





**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	7 April 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Cobb, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and C Theobald Co-opted Members: Mr J Small (CAG Representative)
Contact:	Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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AGENDA

246. 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.

247. MINUTES OF THE PREVIOUS MEETING

1 - 22

Minutes of the meeting held on 17 March 2010 (copy attached).

248. CHAIRMAN'S COMMUNICATIONS

249. PETITIONS

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

250. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 31 March 2010)

No public questions received by date of publication.

251. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 31 March 2010)

No deputations received by date of publication.

PLANNING COMMITTEE

252. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

253. LETTERS FROM COUNCILLORS

No letters have been received.

254. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

255. APPEAL DECISIONS

23 - 46

(copy attached).

256. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

47 - 50

(copy attached).

257. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

51 - 52

(copy attached).

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

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

(copy circulated separately).

260. 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

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

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

PLANNING COMMITTEE

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

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

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

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

WEBCASTING NOTICE

This meeting may be filmed for live or subsequent broadcast via the Council's website. At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

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

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

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

Date of Publication – Tuesday, 30 March 2010

PLANNING COMMITTEE

Agenda Item 247
Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 17 MARCH 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Allen, Carden (Opposition Spokesperson), Cobb, Davey, Fallon-Khan, Hamilton, Kennedy, Smart, Steedman and C Theobald

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

Officers in attendance: Jeanette Walsh (Head of Development Control); Paul Vidler (Deputy Head of Development Control); Zachary Ellwood (Interim Area Planning Manager (West)); Kathryn Boggiano (Senior Planning Officer); Anthony Foster (Planning Officer); Pete Tolson (Principal Transport Planning Officer); Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

PART ONE

230. PROCEDURAL BUSINESS

230A. Declaration of Substitutes

230.1 Councillor Fallon-Khan was in attendance as substitute Member for Councillor Caulfield. Councillor Allen was in attendance as substitute Member for Councillor McCaffery.

230B. Declarations of Interest

230.2 Councillor Kennedy declared a personal and prejudicial interest in respect of Application BH2010/00143, Former Wholesale Fruit and Vegetable Market, Circus Street stating that as a Trustee of the Phoenix Arts Association she would leave the meeting during consideration of the application and would take no part in the debate and decision making process.

230.3 Councillor Steedman referred to Applications BH2009/03077 and BH2009/03078, Former Thwaites Garage, 33 Mighell Street, Brighton. He explained that these applications had been discussed at meetings at his local ward surgery; he had however taken no part in any discussions, had expressed no opinion in respect of them and remained of a neutral mind. He would therefore remain present during the discussion and debate and intended to vote in respect of these applications.

230.4 Councillor Fallon-Khan referred to Application BH2009/01824, Warren Plantation, Warren Road, Woodingdean stating that he expressed an opinion in respect of the application and would therefore leave the meeting during consideration of the application and would take no part in the debate or decision making thereon.

230C. Exclusion of Press and Public

230.5 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 “).

230.4 **RESOLVED** – That the public be not excluded from the meeting during consideration of any item appearing on the agenda.

231. MINUTES OF THE PREVIOUS MEETING

231.1 **RESOLVED** – That the Chairman be authorised to sign the minutes as a correct record.

232. CHAIRMAN'S COMMUNICATIONS

Web casting

232.1 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.

233. PETITIONS

233.1 There were none.

234. PUBLIC QUESTIONS

234.1 The Committee considered a report of the Director of Strategy and Governance setting out a question received from Miss P Tompkins. Miss Tompkins was present to put her question in person and having received a response from the Chairman was afforded the opportunity to ask a supplementary question.

234.2 Miss Tompkins put the following 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 homes, 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 environment and the destruction of their homes?”

234.3 Miss Tompkins then expressed personal opinions which did not form the substance of a question, in order to set them into context the Chairman explained that the specific development to which Miss Tompkins was referring related to a permitted development on which the Council as Local Planning Authority had no locus. This had been the subject of two Ombudsman Enquiries neither of which had found against the Council in any way.

234.4 The Chairman then responded in the following terms explaining that a copy of both Miss Tompkins’ question and the reply would be sent to her as a written response.

“All applications for development in the City are published weekly on the City Council website (the weekly list). In addition and where relevant applications are published in the “Leader” newspaper, by site notice and through neighbour notification. All decisions made on planning applications are reported in the pages of the Planning Committee agenda papers. The most significant or controversial applications are decided by Planning Committee. In that way Councillors are aware of proposed development in the city.

In making decisions on planning applications the duty is to determine them in accordance with the Development Plan unless there are material considerations which would indicate otherwise.

Residential amenity is expressly protected through policy QD27 of the Brighton & Hove Local Plan. That policy, together with other policies in the Development Plan seek to balance the impacts on amenity and environment with the impacts and benefits of development.

Many householder improvements or developments do not require planning permission and are permitted under planning legislation. The Local Planning Authority do not have any involvement or role where development is permitted.”

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

235. DEPUTATIONS

235.1 There were none.

236. WRITTEN QUESTIONS FROM COUNCILLORS

236.1 There were none.

237. LETTERS FROM COUNCILLORS

237.1 There were none.

238. NOTICES OF MOTION REFERRED FROM COUNCIL

238.1 There were none.

239. APPEAL DECISIONS

239.1 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.

240. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

241. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

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

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

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

Application:	Site Visit Requested by :
BH2009/02741, 7 Station Road, Brighton	Councillor C Theobald
BH2009/02158, Land R/o 11 Longhill Road, Ovingdean	Councillor Smart
BH2009/03154, Gala Bingo Hall, Portland Road, Hove	Head of Development Control

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

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

A. Application BH2010/00143, Former Wholesale Fruit & Vegetable Market, Circus Street, Brighton – Change of use of vacant market building for temporary period of two years to Class D1 and D2 cultural and community uses and small scale ancillary Class A1, A3 and B1 uses.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposals. She confirmed that the building had been vacant for a number of years, but had been used intermittently as an exhibition space associated with the Brighton Festival and other community events. The proposal would allow reuse of the building prior to comprehensive redevelopment proposals being finalised and approved for the site and would be beneficial to the wider community.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Steedman sought clarification regarding the level of information provided to Members in relation to projects in their wards. The Head of Development Control confirmed that whilst Members were not notified regarding each individual application the Weekly lists of applications were circulated to all Councillors.
- (3) Councillor Smart referred to the close proximity (to the rear) of Milner flats enquiring whether noise attenuation measures could be conditioned to protect neighbouring amenity. Reference was made to the comments of the Environmental Health Officer and to proposed Condition 3. It was confirmed that if amplified music was to be used that details of the noise management arrangements to be put into place would need to be provided to the Council.

Debate and Decision Making Process

- (4) Mr Small, CAG stated that he had visited an exhibition held at the building the previous year and had observed that the interior of the building was in a parlous condition. Large areas of the floor space had been taped off in order to prevent members of the public from walking on them. Given that parts of the building were in such a dangerous condition he queried whether the proposal was practical and whether the applicant had indicated that or conditions could be applied requiring them to carry out remedial works within the building. It was explained that this was a matter for the applicants and could not be conditioned.
- (5) Councillor C Theobald also expressed concern that these health and safety issues needed to be addressed but it was confirmed that they were not a health and safety consideration.

- (6) Councillor Carden stated that he was satisfied that the requirements to contain noise would be sufficient stating that the site would have generated a lot of noise when it had been in daily use as a market.
- (7) Councillor Steedman stated that notwithstanding his concerns that Local Ward Councillors be kept fully apprised regarding longer term development of the site, He welcomed this scheme as it represented a good temporary use of the space.
- (8) Councillor C Theobald also welcomed the temporary use but stated that she would prefer the site to be used to provide housing in the longer term.
- (9) Councillor Smart stated that an application considered the previous year had resulted in the loss of a purpose built theatre; approval of this application would result in a building being used which was in an awful state of repair. He was unable to support it.
- (10) A vote was taken and the 11 Members present when the vote was taken resolved that on a vote of 10 to 1 that planning permission be granted.

243.1 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 9 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report and to the addition of Informative 3 set out below:

Informative 3:

A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact: Atkins Ltd, Ango St James House, 39A Southgate Street, Winchester, S023 9EH (Tel:01962 858688).

Additional Informative 4:

Planning Committee would like to request that prior to implementation of this temporary consent the Local Ward Councillors are advised.

Note 1: Having declared a personal and prejudicial interest Councillor Kennedy withdrew from the meeting and took no part in the debate and decision making process.

Note 2: Councillor Smart voted that the application be refused.

B. Application BH2009/01824, Warren Plantation, Warren Road, Woodingdean – Change of use from agricultural land (SG07) to woodland burial site (SG08) with alterations to existing internal road.

- (1) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposed scheme and showing its boundaries by reference to site plans, an ariel photograph and a photograph of the woodland area at Bear Road cemetery indicating what the appearance of the site would be once in use as a burial ground. Existing woodland burial sites were at full capacity and it was considered that the benefits to the City of

the proposed site for 1800 graves would outweigh the loss of agricultural land in this instance.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Smart enquired whether it was proposed to add any administrative buildings or structures on site and it was confirmed that it was not.
- (3) Councillor Cobb referred to the comments received from Brighton & Hove Archaeological Society and the County Archaeologist enquiring whether the conditions proposed to be applied addressed their comments regarding potential historic remains. It was explained that the standard conditions had been applied and that these were considered to be sufficiently robust. Archaeologists would have a watching brief on the site.

Debate and Decision Making Process

- (4) Councillor Steedman stated that whilst regretting loss of agricultural land he considered that the rationale for the proposal following consideration and discounting of other sites was clear, he supported the application.
- (5) Councillor Wells stated that he considered the site was ideally located.
- (6) A vote was taken and the 11 Members present when the vote was taken voted unanimously that planning permission be granted.

243.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the receipt of no further objections raising significant material planning considerations that are not addressed within this report and to the conditions and informatives also set out in the report.

Note: Having declared a personal and prejudicial interest in respect of the above application Councillor Fallon-Khan withdrew from the meeting and took no part in the debate and decision making process.

C. Application BH2009/03155, Unit 1, Fairway Trading Estate, Eastergate Road, Brighton – Change of use from B2 (industrial) to Local Authority Housing Services Repairs and Maintenance Offices and Depot (mix of B1, B2 and B8 uses). Insertion of 15 new windows and a door at ground floor level and 4 new windows at first floor level.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the scheme. She explained that the statutory consultation period was due to expire on 24/03/2010. Therefore it was recommended that the recommendation in the report should be amended as set out below.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Davey sought clarification regarding the number of cycle parking spaces proposed. He was of the view that this appeared to be a low figure. However the Principal Transport Planning Officer confirmed this complied with SPG4 and would be monitored.
- (4) Councillor Smart enquired regarding the current status of the Travel Plan and it was explained that the consultation process would be on going.
- (5) A vote was taken and Members voted unanimously that minded to grant planning permission be given.

243.3 RESOLVED- That the Committee has taken into consideration and agrees with the reasons for the amended recommendation set out in the Late Representations List that it is minded to grant planning permission subject to the receipt of no further objections raising material planning considerations that are not addressed within this report and the following conditions and informatives and those set out in the report where they have not been amended:

Acceptable details have since been submitted to show the 6 disabled parking bays and cycle parking facilities for 16 bicycles. It is therefore agreed that Conditions 5 and 7 be replaced by the following conditions:

Condition 5: the vehicle parking area shown on the approved plan number 32612601-02 revision A submitted on 9 March 2010 shall be carried out in accordance with the approved details prior to first occupation and shall not be used otherwise than for parking of private motor vehicles belonging to the occupants of and visitors the development hereby approved.

Reason: To ensure that adequate parking provision is retained and to comply with policy TR19 of the Brighton & Hove Local Plan.

Condition7: The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plan number 321612601-01 revision A submitted on 9 March 2010 have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan.

Informative 1 should read as follows:

This decision is based on drawing nos. 181 revision P1 - 181/08 revision P1, 181/09 revision P2 submitted on 23 December 2009 and 32612601-02 revision A submitted on 9 March 2010.

In addition a Travel Pack requested by Condition 11 had been submitted to be considered by Officers. A response from Sustainable Transport was awaited.

D. Application BH2009/03077, Former Thwaites Garage, 33 Mighell Street, Brighton
– Demolition of existing garage and flint wall. Construction of a flint facing building

between 4 and 7 storeys to accommodate 87 student units and reinstatement of flint wall.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Deputy Head of Development Control, Mr Vidler gave a presentation detailing the constituent elements of the scheme. He referred to additional letters of objection received from Councillor Duncan and the Friends of Turner Park and also explained that amended drawings setting out proposed amendments to the scheme had been received from the applicants agent. These had been received very late and contained such significant changes that officers had been unable to assess them in advance of the meeting. The application would therefore be considered as originally submitted and as set out in the Committee report.
- (3) Mr Lacey spoke on behalf of the applicant in support of their application. He explained that the plans and paperwork recently submitted to the department sought to address the objections raised. The applicant had not been aware of officers' concerns until relatively late in the process. Whilst it was noted that the site was designated for employment use it was not ideally suited for this purpose and had been vacant for two years during which time little/no interest had been shown in an employment use. There was an identified need for student accommodation and provision at this central location would alleviate pressure on rented/ private accommodation elsewhere in the City.
- (4) Councillor Fryer spoke in her capacity as a Local Ward Councillor setting out her objections to the proposed scheme. She explained that local residents had requested a consultation meeting with the applicants, however, this was not due to take place until the following week. The scheme as it stood was considered completely unacceptable as it represented overdevelopment, was out of keeping with the character of the surrounding area and would have a detrimental impact on the surrounding area. It also scored very poorly in terms of meeting sustainability targets. The site needed to be re developed but this was not appropriate.

Questions/Matters on Which Clarification was Sought

- (5) Councillor C Theobald referred to the concerns expressed in the report relating to disposal of waste, lack of on site cycle storage/parking and disabled parking enquiring what measures the applicant had put into place to address these issues. Mr Lacey responded on behalf of the applicant that these issues could be addressed and that further discussions were set to take place with the traffic and transport team.

Debate and Decision Making Process

- (6) Councillor C Theobald stated that she considered that the design was incongruent and out of keeping with the setting of the listed building nearby and the character of the conservation area.
- (7) The Head of Development Control explained that all applicants were invited to engage in pre-application discussions with officers and as part of the current pilot arrangements with Members as well, very little discussion had taken place in respect of

this application. As the applicant had put in an application for student accommodation, rather than housing, it failed to meet the appropriate policies and insufficient evidence had been provided to justify a departure from those policies.

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

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

E. Application BH2009/03078, Former Thwaites Garage, 33 Mighell Street, Brighton
– Demolition of existing garage and flint wall.

- (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 agreed unanimously that conservation area consent be refused for the reasons set out in the report.

243.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse conservation area consent for the reasons set out in the report.

F. Application BH2009/03038, Saunders Glass, Sussex Place, Brighton - Demolition of existing former glassworks and erection of a 7 storey student halls of residence providing 182 units and ancillary cycle parking.

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

- (2) The Planning Officer, Mr Foster, gave a detailed presentation also referring to additional material forwarded by the applicant to Members in support of their application including a letter from the University of Sussex expressing in principle support for the project.

- (3) Mr Bareham spoke on behalf of the applicant in support of their application. He stated that although only part of the site was allocated for housing student housing was still housing. This provision would help to free up other accommodation elsewhere in the City. He explained that small areas of amenity space around the building had been provided and this was commensurate with the University's own policies in order to avoid management concerns and student safety issues.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Mrs Theobald enquired regarding proposed arrangements for dropping off and picking up of students and their belongings at the beginning/end of term given the lack of on-street spaces and tight turning area. The applicant's representative explained that timed arrival "slots" would be in place with all students making the

University their first port of call at which time they would be allocated a time for arrival at their accommodation which allowed sufficient time for their belongings to be unloaded. The development would be car free and given the lack of on-street parking nearby, students who owned cars were unlikely to choose to live there.

Debate and Decision Making Process

- (5) Councillor C Theobald stated that she considered the proposed dropping off arrangements were completely impractical. Councillors Carden and Smart concurred in that view stating that any disruption/congestion to traffic would completely invalidate the timing arrangements.
- (6) Councillor Kennedy stated that she fully supported the officer recommendation considering that the existing housing use for the site should be protected, otherwise, the development could easily turn into a giant HMO.
- (7) Councillor C Theobald stated that she considered the proposed development to be too high and harmful to the adjacent conservation area. It represented overdevelopment and should be refused.
- (8) In responding to the matters raised during debate the Head of Development Control confirmed that if minded to grant planning permission Members could include provision within a Section 106 Agreement which would require further permission be sought if the development was subsequently to be used as an HMO.
- (9) A vote was taken and Members voted unanimously that planning permission be refused.

243.6 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the reasons and informatives also set out in the report.

(ii) MINOR APPLICATIONS

G. Application BH2009/03047, 123-124 Western Road, Brighton – Change of use from retail (A1) to retail and café/restaurant (A1/A3) at basement and ground floor levels.

- (1) The Interim Area Planning Manager (West), Mr Ellwood gave a presentation detailing the proposed scheme. The retail element would be carried out at the front of the unit which faced out onto Western Road with the café restaurant use at the rear. The basement was proposed for use as storage/plant rooms, toilets and a kitchen. Construction of a new rendered chimney at roof level was included but no alterations were proposed to the existing shop front. He referred to the suggested condition set out in the “Late Representations List” seeking to ensure that the A3 use was restricted to the raised area to the rear of the premises.

Questions/Matters on Which Clarification was Sought

- (2) Mr Small, CAG referred to the fact that the drawings submitted by the applicant indicated seating in the front retail area of the premises as well as associated with the

café use at the rear. It was explained that the drawings were for indicative purposes only.

- (3) Mr Small also enquired whether it was proposed that there would be a physical separation between the front and rear part of the premises. It was explained that the entire premises would be used by one owner but that only the defined raised area at the rear would be permitted for café, A3 use.
- (4) Councillor Davey sought confirmation that as no physical separation of the A1 and A3 uses was proposed that measures would be put into place to restrict the use to the proposed area. The Interim Area Planning Manager confirmed that it was proposed that the amended condition referred to would ensure that there was a clear distinction.
- (5) Councillor Smart asked how the raised café area would be reached. It was explained this would be via by steps which would provide a delineation between the two areas.
- (6) Councillor Kennedy sought clarification of the hours of operation of the premises and confirmation whether the hours during which the café would be used would differ from that of the retail element within the premises.

Debate and Decision Making Process

- (7) Councillor Kennedy stated that she was concerned that the hours of operation of the premises seemed very long. This could lead to nuisance to residents of the flats above the premises and in the neighbouring dwelling in Temple Street, particularly if the side door onto Temple Street was used by customers entering/leaving the premises late at night.
- (8) Councillors C Theobald and Smart expressed concern regarding the lack of a clear distinction (physical barrier) between the two uses.
- (9) Mr Small stated that he was anxious that the seating area shown at the front of the premises, fronting Western Road could be used as a window bar area.
- (10) Councillor C Theobald enquired whether it would be possible to require sound insulation measures to be carried out at the rear to avoid noise nuisance to the flats above and neighbouring house in Temple Street. It was explained that although odour control measures would be required and building control regulations would also need to be met it was not generally considered appropriate to apply noise control conditions to a retail unit.
- (11) Mr Small enquired regarding location of the payment desks for the retail/ café uses. Whilst accepting that the submitted drawings relating to layout were indicative only, he was concerned that once the premises opened it was unlikely that checks would be made to ensure that the uses remained self-contained and separate.
- (12) Councillor Wells echoed the concerns expressed by Mr Small and by Councillors Smart and C Theobald.

- (13) Councillor Davey expressed a wariness regarding the application. He considered that similar problems could arise to those experienced in the North Laines, where in some instances café /restaurant uses existed in close proximity to residential accommodation and gave rise to nuisance as a result of long hours of operation and noise penetration into neighbouring dwellings. He enquired regarding the location of the side door onto Temple Street in relation to the flats above and house next door. He enquired whether a condition could be applied controlling/limiting when the door could be used.
- (14) Councillor C Theobald stated that she was confused regarding the proposed opening hours of the premises. She also sought clarification regarding arrangements for disabled access which in her view appeared to be inadequate, also enquiring whether the access door from Temple Street was suitable for disabled/access/ egress.
- (15) The Chairman picked up on the concerns of the Committee also querying whether use of the door from Temple Street could be limited by condition and whether noise attenuation measures could be sought in relation to the party wall at the back of the premises in association with the A3 use.
- (16) Councillor Davey reiterated his concerns regarding noise penetration to the rear requesting whether in the light of the Chairman's comments such a condition could be added. The Head of Development Control responded that she would investigate whether/ what noise attenuation measures could be applied in relation to the ceiling and party wall at the rear of the premises and the wording which would be most appropriate in that connection.
- (17) The Chairman, Councillor Hyde, sought to determine whether there was a consensus among Members regarding additional/amended conditions they would wish to see applied to any permission granted.
- (18) Councillor Kennedy suggested that the hours of operation of the café were 8.00–8.00 Mon-Sat; 9.00–6.00 Sundays–Bank Holidays. A vote was taken and this proposed amendment was lost.
- (19) Councillor Fallon-Khan proposed that the premises be permitted to open between 8.00-10.00 7 days per week inclusive of bank holidays. This was voted upon and agreed and is included in the conditions set out below including the other substantive changes agreed.
- (20) A vote was taken on each of the substantive amendments/extra conditions discussed and Members voted by 9 to 2 with 1 abstention that planning permission be granted.
- 243.7 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report. and subject to amended and additional conditions set out below:

Amend Conditions 2 and 7 to read:

Condition 2.

Unless otherwise agreed in writing by the Local Planning Authority, the Class A3 use hereby permitted shall be restricted to the basement and the currently raised section to the northern part of the ground floor only as shown on approved drawing no. 164/08A. Further, notwithstanding the indicative internal layout submitted, no seating or other facilities for customers associated with the A3 use shall be provided within the lower (southern section the ground floor of the unit, which shall be strictly reserved for retail uses falling within Use Class A1 only.

Reason: To retain a retail use and frontage to Western Road in accordance with Policy SR4 of the Brighton & Hove Local Plan.

Condition 7

The use hereby permitted shall not be open to customers except between the hours of 08.00 and 22.00 on any day.

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

Add:

Condition 8

No development shall commence until a scheme for the soundproofing of the building has been submitted to and approved in writing by the by the Local Planning Authority. The soundproofing measures shall be implemented in strict accordance with the approved details prior to the occupation of the A3 element of the development hereby permitted and shall thereafter be retained as such.

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

Condition 9

The entrance to the unit from Temple Street shall not be used to provide access for customers at any time. Use of this entrance shall be restricted to servicing and staff use only.

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

Note: Councillors Cobb and Kennedy voted that the application be refused. Councillor Steedman abstained.

- H. Application BH2009/02741, 7 Station Road, Brighton** – erection of a two storey outhouse, incorporating double garage and parking bay to ground floor and home office to first floor (roof space) over.
- (1) Members agreed that it would be beneficial to carry out a site visit prior to determining the application.
- 243.8 **RESOLVED** – That consideration of the above application be deferred pending a site visit.

I. **Application BH2009/02158, Land to Rear, 11 Longhill Road, Ovingdean** – Erection of detached 2 storey, 4 bedroom dwelling house.

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

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

J. **Application BH2009/03043, Unit 1 Centenary Industrial Estate, Hughes Road, Brighton** – Erection of two storey extension to existing factory to provide secure car parking at ground floor and further manufacturing at first floor.

(1) The Senior Planning Officer, Ms Boggiano gave a detailed presentation setting out the proposed scheme by reference to existing and proposed floor plans. The height location of proposed new windows was also shown. A number of amendments to the conditions and informatives set out in the report were proposed.

Questions/Matters on Which Clarification was Sought

(2) Councillor Davey enquired regarding the number of cycle parking spaces proposed on site and considered that the figure appeared low. The Principal Transport Planning Officer, Mr Tolson explained that the proposed figure complied with SPG4 but would be monitored as the level of provision required was likely to increase when existing parking standards were revised.

(3) In answer to questions by Councillor Smart it was explained that the consultation process relating to development of a travel plan would be on-going.

(4) A vote was taken and Members voted unanimously to grant planning permission.

243.10 **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 to grant planning permission subject to the conditions and informatives set out in the report and to the additional conditions and informative set out below:

Condition 9:

(i) The development hereby permitted shall not be commenced until there has been submitted to and hereby approved in writing by the local planning authority:

(a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos.2 and 3 and BS10175:2001–Investigation of Potentially Contaminated Sites-Code of Practice; and unless otherwise agreed in writing by the Local Planning Authority,

(b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and unless otherwise agreed in writing by the Local Planning Authority,

(c) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of works.

(ii) The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:

- (a) As built drawings of the implemented scheme;
- (b) Photographs of the remediation works in progress;
- (c) Certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c)

Reason: To safeguard the health of future residents or occupiers of the site, to ensure the protection of controlled waters and to comply with policy SU3 and SU11 of the Brighton & Hove Local Plan and Planning Policy Statement 23-Planning and Pollution Control.

Condition10:

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To safeguard the interests of protection of controlled waters and to ensure compliance with Local Plan Policy SU3 and SU11 of National Policy PPS23.

Informatives:

4. The applicant is advised that the above condition on land contamination has been imposed because the site is known to be or suspected to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. To satisfy the condition a desktop study shall be the minimum standard accepted. Pending the results of the desk top study, the applicant may have to satisfy the requirements of (i) (b) and (i) (c) of the condition.

It is strongly recommended that in submitting details in accordance with this condition the applicant has reference to Contaminated Land Report 11, Model Procedures for the Management of Land Contamination. This is available on both the DEFRA website and the Environment Agency website.

5. The phased risk assessment should be carried out also in accordance with the procedural guidance and UK policy formed under the Environmental Protection Act 1990. The site is known or suspected to be contaminated. Please be aware that the

responsibility for the safe development and secure occupancy of the site rests with the developer. The Local Planning Authority has determined the application on the basis of the information made available to it. It is strongly recommended that in submitting details in accordance with the above/below conditions that the applicant has reference CLR 11, Model Procedures for the management of land contamination. This is available online on both the DEFRA and Environment Agency websites.

6. The site overlies a principal aquifer and within a Source Protection Zone 1 area for Southern Water's Lewes Road Public water supply. All appropriate pollution prevention measures should be adopted and guidance notes are freely available from the Environment Agency website.

K. 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 Interim Area Planning Manager (West), Mr Ellwood gave a presentation detailing the scheme. He explained that following the original decision of the Committee on 2 September 2009, a Judicial Review Letter before Claim had been received. It had stated that inaccuracies had been identified in the submitted plans and that as a result the conclusion reached within the Committee report had been based on flawed and incorrect information and that if planning permission had been granted on that basis Judicial Review proceedings would be issued against the Council. In consequence a full daylight/sunlight impact report had been requested and accurate survey plans including level survey of the application site and adjoining properties had been requested and submitted.
- (2) The Committee were requested to re-determine application BH2009/00696 following receipt of this amended/additional information. The existing drawings and cross-sections were shown and the Interim Area Planning Manager explained that the scheme itself had not changed at all. Amended drawings were displayed showing the relationship between the proposed development and 9 and 11 Palmeira Avenue. These drawings took account of accurate levels for daylighting which were based on and complied with BRE guidelines and which had been met. Further objections and observations received including and set out in the "Late Representations List" were referred too. It was noted that 5 further letters of objection had been received following completion of the "Late Representations List"
- (3) It was acknowledged that the originally submitted plans had been inaccurate in so far as they had related to the position and presence of the rearmost window in the basement flat of 9 Palmeira Avenue; a patio door of the basement flat to 11 Palmeira Avenue and associated 25 degree lines drawn from window openings at the rear of Palmeira Avenue to assess the impact of the development on day light to adjoining properties.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Kennedy referred to the joint letter received from the Local Ward Councillors setting out their concerns, particularly regarding the nature of any future community use within the ground floor of the building. She sought clarification whether use as a

doctor's or dental surgery would also be considered to fall within a D1 community use. It was confirmed that they would.

- (5) Councillor Smart referred to the raised area in the rear garden. He expressed concern regarding potential overlooking and enquired whether there would be any restrictions to use of the walkways at the rear of the building. He also enquired regarding measures to prevent overlooking from the upper floors of the building. The Interim Area Planning Manager referred to Condition 9 which sought to address these issues.
- (6) Councillor C Theobald referred to the car free status of the development and asked whether it was anticipated that the development would result in an increased demand for on-street parking. It was confirmed that this remained unaltered from the stated position in relation to the earlier consideration of the application.

Debate and Decision Making Process

- (7) The Chairman, Councillor Hyde and Councillor Cobb referred to the earlier decision of the Committee stating that they were of the view that when making their earlier determination Members had had a clear view regarding the form any community use was likely to take i.e. a community hall and had not been aware that a D1 use could result in a wider use as a doctors or dental surgery.
- (8) Councillor Smart stated that there was an existing doctor's surgery nearby which served the area.
- (9) The legal adviser to the Committee stated that it was appropriate for the Committee to determine the application on the basis of the areas which had been identified as requiring further information. It was not good practice to seek to include additional conditions.
- (10) Councillor Kennedy stated that she was concerned regarding the potential; D1 use to which the ground floor of the building could be put. She considered it would be appropriate to secure use as identified by the Chairman and Councillor Cobb by whatever means would be most appropriate, whether that took the form of a Management Plan or formed part of a Section 106 Agreement rather than permitting a broader D1 use.
- (11) Councillor Fallon-Khan referred to the sunlight/daylight testing requested by the Local Ward Councillors and neighbouring residents and to their concerns that these had been carried out to a base line level rather than at a higher level which had been asked for. He asked whether Officers were satisfied that all of the necessary requirements had been met. The Area Planning Manager confirmed that Officers were satisfied that the applicant had provided sufficient data and that further tests were not required.
- (12) The Interim Area Planning Manager explained that any permission as currently framed would give unrestricted D1 use. If Members were minded to narrow the permitted use they would have to give a rationale for that decision and it could be open to challenge. The legal adviser to the Committee confirmed that this was so.

- (13) Councillor Davey stated that he was anxious to tease out how Members intentions in relation to the community use could be made to work in practice. The legal adviser to the Committee confirmed that the restricted D1 use had not been tied down when Members had determined the application in September 2009 and that would need to be agreed in order to seek to ensure that happened.
- (14) The Committee agreed that a recess was in order to consider whether and how restrictions could be placed on the D1 use and how this could be specified. The Chairman, Councillor Cobb and the relevant Officers then left the meeting.
- (15) Following the recess the Head of Development Control explained that Policy HO20 of the Brighton & Hove Local Plan could be applied to protect community facilities but that Members would need to give a clear demonstration as to why they were drawing those boundaries.
- (16) Councillor Fallon-Khan stated that he considered it appropriate for Members to agree and quantify/restrict the definition of a community use in tandem with those matters (amended plans and sunlighting/daylighting) which had resulted in the application being brought back to Committee for re-determination.
- (17) The Chairman, Councillor Hyde, suggested that if Members wished to do so they could require the community use to be as a community hall as there would be a clear understanding of what such a use would entail.
- (18) Councillor Hamilton stated that he considered the permission as originally agreed in September 2009 was acceptable. The existing building had not been in use for 3 years, the neighbouring language school had rooms which could be made available for community use and additionally the Cornerstone facility was also located nearby.
- (19) Councillor C Theobald stated that she had wider concerns than in relation to the community use and did not support the principle of the development or it being car free. She was of the view that it would be overly dominant.
- (20) The Head of Development Control stated that Councillor Theobald's comments had formed part of the earlier debate and it was not appropriate to revisit them. The debate needed to be restricted to those matters which had formed the basis of the application being brought back before the Committee.
- (21) The Chairman stated that she would take a vote on whether the Committee wished to have an unrestricted D1 community use in relation to the proposed development or whether they wished the D1 use to be restricted to use as a community hall.
- (22) A vote was taken and on a vote of 3 to 9 the proposal that any permission granted would allow an unrestricted D1 use was lost.
- (23) A further vote was then taken and on a vote of 6 to 1 with 5 abstentions planning permission was granted in the terms set out below to include the requirement that the D1 use would be restricted to use as a community hall and to the other amendments set out below.

243.11 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out paragraph 5 of the report and resolves that it is minded to grant planning permission subject to the conditions and informatives set out in the report and as amended below:

Amend condition 2 to read:

2. Notwithstanding the provisions of the Schedule to the Town and Country Planning (use Classes) Order 1987, as amended, the ground floor of the building (except for the communal cycle, refuse and recycling stores and the access to the upper levels) shall be used solely as a Community Hall with associated ancillary uses, and shall not be used for any other purposes (including any other purpose falling within Class D1 to the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

Reason: The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the retention of a community hall within the area to serve the local community and to comply with policy H020 of the Brighton & Hove Local Plan.

Add Condition 17

No development shall commence until full details of existing and proposed ground levels within the site and on land adjoining the site to OS Datum, by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved level details.

Reason: to ensure a satisfactory appearance to the development and to protect the amenity of surrounding neighbours in accordance with policies QD1, QD2, and QD27 of the Brighton & Hove Local Plan.

Note: Councillor C Theobald voted that planning permission be refused. Councillors Allen, Carden, Cobb, Fallon-Khan and Hamilton abstained.

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

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

Application:	Site Visit Requested by:
BH2009/02741, 7 Station Road, Brighton	Councillor C Theobald
BH2009/02158, Land R/o 11 Longhill Road, Ovingdean	Councillor Smart

BH2009/03154, Gala Bingo Hall, Portland Road, Hove	Head of Development Control
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245. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY

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

Note 1: All decisions recorded in this list are subject to certain conditions and reasons recorded in the planning register maintained by the Director of Environment. The register complies with legislative requirements.

Note 2: A list of representations received by the Council after the Plans List reports had been submitted for printing was circulated to Members on the Friday preceding the meeting. 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 5.35pm

Signed

Chairman

Dated this

day of

APPEAL DECISIONS

	Page
A. ROTTINGDEAN COASTAL WARD	
Application BH2009/02424, 7 Greenways Corner, Ovingdean, Brighton. Appeal against refusal to grant planning permission for two storey extension at rear of property (Delegated Decision) APPEAL ALLOWED (copy of the letter from the Planning Inspectorate attached).	25
B. QUEEN'S PARK WARD	
Application BH2009/000328, 164 Queen's Park Road, Brighton. Appeal against refusal to grant planning permission for change of use from C3 (private dwelling to sui generis (house in multiple occupancy), also to divide existing single room into 2 bedrooms (from bay room at 1st floor level) (Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).	27
C. QUEEN'S PARK WARD	
Application BH2007/04679, 8 Pavilion Parade, Brighton. Appeal against refusal to grant planning permission for change of use of the basement, ground, first and second floors from offices to residential.(Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).	31
D. REGENCY WARD	
Application BH2009/00316, 75-79 East Street, Brighton. Appeal against refusal to grant planning permission for removal of the existing glass doors and to block up existing openings. Fixing of formica cladding panels to front elevation only. (Delegated Decision) APPEAL DISMISSED & ENFORCEMENT NOTICE UPHELD (copy of the letter from the Planning Inspectorate attached).	35

E. PRESTON PARK WARD

Application BH2009/00173, 40 Varndean Gardens, Brighton. Appeal against refusal to grant planning permission for a single storey rear extension, first floor front extension, replacement porch, associated external alterations, creation of full width first floor terrace to rear (Amendment to planning permission BH2008/00082). (Delegated Committee Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **39**

F. PRESTON PARK WARD

Application BH2009/00437, 114 Hythe Road, Brighton. Appeal against refusal to grant planning permission for construction of a roof terrace (Delegated Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached). **43**



Appeal Decision

Site visit made on 16 March 2010

by **P E Dobsen MA (Oxon) DipTP MRTPI**
FRGS

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

The Planning Inspectorate
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Decision date:
19 March 2010

Appeal Ref: APP/Q1445/D/10/2121205

7 Greenways Corner, Ovingdean, Brighton BN2 7BQ

- 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. Christopher Bosker against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/02424), dated 24 September 2009, was refused by notice dated 23 December 2009.
- The development proposed is "two storey extension at rear of property".

Decision

1. I allow the appeal, and grant planning permission for the erection of a two storey extension at the rear of 7 Greenways Corner, Ovingdean, Brighton BN2 7BQ, in accordance with the terms of the application, Ref BH2009/02424, dated 24 September 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows or doors [other than those expressly authorised by this permission] shall be constructed on the northern or southern elevations of the extension, without the prior written consent of the local planning authority.

Main issue

2. The main issue in the appeal is the effect of the proposed extension on the Ovingdean Conservation Area (CA).

Reasons

3. The appeal site contains a semi-detached, 2 storey, brick-and-tile built dwelling, with small gardens at the front, side and rear, which lies to the east of the junction of Ovingdean Road and Greenways. No 8, the other half of the pair, lies to the south west. While both dwellings have small, single storey extensions to their flank walls, neither has been extended at the rear.

4. Probably dating from the early part of the last century, these small English vernacular dwellings have a simple, rustic appearance, which is also replicated to some extent by similar dwellings on the far side of the road. Adjacent to the north east is The Hames, a single storey brick-and-flint dwelling, and to the south lie the extensive grounds of the substantial, grade II listed house, Ovingdean Grange.
5. The proposal is to build a 2 storey extension at the rear of No. 7, which would have a footprint of 4m. by 4m, and would occupy about half of its width. This would contain a studio room on the ground floor, and a (third) bedroom above. It would have a hipped, tiled roof and its fenestration, external materials and other design details would match those of the original house.
6. The appeal site and its surroundings lie near the centre of the Ovingdean CA, designated in 1970, which includes much of this older part of the village. I am therefore required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. I have also been mindful of the relevant development plan policies in the Brighton and Hove Local Plan, as listed in the Council's decision notice.
7. On the main issue, I have noted the comments of the Council's Design and Conservation Team, which are not opposed in principle to a two-storey rear extension in this position. Although it would be quite substantial in scale compared with the existing dwelling, it would be unobtrusively sited at the rear, and would not be at all prominent in views from the adjacent road, nor from any other public viewpoints. In my opinion, the design of the extension would complement that of the original dwelling, and it would not have any significant impact on the setting of Ovingdean Grange. The fact that it would "unbalance" what is at present a symmetrical pair of houses is, to my mind, of no great consequence, as it would be located at the rear. In sum, I consider that the proposed extension would preserve the character and appearance of the CA, in accordance with the Council's policies.
8. Despite a reference to this in the single reason for refusal, I am satisfied that the proposed extension would not have any unduly adverse impact upon the rear of the adjoining No.8, or its rear garden. During my site inspection, I also looked at the relationship between the proposed extension and The Hames, from which it would be separated by a boundary wall and a domestic outbuilding. I consider that the extension would not cause any significant loss of natural light to any habitable rooms at that house, and that it would be sited at a sufficient remove from the property boundary to obviate any sense of overbearing proximity.
9. I have therefore decided to allow the appeal, subject to the gist of the 3 conditions suggested by the Council. I have considered all the other matters raised in the Council's statement, and in letters from third parties at the application stage, but there are none which alter or outweigh my findings on the main town planning issue.

Paul Dobsen INSPECTOR



Appeal Decision

Site visit made on 2 March 2009.

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

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

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Decision date:
15 March 2010

Appeal Ref: APP/Q1445/A/09/2114611

164 Queens Park Road, Brighton, East Sussex, BN2 0GG.

- 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 P Conrad against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/00328 dated 16 February 2009, was refused by notice dated 24 June 2009.
- The development proposed is change of use from C3 (private dwelling) to sui generis (house of multiple occupancy), also to divide existing single room into 2 bedrooms (from bay room at 1st floor level).

Procedural Matters

1. The change of use has taken place. From submissions and my site visit, it seems to me that a roof extension has been added to the appeal building in connection with the change of use and to facilitate the provision of the existing 7 bedrooms, as proposed to be increased to 8 in number. The Council acknowledges that the proposed room sub-division amounts to minor internal alterations. The change of use is stated to have occurred more than four years ago (July 2005) and details of the appearance of the roof extension are not before me. In the circumstances, I deal with the appeal solely on the merits of the change of use.

Decision

2. I dismiss the appeal.

Main Issues

3. I consider the three main issues in this case to be the effect of the proposed development on; firstly, transport infrastructure; secondly, housing needs; and lastly, the living conditions of the adjoining occupiers.

Reasons

Transport infrastructure

4. The appeal property is a two-storey terraced Victorian dwelling with basement (lower ground) accommodation, well within a busy urban area that is served by public transport. It has no car parking provision and, notwithstanding the information in the appeal application, there are no signs of dedicated cycle storage and none is proposed. Roadside parking restrictions are in force outside the dwelling. The proposed change of use has substantially increased the number of adult residents at the property through the provision of roof

accommodation and the conversion of downstairs and other rooms to bedrooms.

5. Saved Policy TR1 of the Brighton & Hove City Local Plan 2005 (LP) requires development to provide for the demand for travel it creates and to maximise the use of public transport, walking and cycling. The provision of public transport infrastructure, including the provision or enhancement of public transport services is an aim that is to be secured through planning obligations for financial contributions, as required by saved LP Policy QD28.
6. The Parties do not dispute the need (or amount) for a financial contribution towards sustainable transport infrastructure improvements to off-set the increase in demand for public transport services arising from the change of use. I have not been provided with sufficient information to enable me to establish whether the contribution the Council seeks would meet the tests set out in Circular 05/2005 *Planning Obligations*. Even so, given the substantial increase in the number of adult residents and the absence of any existing or proposed dedicated cycle storage facility, I have no reason to take a different view about the need for a contribution of some form. Whereas the Appellant confirms a willingness to make the necessary contribution, no obligation pursuant to section 106 of the Town and Country Planning Act 1990, is submitted.
7. In the absence of an obligated financial contribution, I conclude that the proposed change of use would be harmful to transport infrastructure, in conflict with the requirements of policies TR1 and QD28 of the Development Plan.

Housing needs

8. The appeal property was originally a single dwelling house unit. The proposed change of use replaced it with multiple residential occupancy of the same unit, currently occupied by students. Saved LP Policy HO8 requires development not to result in a net loss of units of residential accommodation. The Council contends that accommodation for students should not be at the expense of Class C3 residential uses, but gives no reasoning about this.
 9. I have very limited information before me, particularly concerning what constitutes for the purposes of the Policy a unit of residential accommodation. The text to LP Policy HO8 makes clear the need to make the best use of the sites and properties available and the importance of retaining existing houses, flats and other residential accommodation. The aim is to ensure that the delivery of additional housing is not undermined by losses to the existing stock. From the submitted floor plans and from my inspection of the appeal property, it seems to me that the appeal proposal amounts to a house let in lodgings that has a different character to a dwelling-house. The fact that the appeal application is made for a change of use from C3 bears this out.
 10. However, I am unclear as to whether it follows that the appeal proposal is not 'other residential accommodation' and that a net loss of residential units has occurred. Moreover, no evidence is produced about the harm that arises if that were to be the situation in the appeal case. For those reasons, I am unable to draw a conclusion on this issue.
-

Living conditions

11. The appeal property is part of a terrace in a busy residential street and it backs onto other dwellings in close proximity. The area has mixture of housing in that many properties are converted into flats and, potentially, some others may be taken to be in shared or multiple use, given their size and configuration and the flexibility applicable to Class 3 uses. The proposed change of use has resulted in an intensification of comings and goings at the appeal property. The thrust of saved LP policies SU10 and QD27 is to protect the amenity of residents from noise nuisance, among other things.
12. The Council and third parties make assertions about noise and disturbance. I acknowledge that noise and disturbance is inherently more likely with the appeal proposal than with a single dwelling, because of the additional comings and goings. Those comings and goings, however, are in a mixed housing area and are not much different to elsewhere in the street, being part of its character. During my site visit, I came to the conclusion that the street is a busy, noisy place within which comings and goings of residents is not particularly evident to adjoining occupiers, whichever type of housing unit is occupied.
13. At the rear of the appeal property I experienced a much quieter environment. The rear garden is high in relation to those behind it, but it is especially small and not suited to much leisure/recreational use. Given its limited nature, I consider that any propensity for disturbance to the adjoining occupiers is not great. I acknowledge the Appellant's view that any problems can be reported to him so that a remedy may be sought in the first instance through the terms of the tenancy agreement that specifically seeks to control such matters. I bear in mind, however, that the character of the management of the appeal property is untested and may change.
14. I give considerable weight to the fact that the appeal proposal has been active for several years, sufficient to provide the basis of a 'trial run'. The Appellant states that he has never received any complaints. No evidential base has emerged to show that there are insurmountable problems. In the circumstances, I find that the concern about noise and disturbance is overstated.
15. I conclude that the proposed change of use would not unacceptably affect the living conditions of the adjoining occupiers, in accordance with the requirements of policies SU10 and QD27 of the Development Plan.

Conclusions

16. Notwithstanding my conclusion on living conditions and my finding on housing needs, my conclusion on the first issue (transport infrastructure) is sufficient reason to dismiss this appeal.
17. I have considered all other matters raised, but none alters my conclusions on the main issues.

B C Scott
INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Frances Mahoney DipTP MRTPI IHBC**

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

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Decision date:
15 March 2010

Appeal Ref: APP/Q1445/A/09/2113100 8, Pavilion Parade, Brighton BN2 1RA

- 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 Baron Homes Corporation Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/04679, dated 20 December 2007, was refused by notice dated 31 March 2009.
- The development proposed is the retrospective planning application for the change of use of the basement, ground, first and second floors from offices to residential.

Decision

1. I dismiss the appeal.

Procedural matters

2. The terms of the description of development adopted by the Council as well as that on the planning application form refers to the change of use as being retrospective. The submitted drawings show that there are no works of conversion from offices to residential use. I saw at my site visit that the office units were in use as residential flats, in active occupancy. It is clear to me that the change of use of the basement, ground, first and second floors from offices to residential has already taken place and that it has been carried out in accordance with the submitted plans. I shall therefore deal with the appeal on this basis.

Main issues

3. The main issues in this case are the effect of the development on; local employment opportunities; and on the living conditions of the residents of the flats in respect of the nature of the habitable rooms.

Reasons

4. No 8 Pavilion Parade is a five storey property with basement, part of a fine terrace of early 19th century buildings listed Grade II which, whilst altered over time, still retains some sense of the elegance of its period. The magnificence of the Royal Pavilion stands just on the other side of Pavilion Parade, a busy City road.
5. The terrace, of which No 8 forms part, includes a number of office uses alongside some flats. This mixture of business and residential uses is reflected in the character of the development within the immediate area of the appeal

site and is one of the characterising features of the Valley Gardens Conservation Area of which the appeal site forms part. The location of the Law Courts just around the corner in Edward Street seems to have attracted a number of Solicitor's offices to the area. The University also has offices at the end of the Pavilion Parade terrace and I did note other office users in the immediate area located within other terraced buildings which were undoubtedly built as Regency residences.

Local employment opportunities

6. The appeal property is well located in terms of public transport links and access to services being central to the City's commercial area. The building was previously used as small office suites, with the third and fourth floors being used as a residential maisonette, a use which will continue.
7. *The Brighton & Hove Local Plan 2005* (LP) policy EM5 sets out that the change of use of office premises will not be granted unless they are genuinely redundant. From the submitted evidence it would seem that No 8 was marketed from September 2004 until October 2005 when the appellant company purchased it. Some detail is offered as to how the freehold of the premises was offered for sale, but this does not include the detail of the strategy employed; why the offices were not marketed to let as a further option; targeted advertisements and their level of frequency which would actively promote the premises with the intention to achieve a sale or letting at a realistic market value; nor the level of interest generated, including viewings and feedback.
8. However, in fact the 2004-2005 marketing strategy was successful as the appellant company purchased the building marketed as offices and a two bedroom maisonette. I also note that the purchase followed an aborted negotiation with another interested party.
9. The appellant company has submitted some more up-to-date evidence of the availability of office premises in the Brighton City centre area. I did note that virtually all of the examples highlighted were being offered to let rather than as a freehold purchase as No 8 was offered. However, no evidence has been submitted that the appeal property has been offered to the market as office space, either to let or as a freehold premises, by the appellant company since October 2005. Whilst I appreciate that the economic circumstances have changed considerably in recent times, the lack of evidence of the prolonged and consistent efforts of the appellant company to find office users for the building, I find to be a significant deficiency in their case that the office space is no longer required, as a justification for the premature change of use of the building to flats.
10. The change of use and occupation of the relevant floor space as flats has removed any immediate possibility of employment uses reoccupying the appeal property. However, as no works of conversion were required to bring the flats into use, it would be similarly a comparatively simple operation to restore the office use back to the building.
11. The appellant also contends that the building is no longer suitable for the modern office user. However, no convincing evidence has been submitted to substantiate this claim. I did note that a number of other buildings of a similar

period to No 8 appeared to be in active use as offices, either subdivided into suites or occupied by single users.

12. It is for these reasons that I am not satisfied that it has been demonstrated that the office use at No 8 is genuinely redundant. Therefore, I consider that the appeal proposal would be contrary to LP saved policies EM5 and EM6 which seek to protect local employment opportunities.

Living conditions

13. The quality of the living conditions of the residents of the flats, with particular regard to the size of the flats and the lack of natural light and ventilation to both the kitchens and bathrooms has been raised as a concern.
14. Of the 7 flats, 4 include a separate living room, back bedroom, both being good size rooms, with a central kitchen and shower room; whilst the other 3 are bedsits but still provide a reasonable size space suitable for single person occupancy. In all cases all of the habitable rooms have external windows allowing light and fresh air into the flats. The lack of ventilation and natural light to what I consider to be non habitable rooms is not an uncommon arrangement in the development of flats.
15. The flats lack any on-site amenity space for residents to enjoy. However, opposite the appeal site is the Royal Pavilion including the surrounding park, and only a short walk away is the Brighton sea front and beach, both of which offer considerable opportunities for recreational use by residents. In my judgement, the availability of these easily accessible public spaces to the residents of the flats, makes up for the lack of useable on-site amenity space, particularly in such an urban location.
16. Consequently, I do not consider that the change of use to flats is contrary to LP saved policies HO5 and QD27 which seek to secure amenity space for residents appropriate to the scale and character of the development.

Other matters

17. LP policy requires that Lifetime Homes criteria should be incorporated in the design of new development, wherever practicable (HO13); that secure cycle storage facilities be provided (SU2, TR1 & TR14); refuse/recycling facilities be provided (SU2 & QD27); and that a satisfactory level of efficiency in the use of energy, water and materials should all be achieved (SU2).
18. As a listed building, on a confined site, within a dense urban area, No 8 has limitations in the way the structure of the building can be adapted and its operational limitations. Nonetheless, in respect of matters relating to the sustainability of the development, it seems to me that it would be possible to devise a scheme to improve the efficiency in the use of energy, water and materials within the building.
19. The appeal property is centrally located to the City and within ready walking distance to the shops and services. I also saw regular local buses passing up and down Pavilion Parade. The provision of secure cycle storage facilities would be an advantage. However, No 8 does not lend itself to accommodating the 9 cycle spaces which are required. It is likely that any residents who have cycles, have made their own informal arrangements such as storing them within

- hallways or in their flats. However, in any case LP policy TR14 does offer the option of the need for cycle storage being met by the provision of facilities on the public highway or for a contribution to improvements to cycling infrastructure being made. This would seem to me to be just such a case and an appropriate way of dealing with this aspect of the change of use.
20. Similarly, in respect of refuse and recycling it is likely that residents have devised their own arrangements to manage their waste disposal. However, whilst recognising that there is no outside space for the location of bins, nonetheless it may be possible to design into the internal circulation spaces some storage facilities.
21. In respect of Lifetime Homes criteria, I have no evidence that full consideration has been given by the appellant company to the need to incorporate, where practicable the policy requirements. However, I am mindful that the appeal property is a grade II listed building which may offer only limited opportunities to achieve the criteria if practicable.
22. In all of the above cases under the heading of "Other matters", I do not consider that the limitations on the compliance with the identified LP saved policies, either individually or in combination, are so significantly harmful as should warrant the withholding of planning permission in this instance. In reaching this view I have also taken into account the character of the area; the nature of the uses of the neighbouring buildings; character, appearance and integrity of the listed building; and the lawful use of the building as offices.
23. In addition, taking into account the mixed use nature of the character of the Valley Gardens Conservation Area and that this appeal concerns purely a change of use of the building from offices to flats without any internal or external alterations to the listed building, I do not consider that the scheme has any effect on the character or appearance of the Conservation Area.

Conclusion

24. Nonetheless, in conclusion, I consider the harm caused to local employment opportunities by the change of use of the basement, ground, first and second floors from offices to residential at No 8 Pavilion Parade is of such significance as should warrant the dismissal of this appeal.

Frances Mahoney

INSPECTOR



Appeal Decision

Site visit made on 16 February 2010

by **Frances Mahoney** DipTP MRTPI IHBC

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for Communities and Local Government

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Decision date:
3 March 2010

Appeal Ref: APP/Q1445/A/09/2116160 75-79 East Street, Brighton, BN1 1NF

- 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 CHF (UK) Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00316, dated 10 February 2009, was refused by notice dated 6 May 2009.
- The development proposed is the removal of the existing glass doors and block up existing openings. Fixing of Formica cladding panels to front elevation only.

Decision

1. I dismiss the appeal.

Procedural matter

2. I saw at my site visit that the front street elevation of the building had been covered in a maroon coloured cladding with a wide black fascia board and a ramp up to the main door. It was clear to me, however, that the detail of the front elevation was not the same as that shown on the plans now the subject of this appeal. For the avoidance of doubt I confirm that my determination of the appeal is based on the drawings submitted and not on the works as constructed.
3. I also note that negotiations between the appellant and the Council are on-going to seek a resolution to the design of the restaurant frontage. However, I am charged with determining this appeal on the basis of the documentation and plans submitted and therefore, I shall deal with this appeal accordingly.

Main issue

4. I consider the main issue in this case is whether the proposed restaurant front would affect the character and appearance of the existing building and linked to that, whether the character or appearance of the Old Town Conservation Area would be preserved or enhanced.

Reasons

5. The appeal site stands at the corner of East Street and Pool Valley, in a particularly prominent site within this part of the Conservation Area. The building was built in the early part of the 20th Century as a cinema and is a landmark building close to the sea front. It contrasts with the more modest

scale, close-knit, traditional development of shops and businesses close by in this part of the historic Old Town.

6. In the 1920s the Savoy Cinema, as it was known, was a building of elegance and grandeur. Its distinctive curving frontage onto East Street is of particular note. It continued in use as a cinema up until the 1990s. The submitted photographs of the building show how its condition had deteriorated in the intervening period up until 2001 when it was a sad reflection of its former glory. Restoration work then ensued, which revitalised the front façade of the building including strongly echoing the form and character of the original windows at first floor level and above with intervening panels. In addition the three door openings on the ground floor, so obviously features of the original cinema were maintained. To some extent the grandeur and elegance of the original building has been re-established and its use as a restaurant along with other commercial uses elsewhere in the building has brought, what appeared to be a rather sad building, back to life.
7. In my view this is a building of particular note within the Conservation Area, being prominently located, retaining the character and appearance of its 1920s Picture House origins. Whilst not being specifically recognised in terms of its historic or architectural value, its stature and design makes an important contribution to the character and appearance of the Conservation Area.
8. However, this appeal proposes the application of red cladding panels to the curving front ground floor elevation. The cladding would cover over all surfaces of the restaurant frontage other than 3 of the original cinema double door openings. Of these door openings, the two side doors are proposed to be removed and glazed over.
9. The proposed red cladding would present a strident, unsympathetic colour finish in an insensitive material which would dominate the façade of the building, detracting from and undermining the benefits of the recent restoration at first floor level and above. The proposed cladding would unacceptably harm the character and appearance of the immediate locality of the appeal site where its character is firmly rooted in the historic, traditional buildings and layout of the Old Town. The introduction of such a brash and overbearing front façade would neither preserve nor enhance the character or appearance of the Old Town Conservation Area.
10. The removal of the two pairs of double doors on either side of the front of the restaurant, I also find to be an unacceptable erosion of the character and appearance of the building. The 3 sets of doors in combination with the curved front and 1920s detailing were an expression of the buildings original use. Even with the property being occupied by a restaurant, the character and appearance of this prominent corner building in the Conservation Area still asserts the grandeur and style of a by-gone age of motion picture houses.
11. In my view, the removal of the two side sets of double doors would serve to diminish the character and appearance of the building within the street scene, whilst neither preserving nor enhancing the character or appearance of Conservation Area. I see no reason why these doors could not be retained and fixed shut to limit access to the restaurant via the central pair of doors whilst still maintaining views into the restaurant. No evidence has been submitted to

suggest these doors present a particular security problem for the building. In the absence of such evidence I am confident that a way could be found to introduce to these doors the level of security the appellant desires.

12. In conclusion, the appeal proposal represents a prominent, unsympathetic form of development which would detract from the character and appearance of the existing building; and would neither preserve nor enhance the character or appearance of the Old Town Conservation Area. Therefore it would be contrary to *Brighton & Hove Local Plan* saved policies HE6, QD5, QD10 and QD14 which reflect the requirements of the legislation and national guidance in this regard, and seek to ensure that new development is of a high quality design which will successfully integrate into its context.

Frances Mahoney

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil MRTPI**

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for Communities and Local Government

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Decision date:
10 March 2010

Appeal Ref: APP/Q1445/A/09/2113516 **40 Varndean Gardens, Brighton BN1 6WL**

- 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 Nigel Robinson against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00173, dated 22 December 2008, was refused by notice dated 7 April 2009.
- The development proposed is a single-storey rear extension, first floor front extension, replacement porch, associated external alterations, creation of full width first floor terrace to rear (Amendment to planning permission ref: BH2008/00082).

Decision

1. I dismiss the appeal.

Main Issue

2. Planning permission was granted in June 2008 for a single storey rear extension, first floor front extension, replacement porch and associated external alterations (Ref: BH2008/00082). The appeal proposal is materially the same as the previous scheme apart from the inclusion of a full-width first floor level terrace to the rear of the property. I consider that there is a reasonable prospect that the 2008 permission would be implemented and therefore represents a credible fall-back position.
3. The main issue in this case is therefore the effect of the terrace on the living conditions of occupants of neighbouring properties with particular regard to privacy and noise disturbance.

Reasons

4. The appeal property is a 2-storey detached house situated in an area comprising a mix of bungalows and 2-storey houses of varied design. It is located towards the upper end of Varndean Gardens, a road that rises steeply from west to east. There is a close of bungalows, Fairlie Gardens, to the rear of the appeal site.
5. The first floor level rear terrace would be accessed from 3 bedrooms via large glazed doors, rather than being directly accessible from the main living areas. I also note the appellant's view that it would be used infrequently. However, I consider it necessary to pay due regard to the potential impact of future occupiers of the property and possible future internal changes to the property. As the terrace would extend across the full width of the property, serve a

generous 4-bedroom house and provide pleasant views, I consider that potential would exist for it to be used frequently and, from time to time, intensively.

6. The timber privacy screens at the 2 ends of the terrace would prevent overlooking of the rears of the properties to either side. In addition, the vegetation along the eastern edge of the appeal site's rear garden, combined with the sloping ground, would prevent overlooking of the garden to the rear of 42 Varndean Gardens. However, due to the elevated position of the terrace and the fall in ground levels to the west, I consider that an unacceptable level of overlooking of the rear garden of 38 Varndean Gardens would occur.
7. The bungalows in Fairlie Gardens have relatively short rear gardens and large glazed sliding bedrooms doors in their rear elevations. Although the fence and bamboo along the rear boundary of the appeal site provide a degree of screening I consider that this would not prevent overlooking of a large proportion of the rear garden of 6 Fairlie Gardens. Although I note that the reflection of the sky prevents a view into the rear bedroom of No.6, I do not consider that this would be the case in the evening, nor would it overcome the significant sense of being overlooked that I consider would be experienced by the occupiers of No.6.
8. Despite the privacy screens, and having regard to the size of the terrace, the potential frequency of its use and its elevated position, I consider that there would be a significant change in the level of overlooking occurring compared with that resulting from rear first floor level windows. I conclude that this would unacceptably harm neighbouring property occupiers' privacy and consequently have an unacceptable effect on their living conditions. For these reasons the proposal would be contrary to Brighton and Hove Local Plan (LP) Policies QD14 and QD27, which state that planning permission will not be granted for development that would result in a loss of amenity to existing residents.
9. I am satisfied that the combination of the screens and the separation distance between the terrace and rears of the properties to either side would be sufficient to ensure that unacceptable levels of noise disturbance would not occur. I am also satisfied that other neighbouring properties are a sufficient distance from the terrace to ensure that residents would not experience unacceptable noise disturbance due to the use of the terrace. However, this does not outweigh my conclusion above.

Other Matters

10. I have considered the presence of other terraces and balconies in the area, including those at Surrenden Court. However, the proposed terrace would be significantly larger than others in the area and would serve a large house rather than a flat, therefore resulting in potentially greater frequency and intensity of use.
 11. The appellant has stated that the terrace would improve the appearance of the rear elevation of the property. Although I consider that it would provide more interest to an otherwise plain area of flat roof, this matter does not outweigh my conclusions in respect of the main issue.
-

12. I do not consider that the support of some neighbours is decisive given the planning harm identified above and the fact that ownership of nearby properties may change. I therefore attach limited weight to this.

Conclusions

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

Simon Poole

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil**
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Decision date:
19 March 2010

Appeal Ref: APP/Q1445/A/09/2114717 114 Hythe Road, Brighton BN1 6JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Lindsey Shakoori against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00437, dated 23 February 2009, was refused by notice dated 23 April 2009.
- The development proposed is the construction of a roof terrace.

Decision

1. I dismiss the appeal.

Procedural Matter

2. The roof terrace has been constructed although the screens shown on the application drawing are not in place.

Main Issues

3. The main issues are the effects of the appeal scheme on the living conditions of occupiers of neighbouring properties, with particular regard to privacy and noise disturbance, and on the character and appearance of the area.

Reasons

Living Conditions

4. The appeal property is a 3-storey mid-terraced house with accommodation in the roofspace. The properties in the terrace have 2-storey rear projections, most of which have shallow-pitched roofs. On the appeal property the roof has been replaced by a small terrace, which is accessed via a glazed door and enclosed on its 3 outer edges by railings. The appeal proposal would involve the replacement of the railings on the 2 flank sides of the terrace by 1.8m high opaque screens.
5. I consider that the screens would ensure that adequate privacy to rear rooms of neighbouring properties would be maintained. However, due to the terrace's elevated position I consider that an unacceptable degree of overlooking of large proportions of neighbouring rear gardens and the lower-lying properties in Preston Drove would result. Although a certain level of overlooking is inevitable in such situations, I consider that the effect of the proposal would be

significantly more harmful than that resulting due to overlooking from upper floor rear windows from within the appeal dwelling.

6. For these reasons I consider that the scheme would have an unacceptable effect on the living conditions at neighbouring properties. I therefore conclude that it would be contrary to Brighton and Hove Local Plan (LP) Policies QD14 and QD27, which state that planning permission will not be granted for development that would result in a loss of amenity to existing residents.
7. The roof terrace is small and cannot accommodate many people. As it serves a house with a garden it does not therefore form the only area of private amenity space. For these reasons I consider that the level of use and therefore potential noise generated on the terrace would be low and that the screens would adequately mitigate disturbance to nearby properties. I therefore consider that the proposal would not result in unacceptable harm to the living conditions of neighbouring property occupiers in respect of noise.

Character and Appearance

8. The terrace is in a prominent position and can be viewed from Preston Drove properties and from the rear gardens of Hythe Road properties. Although the opaque screens would appear as thin enclosing walls extending out from the house, when viewed obliquely from points to either side of the appeal property they would be highly prominent and incongruous features. I consider that they would have an unacceptable effect on the character and appearance of the area and that this would outweigh any reduction in noise and overlooking that they would afford. For this reason I conclude that the scheme would fail to comply with LP Policy QD14, which states that planning permission will only be granted for development that is well designed, sited and detailed in relation to the surrounding area.
9. Whilst I note that the detailed design of the screens could be subject to a planning condition, to serve the purpose for which they are intended the screens would need to be opaque and the height that has been proposed. I consider therefore that the harm identified above could not be overcome through the imposition of a condition requiring approval of details of the screens.

Other Matters

10. I note that there are second floor rear terraces on 2 nearby properties. However, based on the information before me, it appears that these have been in place for some time. I therefore attach limited weight to their existence in reaching my decision.
11. I have considered concerns expressed by a local resident that the proposal would set a precedent for similar development. Whilst each application and appeal must be treated on its individual merits, I can appreciate the concern that approval of this proposal could be used in support of similar schemes. I consider that this is not a generalised fear of precedent, but a realistic and specific concern. Allowing this appeal would make it difficult to resist further planning applications for second floor level rear terraces, the cumulative effect of which would be to exacerbate the harm which I have described above.

Conclusions

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

Simon Poole

INSPECTOR

NEW APPEALS LODGED

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

BH2009/02255

11 Carden Avenue Brighton

Removal of single storey extension and chimney. Redevelopment of existing dwelling incorporating single storey, two storey, stairwell and roof extension.

APPEAL LODGED

26/02/2010

Delegated

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

BH2009/02499

30 Norfolk Road Brighton

Extension at first and second floor levels to rear with extended roof terrace over.

APPEAL LODGED

03/03/2010

Delegated

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

BH2009/01784

Janeston Court 1-3 Wilbury Crescent Hove

Partial roof extension to provide 4no additional two-bedroom flats together with roof gardens, a new passenger lift structure, solar panels and a secure cycle storage building.

APPEAL LODGED

08/03/2010

Delegated

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

BH2009/01898

27-28 Meeting House Lane Brighton

Change of use of first and second floors from vacant offices to three self-contained flats.

APPEAL LODGED

05/03/2010

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****WESTBOURNE**

BH2009/02515

24a Westbourne Place Hove

Conversion of outbuilding into a two bedroom mews cottage.

APPEAL LODGED

APPEAL RECEIVED DATE 10/03/2010
APPLICATION DECISION LEVEL Delegated

WARD **HANGLETON & KNOLL**
APPLICATION NUMBER BH2009/02315
ADDRESS 200 Poplar Avenue Hove
DEVELOPMENT DESCRIPTION Conversion of loft into self-contained flat incorporating dormers and rooflights.
APPEAL STATUS APPEAL LODGED
APPEAL RECEIVED DATE 03/03/2010
APPLICATION DECISION LEVEL Delegated

WARD **WITHDEAN**
APPLICATION NUMBER BH2009/03004
ADDRESS Land to rear of 14 Bankside Brighton
DEVELOPMENT DESCRIPTION Erection of new 3no storey two bedroom dwelling incorporating solar panels.
APPEAL STATUS APPEAL LODGED
APPEAL RECEIVED DATE 11/03/2010
APPLICATION DECISION LEVEL Delegated

WARD **HANGLETON & KNOLL**
APPLICATION NUMBER BH2009/02985
ADDRESS 1 The Down Hove
DEVELOPMENT DESCRIPTION Construction of decking to rear. (Retrospective)
APPEAL STATUS APPEAL LODGED
APPEAL RECEIVED DATE 15/03/2010
APPLICATION DECISION LEVEL Delegated

WARD **ST. PETER'S & NORTH LAINE**
APPLICATION NUMBER BH2009/02970
ADDRESS Community Base 113 Queens Road Brighton
DEVELOPMENT DESCRIPTION Display of externally illuminated mesh type banner to North elevation
APPEAL STATUS APPEAL LODGED
APPEAL RECEIVED DATE 15/03/2010
APPLICATION DECISION LEVEL Delegated

WARD **HANOVER & ELM GROVE**
APPLICATION NUMBER BH2009/02249
ADDRESS 159 - 162 Lewes Road Brighton
DEVELOPMENT DESCRIPTION Display of 2no. internally illuminated wall mounted display units (Retrospective).
APPEAL STATUS APPEAL LODGED
APPEAL RECEIVED DATE 16/03/2010
APPLICATION DECISION LEVEL Delegated

INFORMATION ON HEARINGS / PUBLIC INQUIRIES
7th April 2010

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

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: 21st 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: 18th 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: 25th – 27th May 2010
Location: Hove Town Hall

27-28 Meeting House Lane

Planning application no: BH2009/01898
Description: Change of use of first and second floors from vacant offices to three self-contained flats.
Decision: Committee
Type of appeal: Hearing
Date: TBC
Location: TBC

