



Brighton & Hove
City Council

Planning Committee

Title:	Planning Committee
Date:	21 July 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Hyde (Chairman), C Theobald (Deputy Chairman), Carden (Opposition Spokesperson), Alford, Cobb, Davey, Hamilton, Kennedy, McCaffery, Simson, Smart and Steedman Co-opted Members: Philip Andrews ((Chairman) Conservation Advisory Group) and Mr Roger Amerena (Conservation Advisory Group)
Contact:	Jane Clarke Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk

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AGENDA

50. 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.

51. MINUTES OF THE PREVIOUS MEETING

1 - 16

Minutes of the meeting held on 30 June 2010 (copy attached).

52. CHAIRMAN'S COMMUNICATIONS

53. PETITIONS

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

54. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 14 July 2010).

No public questions received by date of publication.

55. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 14 July 2010).

No deputations received by date of publication.

PLANNING COMMITTEE

56. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

57. LETTERS FROM COUNCILLORS

No letters have been received.

58. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

59. APPEAL DECISIONS

17 - 86

(copy attached).

60. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

87 - 90

(copy attached).

61. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

91 - 92

(copy attached).

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

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

(copy circulated separately).

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

65. TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST

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

PLANNING COMMITTEE

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

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

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

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

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For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Tuesday, 13 July 2010

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 30 JUNE 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), C Theobald (Deputy Chairman), Alford, Cobb, Davey, Hamilton, Kennedy, McCaffery, Simson, Smart and Steedman

Co-opted Members Philip Andrews ((Chairman) Conservation Advisory Group)

Officers in attendance: Jeanette Walsh (Development Control Manager), Hilary Woodward (Senior Lawyer), Pete Tolson (Principal Transport Planner), Liz Hobden (Planning Policy Officer), Steve Reeves (Principal Transport Planner), Claire Burnett (Area Planning Manager (East)) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

34. PROCEDURAL BUSINESS

34a Declarations of Substitutes

34.1 Councillor Allen declared that he was substituting for Councillor Carden.

34b Declarations of Interests

34.2 Councillor Allen declared a personal and prejudicial interest in application BH2010/00060 and BH2010/00061, St Augustine's Church, Stanford Avenue, Brighton arising from the fact that he had already expressed an opinion on the application and intended to speak in objection as Ward Councillor.

34c Exclusion of the Press and Public

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

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

35. MINUTES OF THE PREVIOUS MEETING

35.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 9 June 2010 as a correct record of the meeting with the following amendments:

18.1 “Councillor Carden declared a personal interest on application BH2010/00669, 75 Crest Way, North Portslade in knowing an objector to the application but as he did not consider that this amounted to a prejudicial interest he took part in the discussion and abstained from voting thereon.”

17.4 “Councillor Cobb declared an interest in application BH2010/00559, Dolphin House, Manchester Street as she had been closely involved in licensing issues relating to the objectors residences. She felt that the public perception may be that she had predetermined the application and therefore did not take part in the discussion or voting and left the room for the duration of the application.”

D (16) [In relation to Mr Reeves’ advice on application BH2010/00083, Land to the rear of 67-81 Princes Road] “...there were no bus stops in the vicinity of the site that needed up-grading or improving...”

36. CHAIRMAN'S COMMUNICATIONS

36.1 The Chairman reported that a report from the Enforcement Team would be coming to the next meeting regarding the performance of the team over the last year.

36.2 The Chairman introduced Liz Hobden from the Planning Policy Team to discuss new changes to national planning policy.

36.3 Ms Hobden stated that a briefing note would be circulated to Members regarding changes to the housing targets and the Regional Spatial Strategy. There was a clear intention from the government to abolish the South East Plan and this would have implications on housing targets which would be locally rather than regionally set in future. She noted that Brighton & Hove had been historically good at meeting these targets. The Growth Point designated around Shoreham Harbour would change in status, but the Team were awaiting more details on this, and targets for gypsy and traveller sites would now be locally determined.

Further changes to PPS3 included deletion of the nation minimum density targets, but this would have less impact on Brighton & Hove as it was already a densely populated city. Garden land would no longer be considered as previously developed land and would now be defined as greenfield land. Within national policy (PPS3) there is no longer a presumption against building on greenfield land. Nor can gardens be treated as ‘open space’ within the definitions of policy HO20 that deals with protection or public and private outdoor recreation space. However, each planning application for garden development will need to be considered on its merits in the current planning policy framework but the changes will allow the city council to apply higher standards for design, retention of garden space, appropriate density standards and for meeting higher sustainability requirements.

- 36.4 Councillor Kennedy asked about the impact on the existing estate owned by the Council and Ms Hobden replied that the same considerations would remain as this was not classed as private garden land.
- 36.5 Councillor Cobb felt the briefing note seemed to contradict itself. The Solicitor to the Committee, Ms Woodward replied that the briefing note was a summary of the changes, but more detailed information was provided in section two which clarified the changes. The Head of Development Control, Ms Walsh added that a greater test would now apply to garden land, but if the application passed that test planning permission could be granted. The Chairman noted that the complete document was available to Members and available on the website for further consideration.
- 36.6 Councillor Davey asked about the implications for Shoreham Harbour and Ms Hobden replied that it was likely the South East Plan would be revoked rapidly and further guidance for these implications would be issued shortly to Members.

37. PETITIONS

- 37.1 There were none.

38. PUBLIC QUESTIONS

- 38.1 There were none.

39. DEPUTATIONS

- 39.1 There were none.

40. WRITTEN QUESTIONS FROM COUNCILLORS

- 40.1 There were none.

41. LETTERS FROM COUNCILLORS

- 41.1 There were none.

42. NOTICES OF MOTION REFERRED FROM COUNCIL

- 42.1 There were none.

43. APPEAL DECISIONS

- 43.1 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.

44. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

- 44.1 The Committee noted the planning appeals that had been lodged as set out in the agenda.

45. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

45.1 The Committee noted the information regarding informal hearings and public inquiries as set out in the planning agenda.

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

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

Application:	Site visit requested by:
BH2009/03014, 331 Kingsway, Hove	Head of Development Control
BH2010/001054, Brighton General Hospital, Pankhurst Avenue, Brighton	Head of Development Control

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

(i) TREES

47.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse consent to fell the tree which is the subject of this application.

BH2010/01518, 15 Wanderdown Close, Ovingdean.

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

A. BH2010/00060, St Augustine’s Church, Stanford Avenue, Brighton – Conversion of Church Hall to provide 14 self-contained flats together with alterations to existing building and 2-storey extension with accommodation in roofspace and basement car parking to rear. Alterations to church to provide additional community space. Demolition of timber building to rear.

Note: [The presentation of this application and application BH2010/00061, St Augustine’s Church, Stanford Avenue, Brighton (listed building consent application) were taken together.]

(1) The Area Planning Manager (East), Ms Burnett, introduced the application and presented plans and elevation drawings for applications BH2010/00060 and BH2010/00061. Three errors were corrected on the report in that there were in fact fourteen flats comprising of 12x2 bed and 2x1 bed units, with regard to highways and parking a legal agreement requiring a financial contribution of £10,500 and not £15,000 and that there were 16 car parking spaces plus 1 disabled car parking space.

Ms Burnett noted there had been 48 letters of support and 15 letters of objection including a letter of objection from Councillor Allen as Ward Councillor.

The building was a prominent landmark grade II listed building in the Preston Park Conservation Area. Planning permission had been sought for conversion of the church hall to flats with a rear extension. The extension would be at a minimum two metres from the site boundary and there would be balconies and windows created as part of the scheme. No materials had been submitted in this respect. Access would be from Florence Road and 19 cycle spaces would be created. Furthermore alterations to the interior of the Church were sought to create community space. There were concerns regarding standing room on the third floor due to the trusses for the roof.

In principle the development accorded with policy, but did not meet the affordable housing requirements for a scheme of this size and there was no satisfactory reason why this was the case. The Conservation Officer had objected to the scheme stating that the Nave and Palladian window made important contributions to the street scene and would be unacceptably altered by the proposals. The amenity of neighbouring properties would also be affected and the size of the extension would be dominant and overbearing. It was felt the scheme would be poor in terms of light and outlook for future occupiers and the spatial relationship of the buildings was poor and contrary to policy. Private amenity space for future occupiers was limited and poor, and there had been no bat report submitted with the scheme, which was against policy in terms of biodiversity.

The listed building application was also recommended for refusal due to the unacceptable changes to the Palladian window and the interior of the Church. There were a number of inaccuracies in the plans submitted by the developer, and this was proposed as a further reason for refusal.

- (2) Mr Simon Bareham, Agent for the applicant, and Reverend Peter Dennett spoke in support of the scheme. Reverend Dennett stated that the application had been through several stages of detailed discussion to achieve its current stage. The Church had been marketed and sixteen bids for redevelopment had been received. Only one bid combined a community and church element with a residential redevelopment proposed. Reverend Dennett felt that the scheme proposed had excellent community benefit credentials including child care and lunch clubs for the elderly. The development would encourage employment and revive the building for community life. Local residents and businesses had been surveyed and there was a groundswell of support for the scheme. The loan to maintain the Church was crippling and this would be an enabling development that would turn a negative situation into a positive for the community.
- (3) Mr Bareham spoke and stated that the costs to provide community space in schemes were prohibitive and the residential element was needed to meet some of these costs. There was a shortfall of around £80,000 that parishioners would need to find. The extension had been altered to reduce overlooking and he did not feel it would now result in overshadowing. The lack of affordable housing on the site was down to finances, and with each unit of affordable housing provided, there would be an additional shortfall in funding of around £100,000.
- (4) Councillor Mrs Theobald asked for more information on the community uses of the Church. Reverend Dennett said that the Church was needed for far more than just

Sunday mornings. A similar example of what they hoped to emulate was at a Church and community centre in Patcham, which was used seven days a week for a variety of community uses.

- (5) Councillor Mrs Theobald asked if the Church could still be used for worship and Reverend Dennett agreed, stating that it could be used for weddings et cetera as well. As the community space interiors would be moveable, the Church could adapt to the needs of the community.
- (6) Councillor Mrs Theobald noted many mature trees on site and asked if they would be retained. Reverend Dennett replied there were no plans to disturb the trees.
- (7) Councillor Kennedy highlighted the lack of consideration paid to biodiversity issues on site, in particular noting that no bat study had been performed, and asked why this was. Mr Bareham replied that as bat surveys only needed to be done when there were changes to the roof structure on buildings older than 1914 they had not considered it was necessary. However, they were happy to provide this information if required.
- (8) Councillor Smart asked if the applicant had considered running the community project in the same way as a similar community scheme run by Cornerstone. Reverend Dennett replied that this project was unique in style and nature and was aiming to provide the community with the best centre possible.
- (9) Councillor McCaffery asked about the lack of affordable housing offered on the scheme, and asked if this was purely for financial reasons. Mr Bareham confirmed this and stated that a shortfall of £80,000 already existed on the project and for each affordable housing unit that was included as part of the scheme, a further £100,000 would need to be found by parishioners. Reverend Dennett added that they had submitted a previous application with an affordable housing element, but had been advised that the density on site was too high and they were advised to remove the affordable housing to lower the density levels.
- (10) Councillor Allen spoke as Ward Councillor in opposition to the scheme and asked the Members to support the officer's recommendation and refuse the scheme. The development would have an unsatisfactory impact on neighbouring properties, it lacked any affordable housing element and Councillor Allen urged the committee to uphold the policy of Brighton & Hove City Council in this regard. Further clarification was needed on the purpose of the community element of the scheme, and it would create parking issues on Florence Road and Stanford Avenue. Councillor Allen noted that parking was a particularly sensitive issue in this area and he was surprised that the traffic officer had stated that there was spare capacity in the area. Whilst he agreed that the Church needed to be brought back into use again, and this was an admirable scheme in principle, he urged the developers to rethink the application and return with a more detailed scheme that addressed the issues raised today.

Questions/Matters on which Clarification was Sought

- (11) Councillor Simson asked what the structure was and how high that was indicated near to the Church on the ordnance survey plan. Ms Burnett replied that she believed it was a timber shed that was one storey high.

- (12) Councillor Mrs Theobald asked about the orientation of the flats and Ms Burnett replied that they were oriented in various different ways and had a variety of aspects.
- (13) Councillor Cobb queried the parking standards given in the report and felt they were conflicting. She believed that the parking standards should be one parking space provided per unit plus one visitor space per two units.
- (14) The Principal Transport Officer, Mr Tolson stated that the general parking standards were a maximum for new developments rather than a target. They could submit applications with less parking provided if they wanted to.
- (15) Councillor Cobb asked whether the affordable housing provision should be 40% or up to 40%, and the Head of Development Control, Ms Walsh, replied that policy HO2 stated that on housing windfall schemes, affordable housing of 40% should be provided. She felt that Councillor Cobb may be referring to the emerging policy in the Core Strategy, but advised Councillors that this policy only held limited weight at the moment.
- (16) Councillor Davey asked whether the Church was intended to be brought back to full Church use and Ms Burnett replied that it was for both Church and community use. Ms Walsh added that it appeared from the site visit that the Church had already been put into use.
- (17) Councillor Davey asked if there would be restrictions on the community space in terms of what uses it could be put to, and what development may or may not be allowed in the future. Ms Burnett stated that there was an existing community use established for the space and the policies of Brighton & Hove City Council would seek to retain this use in any future planning applications.
- (18) Councillor McCaffery asked about the suggestions for a proposed children's nursery. Ms Burnett indicated where this would be situated on the plans, and Ms Walsh added that due to health and safety concerns this area could not be accessed on the site visit.

Debate and Decision Making Process

- (19) Councillor Mrs Theobald stated that the Church was a beautiful building that needed to be brought back to community use. She believed there was enough parking and did not believe that the scheme needed to provide 40% affordable housing as the community use was so worthwhile.
- (20) Councillor Hamilton believed that as the Council had a policy regarding 40% housing this needed to be adhered to regardless of how worthy a particular scheme might be or how expensive it might be for developers to include. He understood the difficulties on site and agreed with the overall use of the development however.
- (21) Councillor Kennedy agreed and stated the policy must be protected otherwise it would be weakened and challenged by other developers. She also felt that the Church was a beautiful building, but the proposals would spoil the interior. She added that whilst community space was generally good, it might not be suitable to situate it in a Church

for certain parts of the community who might belong to different faiths and feel uncomfortable about using a church. Finally she believed that the adverse biodiversity implications with this application were very serious and should the application be approved conditions would be needed to protect this.

- (22) Councillor Smart was satisfied with the car parking provision on site but not the lack of affordable housing. He recognised that the Paladian window was in danger as were parts of the interior, however felt the community aspect of the scheme was excellent and understood how difficult it was to bring such projects to fruition and on budget. He felt that other denominations would be happy to use the Church on a community basis.
- (23) Councillor McCaffery felt this was an exciting development as the Church was currently derelict and used by drug-users. She understood the difficulties on the scheme, but felt that a compromise between density and affordable housing could be reached. She remained concerned about the implications to the Paladian window and overlooking on neighbours.
- (24) Councillor Simson felt that some leeway could be granted to this scheme as the community use would be so beneficial. She appreciated the problems with delivering the affordable housing on site and felt that this requirement could be dropped in this instance to bring the building back to a viable use quickly.
- (25) Ms Walsh addressed the Committee and stated that there would be an adverse cumulative impact on overlooking and the amenity of nearby neighbours if the scheme was granted. The Conservation Team and Conservation Advisory Group had also raised significant objections to the scheme. There were discrepancies in the drawings submitted by the applicant and this was recommended as an additional reason for refusal. There was no overall objection to the proposals for the site, but there were unresolved planning and listed building issues that provided solid grounds for refusal.
- (26) Councillor Kennedy raised concerns over proposed internal floors being solid and crossing the width of the building. Ms Burnett noted that there would be voids in the floors around the Nave area.
- (27) Councillor Mrs Theobald felt that lots of Church conversions had solid floor insertions that did not create a problem and felt this could be achieved here. She was concerned that the building would fall down if there was no investment. Ms Walsh replied that a structural survey had been conducted and the building was structurally sound and would not fall down.
- (28) Councillor Alford asked if the Nave would retain floor to ceiling vision and Ms Burnett confirmed this.
- (29) Councillor Smart asked if views through the Church would be retained due to the partition walls proposed and this was confirmed.
- (30) A vote was taken and on a vote of 6 for refusal, 3 against refusal and 2 abstentions, planning permission was refused for the reasons given in the report.

47.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 1 of the report and resolves to refuse planning permission.

B. Application BH2010/00061, St Augustine’s Church, Stanford Avenue, Brighton – Conversion of Church Hall to provide 14 self-contained flats together with alterations to existing building and 2-storey extension with accommodation in roofspace and basement car parking to rear. Alterations to church to provide additional community space. Demolition of timber building to rear.

(1) A vote was taken and on a vote of 7 for refusal, 1 against refusal and 3 abstentions, listed building consent was refused for the reasons given in the report.

47.3 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 1 of the report and resolves to refuse listed building consent.

C. Application BH2010/00813, 53a New Church Road, Hove – Demolition of existing bungalow and erection of new 2 storey dwelling house.

(1) This application was deferred for a site visit without discussion.

D. Application BH2009/01355, Wolseley Build Centre, 19 Bristol Gardens, Brighton – Demolition of existing building and construction of 9 new residential dwelling houses. Provision of on site parking, cycle store and refuse facilities.

(1) Ms Burnett introduced the application and presented plans and elevational drawings. She noted that there was significant frontage proposed on the west boundary of the development and the existing structure would be demolished to provide 9 dwellings. Off road parking would be provided. Access would be from Bristol Gardens. Seventeen letters of objection had been received. There were no policies which did not support a change of use of the site and there were a variety of styles in architecture in the surrounding area, so the modern style proposed was acceptable. As this was a residential scheme it would reduce the impact of noise on site from the current use. Whilst the development would increase overlooking on Princes Terrace the distances were in acceptable limits for a city centre location. The scheme was set back and so would reduce any overbearing element from the current structure. The size of amenity space varied greatly in the surrounding area and so the proposed amenity space on this development was acceptable. There was one parking space provided per unit and conditions were included to ensure safety measures on site. Code level three for sustainable homes was required as a site condition.

(2) The agent for the applicant, Mr Green spoke in favour of the application and stated that this was an exemplary scheme which had taken in considerations from pre-application meetings. The use on site was sui generis. The existing occupier was relocating and the site would fall into disuse. Given the existing residential surroundings a residential scheme was entirely appropriate here. Although there was a small loss of on street parking, several spaces were provided off street and this would be balanced out by the lack of commercial movements on site. The density was slightly lower than 50 dwellings per hectare. Mr Green was happy to include a condition to retain the flint wall and a

precise height for boundary treatments. There was a minor variance in site levels of about one metre and so there would be no loss of light as a result of the development. Finally Mr Green agreed that there would be no balconies or roof terraces on site.

- (3) Councillor Smart asked if the repairs to the flint wall would include replacement of the brick sections and Mr Green agreed to enter into discussions with officers regarding this.
- (4) Councillor Alford asked if there would be any overlooking created by the development and Mr Green replied that the 1st floor level bathrooms would be obscured glazing on this aspect, and whilst there were some bedroom aspects that would not be appropriate for this they were at distances of around 17 meters and so the overlooking implications were not that significant. The development was consistent with its surroundings.
- (5) Councillor Mitchell spoke against the application as Ward Councillor and stated that the site was very constrained with access and egress issues, which was very narrow and almost hidden. Princes Close was a quiet area and the application would significantly change the amenity of the Close. She welcomed the offer to repair the flint wall but questioned the suggested raising of the boundary walls as this might create loss of light issues for some of the existing residents. The Officer's report recognised there would be increased overlooking from the development and this was compounded by the variance in site levels which was quite considerable. She welcomed the condition to prevent roof terraces and balconies being created, but overall the issues around overlooking, density and loss of light for existing residents remained unresolved.

Questions/Matters on Which Clarification was Sought

- (7) Councillor Alford asked if the boundary wall treatment could be increased along Princes Terrace to allay concerns about overlooking. He asked whether there was a condition to prevent balconies and roof terraces being included on site and whether there would be any obscured glazing on site. Ms Burnett replied that the flint wall would need to be retained to an agreed height. The roof terraces and balconies would be restricted by condition and Officers did not have details of obscured glazing on site. Ms Walsh added that there were amenity issues with raising the boundary too high and an informative could be included for details of the boundary to be discussed.
- (8) Councillor Simson asked what was the closest distance relationship between the development and Princes Terrace. Ms Burnett replied that units 4 and 13 would be 10.5 meters distance back to back.
- (9) Councillor Steedman asked why this site was not included in current policies to protect employment use on site. Ms Walsh replied that the current site use did not fall into any class. The department were aware of this discrepancy and were addressing this in the forthcoming Local Plan.
- (10) Councillor Hamilton noted the loss of employment space on site and asked why similar applications had been refused under employment usage. He also asked why there was not 40% affordable housing provision on site. Ms Walsh replied that the current site use did not fall into any category defined by the policy and so was not protected. She added that the affordable housing policy only applied to developments with 10 or more units on

site. She believed 9 units on this site were appropriate given the density and concerns around overlooking.

- (11) Councillor Mrs Theobald asked about the loss of parking space on street and Mr Reeves replied that he was not aware of any capacity elsewhere in the area where these spaces could be met and the scheme met with the Council's currently adopted standards.

Debate and Decision Making Process

- (12) Councillor Steedman was disappointed that the employment use on site could not be protected but believed that this was a good scheme which brought forward family homes which were needed in the city.
- (13) Councillor Hamilton was also disappointed that the employment use was not protected on site, and felt that other sites had enjoyed this protection in the past despite having the same use and functions. He felt the existing policy needed to be amended quickly to resolve this issue.
- (14) The Solicitor to the Committee, Ms Woodward, stated that the previous application to which Councillor Hamilton referred had been storage use only and therefore fell into B8 class and could be protected. This was not the case with the current application site and therefore the employment usage could not be protected using policy grounds.
- (15) A vote was taken and on a vote of 11 for approval, none against approval and one abstention, planning permission was granted subject to the conditions and informatives in the report and as detailed below.

47.4 **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 Minded to Grant planning permission subject to the applicant entering into a Section 106 Agreement and to the conditions and informatives listed in the report and the following additional conditions:

1. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for the restoration and repair of the existing flint and brick walls surrounding the development. The scheme shall include details of openings and restoration of the walls.

Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies QD1 and QD15 of the Brighton & Hove Local Plan.

2. The details approved in accordance with the condition above shall be implemented prior to the occupation of the development.

Reason: To enhance the appearance of the development in the interest of the visuals

E. Application BH2010/01132, 41 Ladies Mile Road, Brighton – Change of use from A2 to A5.

- (1) Ms Burnett introduced the application and presented plans and elevational drawings. She noted that the application was minded to grant and five further letters of objection, plus a letter of objection from Councillor Pidgeon had been received. The property was currently vacant but had been used as a betting shop. The proposed use was for a takeaway. There would be external works to the shop front and the signage would be relatively modest. There was a flat roof at the rear and there were concerns that this would be used as a roof terrace. A condition to restrict the use of this roof to emergency access and maintenance only was proposed. It was felt that the proposed use would not increase disturbance but there would be greater evening use on site. The applicant had proposed a condition that the premises was not open for counter sales before 16:00 hours. There was no significant increase in traffic caused by the development and whilst there was insufficient information regarding cycle space provision, this could be secured by condition. The change of use accorded with existing policies of the Council. Legal advice had been given to Members regarding health issues related to the site.
- (2) Ms Sampson, a local neighbour spoke against the scheme and stated that it had been previously refused and she felt the applicant was purposefully targeting this site to gain trade from nearby school children. She felt that the product the applicant sold was poor in nutritional value and believed that the law made it possible for Local Councils to take account of healthy eating policies and strategies. A recent NICE report recommended restricting takeaways near schools to reduce cardio-vascular disease. The local residents were also concerned about the anti-social behaviour that might occur should this application be granted as it was a low lit area where people would congregate. There were parking and traffic congestion concerns and she felt the scheme would contribute to obstruction of the highway with delivery vehicles parking illegally in the area. Finally, local residents were concerned about the increase in noise and pollution that might be caused by this application.
- (3) The agent for the applicant, Mr Unwin, spoke in favour of the scheme and stated that since the previous refusal on this site a detailed highway report had been commissioned and the Highways Department and the Environmental Health Department had now given the scheme their full support. Sussex Police had been consulted and had stated that there was no record of this type of premises attracting anti-social behaviour and as the premises would be closed at 23:00 hours it would not attract people coming home from local public houses.

To allay any health concerns arising from students from the nearby school using the facility the applicant proposed a condition to restrict counter sales to after 16:00 hours. The premises would not be able to deliver any products to the school. The premises had been on the market for two years without any interest and the applicants were able to spend a large amount of money on the development to refurbish the property. There were no policies against this application and Mr Unwin urged the Committee to approve it.

- (4) Councillor Smart asked if orders could be phoned ahead and picked up at the premises beforehand and Mr Unwin replied that this was not possible with the proposed condition as there would be no counter service before 16:00 hours.

- (5) Councillor Kennedy asked if the applicant had any policies regarding delivery drivers and where it was appropriate for them to park vehicles. Mr Unwin replied that a document was available for this purpose. A meeting had taken place with the franchisee and the Police regarding similar problems at a separate site and it was the view of the Police that this outlet would relieve parking pressures at the alternate store. Therefore the Police fully supported the application.
- (6) Councillor Mrs Theobald asked about the amount of delivery vehicles at the premises and the health content of the food. Mr Unwin replied that the product was created with fresh ingredients and he felt that many health issues were related to lack of exercise. Traffic movements would obviously vary but be at their peak between 18:00 and 20:00 hours. This did not coincide with other peak traffic movements however and the applicant was able to synchronise traffic movements across its stores to minimise overall deliveries.
- (7) Councillor Mrs Theobald asked where the vehicles would be kept during lulls. Mr Unwin replied that during the peak times most other shops would be closed so there would be more parking spaces available. The applicant was able to anticipate movements well in advance to ensure smooth traffic flow.
- (8) Councillor Simson asked what policies would be in place to ensure there were no counter sales before 16:00 and to ensure delivery drivers parked sensibly. Mr Unwin stated that the applicant held the lease of the franchisee and would enforce any legal conditions, government laws and by-laws. He added that there was also an enforcement team at the Council which would be able to legally enforce any conditions placed on the planning permission.
- (9) Councillor Cobb asked if deliveries could be made in the local area and Mr Unwin replied that they could.
- (10) Councillor Pidgeon spoke as Ward Councillor against the application and handed a petition to the Chairman regarding the application. He stated that there was significant local objection to the proposals and referred to a recent NICE paper "Public Health Guidance", which recommended that local authorities have the power to control fast food outlets and there was a need to restrict these when in walking distance to schools. He felt that a recent High Court judgement supported this stance and added that there were already a lot of takeaway premises in the area. He urged the Committee to refuse the application.
- (11) Councillor Smart asked if there was another takeaway pizza outlet close by and Councillor Pidgeon confirmed there was one next door but one to the application.
- (12) Councillor Simson asked for the reasons for refusal given on the petition and the Chairman stated that there were various reasons given ranging from the premises being too close to a school, to noise issues, no need for the outlet, the promotion of local trade, concerns around anti-social behaviour and additional litter in the area.

Questions/Matters on Which Clarification was Sought

- (13) The Chairman noted the letter from Councillor Pidgeon attached to the late list and advised Members that it was not printed completely.
- (14) Councillor Simson noted that Sussex Police had suggested there was a high frequency of delivery vehicle movements at other stores but the Highways Department had not objected to this application and asked why there was this discrepancy. Mr Reeves stated that the Highways Department assessed traffic movements across the city as a whole and determined the impact on the total network. The existing impact from this application would not be enough to warrant a material reason for refusal of the application.
- (15) Councillor Smart asked if traffic was assessed when other local community centres were at the peak use. Mr Reeve stated that the assessment had been conducted on a Friday between 17:00 and 20:00 hours. He did not think this issue would have been picked up in this assessment.
- (16) Councillor Alford asked where the flue would terminate and Ms Burnett replied that that a condition was included for details of this to assess the impact.
- (17) Councillor Mrs Theobald asked where the cycle parking would be located and Mr Reeves stated that although it was not on the plans, it would be required to be safe for cyclists and not impede pedestrians.
- (18) Councillor Simson asked why the application was recommended for approval now when it had been refused in 2009. Ms Burnett replied that an anti-social behaviour and traffic assessment had been conducted for this application and the Police had been consulted for their views. This indicated that the previous reasons for refusal had been satisfactorily met. Mr Reeves added that any increase in traffic on the road could be accommodated on the surrounding network.
- (19) The Chairman asked for details of the delivery vehicles and Mr Reeves replied that there were no formal loading areas on the carriageway. He believed that scooters might be used for delivery of the products from this premises.
- (20) Councillor Simson asked why the anti-social behaviour reason was given for refusal of the last application in 2009. Ms Walsh replied that Committee Members had been concerned about instances of anti-social behaviour in the area, but the Police had been consulted and a recommended hours condition had been placed on the permission.
- (21) Councillor Steedman asked for more information regarding the healthy eating legal advice and Mrs Woodward replied that a Planning Committee at the London Borough of Tower Hamlets had been wrongly advised by Officers that healthy eating concerns were not material planning considerations. The High Court had recently confirmed that a healthy eating policy was capable of being a material planning consideration and should be given the appropriate weight. The planning authority's decision had been quashed on this ground. It was not for the Court to consider the merits of the planning application. Mrs Woodward added that it was her understanding that the Brighton & Hove Local Plan

did not contain policies supporting a refusal on these grounds. She accepted that the Brighton & Hove Planning Committee may have been wrongly advised in the past regarding the issue of a healthy eating policy being a material planning consideration.

Debate and Decision Making Process

- (22) Councillor Mrs Theobald did not believe this scheme was any different to the last scheme and she was very concerned about parking problems in the area. She noted that the area was already used as overspill parking for the school and community centre and this application would add to the problems. There were anti-social behaviour problems in the area and she felt that this application was likely to encourage congregation with the takeaway being a focal point for trouble.
- (23) Councillor Simson agreed and stated that young people frequently hung around takeaways. She appreciated the offer of a 16:00 hour restriction on counter sales offered by the applicant but did not think the parking and anti-social behaviour problems that might be caused by the application had been resolved satisfactorily.
- (24) Councillor Steedman felt that the healthy eating policies of the school needed to be taken into account, and Councillor Simson agreed, adding that the wellbeing of young people using the community youth centre also needed to be considered.
- (25) A vote was taken and on a vote of 3 for approval, 6 against approval and 3 abstentions, planning permission was not granted.
- (26) Councillor Mrs Theobald proposed an alternative recommendation for refusal, seconded by Councillor Simson and the Committee took a short recess in order to confirm the reasons for refusal given.
- (27) A second recorded vote was taken and on a vote of 6 for refusal, 3 against refusal and 3 abstentions, planning permission was refused for the reasons set out below.
- 47.5 **RESOLVED** – That the Committee had taken into consideration and does not agree with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the following reasons:
1. The proposal would result in increased pressure on parking, increased traffic flow and resulting vehicle noise, contrary to policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.
 2. The proposal would result in the generation of anti-social behaviour by reason of the congregation of youths and resulting noise, contrary to policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.
 3. The proposed change of use by reason of its close proximity to Patcham High School, Patcham Community Centre and Patcham Youth Centre would have an adverse impact on the health of young people using the same, contrary to the Council's Health School's Strategy and the social objective of encouraging healthy eating as evidenced by the Council's Community Strategy.

[**Note:** Councillors Hyde, Alford, Cobb, Simson, Steedman and Mrs Theobald voted for refusal of the application. Councillors Davey, Hamilton and McCaffery voted against refusal of the application. Councillors Allen, Kennedy and Smart abstained from voting.]

48. 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

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

Application:	Site visit requested by:
BH2009/03014, 331 Kingsway, Hove	Head of Development Control
BH2010/001054, Brighton General Hospital, Pankhurst Avenue, Brighton	Head of Development Control

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

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

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

[Note 2: A list of representations received by the Council after the Plans List reports had been submitted for printing was circulated by Members on the Friday preceding the meeting. Where representations are received after that time they should be reported to the Chairman and Deputy Chairman and it would be at their discretion whether they should in exceptional circumstances be reported to the Committee. This is in accordance with Resolution 147.2 of the then Sub Committee on 23 February 2006.]

The meeting concluded at 5.45pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

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<p>Application BH2009/00948, 1 Meadow Close, Rottingdean. Appeal against refusal to grant planning permission for construction of 2 semi-detached, 3 bedroom chalet bungalows. APPEAL ALLOWED (Delegated).</p>	
B. PATCHAM	25
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G. EAST BRIGHTON **45**

Application BH2009/02575, 17 Madehurst Close, Brighton. Appeal against refusal to grant planning permission for development of staircase from first floor kitchen to garden. **APPEAL ALLOWED (Delegated)**.

H. PATCHAM **47**

Application BH2009/00915, 18b Salisbury Road, Hove. Appeal against refusal to grant planning permission for conversion of existing flat into two separate dwellings. **APPEAL DISMISSED (Delegated)**.

I. REGENCY **51**

Application BH2009/00961, 20 Ventnor Villas, Hove. Appeal against refusal to grant planning permission for conservation rooflight in connection with a loft conversion. Small roof projection to accommodate French doors, giving access to a new balcony. **APPEAL DISMISSED (Delegated)**.

J. GOLDSMID **55**

Application BH2009/00410, 33 Cissbury Road, Hove. Appeal against refusal to grant planning permission for a side extension to form a separate two-bedroom dwelling. **APPEAL DISMISSED (Delegated)**.

K. REGENCY **59**

Application BH2009/00083, 36 Victoria Street, Brighton. Appeal against refusal to grant planning permission for staircase access from existing terrace balcony to ground floor courtyard. **APPEAL DISMISSED (Delegated)**.

L. HOVE PARK **61**

Application BH2009/02152, 55 Dyke Road Avenue, Hove. Appeal against refusal to grant planning permission for a two storey side extension to replace garage. **APPEAL ALLOWED (Delegated)**.

M. HOVE PARK **65**

Application BH2008/03363, 59 Cranmer Avenue, Hove. Appeal against refusal to grant planning permission for a single storey rear extension to existing garage to form annex to house. **APPEAL DISMISSED (Delegated)**.

N. HANGLETON & KNOLL **69**

Application BH2009/02504, 59 Lark Hill, Hove. Appeal against refusal to grant planning permission for demolition of existing uPVC conservatory and erection of larger replacement uPVC conservatory. **APPEAL DISMISSED (Delegated).**

O. WESTBOURNE **71**

Application BH2009/03157, 60 Cowper Street, Hove. Appeal against refusal to grant planning permission for single storey rear side extension to terraced house. **APPEAL DISMISSED (Delegated).**

P. WISH **73**

Application BH2008/03179, 269 Kingsway, Hove. Appeal against refusal to grant planning permission for a side a rear extension at basement and ground floor levels. **APPEAL DISMISSED (Delegated).**

Q. REGENCY **77**

Application BH2003/00319, 18 Hampton Place, Brighton. Appeal against two listed building enforcement notices. Appeal A **APPEAL DISMISSED (Delegated)**. Appeal B **APPEAL DISMISSED (Delegated)**.



Appeal Decision

Unaccompanied 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

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Decision date:
30 March 2010

Appeal Ref: APP/Q1445/A/09/2113807

1 Meadow Close, Rottingdean, Brighton BN2 7FB

- 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 South Eastern Construction against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/00948), dated 14 April 2009, was refused by notice dated 28 July 2009.
- The development proposed is "construction of 2 semi-detached, 3 bedroom chalet bungalows".

Decision

1. I allow the appeal, and grant planning permission for the construction of 2 semi-detached, 3 bedroom chalet bungalows, at 1 Meadow Close, Rottingdean, Brighton BN2 7FB, in accordance with the terms of the application, Ref BH2009/00948, dated 14 April 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) Neither dwelling shall be occupied until space has been laid out within the site [in accordance with drawing No 10750/20] for at least 2 bicycles to be parked.
 - 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; hard surfacing materials; minor artefacts and structures (eg. refuse or other outdoor storage units) and planting with trees and shrubs.
 - 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 5) 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 extension or

enlargement to the dwellings shall be erected without the prior written approval of the local planning authority.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows [other than those expressly authorised by this permission] shall be constructed on the southern elevation of the dwellings without the prior written approval of the local planning authority.

Main issues

2. In the light of the reasons for refusal, and the relevant policies, the 2 main issues are: i) the effect of the proposed development on the character and appearance of Meadow Close and the local area; and ii) whether the proposed dwellings would lack adequate and satisfactory private (outdoor) amenity space for the proposed occupiers.

Reasons

3. The rectangular appeal site, approximately 0.04 ha. in size, lies on the north eastern edge of Meadow Close, a medium-density, suburban cul-de-sac in Rottingdean which takes access from Falmer Road via Meadow Parade. Meadow Close mainly comprises semi-detached and detached bungalows and chalet bungalows, but there are contrasting elements in the nearby street scene such as the 2/3 storey terrace at Court Ord Cottages opposite the site, the shops at Meadow Parade, and various house extensions and varied roof forms.
4. The site contains a single bungalow which would be demolished, and a detached garage to the east which would be retained. The proposal is to build 2 semi-detached chalet bungalows in the central part of the site, somewhat further away from the neighbouring dwelling at No. 3, but also closer to the garage and eastern site boundary. Both would have garden areas at the front and side, and small patio gardens at the rear. One would have the use of the garage while the other would have an off-street parking space with access from Meadow Close.
5. Although the 2 houses together would have a greater footprint than the existing bungalow, their roofs would be slightly lower than its roof ridge, and no higher than the neighbouring bungalows at Nos. 3/5.
6. I have considered the proposals in the light of the relevant saved planning and design policies in the Brighton and Hove Local Plan 2005. I see no need to describe these in detail. I have also paid attention to national design advice in PPS 1, PPS 3 etc. and to the Council's supplementary planning guidance
7. On the first issue, I broadly endorse the grounds of appeal. In particular, I find the overall scheme design and the chosen architectural style and detailing wholly appropriate to the site and its setting; in my opinion, they would enhance the character of the site and the locality, in full accordance with national and local design policies.
8. It seems to me that there is no compelling reason here to replicate the (to my mind) somewhat mundane pattern of mid-twentieth century bungalow

development which is characteristic of Meadow Close, and I consider that the more contemporary style of this pair of houses would make a sympathetic and positive contribution to the appearance of the site and the street scene. The development would not appear out of scale with the surrounding development, and, with appropriate planning conditions limiting permitted development rights, would not have any adverse impacts on any adjoining or nearby dwellings.

9. Turning to the second issue, the Council says that the dwellings would lack sufficient outdoor amenity space for their occupiers, but I note that there are no local plan policies or supplementary planning guidance which specify any minimum standards in this regard. Local plan policy HO5 merely states a rather generalised requirement for amenity space, "appropriate to the scale and character of the development". It seems to me that while each of the new dwellings would have less outdoor amenity space than some other dwellings in Meadow Close, which are more generously endowed, they would still have sufficient space to satisfy many people's requirements and preclude any impression of cramped development. And the space available would be distributed around each dwelling, giving the opportunity to design, lay it out and plant it to create variety in the character, outlook and orientation of the spaces thereby created. Thus I do not consider that there would be any significant conflict, in this issue, with policy HO5.
10. I note and am satisfied by the appellants' document indicating compliance with the Lifetime Homes Standards as set out in the Council's Planning Advice Note 3. I have considered the other matters mentioned in the Council's and in third party representations, but there are none which raise any other determining issues in the appeal. Since I find the proposed development acceptable in all respects, I have decided to allow the appeal. I do so subject to conditions which are based on most of those suggested by the Council, but I have added a condition requiring external materials samples, and amended other draft conditions in accordance with the advice in Circular 11/95, *The Use of Conditions In Planning Permissions*, and other national policy advice.

Paul Dobsen

INSPECTOR



Appeal Decision

Site visit made on 12 May 2010

by **Victor Crumley** DipTP DMS MRTPI

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

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Decision date:
28 May 2010

Appeal Ref: APP/Q1445/A/09/2119238

1 Warmdene Way, Patcham, Brighton, East Sussex BN1 8NW

- 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 Robert Walters against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01718, dated 17 August 2009, was refused by notice dated 12 November 2009.
- The development proposed is construction of new bungalow.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this appeal to be:
 - a) the effect of the proposal upon the living conditions of the occupiers of the host property at No. 1 Warmdene Way;
 - b) the effect upon the character and appearance of the street scene in the immediate surroundings of the appeal site.

Reasons

3. The appeal site is the side garden of an existing bungalow at No 1 Warmdene Way, currently comprising a garage and forecourt. The garage would be demolished to make way for the new bungalow. Planning permission for a small bungalow on the site was approved under Ref. BH2008/03475. By comparison with the approved bungalow, the current proposal would have gables instead of a hipped roof, would be 0.6m higher and 1m wider, leaving a gap of 0.8m to the boundary with the host property instead of 1.6m, and a minimum wall-to-wall distance of 1.6m, by comparison with the 3m wall-to-wall distance approved. The new higher ridge would be about 8.0m long, by comparison with the 1m length of the lower ridge of the approved hipped-roof bungalow.

Living conditions

4. In my view the standard of outlook from the host bungalow after construction of the approved bungalow would be modest. The appeal proposal would result in a higher ridge over a significantly greater length, and the property would appear to be set noticeably closer to the host property. The larger and bulkier structure proposed would be emphasised by the position of the new bungalow

set forward of the host property, and by the effect of the gabled roof proposed on the appearance of the front of the new bungalow. It would also have a greater adverse effect on the side windows of No. 1, notwithstanding the presence of alternative windows to these rooms. I consider that the proposal would have an unacceptable adverse overbearing effect on the host property, and I conclude that this would harm the standard of outlook available to residents, contrary to Policies QD27 and HO4 of the Brighton and Hove Local Plan.

Character and appearance

5. Warmdene Way is particularly narrow, and the group of properties at its end are set close together. The bungalow now proposed would lie noticeably closer to No. 1 than that approved, and its greater height and bulk would in my view create a greater sense of enclosure, resulting in a cramped and over-developed appearance. This would be emphasised by the intention to locate parking spaces for No.1 on land immediately west of the appeal site and north of the access lane. I consider that this would have an unacceptable adverse effect on the appearance of this already closely developed area. I therefore conclude that the proposal would harm the character and appearance of the street scene, contrary to Local Plan Policies QD1, QD2, QD3 and HO4.

Other matters

6. I have taken account of the concerns of neighbours about the effect of the additional traffic generated by the proposal. However, no additional parking spaces were proposed, and in my view the bungalow now proposed would generate no more traffic than that already approved. While I accept that building activity would present temporary difficulties of managing traffic, I cannot agree that the proposal would result in lasting additional traffic consequences sufficient to harm road safety or standards of amenity in the area. This does not, however, outweigh the main conclusions that I have reached.

Victor Crumley

INSPECTOR



Appeal Decision

Site visit made on 6 April 2010

by **Rob Huntley BSc MRTPI**

an Inspector appointed by the Secretary of State
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Decision date:
28 May 2010

Appeal Ref: APP/Q1445/A/09/2117929 2, Forest Road, Brighton BN1 9GP

- 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 Tim Harding against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01910, dated 31 July 2009, was refused by notice dated 2 October 2009.
- The development proposed is the erection of a new dwelling.

Decision

1. I dismiss the appeal.

Main issue

2. The main issues are the effect of the proposed development on;
 - i) the character and appearance of Forest Road; and
 - ii) the living conditions of the occupants of the adjoining residential property, 2 Forest Road, in terms of outlook and light.

Reasons

Character and Appearance

3. Forest Road is a short and quite steep length of road connecting Coldean Lane to the north with Rushlake Road to the south, within the built up area of Brighton, close to its northern edge. The adjoining part of Rushlake Road is characterised by pairs of semi-detached houses fronting the road, but with those on either side of the junction with Forest Road angled across the corner plots.
4. The footprint of the Rushlake Road houses, and of those turning the corner into Forest Road including No 4 adjacent to the appeal site, are approximately square, with the depth of the houses being similar to their width. As a result of their semi-detached configuration the character is of buildings whose street-facing frontage is approximately twice its depth from front to back, with substantial separation between adjacent pairs. A similar character is apparent at the northern end of Forest Road, with the semi-detached pairs of similar scale, but different design, also being positioned diagonally.

5. The pairs of houses on either side of the appeal site (60 Rushlake Road and 4 Forest Road to the south, and 38 Coldean Lane and 2 Forest Road to the north), lie approximately perpendicular to each other, as a result of their angled orientation. The separation between Nos 2 and 4 Forest Road that results from this alignment of buildings, contributes to a spacious character in Forest Road. This spaciousness is mirrored on the opposite side of Forest Road between Nos 1 and 3, and on both sides of the road the gap between the angled semi-detached pairs at either end responds to and reflects the substantial change in levels, rising from north to south.
6. The introduction of a detached building, fronting Forest Road, into the space between Nos 2 and 4, would appear cramped and would unacceptably disrupt the established pattern of development in Forest Road. Although, in the design of the proposed building, an attempt has been made to respond to the constrained width of the site and the significant level changes between it and the adjacent properties, including by lowering the eaves line and excavating into the site, the result would be an incongruous addition to the street scene exhibiting an unsatisfactory relationship with the buildings on either side, particularly No 2. As a result, I conclude that the proposed development would unacceptably harm the character and appearance of Forest Road. The proposed development would, as a consequence, conflict with policies QD1, QD2, QD3 and HO4 of the Brighton and Hove Local Plan 2005 (Local Plan), which seek to ensure that development respects local scale, layout and townscape and is of a high standard of design.

Living Conditions

7. The flank wall of the proposed dwelling would project significantly beyond the rear façade of No 2 and be angled towards that property, at a distance of about 1m from the mutual boundary. As the ground floor of proposed dwelling would be raised about 1.5m above that of No 2, these characteristics would, in combination, give rise to an unacceptably overbearing and enclosing effect, harmful to the living conditions of the occupants of No 2 in terms of outlook. Although I have not been provided with details of the effect on sunlight, I consider that the position of the proposed dwelling to the south of No 2, coupled with the extent of its rearward projection and raised level, would be likely to obstruct sunlight to that property to an unacceptable degree. This would add to the harm to living conditions of the occupants of No 2.
8. I note that the present occupant of No 2 raises no objections on these grounds but, for the reasons I have given, I conclude that the proposed development would harm the living conditions of the occupants of 2 Forest Road in terms of outlook and light. This would be in conflict with Local Plan policy QD27, which seeks to ensure that development does not give rise to material loss of amenity to occupiers of adjacent properties.

Other Matters

9. In reason for refusal 3, the Council suggests that, in the absence of measures to secure a contribution towards local sustainable transport infrastructure, there would be conflict with local plan policies TR1, TR90, SU15, QD28 and HO7, and with its Supplementary Planning Guidance Note 4 "Parking

Standards" (SPG). However, I have not been provided with any explanation of the measures to which any such contribution would be applied, how these would relate to the development proposed, or any reasons why the development would be unacceptable without such a contribution. I am therefore unable to conclude that the development would unacceptably conflict with the provisions of the Local Plan or SPG.

10. In view of its location within the built up area and accessibility to a frequent bus service, I accept that the location is one where residential development would be acceptable in principle. I acknowledge that elements incorporated into the design, including measures to minimise water and energy use, the incorporation of on-site renewable energy generation, compliance with the "Lifetime Homes" standards and achieving level 3 of the Code for Sustainable Homes, would be positive features of the proposed development. In these respects the proposed development would be consistent with aspects of the objectives of several Local Plan policies, including SU2 and HO13. However, the positive findings in these respects do not outweigh the harm that I have found in terms of the 2 main issues.
11. I have considered all other matters raised and, for the reasons I have given, I conclude that the appeal should be dismissed.

Rob Huntley

INSPECTOR



Appeal Decision

Site visit made on 4 March 2010

by **Megan Thomas BA Hons in Law,**
Barrister

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

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Decision date:
26 March 2010

Ref: APP/Q1445/09/A/2113422

Ground Floor Flat, 2 Landseer Road, Hove, East Sussex BN3 7AF

- 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 Antony Collins against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00817, dated 4 April 2009, was refused by notice dated 3 June 2009.
- The development proposed is a brick extension with sloping roof and skylights to the back of the building, developing on the rear garden, to be used as a living room.

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupants of 4 Landseer Road with regard to outlook and light.

Reasons

3. 2 Landseer Road is a ground floor flat forming part of a two storey end-of-terrace property in a residential part of Hove. The terraced property next door to the west is 4 Landseer Road. Both properties have small south facing rear gardens and are divided by a wall which has some vegetation growing along the top part of it.
4. The terraced properties along Landseer Road appear to have been built originally with two storey projections at the rear. No.2 has a small conservatory attached to the projecting block and this conservatory would be demolished prior to construction of the extension.
5. The proposed extension would consist of a single storey structure with a mono-pitched roof and two rooflights. It would have rear facing French doors leading into the garden with a window either side of those doors. There would be no windows in either of the side elevations of the proposal. The new internal space would be used as a living room. There would be some minor changes to the fenestration of the east elevation of the main property at ground floor level.
6. The occupants of 4 Landseer Road have a large kitchen window facing their garden. The western elevation of the proposed structure would be situated very close to the common boundary and would project about 3.4 metres from

the rear elevation of 2 Landseer Road (after demolition of the conservatory). Whilst some of the new structure would be hidden behind the existing boundary wall, there would be a significant loss of outlook from that kitchen window. Furthermore, when the occupants of 4 are using their garden the portion of the new extension visible above the wall would create an undue sense of enclosure curtailing the enjoyment by the occupants of what is only a very modest-sized garden.

7. Furthermore, given the size and location of the structure proposed there would be a noticeable loss of daylight to the kitchen window and some loss of morning sunlight to the kitchen and garden given that the structure would be to the east of the garden to 4 Landseer Road. I have insufficient information to prove to me that the 45-degree line test referred to in paragraph 3.57 of the Brighton & Hove Local Plan 2005 would not be breached, on either a horizontal or vertical axis. Even if I was convinced that there would be compliance with that guidance, I have borne in mind that it is the effect on the neighbouring property which is critical and with that in mind I do not consider that the impact of the proposal would be acceptable in terms of loss of outlook or light.
8. Whilst I note that the current occupants of 4 Landseer Road have not lodged an objection to the scheme I must also have regard to the living conditions of future occupiers of the property. I acknowledge that the current scheme is a second planning application by the appellant seeking permission for a smaller structure than the first application, however I am obliged to determine this particular scheme on its own particular merits.
9. Accordingly, I conclude that the proposal would unduly harm the living conditions of the occupants of 4 Landseer Road with regard to loss of light and outlook. The proposal would be contrary to policies QD14 and QD27 of the Brighton and Hove Plan 2005. Having taken into account all representations made, including the benefit arising from improving the housing stock, I conclude that the appeal should be dismissed.

Megan Thomas

INSPECTOR



Appeal Decision

Site visit made on 2 June 2010

by **David Prentis BA BPI MRTPI**

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

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Decision date:
9 June 2010

Appeal Ref: APP/Q1445/D/10/2126163 2 Lustrells Vale, Saltdean, Brighton BN2 8FE

- 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 Jason Leach against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02789, dated 16 November 2009, was refused by notice dated 8 January 2010.
- The development is described as *resubmission of application BH2009/01349 for a proposed two storey rear/side extension*.

Decision

1. I dismiss the appeal.

Main issue

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

Reasons

3. The appeal site is located within a suburban residential area where the individual properties are set back to more-or-less consistent building lines which follow the curving road alignments. This layout, combined with the sloping terrain, results in an open and spacious character. No 2 Lustrells Vale is a chalet bungalow with a half-hipped roof containing two front-facing dormers. It stands at the end of a line of similar properties fronting Lustrells Vale on a corner plot adjacent to the junction with Bishopstone Drive. The side boundary to Bishopstone Drive is enclosed with a substantial hedge. The ground rises steeply to the rear so that the back garden and the adjoining section of Bishopstone Drive are at a significantly higher level than the ground floor level of the chalet bungalow.
4. The proposed extension would take up most of the available space between the existing flank wall of the dwelling and the side boundary. Consequently, it would be unduly dominant in views along Bishopstone Drive, in which it would appear to be uncharacteristically close to the footway. In my view this would result in a cramped effect which would detract from the spacious character of the area.
5. The extension would wrap around the side and rear of the existing dwelling on two storeys. This would result in a large and bulky extension with an extensive area of flat roof. I consider that it would be out of scale with the host building

and that the flat roof would be out of keeping with the pitched roofs which predominate in this locality. Moreover, due to the sloping nature of Bishopstone Drive, the upper parts of the side and rear elevations and the flat roof would be readily apparent in the street scene, notwithstanding the presence of the boundary hedge.

6. I appreciate that the design incorporates features, such as a slightly reduced ridge height, a set-back to the front elevation, a pitched section around the flat roof and tile hanging to the first floor, which are intended to respect the design of the original building. Nevertheless, in my view these features would not be sufficient to mitigate the sheer scale and bulk of the proposed extension.
7. The appellant draws attention to a two storey rear extension nearby at No 1 Lustrells Vale. Whilst that extension shares some design features with the appeal proposal, I do not consider it to be as bulky or as dominant as the appeal scheme would be. In any event, it is not characteristic of the area as a whole. It is also suggested that a large extension could be constructed as permitted development. However, there is no alternative scheme before me and any such proposal would no doubt be subject to the usual limitations on permitted development rights. I therefore attach little weight to this possibility. Whilst I note that there have been no objections from neighbouring residents, I shall form my own view on the merits of the appeal having regard to the development plan and other material considerations.
8. I conclude that the proposal would be harmful to the character and appearance of the area. It would be contrary to Brighton and Hove Local Plan 2005 Policy QD14 which states that extensions to buildings should be well designed, sited and detailed in relation to the property to be extended and the surrounding area. It would also be contrary to Policy QD2 which stresses that design should take account of local characteristics, including the scale and bulk of existing buildings and the layout of streets and spaces.
9. I have considered all other matters raised but find nothing to alter my conclusions. For the reasons given above, the appeal should not succeed.

David Prentis

Inspector



Appeal Decisions

Site visit made on 17 May 2010

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

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for Communities and Local Government

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Decision date:
11 June 2010

Appeal A Ref: APP/Q1445/E/09/2118796

12 St George's Place, Brighton, East Sussex BN1 4GB

- The appeal is made under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/00857, dated 9 April 2009, was refused by notice dated 15 June 2009.
- The works proposed are: "*Change of use of redundant former Council office building to provide 5 residential flats*".

Summary of decision: the appeal is allowed and listed building consent is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/Q1445/A/09/2118794

12 St George's Place, Brighton, East Sussex BN1 4GB

- 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 R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/00856, dated 9 April 2009, was refused by notice dated 12 June 2009.
- The development proposed is: "*Change of use of redundant former Council office building to provide 5 residential flats*".

Summary of decision: the appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C Ref: APP/Q1445/A/09/2118798

12 St George's Place, Brighton, East Sussex BN1 4GB

- 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 R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/01977, dated 14 August 2009, was refused by notice dated 2 November 2009.
- The development proposed is: "*Change of use of vacant offices from B1 to D1*".

Summary of decision: the appeal is dismissed.

Procedural matter

1. The application for listed building consent proposes a change of use of the appeal building, but a change of use amounts to development. Development is not a matter pertinent to an application for listed building consent which relates only to works to a listed building. In realisation of this the Council's decision
-

notice describes the application as "*Internal and external alterations in connection with change of use from offices B1 to 5 self contained flats*". I accept that this is a proper description of the appeal proposal and propose to determine the appeal on this basis.

Appeal A

Main issues

2. The matter of the submission of the application for listed building consent denotes that the building, the subject of the appeal, is included in the Statutory List of Buildings of Special Architectural or Historic Interest. In the light of this, and having regard to the provisions of Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the first main issue on which a decision on this appeal turns is whether or not the proposed works would preserve both the appearance and character of this listed building.
3. The subject building lies in the Valley Gardens Conservation Area but the Council's single reason for refusing the application makes no mention of any impact the proposed works might have on the conservation area. However, by virtue of Section 72(1) of the aforementioned Act this is a matter I am obliged to consider. This gives rise to the second main issue which is whether or not the proposed works would preserve the character of the conservation area.

Reasons for the decision

Consideration of the first main issue

4. For completeness I record that the premises, the subject of the appeal, comprise an early 19th century mid-terrace building. Including a semi-basement this building provides accommodation on 5 floors. The bowed stuccoed and painted façade, built to a shallow segmental profile, rises through all 5 floor levels.
5. The Council's reason for refusal alludes to harm the proposed works would cause to this listed building, intimating that the application contains insufficient information to demonstrate that no harm would be caused, with the application also deficient in its failure to address the policy requirement to reinstate original features of the building. Reference to these matters is made in the Council Officer's report, particularly in the section recording the internal consultation on conservation and design matters.
6. It seems to me that although the reason for refusal is not inaccurate the underlying principle behind the refusal is faulted. This is because the Council has the ability to request any information it requires in order to determine the application. It appears that this was not done. Moreover, the Council is empowered to impose conditions on the grant of listed building consent to require later submission of details of works for its approval if it appears that such works could be appropriately carried out. It is apposite to construe Circular 11/95 "*The Use of Conditions in Planning Permissions*" as applicable to listed building consents. Accordingly, rather than refusal of the application, it appears that the Council did not consider the opportunity of approving the application subject to suitable conditions as expounded in paragraph 10 of this circular.

7. It is apt to consider the conservation and design issues in the Officer's report in the light of the foregoing criticisms of the Council's refusal. It is also pertinent to mention that certain of these issues appear to stem from injurious alterations made to this listed building by the Council, ostensibly without the grant of listed building consent, when it was owned and occupied by that authority. The Council recognises that some past alterations are inappropriate, and that a change of use of the building or a programme of refurbishment would present the opportunity to reverse certain of the inappropriate alterations.
8. I concur with the Council Officer's opinion that there is no objection to the principle of the change of use leading to the proposed works, but insofar as the Officer prefers retention of the building in office use, as it would result in less intrusive works, I point out that that is not the subject matter of the application. The Council objects to the proposed removal of the basement staircase, arguing that it could be retained if the basement and first floor were combined to form a maisonette. I accept that retention of the staircase would preserve the original planform of the building. However, the staircase is located in a ground floor under-stair cupboard and is of basic form and construction. It is not a feature of architectural or historic merit that warrants retention for the contribution it makes to the integrity of the listed building. I find no reason to oppose the removal of this staircase.
9. I agree with the Officer recommendation that removal of the modern partition from the ground floor front room would advantageously restore that room to its former proportions. Compliance with that recommendation would necessitate replanning the layout of the ground floor flat and as such does not form part of the application. Despite the advantage that would result I am not convinced of the necessity for this work. Accordingly, I do not find that the Officer's criticism justifies refusal of the application. This is a matter best dealt with by means of later negotiation between the principal parties to the appeal.
10. The Council Officer also criticises the absence of detail regarding: proposed service pipe and ventilation duct runs; the extent of original interior features; and the means of revealing the original arched openings in partitions at ground and first floor levels. I consider that all these matters, together with the reinstatement of an existing modern sash window on the rear elevation of the main structure with a sash window to match the original windows, and reinstatement of glazing bars in the building's façade at ground floor level could all suitably be controlled by means of planning conditions.
11. Certain of the planning conditions suggested by the Council for imposition on the grant of listed building consent in the event of the appeal being allowed would serve this purpose, but others are merely informatives or unnecessary as they relate to enabling works which are not authorised by the consent granted herewith and would amount to an offence in law if implemented outside the terms of the listed building consent. I therefore intend to impose certain of the conditions suggested by the Council redrafted as I consider necessary together with additional conditions required to control other matters referred to above, and a condition requiring submission of a photographic survey as mentioned in the Council's representations.

12. Having found removal of the basement staircase acceptable and recognising the controls available by the imposition of planning conditions I conclude that the Council's refusal is unfounded. Accordingly, with the safeguards afforded by having such controls in place I am satisfied that the proposed works would preserve both the appearance and character of this listed building while not offending against saved Policies HE1 and HE4 of the adopted Brighton and Hove Local Plan 2005. Respectively, these policies provide for the protection of listed buildings and for the reinstatement of original features on listed buildings.

Consideration of the second main issue

13. The bulk of the proposed works are internal. Suitable replacement of the modern sash window on the rear elevation and reinstatement of glazing bars to the basement windows in the building's façade at ground floor level would constitute enhancements, as would removal of the spiral metal fire escape stair from the rear of the building. Consideration of these matters leads me to the opinion that the appeal proposal would preserve the character of the Valley Gardens Conservation Area.

Appeal B

Main issues

14. Having regard to the connection between Appeals A and B, and in the light of my conclusions on Appeal A, I am satisfied that the proposal, the subject of Appeal B, would preserve both the listed building and the character of the Valley Gardens Conservation Area. Accordingly, I do not intend to consider these matters in the context of Appeal B.
15. In the case of this appeal I have identified the main issues as whether or not the proposed development would: firstly, result in the unacceptable loss of office premises to an alternative use; secondly, erode the amenities of the occupiers of the residential property that gives onto the rear garden of the appeal property; and thirdly, provide new residential accommodation that fails to comply with the Council's Lifetime Homes criteria.

Reasons for the decision

Consideration of the main first issue

16. On the matter of this issue, the Council's refusal of planning permission cites saved local plan Policy EM5. This policy militates against the loss of office premises to other uses unless it is proven that they are genuinely redundant for office use because the site is not suited to redevelopment or the premises are unsuitable and cannot readily be converted to provide different types of office accommodation, or where a change of use would provide the only practical means of preserving a building of architectural or historic interest.
17. Notwithstanding the Appellant's fruitless marketing campaign, the Council rejects his claim that the appeal property is genuinely redundant for office use. I do not accept the Council's stance. A local estate agent of repute has marketed the appeal building in part or in whole since September 2008 for what appears to initially have been a realistic figure, which was reduced over time. This action had no effect. The Council suggests that this reflects the

poor condition of the building, but the terms of disposal of the premises are not revealed, and the Council's decision to vacate the building in 2006, ostensibly owing to its unsuitability for office use falls to be a material consideration. It seems to me that the appeal premises accord with many of the Policy EM5 factors on which redundancy is judged. In particular I consider that factors a, b, d, and f are illustrative of the genuine redundancy of the appeal property for office use.

18. Policy EM5 further provides that if there is proof that a building is genuinely redundant for office use preference will sequentially be given to an alternative employment generating use or affordable housing. The Appellant has explored these alternatives without success. An application for planning permission was refused by the Council to use the appeal property for Use Class D1 "*Non-residential Institutions*". That refusal is now the subject of Appeal C. The appeal premises have been offered to a number of organisations engaged in the provision of affordable housing but has been rejected by all of them. From consideration of these matters I am of the opinion that the appeal property is genuinely redundant for use as offices with my opinion reinforced by the view of the Council's Economic Development Officer who raised no objection to the proposal, the subject of Appeal C, further stating that: "*It is considered that the property has been actively marketed at competitive rates*".
19. Insofar as the alternative uses promoted by Policy EM5 have been positively explored without success I consider that release of the appeal premises from office use to the alternative use now proposed is acceptable in that it would not run counter to the provisions of that policy. These considerations run parallel to that plank of Policy EM5 relating to the preservation of a building of architectural or historic interest. The appeal premises are vacant and in need of permanent occupation in the interest of their preservation. Implementation of the appeal proposal would achieve this desirable objective, particularly as the premises have a higher status than a building of architectural or historic interest, with its inclusion in the Statutory List denoting that it possesses "special" architectural or historic interest. This further supports my decision to allow this appeal

Consideration of the second main issue

20. The Council's second reason for refusal is predicated on the basis of the effect of the appeal proposal on the residential amenities of the occupiers of 9 St George's Mews, one of the terraced dwellings which immediately backs onto the appeal site. A window in the rear wall of this neighbouring dwelling is positioned coincident with the west site boundary. The existing situation is such that no valid objection could be raised to the continued use of the appeal premises as offices, but the owner of 9 St George's Mews objects to the appeal proposal alleging that the undoubted increase in use of the garden at the appeal site, and residential occupation of the appeal building throughout the whole day, would eliminate any privacy currently enjoyed in this adjoining dwelling.
21. I understand the cause of the objection and I am sympathetic to the Objector. However, the Appellant alludes to the Council having granted planning permission for the use of 9 St George's Mews as a dwelling in the knowledge that the current situation would arise. As the matter stands, if this objection is

accepted for reasons relating to the erosion of residential amenity, thereby leading to dismissal of the appeal, this action would be tantamount to declaring the appeal premises unsuited to any alternative use. In the light of my findings on the existing office use, this would blight the appeal property and most likely render it incapable of accommodating any use whatsoever. That is an unacceptable situation.

22. However, the potential for overlooking appears to have been ameliorated to an extent by the erection of a high fence, apparently without the grant of planning permission, across the appeal site some 2.0 m from 9 St George's Mews. Moreover, at my site inspection information was volunteered regarding negotiations concerning the sale of the enclosed land adjacent to the mews dwelling to the owner of that property. The situation has not been formally resolved, but while I acknowledge that at the present time the appeal proposal conflicts with saved local plan Policy QD27, which is specific to the protection of residential amenity, for the foregoing reasons I find justification for making an exception to that policy.

Consideration of the third main issue

23. The third reason for refusal asserts that the appeal proposal runs contrary to the aims and objectives of saved local plan Policy HO13 which promotes provision of lifetime homes standards in all new dwellings. For reasons that follow, the third part of the policy relating to conversions and changes of use is particularly relevant to the appeal proposal.
24. The building, the subject of the appeal is a 5-storey terraced town house of early 19th century origin. As illustrated by the plethora of internal partitions erected by the Council when the authority used the building as offices, the constraints imposed by the original planform present difficulty in conversion from its original use as a single dwelling. In addition there are the constraints that stem from the need to keep intervention into the original structure and fabric of this listed building to a minimum. In my opinion the building is not well suited to provide lifetime homes standards.
25. Nevertheless, the Appellant claims that a number of the Council's lifetime homes standards have been incorporated in the proposed conversion scheme. Of the 16 standards included in the Council's Planning Advice Note 03 "*Accessible Housing and Lifetime Homes*" a schedule forming part of the grounds of appeal indicates that 3 standards are not applicable while 7 standards are fully met and 5 others are partially met. On the basis of this schedule and having regard to the third part of Policy HO13 which states "*Proposals for conversions and changes of use to provide residential accommodation will be expected to demonstrate that wherever it is practicable, Lifetime Homed criteria have been incorporated into the design*", I consider that the appeal proposal is acceptable as it accords with this element of Policy HO13.

Conclusions

26. Having found the appeal proposal acceptable in relation to all 3 main issues I conclude that there is no reason to withhold the grant of planning permission. I have therefore examined the conditions suggested by the Council. I find the 2 conditions relating to the achievement of a certain Ecohomes standard

unduly convoluted. Accordingly, I intend to replace them with a single condition requiring the development to meet the standard set out in the Council's Supplementary Planning Document 08 "*Sustainable Building Design*".

27. I also criticise the suggested condition concerning arrangements to be made for car free dwellings. I find it unacceptable as I consider that it is noncompliant with the content of paragraph B51 of Annex B to Circular 05/2005 "*Planning Obligations*". This is because the informative linked to the condition requires the developer to provide a planning obligation in the form of a unilateral undertaking or agreement under Section 106 of the Act in order to discharge the condition. This is tantamount to the condition unacceptably necessitating the submission of the planning obligation. In any case it is not incumbent on me to attach such an informative to the grant of planning permission. This would render the condition of no effect. Moreover, a planning obligation should be in place at the time planning permission is granted, and I consider the Council's implied request for a planning obligation at this late stage wholly unreasonable.

Appeal C

Main issue

28. Taking into account the provisions of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I consider that this proposed change of use, without physical alterations to the appeal property, would preserve the listed building affected by the proposed development, therefore this is not a main issue I intend to investigate. However, I am charged to consider the impact of the proposed development on the conservation area. This is a matter to which I turn when dealing with the second main issue identified below.
29. The main issues to be decided are whether or not the proposed development would: firstly, result in the unacceptable loss of office premises to an alternative use; and secondly give rise to a use inappropriate to the area in which the appeal site is located.

Reasons for the decision

Consideration of the first issue

30. The Council's first reason for refusal rests on saved local plan Policy EM5. I have examined this matter in depth in my consideration of Appeal B. For the reasons already given in relation to that appeal I find no impediment to allowing the appeal on the basis of the provisions of Policy EM5 as I consider that in the circumstances of this case the proposal, the subject of appeal C, complies with this policy. In view of this I find that conversion of the appeal premises to accommodate the proposed use acceptable in principle.

Consideration of the second issue

31. The Council's second reason for refusal alleges that insufficient information has been submitted with the application to demonstrate that the proposed development would not cause significant harm to amenity. As with appeal A I point out that the Council had the ability to request any additional information it required. In addition, this reason for refusal refers to potential alterations to

the listed building required to accommodate the proposed use. That is not a relevant matter as the application is only for a change of use with no alterations to the building specified.

32. I appreciate that the application was made to address that element of Policy EM5 which promotes use for employment generating development should it be proven that premises are genuinely redundant for office use. The Council accepts that certain uses within Use Class D1 "*Non-residential Institutions*" would be suitably operated at the appeal premises, but in the absence of reference to a specific use, it rightly mentions that if the appeal proposal were approved and implemented, change to an alternative use within that Use Class could not be prevented by means of a condition.
33. As clarified in its appeal statement, the Council's general concern is that Use Class D1 is wide ranging. They cite the worst case scenario as use of the appeal premises as a doctor's surgery and point to the traffic movements that this potential use would generate, mentioning that the appeal property is devoid of on-site parking provision. I accept this is a justifiable concern, but suggest the worst case scenario might be use of the appeal property as a place of public worship or religious instruction with the potential to attract large numbers of worshippers and people for instruction on many occasions throughout the day from early morning until late hours. In the light of the potential to generate substantial traffic movements in the vicinity of the appeal site, where there is widespread parking control and heavy parking demand, I consider this use unacceptable. Nevertheless it could arise if planning permission were granted for an unrestricted D1 use
34. I also find the possible use of the appeal premises as a surgery and perhaps other uses in Use Class D1 unacceptable as they would be likely to exacerbate the current demand for parking. It is of note that no arrangements have been offered to mitigate the parking demand the appeal proposal would generate. In my opinion the heavy traffic passing along St George's Place significantly detracts from the visual amenity of the area which derives from the buildings in the locality and the open aspect of Valley Gardens. The attraction of additional motor vehicles to this already heavily trafficked area would further impinge on the visual amenity of the area. As such, having regard to the generality of the appeal proposal I conclude that it would not preserve the character of the Valley Gardens Conservation Area. In the light of these matters I find that the appeal proposal fails to accord with saved local plan policies HE6 and TR1 which respectively relate to the protection of conservation areas and to the control of travel demand from development proposals.

Overall conclusions

35. For the reasons given above, and having regard to all the other matters raised, I conclude that Appeals A and B should be allowed while Appeal C should be dismissed.

Formal decision

Appeal A – Ref: APP/Q1445/E/09/2118796

36. I allow the appeal and grant listed building consent for: Internal and external alterations in connection with change of use from offices B1 to 5 self contained

flats at 12 St George's Place, Brighton, East Sussex, in accordance with the terms of application Ref: BH2009/00857, dated 9 April 2009, and the plans submitted therewith, subject to the following conditions:

- 1) The works hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Subject to other conditions imposed on this consent, the works hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans: 892.00; 892.01; 892.03; 892.04; 892.05; 892;06; 892;07.
- 3) Before the works hereby permitted are commenced, details as appropriate of the window to be inserted at third floor level into the rear elevation of the subject building, the glazing bars to the ground floor windows of the façade, and all internal doors, including frames and architraves shall be submitted to and approved in writing by the local planning authority. These details shall include elevations of the window and doors to a scale of not less than 1:20 and cross sections of the head, sill, jambs and glazing bars of the window, the glazing bars to the ground floor windows of the façade, and all members of the doors and frames and architraves to a scale of not less than 1:5. The works shall be carried out in accordance with the approved details.
- 4) No existing door shall be removed without the prior written approval of the local planning authority.
- 5) Before the works hereby permitted are commenced, details of proposed service pipe and ventilation duct runs together with any casings or covers shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 6) With the exception of the basement staircase, all existing architectural features including the main staircase, balustrades, windows, window linings and/or casings, doors, architraves, skirtings, dado rails, picture rails, and cornices shall be retained except where otherwise agreed in writing by the local planning authority.
- 7) Before the works hereby permitted are commenced, details of measure to retain and reveal the original arched openings in partition walls at ground and first floor level shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the details of the approved measures.
- 8) Before the works hereby permitted are commenced, a schedule of all features to be removed, replaced or reinstated shall be submitted to and approved in writing by the local planning authority. All works in the schedule thus approved, be it replacement or reinstatement of features, shall exactly match the originals in detail and materials.
- 9) No cables, wires, aerials, pipework (other than rainwater pipes shown on the approved plans), meter boxes or flues shall be fixed to any part of the subject building without the written approval of the local planning authority.

- 10) No works shall be undertaken until a full photographic survey of the interior and exterior of the subject building has been deposited with the local planning authority.

Appeal B – Ref: APP/Q1445/A/09/2118794

37. I allow the appeal and grant planning permission for: Change of use of redundant former Council office building to provide 5 flats at 12 St George's Place, Brighton, East Sussex, in accordance with the terms of application Ref: BH2009/00856, dated 9 April 2009, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Subject to other conditions imposed on this permission, the development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans: 892.00; 892.01; 892.03; 892.04; 892.05; 892.06.
- 3) Before the development hereby permitted is commenced, details as appropriate of the window to be inserted at third floor level into the rear elevation of the subject building, and the glazing bars to the ground floor windows of the façade, shall be submitted to and approved in writing by the local planning authority. These details shall include elevations of the window to a scale of not less than 1:20 and cross sections of the head, sill, jambs and glazing bars and the glazing bars of the ground floor façade windows to a scale of not less than 1:5. The development shall be carried out in accordance with the approved details.
- 4) No cables, wires, aerials, pipework (other than rainwater pipes shown on the approved plans), meter boxes or flues shall be fixed to any part of the subject building without the written approval of the local planning authority.
- 5) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Appeal C – Ref: APP/Q1445/A/09/2118798

38. I dismiss the appeal.

A J Bingham

Inspector



Appeal Decision

Site visit made on 4 May 2010

by **J Mansell Jagger MA(Cantab) DipTP**
MRTPI IHBC

**an Inspector appointed by the Secretary of State
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**Decision date:
12 May 2010**

Appeal Ref: APP/Q1445/D/10/2124427 **17 Madehurst Close, Brighton BN2 0YR**

- 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 Neil Baker against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02575, dated 20 October 2009, was refused by notice dated 8 February 2010.
- The development proposed is a staircase from first floor kitchen to garden.

Decision

1. I allow the appeal, and grant planning permission for a staircase from first floor kitchen to garden at 17 Madehurst Close, Brighton BN2 0YR in accordance with the terms of the application, Ref BH2009/02575, dated 20 October 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The staircase shall be painted or stained in a suitable colour, the details of which shall be submitted to and approved in writing by the local planning authority within two months of the date of this decision. Within four months of the date of this decision, the staircase shall be painted or stained in the approved colour and shall be retained in that colour thereafter.
 - 2) The landing area shall not be used as a roof terrace, balcony or similar amenity area.

Main issues

2. The main issues are the effect of the proposal on the character and appearance of the property and on the residential amenities of neighbouring properties, with particular regard to overlooking and loss of privacy.

Reasons

3. The external timber staircase, which has already been constructed, is at the rear of the property and leads from the first floor kitchen to the garden below. A ground floor door has been blocked up and access to the garden at that level is now through a bedroom.
4. Several of the properties on the other side of Madehurst Close have balconies at first floor but none of the other houses in this terrace has yet had any similar additions and the staircase does stand out somewhat as a new feature. To date, the staircase has not been painted or stained. If it were treated in a

darker colour, it would avoid the rather stark appearance that it has at present. These are tall terraced 1970s houses of plain character, with dark red tile hanging to first and second floors, and I do not think that the staircase, suitably treated, would unduly harm their character or appearance.

5. The staircase is not visible from the public domain and is only seen from neighbouring properties at an oblique angle or from their gardens and I do not think that it has an unacceptable impact on their outlook.
6. The gardens of adjacent properties, including the house opposite at 2 Whitehawk Hill Road, are already very visible from the first and second floor windows of the appeal property and I do not think that the use of the staircase would significantly increase that overlooking. The staircase landing is probably too small to be used regularly as a balcony or sitting out area, but a condition can be applied to ensure that it is not used in this way.
7. The Council had specific concerns regarding possible views into the first floor windows of the adjoining house, 19 Madehurst Close. Only brief views, at an oblique angle, are possible when ascending the staircase, which makes it difficult to see into those rooms. The immediately adjacent window serves a kitchen, but it is not possible to see directly into this window when standing on the landing.
8. In the circumstances I do not think that the staircase would lead to any significantly increased overlooking or loss of privacy for the occupiers of neighbouring properties.
9. Subject to the conditions mentioned above, I conclude that the staircase would not materially harm the character or appearance of the property or the residential amenities of neighbouring properties. It would therefore not conflict with the adopted policies of the Brighton & Hove Local Plan, including policies QD1, QD2, QD14 and QD27.

J Mansell Jagger

INSPECTOR



Appeal Decision

Site visit made on 29 January 2010

by **M C J Nunn BA BPL LLB LLM BCL MRTPI**

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Decision date:
3 March 2010

Appeal Ref: APP/Q1445/A/09/2110301

18b Salisbury Road, Hove, East Sussex, BN3 3AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Boden against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00915, dated 14 April 2009, was refused by notice dated 3 July 2009.
- The development proposed is the conversion of existing flat into two separate dwellings.

Decision

1. I dismiss the appeal.

Main issue

2. I consider the main issue to be whether the existing flat should be retained as a single residence, having regard to local policy on residential conversions and smaller family dwellings.

Reasons

3. The appeal property comprises a three bedroom lower ground floor flat within a substantial semi-detached Victorian residence that has been sub-divided into flats. The appeal flat has a private garden to the rear. The other neighbouring properties on the western side of the road are similar substantial Victorian residences, many of which appear to be converted into flats. On the opposite side of the road, near the appeal site, are more modern purpose built apartments. The site falls within the Willett Estate Conservation Area.
4. I am required to determine this appeal in accordance with the development plan, unless there are convincing reasons for doing otherwise. The Council has cited, in its grounds for refusal, Policy HO9 of the Brighton and Hove Local Plan 2005 (BHLP). This policy sets out the Council's approach to residential conversions and the retention of smaller dwellings. It requires that various criteria must be met when converting dwellings into smaller units of self-contained accommodation. The supporting text explains the rationale of the policy: amongst other things, it states that there remains a high level of demand for smaller dwellings which are suitable for family accommodation, and that it is important to retain the stock of such properties.
5. The first criterion of Policy HO9 states that planning permission will be granted for the conversion of dwellings into smaller units of self-contained accommodation if the original floor area is greater than 115sqm or the dwelling has more than 3 bedrooms. The Council has calculated that the appeal

- property has a floor area of 102.17sqm whereas appellant says it is 117sqm, if a storage area adjoining the existing kitchen is included in the calculation.
6. The Council has not commented on the appellant's calculations or whether the storage area should be included. In view of this difference of opinion, it is difficult for me to decipher with certainty whether the flat's area falls above or below the 115sqm threshold. However, I note that in ascertaining whether a property is suitable for conversion, there are other considerations to take into account, and its floor area is not the sole criterion to be applied.
 7. For example, the second criterion of Policy HO9 requires that in conversions, at least one unit of accommodation should be provided which is suitable for family occupation and which has a minimum of two bedrooms. The appeal proposal would result in a studio flat to the front and a two bedroom flat to the rear. The front studio would use the existing front entrance, and have a combined bed/living area, and a separate kitchen and bathroom. The rear two bedroom flat would be entered via an access way running down the side of the property to an existing rear door. In addition to the two bedrooms, there would be a combined living/dining/kitchen area and separate bathroom, with a hall providing access between them.
 8. In my view, the existing flat provides spacious accommodation ideally suited for a single family, and is a property of the type the Council is seeking to retain. The existing flat provides a good standard of accommodation with generously proportioned rooms, a lounge/living room, a separate kitchen, a large double bedroom and two smaller bedrooms, as well as a good sized private garden area to the rear. By contrast, the proposed conversion would result in two flats substantially smaller in size, providing far more restricted and limited accommodation. I appreciate that the rear flat would provide two bedrooms, complying with the minimum required by Policy HO9, and would retain the rear private garden. However, there would be only one living/dining room that would also serve as a kitchen. In my judgement, this would provide a poorer and more cramped environment, making it much less attractive for occupation by families than the existing flat.
 9. I acknowledge that a combined open plan living/dining/kitchen area is a common arrangement in both conversions and new build flats. However, I am not convinced that such an arrangement combined with the very substantially reduced overall floor area would make it attractive for family occupation, as compared with the existing flat.
 10. In my deliberations, I have noted all of the appellant's submissions in support of the appeal. I acknowledge the appellant's contention that many of the lower ground floor flats in Salisbury Road have been sub-divided into two separate flats although I have not been provided with any detailed information on this point. I also do not doubt that the converted units would provide housing attractive for both sale and letting; and I note the appellant's contention that there is a high demand for studio flats, as well as for smaller two bedroom flats, as is proposed here.
 11. I also have no reason to doubt that adequate storage could be incorporated at the converted two bedroom property, and that adequate ventilation could be provided to the internal bathroom. I am aware that the Council's Transport

Planning Department raised no objections to the proposal subject to conditions. I note the Council has no objections relating to living conditions of existing or future residents, and no objections were received from third parties. I also accept that the proposal would comply with various other criteria within Policy HO9.

12. On the other hand, I must have regard to the Council's established development plan policy on protecting smaller sized family accommodation. Overall, it seems to me that the existing flat is a type of property that Policy HO9 is specifically seeking to retain. It would provide accommodation more suited to family occupation than that proposed in either the two bedroom unit or studio flat. This being so, I can see no sound reason to depart from, or override, the requirements or the thrust of Policy HO9, or the overall aims of the housing objectives of the BHLP which seek to protect smaller dwellings suitable for family accommodation. Consequently, I consider that the appeal should fail.

Other matters

13. The Council has raised no concerns in terms of the effect of the proposal on the character and appearance of the Willett Estate Conservation Area. Since no external alterations are proposed, I see no reason to disagree. I am satisfied the proposal would preserve the character and appearance of the Conservation Area. However, this does not alter my conclusion that the appeal should be dismissed.
14. In reaching my decision, I have had regard to Government policy which encourages the most efficient use of previously developed land and buildings, as well as the need for additional housing and the importance of house conversions in meeting that need. I acknowledge the appeal site's highly sustainable and accessible location. However, in this instance, I consider that the benefits that would accrue from allowing the appeal would not outweigh the harm I have identified.

Conclusion

15. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

M C J Nunn

INSPECTOR



Appeal Decision

Site visit made on 6 April 2010

by **Rob Huntley BSc MRTPI**

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Decision date:
22 June 2010

Appeal Ref: APP/Q1445/A/09/2117903 Flat 6, 20 Ventnor Villas, Hove, BN3 3DE

- 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 Andrew Milledge against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00961, dated 16 April 2009, was refused by notice dated 18 June 2009.
- The development proposed is "*Conservation rooflight in connection with a loft conversion. Small roof projection to accommodate French doors, giving access to a new balcony*".

Procedural Matter

1. The Council officer's report makes reference to the Brunswick Town Conservation Area. However, from the representations made and the plan of the Conservation Area provided by the Council, I note that the appeal property lies within the Cliftonville Conservation Area. I have considered the appeal on that basis.

Decision

2. I dismiss the appeal.

Main issue

3. The main issues are;
 - i) whether the proposed development would preserve or enhance the character or appearance of the Cliftonville Conservation Area; and
 - ii) the effect of the proposed development on the living conditions of the occupants of adjoining properties, including at 19, 20 and 21 Ventnor Villas, in terms of privacy.

Reasons

Character or Appearance

4. The 3 and 4-storey terraces and semi-detached pairs of residential buildings fronting Ventnor Villas vary in their design details, but exhibit a harmonious consistency of style in views from the street. The proposed development, although not prominent from public vantage points, would be seen from the rear gardens of nearby properties in Ventnor Villas and from 1st floor windows and terraces of properties fronting George Street, outside the Conservation

Area to the west. In these views of the rear of the properties, a greater degree of variation is apparent, including 1, 2 and 3-storey projections. I also noted examples of external metal staircases at the rear of nearby properties and, as the appellant has pointed out, at least one example of a raised terrace at one of the Ventnor Villas properties to the south.

5. The rear projections, although varying in height and detailed design, are characterised by pitched roofs, consistent with the treatment of the frontage buildings. I note that at some buildings, including the appeal property, small projections to the side exhibit flat roofs behind parapets. However these appear to me to be original design features. The removal of the pitched roof above the three-storey rear projection at the appeal property, as is proposed in this appeal, would introduce a feature inconsistent with the rear views of the Ventnor Villas properties and the prevailing character of this part of the Conservation Area. The parapet proposed around the roof terrace would increase the apparent bulk and alter the proportions of the rear projection. This would be exacerbated with the addition of glazing and metal railings above the parapet.
6. Dormers and similar roof alterations, one accommodating doors leading to a small balcony, exist at several nearby properties in Ventnor Villas, mainly on the street-facing side. However, I observed that these are generally located away from roof edges, such that they are set within an expanse of roofslope. The dormer-style projection proposed to accommodate the access doors leading to the roof terrace would, by contrast, cut through the eaves line very close to the hipped slope of the roof. This would create an awkward and discordant feature, not consistent with the character and appearance of the rear of the appeal property and nearby buildings fronting Ventnor Villas.
7. The proposed window in the rear facing roofslope would be of modest proportions and similar to at least one other example which I observed nearby. Although I consider that this element would not be objectionable, I conclude overall that the removal of the pitched roof, the construction of the raised parapet and the roof alteration to accommodate the proposed access doors would harm the appearance of the appeal property and would fail, therefore, to preserve or enhance the character and appearance of the Cliftonville Conservation Area. There would, as a consequence, be conflict with policy QD14 of the Brighton and Hove Local Plan 2005 (Local Plan), which seeks, amongst other things, to ensure that development is of a high quality of design in terms of scale, height and siting, taking account of the characteristics of the host property and those nearby. There would also be conflict with the guidance contained in the Council's Supplementary Planning Guidance Note 1 "Roof Alterations & Extensions", which provides that dormers should normally be set back from the eaves line and well contained within the roof profile.

Living Conditions

8. From the proposed roof terrace clear views would be obtainable into the private garden of flat 3 at the appeal property, into the gardens at Nos 19 and 21 adjacent and, at a greater distance, into gardens further to the north and south. Although views over nearby gardens from residential properties is a common occurrence within urban areas, those that would be enabled by the

proposed development would be over an arc of 180° and from the equivalent of 3rd floor level.

9. The resulting degree of overlooking of the rear garden areas would, therefore, be significantly greater and more obtrusive than is obtainable from the existing windows in the rear elevation of the appeal property. Because of the projection of the roof terrace from the rear of the building, angled views would also be obtainable back towards the rear windows of other residential units within the appeal property, at ground and first floor level, and towards those at No 21. The appellant comments that such views could be screened by the use of railings and glazed panels but, as I have indicated above, these features would unacceptably add to the bulk and disrupt the proportions of the rear projection to the building.
10. I appreciate that the roof of a projection to the rear of a property nearby to the south is used as a terrace. However, that is at a lower level, and from which views are restricted by built forms on at least 2 sides. I do not therefore consider that the compromise to privacy in that case is comparable to that which would arise with the appeal proposal. I also note that beyond the high wall of the garden within the appeal property, the roof of a single storey extension to the rear of a building fronting George Street is furnished with a table and chairs, suggesting use as a raised terrace. However, the appellant advises that this is associated with a commercial use as a hairdressers rather than a residential property and I consider that any use of that area would be more likely to be during the daytime period. Use of the terrace proposed would be likely, in my opinion, to include evening hours, giving rise to a greater infringement of neighbours' privacy.
11. For these reasons I conclude that use of the proposed roof terrace would harm the living conditions of the occupants of adjoining properties at 19 and 21 Ventnor Villas, and those of flat 3 on the lower floor of the appeal building, in terms of privacy. This would be in conflict with policies QD14 and QD27 of the Local Plan, which seek to ensure that development does not give rise to unacceptable overlooking, compromising privacy.

Conclusion

12. I have considered all other matters raised and, for the reasons I have given, I conclude that the appeal should be dismissed.

Rob Huntley

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

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

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Decision date:
10 March 2010

Appeal Ref: APP/Q1445/A/09/2114410 33 Cissbury Road, Hove BN3 6EN

- 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 Sly against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00410, dated 16 February 2009, was refused by notice dated 30 April 2009.
- The development proposed is described as a side extension to form a separate two-bedroom dwelling.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this case are:
 - i) the effect of the proposal on the character and appearance of the host property and the surrounding area;
 - ii) the effect of the proposal on the living conditions of occupiers of neighbouring properties, with particular regard to outlook, daylight and private amenity space provision;
 - iii) whether the proposal would result in satisfactory living conditions for future occupiers of the property, with particular regard to private amenity space provision; and
 - iv) the effect of the proposal on the health and life expectancy of the copper beech tree, which is protected by a Tree Preservation Order.

Reasons

3. The appeal property is a detached 2-storey building which comprises 2 flats. It is situated in an area predominantly comprising terraces and semi-detached houses of similar age and appearance laid out in parallel streets. It occupies a corner site at the junction between Cissbury Road and Old Shoreham Road. The property has a rear garden with a boundary to the latter road and a double garage to one end.

Character and Appearance

4. The proposal would comprise a 2-storey extension to the rear of the appeal property to create a 2 bedroom house facing Old Shoreham Road. The

majority of the frontage of the proposed dwelling would be set back behind the building line of the host property. An off-street parking space, cycle storage and garden space would be provided to the side of the development.

5. The proposal would result in a significant increase in the length of the Old Shoreham Road frontage and a significant reduction in the gap between the appeal property and 2 Old Shoreham Road, a feature that I consider forms an important part of the character and appearance of the area. Although it would have a lower ridge level than the host property, due to the substantial length of the frontage I consider that the proposal would not appear subservient to the host property.
6. Although I note that the proposal includes features that would mirror those in the host property, such as a bay window, I consider that the street-facing gable portion of the proposal together with the mismatch between the proposed and existing eaves levels would result in a development which would appear incongruous in the street scene.
7. I conclude on this issue that, due to its siting, bulk and design, the proposal would fail to relate adequately to the host property, appear incongruous in the street scene and have an unacceptable effect on the character and appearance of the area. It would therefore fail to comply with the aims and objectives of the Brighton and Hove Local Plan (LP) Policies QD1, QD2 and QD14, which seek new buildings and extensions to existing buildings to have a high standard of design and enhance the positive qualities of local neighbourhoods.
8. Although the proposal would screen views towards the rears of the Cissbury Road properties and cover up the unattractive flank wall of the host property, this does not outweigh my conclusions on this matter.

Living Conditions – Neighbouring Residents

9. The proposal would extend about 4.5m beyond the predominant rear building line of the neighbouring properties in Cissbury Road. The 2-storey part of the proposal would be about 2.5m from the rear boundary of 2 Old Shoreham Road and approximately 3m from the narrow alley between the appeal property and 31 Cissbury Road.
10. 31 Cissbury Road has first floor windows that face north towards the appeal site and west towards the rears of properties in Montifiore Road. Outlook from the windows in No.31 is currently partly restricted by No.33 and partly open to Old Shoreham Road via the appeal site. As a result of the appeal proposal's close proximity to No.31 and its height and bulk, I consider that outlook from nearby windows would be significantly reduced. For the same reasons I consider that levels of daylight within the rooms served by the windows would be severely compromised.
11. The proposal would result in the loss of most of the rear garden, which currently provides the primary private amenity space for the ground floor flat in the host property. The area retained would be about 6.5sqm and would be severely enclosed by a combination of the existing and proposed development. Due to this substantial loss of available private amenity space, I consider that the proposal would have an unacceptable effect on the living conditions of the current and future occupiers of the ground floor flat at 33 Cissbury Road.

12. I conclude therefore that the proposal would have an unacceptable effect on the living conditions of the occupiers of both No.31 and the host property. The proposal would therefore conflict with 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.
13. As the proposal would have high level secondary windows in the upper floor rear elevation and no windows in the upper part of the flank elevation facing 2 Old Shoreham Road and 61 Montifiore Road, I am satisfied that unacceptable overlooking would not occur. Having regard to the distance between the appeal proposal and the rear windows in 2 Old Shoreham Road and 61 Montifiore Road, together with the fact that the proposal would have a narrow flank elevation facing those properties, I do not consider that there would be an unacceptable effect on outlook from those properties.

Living Conditions – Future Occupiers

14. The proposal would have approximately 12sqm of a private amenity space. I consider that this level of provision would be substandard for a 2-bedroom house in a location of this character and would result in unsatisfactory living conditions for future occupiers in this respect. The proposal would therefore be contrary to the aims of LP Policy QD27, which states that planning permission will not be granted for development that would result in a loss of amenity to proposed residents.

Health and Life Expectancy of the Tree

15. A copper beech tree, which is the subject of a Tree Preservation Order, is situated close to the appeal site. The tree's crown appears to be broadly asymmetrical: some lower branches extend horizontally towards the rears of the terraces to either side at about eaves level, whilst the branches above the appeal site extend out above the eaves level of surrounding properties. As a result of this, I consider that the levels natural light reaching the kitchen and courtyard amenity area would not be affected to such a degree by the tree canopy as to give rise to a need for pruning that is significantly greater than that required to ensure adequate light reaches existing dwellings.
16. The root protection area of the copper beech tree extends under part of the appeal site. However, the Council considers that the proposal would not adversely impact on the root system and there is no evidence before me to suggest otherwise. I therefore conclude that the proposal would not have an unacceptable effect on the health and life expectancy of the copper beech tree. The proposal would therefore comply with LP Policy QD16 which states that development which would damage or destroy a preserved tree will not be permitted.

Other Matters

17. The appellant has referred to the Council's *Strategic Housing Land Availability Assessment* and states that the Council has been unable to demonstrate a 5-year supply of deliverable housing sites in the city. Planning Policy Statement 3: *Housing* (PPS3), advises that in these circumstances planning applications for housing should be considered favourably having regard to paragraph 69 of PPS3, which among other matters, refers to the suitability of sites for housing

and design quality. I consider that the proposal would not meet some of the objectives of paragraph 69. I conclude therefore that the contribution the proposal would make towards housing supply in the city would not outweigh the harm that I have identified in respect of the main issues in this case.

18. The appellant has referred to an earlier appeal decision (Ref APP/Q1445/A/09/2105969). In that case my colleague concluded that the proposal complied with the requirements of paragraph 69 of PPS3. I therefore attach limited weight to this.
19. The appeal site has good public transport accessibility and is close to a range of services and facilities. Although LP Policy QD3 seeks efficient and effective use through higher density development in accessible locations, it also requires that special attention is paid to the design and quality of spaces between buildings and the effects of development on living conditions. For the reasons set out above I therefore consider that the proposal would also be contrary to the aims of LP Policy QD3.

Conclusions

20. Although I have found that the proposal would be acceptable in terms of its effects on the health and life expectancy of the copper beech tree, I conclude overall, for the reasons given above and having regard to all other matters raised, that it would have an unacceptable effect on the character and appearance of the area and on the living conditions of residents of neighbouring properties and future occupiers of the proposed development. The appeal is therefore dismissed.

Simon Poole

INSPECTOR



Appeal Decision

Accompanied site visit made on 23
March 2010

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

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

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Decision date:
25 March 2010

Appeal Ref: APP/Q1445/A/09/2107590 36 Victoria Street, Brighton BN1 3FQ

- 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. I. Heath against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/00083), dated 6 January 2009, was refused by notice dated 21 April 2009.
- The development proposed is to "provide staircase access from existing terrace balcony to ground floor courtyard".

Decision

1. I dismiss the appeal.

Procedural matter

2. Since the staircase which is the subject of the appeal has already been installed, I have treated the application as a retrospective one for its retention.

Main issue

3. The main issue (in the light of the relevant development plan policies) is whether the staircase significantly harms the residential amenities of No. 35 Victoria Street, in terms of increased overlooking and a consequent loss of privacy.

Reasons

4. The appeal site is at the rear of No.36, a terraced dwelling house which lies on the east side of Victoria Street, and within the Montpelier and Clifton Hill Conservation Area. The lightweight metal staircase links a small ground floor patio area with a first floor terrace, (which has its principal access from an adjoining bedroom.) Contained within the property, it can only be used by the occupiers of No.36. The staircase runs directly alongside the common property boundary with No.35, the adjacent dwelling to the north, whose occupier objects to actual and potential overlooking of his property from anyone using it.
5. During my site visit I saw that the street block between Victoria Street and Clifton Place to the east is densely built-up with 2- and 3-storey terraced houses, such that there are in general only narrow gaps between their backs. Several of them have small patios etc. at the rear which, although partially

enclosed by walls, can be overlooked by higher level windows, such that privacy hereabouts is at a premium.

6. There is a low wall between Nos. 35 and 36, but any user of the staircase is and would be able readily to see over it, and into both the patio garden at No. 35, and into a first floor habitable room there. This room has a projecting window in very close proximity to the staircase.
7. Although, as I have indicated, the relationship between the properties in this part of the streets is such that none are free of being overlooked to some extent, I consider that the staircase has significantly increased the potential for overlooking of No.35, compared with the situation before it was installed, and over and above any potential overlooking from the terrace balcony alone. Despite the arguments on behalf of the appellant, it seems to me that this has materially reduced its privacy and the residential amenity of its occupier/s. This is contrary to the provisions of policies QD14b (*extensions and alterations*) and QD27 (*protection of amenity*) of the Brighton and Hove Local Plan 2005, and is the reason why the appeal must fail.
8. As I have mentioned the locality falls within a conservation area, but in this tightly contained situation at the rear of the house I am satisfied that the staircase has no significant effect - for better or worse - on the character or appearance of the CA as such. Therefore the appeal does not fail for that reason. I have considered all the other points raised in the representations, including those made at the application stage, but there are none which alter or outweigh my conclusions on the main town planning issue.

Paul Dobsen

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:
1 March 2010

Appeal Ref: **APP/Q1445/D/10/2119746** **55, Dyke Road Avenue, Hove, East Sussex BN1 5LE**

- 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 & Mrs Blencowe against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02152, dated 8 September 2009, was refused by notice dated 2 November 2009.
- The development proposed is a two storey side extension to replace garage. Revised version of rejected application BH2008/00698.

Decision

1. I allow the appeal, and grant planning permission for a two storey side extension to replace garage at 55, Dyke Road Avenue, Hove, East Sussex BN1 5LE in accordance with the terms of the application, Ref BH2009/02152, dated 8 September 2009, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 1633/7 E, 1633/28 A, 1633/29 C.

Main issue

2. I consider the main issue in this case is whether the proposed two storey extension would preserve or enhance the character or appearance of the Tongdean Conservation Area.

Reasons

3. The Tongdean Conservation Area is predominantly residential in character and comprises, in the main, large impressive individual detached houses on generous plots with mature landscaping and grand front walls and gardens. The majority of housing was built in the early 20th Century ahead of the dense, close-knit suburban sprawl which now surrounds it.

4. Dyke Road Avenue is a busy heavily trafficked local route into the City. No 55 is a large house, rendered at first floor with half-timbering, and a steeply sloping roof, set back from the road behind a substantial front boundary wall and gates.
5. The appeal proposes the demolition of the existing large double garage to the side of the house and the erection of a two storey extension set some 1.5 metres from the common side boundary with No 9 The Spinney, a corner bungalow. The extension would be set back from the main front wall of the house, and the hipped roof would be of a height and design so as to appear subservient to the main body of the residence, thereby reducing the overall bulk of the new addition. It would balance against a similar existing extension on the other side of the house.
6. No 55 stands on a large plot. The existing side extension is set just off the northern boundary. The proposed extension would extend the two storey built form of the house across much of the width of the plot. However, I saw a number of other substantial houses within the Conservation Area taking full advantage of their generous plot widths in a similar fashion.
7. No 9, The Spinney is low level in its profile and is an unassuming property in the context of its large well-to-do neighbours. The relationship between No 9 The Spinney and No 55 Dyke Road Avenue is close, the side wall of No 9 being set on the common boundary with No 55 for virtually the whole of the depth of the front garden area and beyond. The roof of No 9 pitches away from No 55 which serves to increase the visual separation between the two buildings at first floor level, increasing the impression of space between the buildings.
8. The large, impressive and expansive nature of the houses within the Conservation Area; the subservient nature of the design of the extension; its set-in from the side boundary in conjunction with the low profile nature of the neighbouring bungalow and its roof; and the lay back of the existing house from the road are all factors which led me to conclude that the appeal proposal would preserve the character and appearance of the Tongdean Conservation Area. This would be in accordance with the *Brighton & Hove Local Plan* saved policies QD1, QD2, QD14 and HE6 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.

Conditions

9. I considered the conditions put forward by the Council in the light of the advice in Circular 11/95. I agree that details of the external materials to be used in the construction of the extension should be submitted in the interests of the appearance of the surrounding area and the Conservation Area. In addition, for the avoidance of doubt and in the interests of proper planning, I shall impose a condition requiring that the development is carried out in accordance with the approved plans.
10. However, the Council has suggested two conditions, one in respect of obscure glazing the first floor side windows and a second one dealing with future openings including dormer windows in the side extension. The first floor side windows are both small windows serving shower rooms. The windows overlook

the side roof slope of No 9 The Spinney and in these circumstances I do not see that they would be a concern in terms of privacy for the residents of the neighbouring bungalow. Further, for the privacy of the residents of No 55 these windows are likely to be obscure glazed in any case. Such a condition would therefore be unnecessary and onerous.

11. The second condition seeks to control future openings (windows, dormer windows, rooflights or doors) in the side extension. As No 55 Dyke Road Avenue lies within a conservation area, an addition or alteration to the roof of the dwelling would require planning permission. In respect of additional windows, doors and rooflights, taking into account my comment above regarding the relationship of No 55 with No 9 The Spinney, I do not consider it necessary to control such future openings as there is a good separation distance between the appeal site and the wider neighbouring properties. Therefore, I find this second condition to be unnecessary.

Frances Mahoney

INSPECTOR



Appeal Decision

Site visit made on 29 January 2010

by **M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

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Decision date:
3 March 2010

Appeal Ref: APP/Q1445/A/09/2111104 59 Cranmer Avenue, Hove, East Sussex, BN3 7JP

- 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 N Hedden against the decision of Brighton and Hove City Council.
- The application Ref BH2008/03363, dated 19 November 2008, was refused by notice dated 27 February 2009.
- The development proposed is a single storey rear extension to existing garage to form annex to house.

Decision

1. I dismiss the appeal.

Background and Procedural Matters

2. During its consideration of the application, the Council sought clarification as to nature of the proposed development, namely whether it related to the creation of an independent self-contained residential unit or whether it was intended for occupation as ancillary accommodation to the existing dwelling. The appellant confirmed by letter dated 5 February 2009 that the proposed conversion and extension of the garage was for a "multi-purpose annex" comprising "living accommodation/home office/studio" and including a "small wet room and tiny kitchen." It was further stated that the annex would be dependent on the main house "for mail, laundry, electricity, water and waste." The appellant also stated that, although he was considering accommodating short stay language students, such use would be "supplementary accommodation to the main residence and any guest use would be intermittent" (appellant's Final Statement dated 22 October 2009).
3. The proposed plans show a toilet/shower facility (or 'wet room'), a small kitchen, and a combined lounge/bed/sitting area. I acknowledge the Council's view that such facilities could provide some independence from the main dwelling. However, from the appellant's submissions, I am satisfied that what is applied for is an extension to, and conversion of, the existing garage to form a residential annex to the existing main dwelling, rather than the creation of a separate self-contained and independent residential unit. In any event, if I were to allow the appeal, a condition could be imposed confirming that the proposal should only be used for purposes incidental to the enjoyment of the main residence, in accordance with the appellant's stated intention. Such a condition would ensure that the proposal could not be used as a self-contained, free standing residential unit, as is feared by the Council.

4. In the light of the above, I believe the description on the original planning application form, and used in the header above, to be a more accurate description of the works proposed than that used by the Council. I have therefore assessed the appeal on this basis.

Main issues

5. I consider the main issues in this case to be:
- i. the effect of the proposal on the character and appearance of the area;
 - ii. the effect of the proposal on living conditions at adjacent properties with particular reference to noise and disturbance, and;
 - iii. whether the proposal would comply with 'Lifetime Homes' standards.

Reasons

Character and Appearance

6. The appeal property comprises an interwar semi-detached residence in an area of other similar properties. The garage is to the rear, although close to the main house. The vehicular access to the garage is via a communal driveway between No 59 and the adjacent semi-detached house, although access to the garage at the appeal site has been obstructed by a rear addition to the main dwelling. The garage is currently used for storage of such items as bicycles, paints and tools. The arrangement of communal driveways between dwellings serving rear garaging exists at a number of properties in the vicinity.
7. The garage would be extended in length, and the rearward new addition would be wider than the existing structure, thus penetrating deeper into the garden, as well as encroaching across it. The rear part would have a higher ridge height. Whilst the presence of a garage in this location is a common feature of the locality, the proposed extended structure providing living accommodation, projecting deep into, and encroaching across, a modest suburban garden would in my judgement be incongruous in this location and would result in a cramped form of development. I also consider the proposed extension's higher ridge height and increased width would appear bulky and jar with the form of the existing garage. In my view, the extended structure providing annex accommodation would be at odds with the general pattern of development in the vicinity, appearing discordant in this location.
8. I accept the existing garage would benefit from refurbishment, and that it is proposed to use matching materials for the extension. I also appreciate the garage cannot be used to park vehicles because of the obstruction caused by the rear extension. I acknowledge the extension to the existing garage would not be readily visible from the street. However, it would be visible at the rear from neighbouring properties and neighbouring gardens, and in my view would harm the locality's character.
9. I find on this issue that the proposed scheme would materially harm the character and appearance of the area and would conflict with Policies QD2 and QD14 of the Brighton and Hove Local Plan 2005 (BHLP). Policy QD2 requires that all new developments should be designed to emphasise and enhance the

positive qualities of the local neighbourhood by taking into account local characteristics; and Policy QD14 requires extensions or alterations to be well designed, sited and detailed in relation to the properties to be extended, adjoining properties and the surrounding area.

10. I find the objection on this issue to be sufficient on its own to cause the appeal to fail.

Living Conditions

11. The Council has raised concerns about the effect of the proposal on living conditions at adjacent properties with particular reference to noise and disturbance, as well as intensified levels of activity and light.
12. Since the accommodation is intended to be ancillary, rather than used as an independent residential unit, it would be used in the same way as if it were attached to the house. The annex would have only one habitable room, plus a small kitchen and toilet/shower (or 'wet room'). Given the limited size and facilities of the proposed accommodation, I do not believe any increase in activity would be great. In my view the levels of noise, disturbance, or light, likely to be generated would not be significant or sufficiently harmful to cause the appeal to fail. Whilst I accept there may be some intensified level of activity, I do not believe that it would adversely affect the living conditions at adjacent properties. In coming to this view, I agree with the appellant that noise and disturbance could potentially be generated from the existing garage use, particularly if also used as a workshop.
13. I therefore find on this issue that there would be no conflict with Policy QD27 of the BHLP which states that planning permission will not be granted where it would cause material nuisance and loss of amenity to proposed, existing or adjacent users, residents or occupiers.

Lifetime Homes

14. The Council is concerned that the proposal would not comply with 'Lifetime Homes' standards. The appellant has stated that some of the standards have been incorporated into this scheme, but questions whether the standards should be strictly imposed in this case, on the basis that they are intended primarily for new residential dwellings.
15. I have not been supplied with any additional guidance on the standards, explaining their details or application. However it seems to me that Policy HO13 of the BHLP is intended primarily for application where new residential dwellings are being created. The policy also indicates that there is greater flexibility in applying the standards in conversions or changes of use to provide residential accommodation; in such cases, the policy requires the standards to be incorporated wherever it is practicable.
16. This proposal concerns the creation of an annex to an existing residential dwelling, utilising and extending an existing building, rather than the creation of a new residential dwelling. Having regard to Policy HO13, I consider there should be greater flexibility in applying the standards here. Thus, I do not consider an objection based on Policy HO13 to be sustainable in this case. My

findings on this matter do not, however, outweigh the harm I have already identified.

Conclusions

17. Although I have found that the proposal would not harm the living conditions at adjacent properties, and would not conflict with the Council's policy on Lifetime Homes, I find it would be harmful to the character and appearance of the area.
18. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

M C J Nunn

INSPECTOR



Appeal Decision

Site visit made on 6 April 2010

by **Rob Huntley BSc MRTPI**

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Decision date:
16 April 2010

Appeal Ref: APP/Q1445/D/10/2122823 59 Lark Hill, Hove, East Sussex, BN3 8PH

- 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 T J Aiton against the decision of Brighton and Hove City Council.
- The application Ref BH2009/02504, dated 12 October 2009, was refused by notice dated 30 December 2009.
- The development proposed is "*Demolition of existing UPVC conservatory and erection of larger replacement UPVC conservatory*".

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposed development on the character and appearance of the host property, the nearby part of Lark Hill and of Hangleton Park and its approach.

Reasons

3. The appeal property is one of a pair of modest semi-detached bungalows amongst similar properties fronting Lark Hill on rising ground in the northern part of the built-up area. It occupies a corner plot adjacent to a wide pedestrian route into Hangleton Park, an area of open space containing sports courts and a playground, wrapping around the northern side of the Lark Hill properties. In view of the local topography, the appeal property is at a higher level than those on the south side of Lark Hill. Notwithstanding some screening trees and an outbuilding along the appeal site's boundary with Hangleton Park, clear views of the rear of the appeal property are available from footpaths and sports courts within the park.
4. A flat-roofed rear extension to the appeal property, projecting beyond the original flank wall of the bungalow, is prominent in views from Lark Hill, the northern part of Park Rise and the approach to Hangleton Park. The proposed conservatory would project some 5m northwards from the existing rear extension, and its glazed, hipped roof would be visible above the extension in these views, despite the side boundary wall and fence. The existing conservatory that would be replaced is, by contrast, not a prominent feature in these views, on account of its considerably smaller dimensions and its lean-to design beneath the eaves of the existing extension.

5. The juxtaposition of the hipped roof form of the proposed conservatory, adjacent to the flat roof of the existing extension, and with eaves levels different from both the original bungalow and the extension, would lack an appropriate degree of design co-ordination to lead to a development of sufficiently high quality.
6. I conclude that the substantial addition to the built form proposed would, because of its size, the extent of its rearward projection, the prominence of its roof form, and lack of design co-ordination, be harmful to the character and appearance of the host property, the nearby part of Lark Hill and of Hangleton Park and its approach. There would, as a consequence, be conflict with the provisions of saved policies QD1, QD2 and QD14 of the Brighton and Hove Local Plan 2005 (Local Plan), which seek to ensure that development is of a high quality of design in terms of scale, height and siting, taking account of the characteristics of the host property and those nearby.
7. I note that the Council accepts that the proposed development would not cause harm to the living conditions of the occupants of neighbouring properties and I see no reason to disagree. I therefore conclude that, notwithstanding the reference to it in the reason for refusal, there would be no conflict with Local Plan policy QD27, which seeks to avoid material nuisance and loss of amenity.
8. The appellant makes reference to extensions at the nearby property, 57 Lark Hill, and I note that these include roof alterations and a conservatory to the rear. I also noted extensions and roof alterations to other properties in the vicinity. The siting of the conservatory at No 57 is such that it is not prominent in external views and the roof alterations at that property and others are not comparable to the development proposed at the appeal property. I have therefore given these little weight in my decision.
9. I have considered all other matters raised and, for the reasons I have given, I conclude that the appeal should be dismissed.

Rob Huntley

INSPECTOR



Appeal Decision

Site visit made on 14 April 2010

by **M F Aldous BA (Hons), Dip Mgt, MRTPI**

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Decision date:
20 April 2010

Appeal Ref: APP/Q1445/D/10/2123521 60 Cowper Street, Hove BN3 5BN.

- 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 Ruth Preston against the decision of Brighton & Hove City Council.
- The application Ref BH2009/03157, dated 22 December 2009, was refused by notice dated 16 February 2010.
- The development proposed is a single storey rear side extension to terraced house.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of 62 Cowper Street, with particular regard to loss of light and outlook and overshadowing.

Reasons

3. The appeal property is located within the central part of a long terrace of similar dwellings. The work proposed is to the rear and would not be visible from the public realm. As such the proposal, which demonstrates a satisfactory design, would have no notable effect upon the character or appearance of the area.
4. To the rear, the properties within Cowper Street benefit from two storey rear projections which extend across about half the width of the plot. This arrangement results in small open areas facing each other on either side of the mutual boundary line. In so far as I could judge, it appeared to me that for the most part the open nature of these areas had been retained in that form and as such contributed to the character of the area, preserving the living conditions of adjacent occupiers by maintaining an open, light outlook from ground floor windows in these areas.
5. This proposal seeks to enclose the small open area within number 60 so as to form a larger kitchen/diner lit by patio doors on the southern elevation and a series of three velux roof openings. Whilst this would be beneficial to the occupants of the appeal property by creating a larger and better lit room, it would have significant implications for the occupants of number 62.

6. The work would result in the construction of a taller party wall along the mutual side boundary between the properties in order to support the extension. At the present there is a roughly 1.5 metre boundary wall which allows a good deal of light to the various openings at ground floor level at number 62. The drawings indicate that the proposed party wall would increase to around 2.7 metres from number 62, topped with a pitched roof that would slope away from that property.
7. The net result would be to significantly restrict the outlook from the ground floor windows of number 62 and to interrupt a degree of light to the windows which face directly onto its small open area. It is also probable that the proposed extension would create a degree of overshadowing to that area during the early part of the day. In these regards I concur with the Council view that the net effect would be harmful to the occupants of number 62 for these reasons.
8. I am aware that the current occupiers of number 62 have not raised objection to the proposal and are content for the party wall to be increased as indicated in the submitted plans. I have noted this and attach weight to it, but decisions must be made on the planning merits of the proposal when considered against development plan policies. Future occupants might well have a different view of the development proposed.
9. The Appellant has also indicated that an extension of not dissimilar proportions could be undertaken under permitted development rights. That might be so, but I find that this proposal, which does require the sanction of planning approval, is defective for the reasons outlined above and is therefore in conflict with saved policies QD14 and QD27 of the Brighton and Hove Local Plan.
10. For the reasons set out above, and having had full regard for all other matters raised, I therefore conclude that this appeal should not succeed.

Michael Aldous

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

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

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Decision date:
31 March 2010

Appeal Ref: **APP/Q1445/A/09/2115484** **269 Kingsway, Hove, East Sussex BN3 4LJ**

- 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 Vic Marchant against the decision of Brighton and Hove City Council.
- The application Ref BH2008/03179, dated 2 October 2008, was refused by notice dated 4 June 2009.
- The development proposed is a side and rear extension at basement and ground floor level.

Decision

1. I dismiss the appeal.

Background and Procedural Matters

2. In December 2006 planning permission was granted for a rear basement level extension (Ref BH2006/03550). At the same time the Council issued a Certificate of Lawfulness Use or Development (LDC) (Ref BH2006/03552) confirming that a scheme comprising a single storey, ground floor level, side and rear extension was permitted development under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development Order) 1995. A basement and ground level rear extensions have been constructed which are materially different from the above. A retrospective planning application – the subject of this appeal – has therefore been submitted to seek to regularise matters.
3. The proposed development is described on the planning application form as “retrospective amendments to the approved applications BH2006/03550 and BH2006/03552”. However, as there is no mechanism to retrospectively amend this development, the proposal needs to be assessed in its entirety and on its individual merits. The description of development in the banner heading above therefore omits reference to the previous approvals.
4. The appellant’s evidence compares the appeal scheme to the combination of the basement permission and the scheme subject to the LDC. The latter is not a planning permission, but indicates that at the time the certificate was issued, the development described on the certificate would be lawful. In this case it was based on an assessment of permitted development rights. If the situation at the property subsequently changes, such as with the construction of another extension or amendments to permitted development rights, the certificate would be unlikely to be relevant. Whilst the ground floor and basement

extensions may be lawful on their own, it is unlikely that they could be implemented together. Whether or not this is the case would need to be established via an application under section 191 Town and Country Planning Act 1990.

5. In any case, the development that is now proposed would not be the same as the previous proposals with the extension projecting further from the building and would be much taller than the proposal the subject of the LDC. While I have taken into consideration the LDC and the basement approval, I am not satisfied that they represent a credible fall-back position.

Main Issues

6. The main issues in this case are:
 - i) the effect of the appeal scheme on the living conditions of the occupiers of the ground floor flat at 271 Kingsway, with particular regard to outlook, daylight and privacy;
 - ii) whether the appeal scheme provides satisfactory living conditions for occupiers, with particular regard to private amenity space provision; and
 - iii) the effect of the appeal scheme on the character and appearance of the host property.

Reasons

7. The appeal property is a large 3-storey mid-terraced house with a pitched roof. In common with the houses to either side, it has a 2-storey rear wing and a short rear garden, which is bounded at the back by an alleyway beyond which is the end property in Wish Road.

Living Conditions – Neighbouring Residents

8. One flank wall of the appeal scheme extends along the boundary with 271 Kingsway for over 5m of its length and is over 3m in height above ground level. It is in close vicinity to the ground floor flat at No.271, which has glazed doors in the main rear-facing elevation and a window in the side of the rear wing of the property which faces the property boundary. I note that outlook from, and natural light to, these windows would have been somewhat restricted by surrounding buildings prior to the erection of the appeal scheme. However, I consider that, due to its height, bulk and proximity to No.271, the appeal scheme results in an additional and significant diminution in outlook and daylight which has an unacceptable effect on the living conditions of occupiers of No.271. For this reason the proposal conflicts with LP Policies QD14 and QD27, which state amongst other things that planning permission will not be granted for development that results in a loss of amenity to existing residents.
9. The appeal scheme includes a ground floor window that faces into a small courtyard area formed between the existing house, the extension and the property boundary with No.271. Although this is close to the windows in No.271 it is obscure glazed, which I consider adequately prevents an unacceptable loss of privacy to the occupants of No.271. I note that the window can be opened. However, were I minded to allow the appeal I consider that overlooking via the window could be prevented by the imposition of a

condition requiring the window to be fixed shut. My views in respect of this matter do not however outweigh my conclusions relating to the effects of the proposal on outlook and daylight.

Living Conditions – Occupiers of the Appeal Property

10. The appeal scheme has resulted in a significant reduction in the size of the rear garden. The area remaining is about 6.5m by 4m and is on 2 levels with a set of steps and a retaining wall between. As a result the retained space provides limited scope for recreation. In light of the fact that the garden serves a relatively large family house I consider that the amount and quality of private amenity space provided is substandard and results in unsatisfactory living conditions for occupiers in this respect. The appeal scheme is therefore contrary to the aims of LP Policy QD27, which states that planning permission will not be granted for development that results in a loss of amenity to existing and future residents.

Character and Appearance

11. Although the materials of the appeal scheme generally match those of the host property and the use of a flat roof minimises the bulk of the scheme as much as possible, the scheme is a substantial addition which extends significantly beyond the prevalent rear building line of the buildings to either side of the terrace and is clearly visible from Wish Road. As a result of its siting, height and bulk it dominates the rear of the host property and represents unsympathetic overdevelopment. I therefore consider that the appeal scheme fails to meet the aims of LP Policies QD1, QD2 and QD14, which seek extensions to existing buildings that are of a high standard of design and enhance the positive qualities of local neighbourhoods.

Other Matters

12. The appellant has referred to the garages and additions to the rears of other properties in the terrace. However, there is no evidence before me that demonstrates that these developments were undertaken since the adoption of the current development plan. In any case, I do not consider them to be directly comparable to the appeal scheme and their presence does not outweigh the harm identified above.

Conclusions

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

Simon Poole

INSPECTOR



Appeal Decisions

Hearing held on 21 April 2010
Site visit made on 21 April 2010

by **Stuart M Reid** D Arch (Hons) RIBA

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Decision date:
17 June 2010

Two appeals at 18 Hampton Place, Brighton BN1 3DD

- The appeals are made under section 39 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended by the *Planning and Compensation Act 1991*.
- The appeals are made by Ms Judy Bow against 2 listed building enforcement notices issued by Brighton & Hove City Council.

Appeal A: APP/Q1445/F/09/2114221

- The Council's reference is 2003/0319.
- The notice was issued on 16 September 2009.
- The contravention of listed building control alleged in the notice is the erection of a metal flue from the basement of the 19th (sic) rear extension, across the lightwell and up the main rear wall of the building to above eaves level.
- The requirements of the notice are to:
 1. Remove the solid metal flue situated at the rear elevation of 18 Hampton Place, Brighton.
 2. Remove any associated pipework.
 3. Remove all resultant rubble and debris from the site.
 4. Make good any damage caused.
- The period for compliance with the requirements is 20 weeks.
- The appeal is made on the grounds set out in section 39(1)(b), (c), (e), (g), and (h) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Summary of Decision: The appeal is dismissed, and the listed building enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B: APP/Q1445/F/09/2118552

- The Council's reference is 2003/0319.
- The notice was issued on 11 November 2009.
- The contravention of listed building control alleged in the notice is:
 1. The erection of New Single Storey Garden Room Extension at the rear of the property.
 2. The replacement of roof of 19th Century Extension.
- The requirements of the notice are to:

1. The New Single Storey Extension at the rear:

 - 1.1 Completely demolish the new extension.
 - 1.2 Completely remove the new extension's floor slab and foundations and backfill with clean topsoil the land to the same level of the existing of the lawn of the garden of No. 18 Hampton Place.
 - 1.3 Lower the northern boundary wall (adjoining the grounds of the St Mary Magdalene School) to its original height as shown highlighted in blue in drawing Ref No. 307.01 accompanying planning application Ref. No. BH2007/01336 (see at Appendix 2 for copy of plan) by removing all the new brickwork (18 courses) on top of the pre-existing

modern brick wall down to its original brick on edge coping as shown in the attached Photograph 3 and removing the new brickwork (10 courses) on top of the surviving original brick-bungaroosh wall as shown in the attached Photograph 4. Reinststate and make good the boundary wall by exposing, cleaning and making good the pre-existing brickwork and brick-bungaroosh on both sides to match the original work. Form a half round cement coping on top of the brick-bungaroosh part of the wall and reinststate and make good the surviving brick on edge coping on the brick part of the wall. Lime mortar with one part hydraulic lime to three parts sharp sand and shingle shall be used to make good the brick-bungaroosh work and one part cement and three parts builders' sand shall be used for the modern brickwork. The colours and the grading of the sand and proportion and grading of the shingle shall be such that the mortars' colours and textures match the originals.

1.4 Lower the eastern boundary wall, where it currently abuts the garden room extension and the site boundary with St Mary Magdalene's School, to the same height as the remainder of the east boundary wall of the garden. Expose, clean and make good the reduced eastern boundary wall original brickwork and its brick on edge coping to match the rest of the east boundary wall with the garden of No. 18 Hampton Place.

1.5 Block up the resultant opening in the east wall of the 19th Century extension by rebuilding the demolished wall in masonry, following the works carried out in paragraphs 1.1 & 1.2 above.

1.6 Render the exterior masonry of the east wall of the 19th Century extension, including the blocked up opening with smooth hydraulic lime and sand render using a mix of one part hydraulic lime to 3 parts fine builders' sand. Replaster the interior of the east wall in smooth putty lime and sand plaster using a mix of 1 part putty lime to 3 parts fine builders' sand.

1.7 Paint the exterior of the rebuilt wall and reinstated north garden boundary wall with smooth white breathable masonry paint to match the rest of the building. Paint the interior wall in breathable emulsion paint.

1.8 Remove all resultant rubble and debris from the site.

2. Alterations to the 19th Century Ground Floor Rear Extension:

The 19th Century Ground Floor Rear Extension is highlighted in green on the plan attached to the notice, see at Appendix 2.

2.1 Remove the concrete tiles and plastic guttering from the pitched roof on the north side. Lay natural slates to the pitched roof with concealed over fascia eaves strip ventilation to under the roof.

2.2 Remove all projecting fascia boards and soffits on the south and east sides and felt roof covering from the flat roof and plastic rainwater goods and cut back projecting roof rafters of the flat roof so that they are flush with the outer face of the wall and cut back the timber board roof cladding to leave a 40 mm overhang. Fix 15 mm thick fascia boards directly to the cut back roof rafters of the flat roof to match the previous detail as shown in the attached photographs 1 and 2. The fascias shall not drop below the level of the bottom of the roof rafters and shall leave a 25 mm ventilation gap between their top edge and the underside of the roof cladding board. Lay lead to the flat roof. The lead shall be turned down over a timber board which shall be fixed to the edge of the roof cladding board to provide an overlap of 75 mm over the fascia and a turned up lead drip edge of 5 mm. A 25 mm ventilation gap shall be maintained behind the downturned lead and its backboard. The exposed timber fascias on the south and east sides shall be painted in primer, undercoat and topcoat in smooth gloss exterior quality white paint to match the colour of the walls. The existing fascia board on the north side above the pitched roof shall be painted in primer, grey undercoat and topcoat in smooth gloss exterior quality grey (BS 4800 Colour Code BS 18 B 25) paint.

2.3 Replace all rainwater goods in cast iron with half round guttering, and paint in primer, undercoat and gloss white topcoat paint to match the background wall's colour. The walls exposed as a result of works carried (*sic*) shall be repaired and made good by rendering using hydraulic lime and sand render in a mix of 1 part hydraulic lime and 3 parts fine builders' sand and painted to match adjacent finishes in breathable smooth

white exterior quality masonry paint.

2.4 Remove all resultant rubble and debris from the site.

- The period for compliance with the requirements is 20 weeks.
- The appeal is made on the grounds set out in section 39(1)(b), (c), (d), (e), (f), (g) and (h) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Summary of Decision: The appeal is dismissed, and the listed building enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Procedural matters

1. I have a general duty to examine the terms of a notice to see if it is valid, and, if it requires correction, to correct it, if it is capable of correction, under the powers available to me by reason of section 41(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended, if I am satisfied that the correction will not cause injustice to the appellant or the local planning authority.
2. Section 38(2) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended states that a listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified –
 - (a) for restoring the building to its former state; or
 - (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
 - (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
3. The requirements in the listed building enforcement notice for Appeal B deal in considerable detail with works to the listed building that have been specified by the Council. The notice requires in principle the demolition of the new extension, and the replacement of the roof of the 19th Century extension. However, these are very detailed requirements, for example specifying mortar and render mixes, wall heights, copings, cleaning of areas of brickwork, and paint specifications and colours.
4. No evidence was put to me by the Council that these works would restore the building to its former state, that is, its former authorised state¹, as no detailed evidence was put to me to show what the former state was, apart from the photographs attached to the listed building enforcement notice. They seemed to be requirements which, whilst desirable in terms of how the building might have been constructed, and beneficial in terms of restoring it to its original condition, would be very likely to exceed what is necessary for restoring the building to its former authorised state, that is, when it was listed on 20 August 1971. That is all that the law permits as a requirement in a case such as this.

¹ This is its state when listed, subject to any listed building consents issued since it was listed.

5. In the light of the judgement in *Bath City Council v Secretary of State for the Environment and Grosvenor Hotel (Bath) Ltd* [1983] JPL 737, where it was held that an improvement could not be secured to a listed building compared to its state before the unauthorised works were carried out, I shall delete the whole of the requirements in Appeal B. I shall, in its place, require the restoration of the building to the state it was in before the unauthorised works were carried out. This correction to the notice would not cause injustice to the parties.
6. The ground (f) appeal in Appeal B was withdrawn before the opening of the Hearing. During the Hearing the appellant withdrew the Appeal B ground (b), (c), (d), and (g) appeals, on the basis that a sufficient period of time would be allowed for the relevant works to be carried out under ground (h). The Council were in agreement with the period sought, 52 weeks, as am I, and I therefore only deal with, for Appeal B, the ground (e) and ground (h) appeals below.

Appeal A

The appeal on ground (b)

7. For this ground of appeal to succeed it is for the appellant to show that the matters alleged to constitute a contravention of section 9(1) or (2) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended have not occurred.
8. Section 7 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended states that, subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.
9. The listed building consent for a false chimney to cover the solid metal flue has time expired. It is evident that the works alleged in the listed building enforcement notice have been carried out, as the solid metal flue is clearly visible on the rear elevation. The presence of the flue has altered the special interest of the listed building. There is no consent or authorisation for the flue or its retention, and it is therefore unauthorised. As a matter of fact the appeal on ground (b) does not succeed.

The appeal on ground (c)

10. For this ground of appeal to succeed it is for the appellant to show that those matters (if they occurred) do not constitute such a contravention.
11. A ground (c) appeal is a simple legal test as to whether the works alleged in the notice have affected the character of the listed building. It is not a test of harm, nor whether the works have a positive or a negative effect. The solid metal flue is visibly present on the rear elevation, and for that reason it affects the architectural character of the listed building.
12. As a matter of fact and degree, I consider that the appearance of the listed building has been materially altered by the works, and that the architectural and historic character of the listed building has been affected. No authorisation for the flue has been granted. It follows that the appeal on ground (c) does not succeed.

The appeal on ground (e)

13. Ground (e) is that listed building consent ought to be granted for the retention of the solid metal flue.
14. The appeal building is listed in Grade II, as part of a terrace from 8 to 18 (even) Hampton Place, with their attached railings, and it has Group Value. It is an early 19th century stucco dwelling, part of a row which steps elegantly down the hill towards the seafront. It is in the Montpelier and Cliftonhill Conservation Area.

Main issue

15. I consider that the main issue in this appeal is the effect that the solid metal flue has on the special architectural or historic interest of the appeal building, and on the special architectural or historic interest of the conservation area within which it is situated.

Reasons

16. For the avoidance of doubt, the ground (e) appeal can only relate to the retention of what is alleged in the listed building enforcement notice, that is, the solid metal flue. It cannot be extended to deal with the time-expired listed building consent for a false chimney to encase it, as that is not part of the allegation.
17. As the ground of appeal is that listed building consent ought to be granted for the works, I am required in determining these appeals to take account of section 16(2) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, in considering whether to grant listed building consent for any works, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
18. As the building is in a Conservation Area, I am also required to take account of section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
19. The Courts have accepted that section 54A of the *Town and Country Planning Act 1990* as amended (which has been repealed and replaced by section 38(6) of the *Planning and Compulsory Purchase Act 2004*) does not apply to decisions on applications for listed building consent, since in those cases there is no statutory requirement to have regard to the provisions of the development plan. Policies in the Development Plan reflect the thrust of the statutory requirements, and I shall deal with them as a material consideration.
20. In determining these appeals I shall also take into account relevant Government advice that is contained in Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5) and PPS5 *Planning for the Historic Environment: Historic Environment Planning Practice Guide*, which reflect the thrust of the advice in the now cancelled Planning Policy Guidance: *Planning and the Historic Environment* (PPG15).

21. The solid metal flue was part of the subject of an appeal against the refusal of listed building consent in 2005, when it was held to be acceptable if it was concealed by a false chimney to match the chimneys of other similar listed properties in the area. The false chimney has not been constructed, and the solid metal flue is still visible in the surrounding area, in the rear garden of the appeal building, and from the gardens of nearby properties, as well as the school.
22. As a shiny metal flue it is incongruous, unattractive, and out of keeping with the terrace of attractive listed properties and their traditional chimneys. It fails to respect the special interest of the building, and, due to its alien character, it is harmful and damaging to the historic and architectural qualities of the appeal building. For the very same reasons it fails to preserve or enhance the character or appearance of the Conservation Area.
23. Having special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, I conclude that listed building consent should not be granted for the unauthorised works. The appeal under ground (e) therefore does not succeed.

The appeal on ground (g)

24. For this ground of appeal to succeed it is for the appellant to show that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.
25. The appellant wishes to keep the flue, although it is not connected to anything. She wishes to complete the works as the original listed building consent. However, the original consent has time expired, and it is not possible to know if the same works would receive listed building consent if an application were to be made now. Because of that uncertainty, it would not be right to allow the retention of the flue, as, if no consent were to be forthcoming, the building would remain with the harmful flue attached to it if this ground were to succeed. For that reason, the appeal on ground (g) fails.

The appeal on ground (h)

26. For this ground of appeal to succeed it is for the appellant to show that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
27. The appellant wishes to carry out the works to the flue in association with the other works dealt with under Appeal B, and for which a period of 52 weeks is sought. For the reasons I give in connection with Appeal B, and so that the flue works can be carried out at the same time, I shall extend the period to 52 weeks. To that limited extent the appeal on ground (h) succeeds.

Appeal B

The appeal on ground (e)

Main issue

28. I consider that the main issue in this appeal is the effect that the works have on the special architectural or historic interest of the appeal building, and on the special architectural or historic interest of the conservation area within which it is situated.

Reasons

29. It was agreed at the Hearing that the works were little different to those dealt with at appeals ref APP/Q1445/E/07/2055079 and APP/Q1445/A/07/2055076, where the Inspector dismissed the appeals as conflicting with Policies HE1, HE3 and HE6 of the *Brighton and Hove Local Plan 2005*, which sought to preserve the architectural and historic character or appearance of listed buildings, and conservation areas, and the settings of listed buildings. The policies before me are identical, although Policy HE4 is also now relevant. From what I have seen and heard I have found no reason to disagree with the conclusions and decisions of the previous Inspector.
30. Having special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, I therefore conclude that listed building consent should not be granted for the unauthorised works. The appeal under ground (e) therefore does not succeed.

The appeal on ground (h)

31. The appellant seeks time to carry out the recently approved listed building consent works, which will deal with most if not all of the matters raised in the listed building enforcement notice. Having discussed the appellant's proposed programme at the Hearing (Document 3), I consider it is reasonable in the circumstances to allow 52 weeks for the works to be completed, and I will extend the period in the notice accordingly. To that limited extent the appeal on ground (h) succeeds.

Conclusions

32. For the reasons given above I conclude that both appeals should fail. I shall vary the period in the notice from 20 weeks to 52 weeks in Appeal A and similarly in Appeal B. I shall correct the listed building enforcement notice for Appeal B, to delete the requirements in their entirety, and to replace them with a requirement to restore the building to its former state.
33. For the avoidance of doubt this requirement for restoration only relates to the allegation concerning the erection of a new single storey garden room extension at the rear of the property, and the replacement of the roof of the 19th century extension, and not to any other allegation or works in connection with this building.

34. It should be noted that Section 44(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended states that if, after the issue of a listed building enforcement notice, consent is granted under section 8(3) –
- (a) for the retention of any work to which the notice relates; or
 - (b) permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,
- the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
35. Moreover, section 38(5) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* states that the local planning authority may-(a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3), and the powers conferred by this subsection may be exercised whether or not the notice has taken effect. Thus, the Council have the power to extend the period if the appellant is making every endeavour to comply with the requirements, but for some reason outside her control is unable to comply with the varied period in the 2 notices precisely.

Decisions

Appeal A: APP/Q1445/F/09/2114221

36. I direct that the listed building enforcement notice be varied by the deletion of the period for compliance with the requirements of 20 weeks and its replacement with 52 weeks. Subject to this variation, I dismiss the appeal and uphold the listed building enforcement notice, and refuse listed building consent for the retention of the works carried out in contravention of section 9 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Appeal B: APP/Q1445/F/09/2118552

37. I direct that the listed building enforcement notice be corrected by the deletion of the requirements in their entirety and replaced with "To restore the building to its former state", and varied by the deletion of the period for compliance with the requirements of 20 weeks and its replacement with 52 weeks. Subject to this correction and variation, I dismiss the appeal and uphold the listed building enforcement notice, and refuse listed building consent for the retention of the works carried out in contravention of section 9 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Stuart M Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Collins	Appellant's agent.
Richard Phelps	Appellant's agent.
Ms Judy Bow	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Miss Evelyn Baxter	Senior Planning Investigations Officer, Brighton & Hove City Council.
Geoff Bennett	Conservation Officer, Brighton & Hove City Council.

INTERESTED PERSONS:

Mick Hamer	Local resident.
Roger Amerina	Local resident.

DOCUMENTS PUT IN AT THE HEARING

- 1 Planning permission ref BH2010/00300 and listed building consent ref BH2010/00299 for development and works at the appeal site, and associated documentation including plans, put in by the appellant.
- 2 Appeal ref APP/L3815/F/06/2024418, put in by the Council.
- 3 Programme for proposed works including approvals and tender activity, put in by the appellant.
- 4 Three photographs of the appeal building flue, put in by Mick Hamer.

WARD

APPLICATION NUMBER
ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

NORTH PORTSLADE

BH2010/00160

1-2 New Barn Cottages, Foredown Road,
Portslade

Conversion of two semi detached cottages into
a single dwelling house incorporating a two
storey rear extension.

APPEAL LODGED

11/06/2010

Delegated

WARD

APPLICATION NUMBER
ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ST. PETER'S & NORTH LAINE

BH2010/00226

51 Church Street, Brighton

Proposed rear dormer.

APPEAL LODGED

15/06/2010

Delegated

WARD

APPLICATION NUMBER
ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WISH

BH2010/00118

304 Portland Road & Land To Rear Of 304
Portland Road, Hove

Erection of 1no. Two storey dwelling house with
associated works including demolition of
existing extension to rear of retail unit and
demolition of garage at land to the rear of the
property. Alterations to existing retail unit
including new door and access steps and
replacement of existing door with new window
to South elevation and replacement of existing
door with new window to East elevation.

APPEAL LODGED

10/06/2010

Delegated

WARD

APPLICATION NUMBER
ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

ST. PETER'S & NORTH LAINE

BH2009/01589

14-16 York Place, Brighton

Conversion of existing units above Numbers 14
and 16 York Place to create new maisonettes.

Erection of 2no two storey rear extensions to
both Numbers 14 and 16 York Place to create
2no additional residential units. Erection of
infill extension to first and second floors at
Number 15 to create 1no maisonette.

Replacement of existing shop front at Number
16.

APPEAL LODGED

NEW APPEALS RECEIVED

APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

17/06/2010
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

CENTRAL HOVE
BH2009/01793
11 Albert Mews, Hove
External alterations to form new door, stairs and gateway access from basement workshop to footpath.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
24/06/2010
Environmental Services Planning Committee

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

GOLDSMID
BH2009/03087
Beresford Court, Somerhill Road, Hove
Installation of 8 no. rooflights to existing crown top flat roof (retrospective).

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
28/06/2010
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

QUEEN'S PARK
BH2010/00364
3 Crescent Place, Brighton
Replacement of existing pitched roof behind front parapet wall with roof terrace.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
30/06/2010
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

GOLDSMID
BH2009/03107
1 Addison Road, Hove
Erection of one 2 no. bedroom and one 3 no. bedroom, two storey houses incorporating rooflights.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
24/06/2010
Delegated

WARD
APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

ST. PETER'S & NORTH LAINE
BH2010/00141
29 Park Crescent Terrace, Brighton
Construction of rear roof extension, alterations to existing rear outbuilding and new fence on north east boundary.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
28/06/2010
Delegated

NEW APPEALS RECEIVED

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

ST. PETER'S & NORTH LAINE

BH2010/00083

Land to rear of 67-81 Princes Road, Brighton
Construction of 6 no. three-storey, two bedroom terraced houses with pitched roofs and solar panels. Provision of private and communal gardens, waste and refuse facilities, and erection of a street level lift gate-house with cycle store.

APPEAL STATUS

APPEAL LODGED

APPEAL RECEIVED DATE

30/06/2010

APPLICATION DECISION LEVEL

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

PATCHAM

BH2009/02660

9 Wilmington Close, Brighton

Erection of single storey detached dwelling in rear garden with associated landscaping.

APPEAL STATUS

APPEAL LODGED

APPEAL RECEIVED DATE

30/06/2010

APPLICATION DECISION LEVEL

Delegated



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 21st July 2010

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

Gala Bingo Hall & Adjacent Car Park, 193 Portland Road, Hove

Planning application no: BH2009/03154

Description: Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground floor level and part first floor level, new D1/D2 unit at ground floor level and 35 residential units above in part 2, 3, 4 and 5 storey building to include 14 affordable units. Provision of surface parking for 18 cars, cycle parking and landscaping.

Decision: Committee

Type of appeal: Informal Hearing

Date: Tuesday 7th September 2010

Location: Council Chamber, Brighton Town Hall

25 Hazeldene Meads

Planning application no: BH2010/00242

Description: Hip to gable roof extension to south end including 3 No. dormers, 1 No. rooflight and pitched roof porch extension at front elevation. Installation of 9 No. Solar Panels to rear over existing dormer.

Decision: Committee

Type of appeal: Public Inquiry

Date: TBC

Location: TBC

