small amenity space would be provided on-site and a contribution made towards improved provision in the vicinity
- (7) Councillor C Theobald also sought confirmation regarding the proposed location of obscure glazing within the units. It was explained that this would be used to some secondary windows.

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

- (8) Councillor Carden stated that he considered that the applicant should be required to provide a sprinkler system. The Area Planning Manager explained that the access arrangements would remain the same as for the existing development and that building control regulation requirements would need to be met.
- (9) Councillor Smart stated that he did not consider the proposal would result in an unsightly development and therefore supported it.
- (10) Councillor McCaffery considered the scheme would be acceptable.
- (11) Councillor Cobb considered that the design of the scheme was very disappointing, particularly the use of obscure glazing to some secondary windows.
- (12) A vote was taken and on a vote of 6 with 5 abstentions planning permission was granted.

227.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of the report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Agreement and to the conditions and informatives set out and to imposition of additional conditions relating to surface water run off.

**C. Application BH2009/02606, The Old Ship Hotel, King's Road, Brighton –**  
Demolition of hotel garage and construction of new 7 storey extension (Basement-5<sup>th</sup> floor) to provide 42 bedrooms, 2 conference rooms, car parking and restaurant/bar.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Interim Area Planning Manager (West) gave a presentation detailing the application referring to a block plan showing the proposals in the context of the existing street frontage and rear elevations. Proposed floor plans were also shown. The Council's Sustainability Officer had indicated that they were satisfied with the proposed sustainability measures and energy strategy for the new development.

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

- (3) Councillor Davey referred to the works carried out to upgrade and improve the street paving in the area. The footway immediately adjacent to the site had yet to be improved and he queried whether part of the proposed contribution to off site highway improvements could be used for that purpose. The Interim Area Planning Manager agreed that an informative to that effect could be added.
- (4) Mr Small, CAG enquired regarding the exterior finishes proposed. It was explained that a rendered finish would be applied to match the existing. Painted block work was also to be used. In answer to further questions it was explained that the top floor would be predominantly glass with a metal frame. Mr Small confirmed that CAG had welcomed the application subject to officer approval of materials and details.

**Debate and Decision Making Process**

- (5) Councillor Cobb stated that Councillor Davey's comments regarding where it might be appropriate for the contribution towards off-site highway improvements to be spent was welcome. It was disappointing that information had not been provided in the report. She would like to see a lot more detail in reports regarding where it was proposed individual contributions were to be spent and the timeframe.
- (6) Councillor Wells concurred with points made by Councillors Cobb and Davey.
- (7) A vote was taken and Members voted unanimously that they were minded to grant planning permission.

227.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the recommendation set out in paragraph 10 of the report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Agreement to the conditions set out and to the amendments set out below:

Condition 6 to be amended to read:

1. Notwithstanding the details shown on the submitted drawings, further details and specifications of the balconies, glass balustrading, handrail, coping, window frames, eaves, doors, ground floor shop fronts, air conditioning units/ducting and any other external plant or equipment and screening thereof (including any sustainable development measures required in connection with meeting the BREEAM excellent standards necessary to comply with the provisions of conditions 3 and 4) shall be submitted to and approved by the Local Planning Authority at a scale of 1:20 elevations and 1:1 sections in writing before work commences, and shall be completed in strict accordance with approved plans.

**Reason:** To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan.

Add informative 9 to read:

9. in respect of the financial contribution towards off-site highways improvements to be secured through a Section 106 Agreement, the Planning Committee has expressed a

preference for this to be used, at least in part, for upgrading the pavement to the front of the site on Black Lion Street to a quality commensurate with that found in the immediate vicinity of the site.

**D. Application BH2009/02607, Old Ship Hotel, King's Road, Brighton – Demolition of hotel garage.**

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) A vote was taken and Members voted unanimously that they were minded to grant conservation area consent.

227.6 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of this report and resolves to grant Conservation Area Consent subject to the conditions and informatives set out.

**(iii) MINOR APPLICATIONS**

**E. Application BH2009/01489, Ocean Heights, Roedean Road, Brighton – Demolition of existing dwelling and construction of 7 residential apartments (part-retrospective).**

- (1) The Area Planning Manager (East), Mr Walke referred to the fact that at their meeting held on 25/11/2009 the Committee had resolved to defer the application pending further negotiations by officers. The report placed before Members reflected those negotiations and the further representations received.
- (2) The Area Planning Manager gave a presentation highlighting the differences between the approved application and the scheme as built. He also referred to a very late further letter of objection from the resident of 5 Roedean Heights.

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

- (3) Councillor Cobb referred to the fact that there had been a large volume of correspondence from neighbouring residents objecting to the scheme citing the conflicting information given regarding the height of the development and the distances between the development and neighbouring properties. The applicant had indicated that they had proceeded with the scheme following a delay of 8/9 months whilst awaiting advice from the Council. The Head of Development Control explained that notwithstanding that one of the case files had gone missing all of the original plans were available on line. The distances given in the officer's earlier report had been based on minimum distances and this had given rise to confusion. However, as the development had been built Members had been able to see its impact in relation to the neighbouring street scene, as they had visited the site.
- (4) Councillor Smart enquired regarding the number and location of the leylandi to be planted along the site boundary, he had concerns that the space where they were proposed was too narrow and too close to the neighbouring boundary for them to thrive. The Area Planning Manager confirmed their precise location which would be in a less constrained position than Councillor Smart had thought.

- (5) Councillor C Theobald stated that she was confused regarding the trees to be planted. The species proposed had changed and it appeared that these were slower growing species than originally proposed. The Arboriculturist explained the species proposed were suited to growing in coastal locations and made ideal hedging plants. Although they took slightly longer to establish themselves they were hardy enough to withstand coastal weather conditions.
- (6) Councillor C Theobald also referred to the height of the development questioning why it was so much higher in her view than agreed and whether the sole reason for this had been in order to accommodate a sprinkler system. It was explained that the height had been reduced slightly as a result of a reduction in the height of the lift shaft.
- (7) Councillor McCaffery expressed confusion regarding the actual height of the development, particularly how much higher it was than the agreed scheme.
- (8) The Area Planning Manager stated that notwithstanding comments made regarding the height, dimensions and appearance of the building as it had been built, Members were in a position to determine the application on that basis and to decide whether or not they considered it was acceptable.
- (9) The Solicitor to the Committee confirmed that notwithstanding that the scheme had undergone a number of changes as it had been built Members were in a position to determine whether or not they were minded to approve it. Applicants were able to seek retrospective approval and the Committee should determine any application on its merits.

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

- (10) Mr Small, CAG referred to the substantial amount of timber cladding used. The scheme was now significantly different in appearance to that originally submitted. It now appeared that the timber used was not locally sourced coppiced wood, but that it had been transported from the north of England by a supplier who sourced materials worldwide. This situation was far from ideal.
- (11) Councillor Smart sought further clarification regarding the differences between the two schemes, particularly in relation to the thickness of the render and materials used in constructing the balconies. He wished to know the height and depth of the balconies. It was explained that these had been modified so that views from them were oblique and ameliorated any impact on neighbouring amenity.
- (12) Councillor Cobb referred to that fact that a large number of conditions appeared to be required in order to mitigate against any detriment to neighbours. To her this indicated that the scheme was an overdevelopment.
- (13) Councillor C Theobald stated that she considered it regrettable that the development had ever been built. It was an eyesore which had a detrimental impact on neighbouring residents. She considered that officers of the department were at fault in that outstanding matters should have been resolved sooner.



- (14) The Head of Development Control stated that there was an extant permission in place. Some elements of the scheme were retrospective and Members needed to determine whether they considered the scheme was acceptable or whether in their view it was so detrimental to neighbouring amenity that it should be refused.
- (15) The Solicitor to the Committee re-iterated that applicants were entitled to submit applications retrospectively. Members needed to determine applications on their merits. It was inappropriate to deal with them punitively.
- (16) Councillor McCaffery thanked officers for their clarification. She had been concerned regarding the height of the development. However, given the amount of screening proposed on balance she supported the application.
- (17) A vote was taken and on a vote of 7 to 3 with 1 abstention planning permission was granted.

227.7 **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.

**Note:** Councillor Kemble stated that he intended to abstain from voting as he had not been present on previous occasions when the application had been discussed. Although he remained of a neutral mind he did not consider he had the same background knowledge of the site as other Members.

**F. Application BH2009/02915, Windlesham School, 190 Dyke Road, Brighton –** Alterations to existing classroom including removal of 1 roof light and lowering of the East section of the building with new mono pitched roof.

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

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

- (2) Councillor McCaffery considered the structure should be erected in the position agreed in the earlier planning permission. She sought clarification of the changes between the application as approved and its precise distance nearer to the boundary wall. She considered the structure was overbearing and had a detrimental impact on neighbouring amenity.
- (3) Councillor Kennedy stated that she did not understand why enforcement action had not been taken as the structure had not been erected in its agreed location. As the structure was resting on the ground rather than having foundations which had been set down into it, she considered that it should be possible for the structure to be moved.
- (4) Councillor Davey stated that although he had voted that the original application be approved he was very unhappy that it not been erected in the agreed location.
- (5) Councillor Hamilton stated that he wanted the structure to have been built in its agreed location and wanted action to be taken to ensure that it was.

- (6) The Head of Development Control stated that the application was before Members for consideration and determination as built, they could refuse permission if they considered it had a significant and unacceptable impact. Applicants could submit a revised scheme. Enforcement action was not taken automatically and an assessment needed to be made as to whether or not enforcement action would be appropriate. As the application had not been determined, enforcement action had not been considered yet.
- (7) Councillor C Theobald referred to the "temporary" status of the building and it was confirmed that the structure would be permanent. The current use as a classroom would be temporary until 2012. Thereafter it would be used for storage.
- (8) A vote was taken and on a vote of 6 to 5 planning permission was granted.

227.8 **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.

**G. Application BH2009/02797, 106 Waldegrave Road, Brighton** – Erection of bicycle shelter to front of property.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Area Planning Manager (East) Mr Walke gave a presentation and explained that by virtue of its location within the conservation area and by reason of its siting in a small elevated front garden the bicycle shelter was considered to be damaging to the existing property, the surrounding street scene and the conservation area.
- (3) Councillor Allen spoke in his capacity as a Local Ward Councillor stating that notwithstanding a recent decision of the Planning Inspectorate relating to a similar bicycle shelter elsewhere in Waldegrave Road he considered it was appropriate for the Council to adopt a more flexible approach. The Council was encouraging residents to use sustainable forms of transport and it was not appropriate to expect residents of terraced properties to carry their bicycles through the house on each occasion they were. He did not consider that the structure was overly dominant or that it would lead to a proliferation of such requests. For consistency a uniform colour type of shelter could be required.

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

- (4) Councillor Kennedy stated that she shared the view that the Council needed to turn its mind to the matter of green transport and to the very real difficulties of those living in terraced houses who were bicycle owners. Clear policies needed to be put together indicating where/under what circumstances shelters could be provided in residents' front gardens and whether certain types of shelter/colour could be permitted which would give a uniform appearance within the street scene, or whether appropriate screening could be considered acceptable. Councillor McCaffery also concurred in that view.

- (5) Mr Small, CAG referred to photographs of the structure (now removed) stating that the properties in the conservation area were well maintained and of a uniform appearance and that to introduce the possibility that a galaxy of “sheds” might appear was unacceptable.
- (6) Councillor Cobb agreed considering that existing policy should be upheld.
- (7) Councillor C Theobald whilst having some sympathy with the applicant considered that if approved the application could set a precedent. On balance she considered that it was important to uphold the Council’s planning policies on this matter.
- (8) A vote was taken and on a vote of 4 to 3 with 4 abstentions planning permission was refused.

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

**H. Application BH2009/02354, The Old Music Library, 115-116 Church Street, Brighton** – Change of use from library (D1) to restaurant (A3) and steel louvres on Eastern roof slope to serve plant room.

- (1) The Area Planning Manager (East), Mr Walke gave a presentation detailing the constituent elements of the scheme including the proposed treatment of the rear garden/yard area. Although it was proposed it would be enclosed by a 2.1m high flint and brick wall it was considered that that the twitten running behind the wall would benefit from increased security and surveillance which could be provided by introducing lower walling and railings above.
- (2) Ms Marriage spoke on behalf of neighbouring objectors living in the adjacent mews development. In their view the proposed hours of operation of the premises, particularly the period during which the rear patio would be use were too long and did not reflect that of other similar businesses in the vicinity. They were proposing that Condition 9 be amended to ensure that use of the rear seating area cease by 11.00pm rather than at 11.00pm.
- (3) Mr Polito, the applicant spoke in support of his application stating that the proposals had been designed with the intention of bringing the building back into use whilst responding sympathetically to the concerns of local residents, the business would operate as a high quality restaurant rather than as a drinking establishment.

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

- (4) Councillors Davey and Wells sought clarification regarding the location and proximity of neighbouring residential accommodation to the rear “garden” area.
- (5) Councillor C Theobald sought clarification regarding disabled access to the premises and it was explained that it would still be possible to obtain access from the rear as well as from the front entrance. Councillor Theobald also requested information

regarding the boundary treatment proposed adjoining neighbouring residential properties and the twitten to the rear.

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

- (6) Councillor Smart stated that he considered the proposed hours of opening were too long, he would like the period during which the rear yard could be used to be reduced. Councillor Davey concurred in that view. Councillor Davey proposed that the hours of operation should be reduced as there was a concern about the impact of the development on the amenity of the immediately adjacent residents.
- (7) Councillor McCaffery enquired regarding the hours of operation agreed by the Licensing Panel when the Licensing application had been agreed recently. It was reported that this was not known. Councillor Cobb stated that it would have been useful if information had been available to Members.
- (8) Councillor Hyde, the Chairman stated that her recollection was that shorter hours of operation had been agreed than those requested by the applicant. The premises would not be able to stay open longer than permitted by the licensing authority.
- (9) The Solicitor to the Committee stated that the Committee acting as the planning authority needed to make their own determination of the application which was caught by separate legislation than that applied by the licensing authority.
- (10) Councillor Smart considered that the time by which use of the rear yard should cease should factor in sufficient time for it to be cleared of customers. Members then suggested that conditions be applied requiring the rear patio be cleared by 10.00pm and that the premises themselves should close by midnight.
- (11) A vote was taken in relation to proposed conditions 8,9 to take on board the points set out in (10) above. This was approved on a vote of 10 with 1 abstention. The substantive vote was then taken and Members voted unanimously that planning permission be granted.

227.10 **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 Agreement and to the conditions and informatives set out conditions 8 and 9 to be amended as set out below:

Condition 8:

Amend hours to midnight to 0.800.

Condition 9:

Amend hours to 08.00 and 22.00.

I. **Application BH2009/02943, 123-125 Portland Road, Hove** – Alterations to shop front including insertion of ATM cash machine. Erection of external condenser unit to the rear within timber plant enclosure.

- (1) The Interim Area Planning Manager (West), Mr Ellwood gave a presentation detailing the scheme. He explained that although the applicant had carried out other works at the site the application before the Committee related only those matters set out. The applicant had been advised of the need to submit further application(s) in relation to those outstanding matters. Condition 1 needed to be deleted as it no longer applied and Condition 2 required amendment.

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

- (2) Councillor Smart enquired regarding the number of car parking spaces which would be lost. It was explained that none would be lost in relation to the current application, although 4/5 could be lost in consequence of the consequent Traffic Regulation Orders.
- (3) Councillor Smart also enquired regarding colour of the windows fronting Portland Road. It was explained that these would be clear but would have a vinyl coating.
- (4) Councillors Davey and Wells and Mr Small CAG requested whether it would be possible to add an informative to ensure that the windows remained clear and clear of advertisement features. The Area Planning Manager stated that an advertising material to be placed in the window would require separate advertisement consent.

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

- (5) Councillor Cobb referred to the unauthorised works which had been carried out stating that the applicants had behaved inappropriately. She considered that they had flouted proper procedures.
- (6) The Solicitor to the Committee explained that the Committee needed to address the application before them with a neutral mind and to determine it accordingly irrespective of whether or not it had been submitted retrospectively.
- (7) A vote was taken and Members voted and on a vote of 6 to 4 of those Members present, Members voted that planning permission be granted.

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

Description of proposal to be amended to read:

“Alterations to shop front including insertion of ATM cash machine. Erection of external condenser unit to rear within timber plant enclosure (Retrospective).”

Condition 1 to be deleted.

Condition 2 to be amended to read:

2. Within two months of the date of this permission a scheme for the suitable treatment of all plant and machinery against the transmission of sound and/or vibration shall be submitted for approval by the local planning authority the measures shall be implemented within one month of the local planning authority's written approval of the scheme in strict accordance with the approved details and shall thereafter be retained as such.

**Reason:** To safeguard the amenities of occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Add Informative 4 to read:

For the avoidance of doubt the applicant is advised that this grant of planning permission is restricted to those works and details shown on the approved plans/drawings only. A separate application for planning permission will be required for any further external plant or equipment, including the fan coil units that have recently been installed on the northern elevation of the building without prior permission from the local planning authority.

**Note1:** Having declared a personal and prejudicial interest in the above application Councillor Davey left the meeting and took no part in the discussion, debate or decision making process thereon.

**Note 2:** Councillors Caulfeld, Cobb, Smart and Wells voted that planning permission be refused.

**J. Application BH2009/00696, 39 Salisbury Road, Hove** – Demolition of existing building and erection of a four storey private residential building containing 9 mixed size units and community area on ground floor.

(1) The Head of Development Control explained that consideration of the application was to deferred as an error had found in the re-submitted plans. The applicant had been requested to address this matter prior to the application being determined.

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

**228. 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**

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

<b>Application:</b>	<b>Site Visit Requested by:</b>
BH2009/03038, Saunders Glass, Sussex Place	Head of Development Control

BH2009/03155, Unit 1 Fairway Trading Estate, Eastergate Road	Head of Development Control
BH2009/03077& BH2009/03078, Former Thwaites Garage, 33 Mighell Street	Head of Development Control

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

229.1 **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 representation received by the Council after the Plans List reports had been submitted for printing was circulated by Members on the Friday preceding the meeting. 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 they should in exceptional circumstances 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 5.45pm

Signed

Chairman

Dated this

day of





<b>Subject:</b>	<b>Public Question</b>		
<b>Date of Meeting:</b>	<b>17 March 2010</b>		
<b>Report of:</b>	<b>Director of Strategy &amp; Governance</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Penny Jennings</b>	<b>Tel: 29-1065</b>
	<b>E-mail:</b>	penny.jennings@brighton-hove.gov.uk	
<b>Key Decision:</b>	No		
<b>Wards Affected:</b>	Rottingdean Coastal		

## FOR GENERAL RELEASE

### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 A question has been received from Miss P E Tompkins of Saltdean in the following terms:
- 1.2 (i) To receive the following question. Miss Tompkins has been invited to attend in person to put her question and on hearing the response will be permitted to ask one supplementary question.

*“Attractive areas surrounding the town are destroyed by developers interested in their cash return, regardless of the destruction to other people’s homes. The impact of close proximity and overshadowing which effects the previous pleasant environment of home owners suddenly faced with such a situation, in short home owners would suffer for the gain of the developer,. as a member of the public it is relevant to ask if the Planning Committee are fully aware of all developments, and if such a situation existed would they stand by the public, their public as elected Councillors? As a Councillor do you consider a developers gains should be placed before the public’s environment and the destruction of their homes?”*



**APPEAL DECISIONS**

	<b>Page</b>
<b>A. ROTTINGDEAN COASTAL WARD</b>	
Applications BH2008/03708 & BH2008/03707, 1 & 2 Northgate Cottages, Falmer Road. Appeal against refusal to grant planning permission and listed building consent for subdivision of the studio from 1 & 2 Northgate Cottages to form a self-contained residential unit at Northgate Cottage. (Delegated Decision) <b>APPEAL ALLOWED</b> (copy of the letter from the Planning Inspectorate attached).	<b>23</b>
<b>B. MOULSECOOMB &amp; BEVENDEAN WARD</b>	
Application BH2008/03736 12 Hornby Road, Brighton. Appeal against refusal to grant planning permission for proposed construction of a detached 2 storey dwelling. (Delegated Decision) <b>APPEAL DISMISSED</b> (copy of the letter from the Planning Inspectorate attached).	<b>29</b>
<b>C. ST PETER'S &amp; NORTH LAINE WARD</b>	
Application BH2007/0138, Land at 95 Trafalgar Street, Brighton. Appeal under Section 174 of the Town & Country Planning Act 1990 as amended by the Planning & Compensation Act 1991 against the enforcement notice issued. (Enforcement Action Decision) <b>APPEAL DISMISSED &amp; ENFORCEMENT NOTICE UPHELD</b> (copy of the letter from the Planning Inspectorate attached).	<b>31</b>
<b>D. PRESTON PARK WARD</b>	
Application BH2009/0201, 96 Waldegrave Road, Brighton. Appeal under Section 174 of the Town & Country Planning Act 190 as amended by the Planning & Compensation Act 1991 against the enforcement notice issued. (Enforcement Action Decision) <b>APPEAL DISMISSED &amp; ENFORCEMENT NOTICE UPHELD</b> (copy of the letter from the Planning Inspectorate attached).	<b>35</b>

## **E. PATCHAM WARD**

Application BH2009/01170, Plots 1 & 2 land off Braypool Lane, Brighton. Appeal against refusal to grant planning permission subject to conditions. (Delegated Committee Decision) **APPEAL ALLOWED & PLANNING PERMISSION VARIED AS SET OUT** (copy of the letter from the Planning Inspectorate attached). **45**

## **F. STANFORD WARD**

Application BH2009/00579, Land R/o 1 Orchard Avenue, Hove. Appeal against refusal to grant planning permission for use of site as a car park. (Delegated Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **49**

## **G. WESTBOURNE WARD**

Application BH2009/00526, 14 Princes Square, Hove. Appeal against refusal to grant planning permission for single storey rear extension and re-cladding to existing pool building. (Delegated Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached). **51**



# Appeal Decisions

Site visit made on 27 January 2010

by **Joanna C Reid** BA(Hons) BArch(Hons)  
RIBA

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

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

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

**Decision date:**  
**18 February 2010**

## 2 Appeals at Northgate Cottage, Falmer Road, Rottingdean, Brighton BN2 7DT

- The appeals are made by made by Mr Kim Strasman against the decisions of Brighton & Hove City Council.
- The proposals are the subdivision of the studio from 1 & 2 Northgate Cottages to form a self contained residential unit.

### Appeal A Ref: APP/Q1445/E/09/2109472

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The application Ref BH2008/03708, dated 12 November 2008, was refused by notice dated 4 March 2009.

### Appeal B Ref: APP/Q1445/A/09/2108856

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application Ref BH2008/03707, dated 12 November 2008, was refused by notice dated 4 March 2009.

### Decision: Appeal A Ref: APP/Q1445/E/09/2109472

1. I allow the appeal, and grant listed building consent for the subdivision of the studio from 1 & 2 Northgate Cottages to form a self contained residential unit at Northgate Cottage, Falmer Road, Rottingdean, Brighton, BN2 7DT, in accordance with the terms of the application, Ref BH2008/03708, dated 12 November 2008, subject to the following conditions:
  - 1) The works hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The works hereby permitted shall be carried out in accordance with the approved plans numbered 01B, 02, 03, 04, 05A, 06a, 07A, and 10.
  - 3) A sample area of the flint and brick wall shall be constructed on the site and shall be approved by the local planning authority in writing and the works shall be carried out to match the approved sample area.

### Decision: Appeal B Ref: APP/Q1445/A/09/2108856

2. I allow the appeal, and grant planning permission for the subdivision of the studio from 1 & 2 Northgate Cottages to form a self contained residential unit at Northgate Cottage, Falmer Road, Rottingdean, Brighton, BN2 7DT, in accordance with the terms of the application, Ref BH2008/03707, dated 12 November 2008, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans numbered 01B, 02, 03, 04, 05A, 06a, 07A, and 10.
- 3) Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) Order 1995* as amended (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwelling shall be carried out other than those expressly authorised by this permission.
- 4) All glazing in the north-east facing wall up to 1800mm above finished floor levels shall not be glazed otherwise than with obscured glass and, except for the ground floor French windows, all glazing up to 1800mm above finished floor levels shall be fixed shut and shall be retained thereafter.
- 5) No development shall take place until details of the storage of refuse and recycling and cycle parking has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall be retained thereafter.
- 6) The car and motorcycle parking spaces to be provided shall be kept available for the parking of motor vehicles and motorcycles at all times. The car and motorcycle parking spaces shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and retained as such thereafter.
- 7) The materials, joinery and roof light to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 8) A sample area of the flint and brick wall shall be constructed on the site and shall be approved by the local planning authority in writing and the development shall be carried out to match the approved sample area.

### **Appeal A: Main issue**

3. I consider that the main issue in this appeal is the effect that the subdivision of the plot and the proposed wall would have on the setting of the listed building.

### **Appeal A: Reasons**

4. The listed building, 1 to 4 (consecutive) Northgate Cottages, was listed in Grade II on 20 August 1971. The group includes a pair of cottages, 1 and 2 Northgate Cottages, which have been converted to a single 2 to 3 bedroom dwelling. It is not clear whether the cottages had been converted to a single dwelling at the time when the building was listed. The proposed conversion of the studio in its garden to a separate dwelling would result in 2 dwellings on the plot where there had historically been 2 dwellings, so the subdivision of the plot is acceptable in principle.
5. Although there is currently a single garden on 2 levels, little documentary evidence of the historic layout of the former plots for each of 1 and 2 Northgate Cottages has been put to me. The low wall and pier which presently separates the upper and lower gardens, which may have formed the original rear boundary of at least one of the cottages' plots, is roughly in line with the

outbuildings in the back gardens of 3 and 4 Northgate Cottages, which were listed at the same time. That wall and pier would be retained, and it would continue to define the boundary between the lower and upper gardens.

6. A new flint and brick wall about 0.85m high would subdivide the upper garden. It would be a low-key addition which would define the proposed courtyard to the listed building and the upper garden area next to the proposed dwelling. The openness over the whole historic upper garden would therefore be preserved. As the proposal would also preserve much of the boundary between the upper and lower gardens, which is important to the setting of the listed building, the historic pattern of the plot would also be preserved. Thus, the subdivision of the plot would not harm the setting of the listed building. In consequence, it would preserve the character of the Rottingdean Conservation Area within which it stands.
7. The Council's suggested condition for a flint wall sample is reasonable and necessary as the proposal is within the setting of a listed building and within a Conservation Area. I have also imposed a condition identifying the application drawings for the avoidance of doubt and in the interests of proper planning.
8. I conclude that the subdivision of the plot and the proposed wall would not harm the setting of the listed building. It would satisfy saved Policy HE3 of the *Brighton & Hove Local Plan* (LP), and national policy in Planning Policy Guidance: *Planning and the Historic Environment* (PPG15). For the reasons given above and having regard to all other matters raised, the appeal succeeds.

### **Appeal B: Reasons**

9. I consider that the main issues in this appeal are firstly, the effect the proposal would have on the setting of the listed building, and thus on the character or appearance of the Conservation Area within which it stands, secondly, its effect on the living conditions of the occupiers the listed building with regard to perceived overlooking from the proposed dwelling, and thirdly, its effect on the living conditions of the future occupiers of the proposed dwelling with regard to Lifetime Homes standards.
  10. For the very same reasons as in Appeal A, I consider that the subdivision of the plot would not harm the setting of the listed building, and in consequence it would preserve, and thus not harm, the character of the Conservation Area.
  11. The studio was a flat-roofed garage which has been extended a number of times. It is now approaching the size of the dwelling it once served, and this is plain in views from Falmer Road. Its character as an ancillary building to the main dwelling has been compromised by the addition of the balcony, and it already looks like a small dwelling. In consequence, the loss of the garage doors and the addition of a modest bay window that the proposal would cause would not harm its existing character. Whilst it would be visible from the public domain the proposed dwelling would not harm the setting of the listed building.
  12. Because it would be a relatively small dwelling I do not consider that the use of the site would be greatly intensified, or that the use of the balcony in connection with the proposed dwelling would harm the living conditions of neighbours. I consider that the proposal would not harm the setting of the
-

listed building, and that it would not harm the character of the Conservation Area within which it stands. It would satisfy saved LP Policies HE3 and HE6, and the advice in PPG15.

13. Turning to my second issue, overlooking of the listed building from the first floor openings in the north-east elevation of the appeal building does not occur because the glazing is obscured, and a planning condition could be imposed for it to be retained. Also, the views from the first floor windows in the listed building towards the proposed dwelling are seriously restricted by their comparatively small size and their relatively low head heights. Due to the sufficient distance between the buildings, and their physical relationship to one another, I do not consider that the first floor glazing in the proposed dwelling would cause a perception of overlooking which would harm the living conditions of the occupiers of the listed building either inside or outside their home. It would satisfy saved LP Policy QD27.
14. Whilst the proposed wall by the courtyard to the listed building would not be sufficiently tall to ensure the privacy of the neighbouring occupiers, this was not a concern of the Council in their reasons for refusal. Low walls at the site and close by contribute in an important way to the character of the Conservation Area. In my view, the depth of the listed building courtyard is sufficient to provide a reasonable degree of privacy having regard to its siting within this Conservation Area, and screen planting on either side of the wall could be provided at the occupiers' discretion.
15. Turning to my third issue, saved LP Policy HO13 states that proposals for conversions and changes of use to provide residential accommodation will be expected to demonstrate that wherever it is practicable Lifetime Homes criteria have been incorporated into the design. However, the relevant Planning Advice Note was not included with the Council's Questionnaire, and the Council have raised no specific concerns about the proposal. I consider that the proposed conversion of the studio to a fairly compact one bedroom dwelling would provide attractive and useable accommodation for its future occupiers. Although it might not satisfy all of the Lifetime Homes criteria, and it would be contrary to the letter of saved LP Policy HO13, this would not be a sufficient reason to refuse planning permission for this otherwise acceptable proposal. I consider that the proposal would not harm the living conditions of the future occupiers with regard to Lifetime Homes standards.
16. I have carefully considered the Council's suggested conditions. A condition identifying the application drawings is necessary for the same reasons as in Appeal A. The exposed siting of the appeal building within a Conservation Area and its relationship with the surrounding dwellings and their gardens provide the exceptional circumstances whereby it is reasonable and necessary to remove permitted development rights for extensions and alterations. The condition to control obscured glazing is reasonable to protect the living conditions of the occupiers of the listed building. Conditions to control materials, including the proposed wall and joinery, including the roof light, cycle parking, and refuse and recycling facilities, are reasonable and necessary to protect the character of the area, as the site is within a Conservation Area. The condition controlling parking at the site is necessary in the interests of highway safety. I shall impose these conditions, re-worded as necessary in the



light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*.

17. The Council do not object to the existing roof light, so it would not be reasonable to require a different type for the proposed roof light. The condition for a scheme to be agreed with the Council for a financial contribution towards sustainable transport infrastructure would not be reasonable because the change of use of the existing studio, which is in use as the appellant's offices, to a small dwelling would have a negligible impact on transport. Also, planning permission could not reasonably be withheld if the contribution were not to be paid. The Code for Sustainable Homes has replaced the Building Research Establishment Environmental Assessment EcoHomes standards for new housing. Compliance with Code Levels, which have been set above the requirements of the current Building Regulations, is currently voluntary. As the appellant objects to the conditions, they would not be reasonable. A waste minimisation statement was submitted with the application for this limited refurbishment proposal, so the condition would not be necessary. For the reasons already given, details of Lifetime Homes standards would not be reasonable or necessary. As these conditions do not satisfy all of the tests in the Circular, I shall not impose them.
18. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

*Joanna C Reid*

INSPECTOR





# Appeal Decision

Site visit made on 1 February 2010

by **E C Grace** DipTP FRTPi FBEng PPIAAS

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**15 February 2010**

## Appeal Ref: APP/Q1445/A/09/2111270 12 Hornby Road, Brighton BN2 4JL

- 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 S Brand against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03736, dated 31/7/08 was refused by notice dated 2/3/09
- The development proposed is construction of a detached 2 storey dwelling.

### Decision

1. I dismiss the appeal.

### Main Issues

2. The main issues in this case are whether the proposal would: a) be out of keeping with the character and appearance of the locality; b) cause harm to the living conditions of residents in neighbouring dwellings and/or c) result in an inadequate area of amenity space for both the new and existing dwellings. A fourth refusal reason relating to making provision for requisite transport infrastructure has been addressed to the Council's satisfaction by the submission of a Unilateral Undertaking by the appellant.

### Reasons

3. The proposal is to sever a plot from the garden of 12 Hornby Road and erect a detached dwelling thereon. The site is within a residential area where the predominant house types are semi-detached 2 storey houses dating from the middle of the last century. They are set in spacious plots with generous gaps between them. I note that a previous outline application for a similar proposal was refused by the Council in 2002 and a subsequent appeal was dismissed.
4. The locality has a steeply undulating topography which strongly influences its character, layout and the inter-relationships between buildings. The property from which the plot is proposed to be severed is one of a pair of semi-detached houses that are set at an angle to the highway. It also steps down the slope from its neighbour and the proposed new dwelling would be set lower still on the site of its former garage. The proposed plot would be much smaller than the norm for the area whereby the building would appear incongruous and extremely cramped due to the relatively short distances between the structure and all its boundaries. Also, it would be alien to the grain of development hereabouts being narrow and deep compared to the relatively wide but shallow buildings around it. I thus find it would be out of keeping with the character and appearance of the locality and result in harm to the street scene.

5. The second and third issues are inter-related. The proximity of the proposed dwelling to the host property, combined with the difference in levels between them and the ensuing relatively compact garden areas, would result in a considerable degree of overlooking between both houses and gardens at close quarters. This is not only the case between the proposed house and No 12 but also with No 14 whose plot would stand just 7.5m away from its rear elevation at a still higher level. Moreover, the new dwelling would result in a significant loss of daylight and sunlight to the residual garden area of No 12.
6. These factors lead me to concur with the Council that the proposal would result in an inadequate area of amenity space for both the new and existing dwellings with a consequential unsatisfactory diminution of living conditions for residents in neighbouring dwellings and the proposed house itself due to a combination of overlooking and loss of light.
7. For the reasons given above I conclude that the proposal would contravene Policies QD1, QD2, QD3, QD27, HO4 and HO5 of the Brighton and Hove Local Plan and that the appeal should be dismissed.

*Edward Grace*

Inspector



# Appeal Decision

Site visit made on 1 February 2010

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 February 2010**

## Appeal Ref: APP/Q1445/C/09/2113921

### Land at 95 Trafalgar Street, Brighton, East Sussex BN1 4ER

- 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 Bank Machine Limited against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is: 2007/0138.
- The notice was issued on: 7 September 2009.
- The breach of planning control as alleged in the notice is: "*Without planning permission the installation within and alteration to shopfront as follows:*
  - a. *Installation of an Automated Teller Machine (ATM).*
  - b. *Insertion of a vertical mullion and white panelling.*
  - c. *Installation of a roller shutter with box housing and guiderails.*
  - d. *Installation of an internally illuminated box sign for the ATM.*
  - e. *Installation of a receipt or litter box for use by ATM customers*".
- The requirements of the notice are:
  1. *Remove the Automated Teller Machine (ATM) from the shopfront.*
  2. *Remove the vertical mullion and white panelling and restore the shopfront to that which existed prior to the installation of the ATM.*
  3. *Remove the roller shutter grille, box housing and shutter guide rails from the shopfront together with any associated fixings.*
  4. *Remove the internally illuminated box signs for the ATM from the shopfront.*
  5. *Remove the ATM receipt or litter box from the front of the shopfront*".
- The period for compliance with the requirements is: "*Three months*".
- The appeal is proceeding on the grounds set out in Section 174(2)(f) 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 is dismissed and the enforcement notice upheld with corrections.**

### The notice

1. The allegation in and the requirements of the notice in respect of that part of the allegation at sub-section c and requirement numbered 3 differ to a minor extent in their terminology and it seems to me that they should relate as closely as possible one to the other. Accordingly, I propose to correct the notice in order that these two elements of the notice directly relate to each other.

### Procedural matter

2. Both parties to the appeal have submitted full appeal statements, but in view of the fact that the deemed planning application does not fall to be considered for the reasons given above, I am not in a position to have regard to the

planning merits of the development, the subject of the notice, including any inferred need for it. The appeal site lies in the North Laine Conservation Area and in the determination of this appeal I am required to have regard to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, insofar as the planning merits of the subject development do not fall to be considered I point to the observations concerning the impact of development on the conservation area made by the Inspector who determined the Section 78 appeal (Ref: APP/Q1445/A/08/2082141, dated 26 January 2009) relating to the installation of an ATM at the appeal premises.

**The appeal on ground (f)**

3. The Appellants contend that the requirements of the notice are excessive in that they are liaising with the Council for the purpose of agreeing a revised design for the shopfront which accords with the Council's planning policies and addresses the criticisms made by the Inspector who determined the above-mentioned appeal. In view of this the Appellants request that the Council withholds enforcement action to allow it to make a decision on an application for planning permission for the revised design which has been commissioned from a local architect.
4. For its part, the Council makes criticisms of the unauthorised development, and points to its refusal of consent for the display of the illuminated sign included in the notice. These matters have led the Council to conclude that the development is unacceptable in which case the requirements of the notice are not excessive and only go as far as necessary for the purpose of remedying the identified breach of planning control.
5. The Council acknowledges the fact that negotiations concerning a revised scheme for the site are on-going, and agrees that an acceptable scheme may ultimately result, but at the present time there is no guarantee that the matter will be satisfactorily resolved. There is acceptance by the Council that should an application for a new shopfront be made, subject to negotiation with the Appellants, it would be reasonable to withhold enforcement action until such time as the application is determined. However, the Council points out that at the time of submission of its appeal statement on 16 November 2009 no planning application had been made by the Appellants.
6. Apart from mention of a revised scheme, and provision of associated illustrative drawings, no physical alterations to the unauthorised development to define any lesser steps that would overcome the objections to it have been included in the grounds of appeal or the Appellant's appeal statement. I say this in the knowledge that it appears to me that the illustrative scheme submitted by the Appellants would not constitute lesser steps but amounts to a major reconfiguration of the shopfront.
7. As the matter stands, the representations made in the ground (f) appeal appear to be more related to an appeal on ground (g) in that the appeal effectively seeks an extension of time for compliance with the requirements of the notice. The problem I have with this is that no finite period is specified, with the grounds of appeal suggesting an open ended period to coincide with determination of an application for planning permission, the submission date of

which is unknown to me. Moreover, I am not in a position to anticipate the decision the Council will make on any future planning application.

8. However, I recognise that Section 173A(1)(b) of the Act as amended enables a local planning authority to relax any requirements of a notice, and in particular may extend any period specified for its compliance. In the circumstances of this case it seems to me that it would be unreasonable for the Council to require compliance with the notice on expiration of the period for compliance given in the notice when there is the prospect of securing an acceptable alternative to the unauthorised development.
9. In view of this I propose to dismiss the appeal in the expectation that the Council will exercise its discretion to operate within the provisions of Section 173A(1)(b) of the Act for the purpose of extending the period for compliance with the notice to allow sufficient time for the Appellants to submit an application for the installation of a new shopfront and for that application to be determined. It will be a matter for the Council to decide on any further action following determination of that application.

### **Conclusions**

10. For the reasons given above, and having regard to all the other matters raised, I conclude that with the likely safeguard afforded by Section 173A(1)(b) of the Act the appeal should not succeed. I shall dismiss the appeal and uphold the enforcement notice with corrections.

### **Formal decision**

11. I direct the enforcement notice be corrected by:
  - a. deletion of the word "*guiderails*" from sub-paragraph c. of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED; and substitution therefor of the words "*guide rails*".
  - b. Insertion of the word "*shutter*" after the words "*housing and*" into sub-paragraph c. of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED;
  - c. deletion of the word "*grille*" from sub-paragraph 3. of paragraph 5 under the heading WHAT YOU ARE REQUIRED TO DO.
12. Subject to these corrections, I dismiss the appeal and uphold the enforcement notice.

*A J Bingham*

Inspector







# Appeal Decisions

Site visit made on 1 February 2010

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 February 2010**

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## Appeal A Ref: APP/Q1445/C/09/2113070

### Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG

- 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 Dr Juan I Baeza against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is: 2009/0201.
- The notice was issued on 24 August 2009.
- The breach of planning control as alleged in the notice is: "*Without planning permission a cycle storage shed of timber construction to the front garden area of the property was erected*".
- The requirements of the notice are: "*Remove the storage shed from the front garden of the property known as 96 Waldegrave Road, Brighton*".
- The period for compliance with the requirements is: "*28 days*".
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: the appeal is dismissed and the enforcement notice upheld.**

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## Appeal B Ref: APP/Q1445/C/09/2113071

### Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Deborah Collis against the same enforcement notice the subject of Appeal A.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. 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 is dismissed and the enforcement notice upheld.**

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### Application for costs

1. An application for costs was made by Dr Juan I Baeza against the Brighton and Hove City Council. This application is the subject of a separate Decision.

### Appeals A and B the appeals on ground (c)

2. The Appellants assert, with support from appeal decisions elsewhere and from legal precedents, that the structure, the subject of the enforcement notice, does not constitute operational development as defined by Section 55 of the 1990 Act. They point to two arguments to counter the allegation that building
-

operations have occurred. Firstly, it is claimed that the subject structure is too small to be of any practical significance; secondly, mention is made of the three part test established by the Courts to assess whether what has occurred is a building operation based on examination of its size, permanence and physical attachment.

3. The Council expresses the view that the subject structure comprises development within the definition given in Section 55 of the Act in which case a breach of planning control has occurred as a matter of fact. The Council has arrived at this view after having considered the matter against the three part test referred to by the Appellants arising from the legal precedent *Cardiff Rating Authority v Guest Keen and Baldwin [1949] 1KB 385*. In the presentation of its case the Council also refers to an Article 4 Direction which is in force on land that includes the appeal site, but insofar as the cycle storage shed is positioned in the front garden of the appeal property the provisions of the Direction have no direct bearing on the matter in hand.
4. I turn firstly to the Appellant's argument that the structure is *de minimis* in planning terms, being too small to be of any practical significance. I reject this argument for reasons given in my consideration of the ground (a) appeal made under Appeal A.
5. Secondly, the three part test referred to by the parties falls to be applied to the case in hand. On the matter of size, which is a relative term, the Appellants give the dimensions of the subject structure as 2.1m in length, 1.0 m in width and 1.2 m in height. It is not a conventional walk-in shed, nevertheless it needs to be considered in the context the garden area in which it is sited. The front garden of the appeal property is not generous being about 4.25 m deep and 5.0 m wide. The storage shed covers some 10% of this front garden area. In view of this degree of coverage, and with regard to its height, it is my opinion that the storage shed is a relatively sizeable structure when seen in its setting.
6. Turning to the matter of permanence, although the Appellants argue that the storage shed is capable of being moved by two people, it seems to me that its removal would not be easily accomplished. Even its removal from time to time would not necessarily denote lack of permanence as illustrated by the judgement made in the case *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions [2006] JPL 1025* concerning the erection and dismantling of a marquee.
7. Despite the size of the storage shed, or perhaps because of its size, and in recognition that timber is a relatively dense material it is my opinion that substantial manpower would be required to achieve manual lifting. In any case, such a lifting operation would not shift the base that forms part of the structure. Moreover, the suggestion that the structure could be easily moved negates the Appellant's argument that the shed provides a secure storage facility. More to the point is the fact that it appears the intention is for the storage shed to be permanently sited on the land for the use of the Appellants, and possibly for any subsequent occupiers of the appeal property. The claim that the storage shed can be dismantled in 30 minutes and reassembled in 4 hours does not have any bearing on the apparent intention to keep it permanently on the appeal site.

8. Finally, the matter of physical attachment to the ground falls to be considered. In relation to this matter the Appellants state that the storage shed: "*does not have a foundation; is not physically affixed to the ground; rests on six paving slabs*". From information volunteered during my site visit, the Appellants believe that the paving slabs are each 600 mm by 600 mm in area. At my inspection it was not possible to see what had been done below the sheet material that forms the floor of the structure. Nevertheless, it appears that the surface of the site has been prepared to provide a level plane. Following that procedure, six paving slabs have been placed to support the timber framed structure, which as a consequence does not rest directly on the ground. In my opinion, despite the Appellant's contrary view, these paving slabs, which together cover land equal to almost 50% of the floor area of the storage shed, form a foundation for it.
9. The paving slabs clearly do not equate to a foundation for a building such as the house at the appeal site, neither do they need to. However, they are sufficient to provide support for the storage shed and are most likely necessary to prevent the structure from settling into the top soil that surrounds it. The storage shed may not be fixed to the paving slabs, but insofar as the paving slabs are part and parcel of the structure which have been placed in the ground, I consider that the structure is physically attached to the ground. For this reason I draw a distinction between the storage shed at the site and an entity such as a Portakabin or shipping container that has been placed on the ground.
10. On the basis of my foregoing conclusions I consider that the structure, the subject of the enforcement notice, is development as defined by Section 55 of the Act. As such, in view of the fact that it does not comprise permitted development under Class E of Part 1 of the Schedule to the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008, I find that its erection constitutes a breach of planning control as alleged in the notice. Accordingly. The appeal on ground (c) fails.

### **Appeal A, the appeal on ground (a) and the deemed planning application**

#### Main issue

11. In recognition of the fact that the appeal site lies in the Preston Park Conservation Area, and having regard to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the main issue on which a decision turns is whether or not the unauthorised development preserves the appearance of the conservation area.

#### Reasons for the decision

12. Preston Park Conservation Area lies some 2.5 km north-west of the centre of Brighton. It is extensive in area, largely comprising housing developments of 19<sup>th</sup> century origin. Waldegrave Road is typical of development in the southern section of the conservation area, with the part of this highway that includes the appeal site presenting continuous terraces of 2-storey houses to both sides of the road, which forms part of an orderly pattern of parallel streets. The houses, with stuccoed and painted façades, lie behind shallow front gardens enclosed by walls. Development in the vicinity of the appeal site appears to stand largely unaltered since its completion.
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13. The storage shed, occupying garden land some 350 mm above the level of the adjacent public footway, has introduced an alien feature into the local street scenes, the prominence of which is accentuated by its elevated position. In view of its size, a matter examined in paragraph 5 (above), I am not persuaded that it is too small to be of any practical significance in planning terms. It is an element that takes no reference from the architectural style of the terraced house in the immediate area. Its mass, rectilinear shape and absence of detail or embellishment render it incongruous in its setting.
14. Similarly, and despite the attempt to paint the storage shed in a colour to match the house at the site, its materials consisting of horizontal shiplap timber boarding and a roof covering of what appears to be a bitumen based black coloured roofing felt are inappropriate to the character and appearance of the house at the site in particular and neighbouring development in general. I reject the notion that the timber boarding "*mirrors*" the wooden window frames of the building at the site.
15. The Appellant claims, with support from representations submitted by neighbouring residents, that the storage shed has an acceptable impact on the street scene and the conservation area, but I disagree. His assertion that the shrubs planted behind the low front garden wall of the appeal property screen the storage shed from view is unfounded. The shrubs are small and even with time I doubt whether they would provide adequate screening as there is insufficient space between the storage shed and the front garden wall of the appeal property to enable some of the planting to become sufficiently established.
16. At the time of my inspection, owing in part to its elevated position, the storage shed was discernible from points on the opposite side of Waldegrave Road some 25 m and 30 m to the north and south of the site respectively. Moreover, despite the shrubs that have been planted, from the immediate site frontage the storage shed is particularly noticeable. From this vantage point it conceals the view of a significant part of the canted bay window in the façade of the house at the site. It obscures the sill and other detail from sight to the detriment of the appearance of that house and presents a view untypical of the remainder of other houses in the terrace. Furthermore, despite the support from local residents, and acknowledging that there is one letter of objection, the totality of this correspondence confirms that the storage shed is visible in the street scene.
17. In the light of my foregoing criticisms I find the cycle storage shed unacceptable in that it does not preserve the appearance of the Preston Park Conservation Area. As such the storage shed fails to accord with saved Policy HE6 of the adopted Brighton and Hove Local Plan July 2005 which provides for the protection of conservation areas. It is also noncompliant with saved Policies QD1 and QD2 which are specific to the quality of the design of development proposals.
18. In my opinion, the safeguarding of the appearance of the conservation area is the overriding consideration. I do not dispute the importance of those national and local planning policies relied on by the Appellant concerning the encouragement of cycling as a sustainable means of transport, but I do not accept that they outweigh the policy provisions that provide for the protection

of the conservation area. In any case, compliance with the requirements of the enforcement notice would not necessitate cessation of cycling by the Appellant and his family, but I accept that it may require reversion to the former less convenient situation where bicycles need to be taken through the house for storage in the back garden.

### **Conclusions**

19. For the above reasons, and having regard to all the other matters raised, including the various appeal decisions relied on by the parties and the Appellant's criticism of car parking and the standing of wheelie bins on the public highways in the conservation area, I conclude that neither the appeals made on ground (c) nor the appeal made on ground (a) should succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

### **Formal decision**

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

*A J Bingham*  
Inspector





# Costs Decision

Site visit made on 1 February 2010

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 February 2010**

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## **Costs application in relation to Appeal Ref: APP/Q1445/C/09/2113070 Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG**

- The application is made under the Town and Country Planning Act 1990, Sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, Section 250(5).
- The application is made by Dr Juan I Baeza for a full award of costs against Brighton & Hove City Council.
- The appeal was against an enforcement notice alleging the construction of a cycle storage shed in the front garden of the appeal property.

**Summary of Decision: the application fails and no award of costs is made.**

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### **The Submissions for Dr Juan I Baeza**

1. It is apparent from correspondence received from the Council that at no time did it consider whether the cycle storage shed at the appeal site constituted operational development. Moreover, although an Officer of the Council visited the site to inspect the shed, no contact was made with the Applicant for the purpose of allowing the Officer entry to the site in order to inspect the subject structure or to enable the Applicant to explain the nature of its construction. Had the Council approached these matters properly, this might have led to an investigation by qualified planning staff which would have concluded that the storage shed was not subject to planning control. It was only after the Applicant sought advice from a professional practitioner to assist with the appeal that the issue of whether or not the storage shed was in breach of planning control was raised.
  2. In the light of the foregoing matters and having regard to paragraphs A12 and A18 of Part A of the Annex to Circular 03/2009 "*Costs Awards in Appeals and Other Planning Proceedings*" it is asserted that the Council has acted unreasonably, with this unreasonable behaviour having caused the Applicant to make an unnecessary appeal against the enforcement notice, with consequential waste of expense. Furthermore, the action of the Council cited above does not accord with the content of paragraph B12 of Annex B to the Circular which, with regard to enforcement action, requires planning authorities to carry out adequate prior investigation, otherwise they are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation. In the case to hand the Council gave no consideration as to whether the storage shed constituted operational development. Had it done so, it would have concluded that there was no case to investigate, thereby preventing the expense unnecessarily incurred in contesting the appeal.
  3. For these reasons, a full award of costs is justified.
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## **The Response by Brighton and Hove City Council**

4. It is not accepted that the Council has acted unreasonably, specifically because the subject development cited in the notice constitutes operational development as defined by Section 55 of the Town and Country Planning Act 1990. The reasons for this conclusion are included in the Council's appeal statement. Of importance, the Council's action is supported by a similar case elsewhere in the city where an appeal (Ref: APP/Q1445/C/05/2004431, dated 16 February 2006) against an enforcement notice relating to a comparable development was dismissed and the notice upheld. That appeal decision supports the Council action in this case which is pursued owing to the incongruous appearance of the subject structure and its impact on local amenity and the conservation area.

## **Conclusions**

5. Circular 03/2009 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby cause the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. The basis for this application for costs essentially rests on two points. Firstly, that the subject of the enforcement notice does not constitute operational development, with the inference that there was no basis for the Council's action; and secondly that the council's investigation of the matter was inadequate. As mentioned above, the outcome of an appeal is not a decisive matter in relation to an application for an award of costs. However, in this case it is necessary to revisit the appeal decision as this is fundamental to the first point.
7. In my determination of the appeal, having considered the representations made by the parties and having had regard to the information gained on my site inspection, I concluded that the structure, the subject of the enforcement notice was operational development. This led me to the further conclusion that the structure constituted a breach of planning control. These conclusions align with those of the Council. It seems to me that the Council had fully considered this aspect which led to the issuing of the enforcement notice, with such consideration an essential step in the process of deciding whether to issue the notice. I reject the suggestion that at no time did the Council consider whether the storage shed was operational development. Accordingly, I do not agree that the Council's processes or actions are at fault and amount to unreasonable behaviour.
8. On the second point, the Applicant confirms that an Officer of the Council visited the site for the purpose of investigating whether or not the storage shed constituted a breach of planning control, but there is no evidence before me that this was the only visit. It is alleged that the Officer did not enter the site or make contact with the Applicant in order to inspect the interior of the shed. However, my inspection of the interior of the storage shed revealed no conclusive evidence as nothing could be seen below its floor. The means by which the structure is supported was clarified in the Appellant's appeal statement. My inspection of the interior of the storage shed provided no factual matters of substance additional to what could be seen from the public



highway. The storage shed is of basic form and construction and it is readily viewed from Waldegrave Road. While it might have been prudent for an Officer of the Council to have inspected the interior of the storage shed prior to the Council having embarked on enforcement action, from the experience of my site visit I do not accept that the Council's investigation was inadequate for that purpose or that more diligent investigation was required.

9. In the light of my conclusions on these matters I do not find that the Council has acted unreasonably such as to have caused the Applicant to have incurred unnecessary or wasted expense in appealing against the enforcement notice.

**Formal decision**

10. I refuse the application for an award of costs.

*A J Bingham*  
Inspector





# Appeal Decision

Site visit made on 27 January 2010

by **Joanna C Reid BA(Hons) BArch(Hons)**  
**RIBA**

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**18 February 2010**

## Appeal Ref: APP/Q1445/A/09/2111237

### Plots 1 and 2, Land off Braypool Lane, Brighton BN1 8ZH

- 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 David Ince against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01170, dated 7 May 2009, was allowed on 22 July 2009 and planning permission was granted subject to conditions.
- The development permitted is "Outline application for the erection of two detached chalet bungalow style dwellings (one storey with rooms in roof level over)".
- The conditions in dispute are No 7 and No 8 which state that:
  - 7 *Unless otherwise agreed in writing by the Local Planning Authority, no residential development shall commence until: (a) evidence that the development is registered with the Building Research Establishment (BRE) under the Code for Sustainable Homes and a Design Stage Report showing that the development will achieve Code level 5 for all residential units have been submitted to the Local Planning Authority; and (b) a BRE issued Interim Code for Sustainable Homes Certificate demonstrating that the development will achieve Code level 5 for all residential units has been submitted to, and approved in writing by, the Local Planning Authority. A completed pre-assessment estimator will not be acceptable.*
  - 8 *Unless otherwise agreed in writing by the Local Planning Authority, none of the residential units hereby approved shall be occupied until a Building Research Establishment issued Final Code Certificate confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code level 5 has been submitted to, and approved in writing by, the Local Planning Authority.*
- The reason given for conditions 7 and 8 is:

*To ensure that the development is sustainable and makes efficient use of energy, water and materials and to comply with policy SU2 of the Brighton & Hove Local Plan and Supplementary Planning Document SPD08 Sustainable Building Design.*

## Decision

1. I allow the appeal and vary the planning permission Ref BH2009/01170 for "Outline application for the erection of two detached chalet bungalow style dwellings (one storey with rooms in roof level over)" at Plots 1 and 2, Land off Braypool Lane, Brighton, BN1 8ZH, granted on 22 July 2009 by Brighton & Hove City Council, by deleting conditions numbered 7 and 8 and substituting for them the following condition:
  - 1) The dwellings shall achieve Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Certificate has been issued for it certifying that Code Level 3 has been achieved.

### **Procedural matter**

2. The appellant's architect, on behalf of the appellant, requested that the description of the proposed development be changed from "erection of two detached dwellings on Plots 1 & 2. Dwellings two storey – 4 bedroom" to "Outline application for the erection of two detached chalet type dwellings (one storey with rooms in roof level over)" by email to the Council on 17 July 2009. The description in the Council's decision notice closely reflects that description, and I have used it in the heading above.

### **Main issue**

3. The main issue is whether the conditions in dispute are reasonable and necessary in the interests of sustainable development.

### **Reasons**

4. The appeal site is within the countryside where there is strict control over development. However, next to the site there are other dwellings and an animal shelter in a ribbon of development along the same side of Braypool Lane. The site is close to the A23 and A27 roads, and it is exposed to substantial road traffic noise. The appellant's acoustic assessment shows that based on the data obtained, noise mitigation measures are a critical part of the development and they will impact on the design criteria. The Council do not object to the development of the site for 2 dwellings as described subject to adequate noise mitigation measures, and I see no reason to disagree.
5. The Development Plan includes *The South East Plan - Regional Spatial Strategy for the South East of England* (SEP) and the saved policies of the *Brighton & Hove Local Plan* (LP). Of the SEP Policies cited, Policy CC4 states that the design and construction of all new development will be expected to adopt and incorporate sustainable construction standards and techniques. Amongst other things it makes clear that when proposing any local requirements for sustainable buildings, local planning authorities must be able to demonstrate clearly the local circumstances that warrant and allow this and set them out in development plan documents (DPD). Saved Policy LP Policy SU2 aims for development to be efficient in the use of energy, water and materials.
6. The Council's Local Development Framework is being prepared, so the Core Strategy and relevant DPD are not in place. The Council's adopted Supplementary Planning Document *SPD08 Sustainable Building Design* (SPD) provides guidance.
7. Sustainable development is the core principle underpinning planning. National policy in Planning Policy Statement: *Planning and Climate Change: Supplement to Planning Policy Statement 1* states that local planning authorities should adhere to a number of principles in determining planning applications. These include that controls under the planning, building control and other regulatory regimes should complement and not duplicate each other.
8. The aim of the Code for Sustainable Homes is to improve the overall sustainability of new homes by setting a single national standard, within which the home building industry can design and construct homes to higher environmental standards. Compliance with the Code Levels, which have been set above the current Building Regulations, is currently voluntary.

9. The conditions in dispute require the dwellings to achieve Code Level 5, which is substantially in excess of the requirements of the current Building Regulations. Condition 7 seeks a Design Stage Report and an Interim Code Certificate. These would only assess the Code Level that would be likely to be achieved. Planning permission would not need to be refused if they were not to be provided, and the time and cost of checking them could be wasteful of the Council's resources. Registration with the Building Research Establishment could prevent the appellant from exercising choice. Thus, Condition 7 would not be reasonable or necessary so it would fail to satisfy the tests in Circular 11/95 *The Use of Conditions in Planning Permissions*. For the very same reasons, the Council's suggested condition 1 would fail the same tests.
10. The requirement for a Final Code Certificate for Code Level 5 is not reasonable, because the Code is voluntary, and the appellant has not offered to achieve this. Furthermore, it is not necessary to satisfy national or Development Plan policy. The reference to the Building Research Establishment would prevent the appellant from exercising choice. Therefore, Condition 8 would not be reasonable or necessary so it would fail to meet the tests in the Circular. Again, the Council's suggested condition 2 would not be reasonable.
11. However, in the light of the appellant's intention to achieve Code Level 3, the anticipated changes to the Building Regulations, the major noise constraints at the site, and saved LP Policy SU2, a new condition for a Final Certificate at Code Level 3 to be submitted before each dwelling is occupied would be reasonable and necessary. It would satisfy the tests in the Circular.
12. I agree that higher Code Levels may not necessarily incur significantly higher costs and that in some cases costs have been reduced. The site comprises greenfield land where the SPD seeks Code Level 5. However, the proposal is also a small-scale development with 2 or fewer residential units where the SPD seeks Code Level 3. There is no adopted DPD which has been subject to independent scrutiny that demonstrates clearly the local circumstances that warrant and allow Code Level 5 at this site. Moreover, the noise at the site will have a serious impact on the design and construction of the dwellings. The Council say that in the event that Code Level 5 could not be achieved, then it would review the condition. This is contrary to the advice in the Circular which is that an unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.
13. I have had regard to my colleague's decision ref APP/Q1445/A/08/2081266, for 24 flats which would benefit from economies of scale. Condition 4 in that proposal requires a scheme which details measures to achieve Code Level 4 or higher or an equivalent level of performance, but requires no Final Certificate. So, that proposal differs in its details from the proposal before me, which I have dealt with on its merits. I conclude that the conditions in dispute are not reasonable or necessary in the interests of sustainable development and I shall delete them, but, for the reasons given above, I shall add a new condition requiring a Code Level 3 Final Certificate to be issued before each dwelling is occupied. It would satisfy saved LP Policy SU2. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

*Joanna C Reid*

INSPECTOR

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# Appeal Decision

Site visit made on 1 February 2010

by **E C Grace** DipTP FRTPi FBEng PPIAAS

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**11 February 2010**

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## Appeal Ref: APP/Q1445/A/09/2111265

### Land rear of 1 Orchard Avenue, Hove BN3 7BL

- 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 J Thomas against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00579, dated 6/3/09, was refused by notice dated 18/8/09.
- The development proposed is use of site as a car park.

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### Decision

1. I dismiss the appeal.

### Main Issues

2. I consider the main issues in this case are whether the proposed car park would harm: a) the street scene and/or b) living conditions for residents in nearby dwellings.

### Reasons

3. The land subject of this appeal originally formed the rear part of the garden of 1 Orchard Avenue, which is a corner house with a return frontage to Orchard Gardens. The application depicts that this severed area of land together with the garage at the rear of 3 Orchard Avenue are in the appellant's ownership, with no other land shown as being within the appellant's control. Access is directly from Orchard Gardens, with a concrete apron between the highway and the garage, while the rest of the land has been hard surfaced with stone chippings. Although the application seeks approval to use the land for the parking of 3 cars it is evident the activity has already commenced and I am therefore treating the proposal as being for the retention of the use of the site as a car park.
4. Despite the locality being predominantly residential in character it is clearly subject to kerbside parking stress due to the presence of nearby commercial premises, whose employees park in these residential streets. It is understood that the appellant rents the land to Portslade Panelworks for use by some of their employees. Despite the application indicating that 3 spaces would be provided, several local residents maintain it frequently has 5 cars parked thereon. However, at the time of my visit, there were no cars parked on the land despite all the kerbside parking being taken. Moreover, there appeared to be spare parking capacity at the Panelworks. In addition, residents point to the availability of modestly priced parking spaces nearby for local workers at the Co-op and Greyhound stadium.

5. The appellant maintains that the land could have been used for parking cars without planning permission if it was still part of a residential curtilage, but I agree with the objectors that its use for commercial parking confers it with a different appearance, not least the sign warning about clamping and the total absence of trees and shrubs. I also noted there was unsightly litter strewn about, which I consider would be less likely if it were being used for domestic parking in connection with an associated residential property.
6. On balance, despite the high levels of kerbside parking in the locality, I am not persuaded that the levels of parking stress are such as to warrant the use of this land as a commercial car park. Moreover, I consider the documented intensity of the use combined with the absence of any planting is detrimental to the visual amenities of the locality and the general street scene. Although there is a measure of support for the proposal I note the vast majority of those do not live in the immediate locality.
7. With regard to the effect on the living conditions of nearby residents, I do not regard the small scale of the site as likely to give rise to such levels of noise and disturbance to warrant refusal. Nevertheless, I consider the introduction of a commercial car park between residential properties, combined with the total hard-surfacing of the site, absence of planting and littering problem gives rise to a poor outlook for the occupants of the houses opposite in particular.
8. For the reasons given above I conclude that the development contravenes Policies QD1, QD2 and QD27 of the Brighton and Hove Local Plan and that the appeal should be dismissed.

*Edward Grace*

Inspector





# Appeal Decision

Site visit made on 2 February 2010

by **E C Grace** DipTP FRTPi FBEng PPIAAS

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**18 February 2010**

## Appeal Ref: APP/Q1445/A/09/2110995 14 Princes Square, Hove BN3 4GE

- 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 Andy Rose against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00526, dated 5/3/09, was refused by notice dated 7/5/09.
- The development proposed is single storey rear extension and re-cladding to existing pool building.

### Decision

1. I allow the appeal, and grant planning permission for single storey rear extension and re-cladding to existing pool building at 14 Princes Square, Hove in accordance with the terms of the application, Ref BH2009/00526, dated 5/3/09, and the plans and documents submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Plans – Drawing Nos 8028/A.01/A; 8028/A.02; 8028/A.03; 08028/D.11; A08028/D.12; 08028/D.13.

### Main Issues

2. The main issues in this case are whether the scale and design of the proposed development would; a) be sympathetic to the host building and b) preserve or enhance the character and appearance of the Conservation Area.

### Reasons

3. The appeal property is a large two storey 7 bedroom house dating from the inter-war period. It occupies a substantial urban plot measuring approximately 20m wide by 70m deep and lies within the designated Pembroke and Princes Conservation Area. The house already has a single storey rear extension which houses the swimming pool and projects 14m into the garden from the rear façade of the main building.

4. The proposal would involve the erection of a further extension of the same depth and height and similar width, incorporating a study, utility room, plant and boiler room and garden workshop. A courtyard area between the two would accommodate a pavilion with fully glazed roof and outer façade that would project 8m from the rear wall of the house and contain a large kitchen/diner area.
  5. The swimming pool extension would be re-clad with tar stained oak slats, which would also be used on the new extension, and both would be provided with gently curved, low profile roofs clad in zinc coloured aluminium sheets with shallow south facing clerestories. The existing lean-to conservatory at the end of the swimming pool extension would be demolished and removed.
  6. The Council indicate that due to the height of the boundary walls/fences to either side and restrained height of the extension roofs, they do not consider the development would result in any significant harm to neighbouring occupiers due to loss of privacy, light or outlook. They also concede that the extensions would not be visible from the street scene and that in isolation the design of the extensions is considered to be acceptable. I do not disagree with any of those conclusions.
  7. It is apparent that the main concern the Council has is the cumulative impact that the extensions would have, indicating that when added to the existing pool building, they would cover an area of 222sqm compared with the footprint of the original house at 229sqm. As these proposals would effectively result in a doubling of its footprint, the Council consider it would harm the original form and appearance of the host building, which in turn they regard as neither preserving nor enhancing the character and appearance of the Conservation Area. They also appear apprehensive that this might establish a precedent.
  8. The appeal property has a substantial rear garden and even with these large extensions, an extensive open area would remain and I do not therefore regard the proposal as constituting over-development of the site. Indeed, the OS Map extract and aerial views submitted with the representations show that it has one of the largest plots in the locality and would retain more open garden and have less site coverage with buildings than many of the other dwellings in the vicinity. Therefore, I do not consider it would set a precedent and in any event each proposal should be assessed on its own merits.
  9. The extensions are at the rear of the property and would not be visible in the public domain. Hence, the main view of them would be by the building's own occupants. The proposed structure would mask the ground floor elevations of the original house, but the upper floors would still be visible. The Council assert that the house would appear over extended, but they do not indicate precisely what harm would arise or to whom. The house is not a Listed Building and although the extensions would be of a more modern style than the original, they are on the secondary elevation and the substantial first floor and roof would remain as dominant features, whereas the restrained detailing and height of the addition would ensure it is relatively understated despite its extensive ground cover. The extensions would also serve to redress the visual imbalance attributable to the swimming pool building on this elevation. Hence, I do not find the proposals would harm the appearance of the host building and the character and appearance of the Conservation Area would be preserved.
-

10. For the reasons given above I conclude that the proposal would not contravene Policies QD14 and HE6 of the Brighton and Hove Local Plan and that the appeal should be allowed, subject to the two conditions suggested by the Council. In addition, I have attached a third condition indicating the development must be implemented in accordance with the submitted plans upon which this decision is based, in the interest of certainty.

*Edward Grace*

Inspector



**NEW APPEALS**

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**BRUNSWICK AND ADELAIDE**

BH2009/01835  
2 & 3 Cavendish Mews Hove  
Erection of rear balconies with patio doors to  
No. 2 & 3 Cavendish Mews.  
APPEAL LODGED  
05/02/2010  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**HANGLETON & KNOLL**

BH2009/02190  
291 Hangleton Road Hove  
Erection of a two storey rear extension.  
APPEAL LODGED  
10/02/2010  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**WITHDEAN**

BH2009/02484  
80 Peacock Lane Brighton  
Erection of a single storey, timber framed  
glazed orangery.  
APPEAL LODGED  
12/02/2010  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**HANOVER & ELM GROVE**

BH2009/01499  
148 Lewes Road Brighton  
Demolition of existing warehouse and erection  
of 2no. new dwellings with garden areas and  
new parking areas to rear of 148 Lewes Road.  
APPEAL LODGED  
17/02/2010  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**

**HANGLETON & KNOLL**

BH2009/02504  
59 Lark Hill Hove  
Demolition of existing uPVC conservatory and  
erection of new uPVC conservatory to the rear.  
APPEAL LODGED  
19/02/2010



**INFORMATION ON HEARINGS / PUBLIC INQUIRIES**  
**17<sup>th</sup> March 2010**

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

**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:                    18<sup>th</sup> May 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

