



**Brighton & Hove  
City Council**

# Planning Committee

Title:	<b>Planning Committee</b>
Date:	<b>11 August 2010</b>
Time:	<b>2.00pm</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<p><b>Councillors:</b> Hyde (Chairman), C Theobald (Deputy Chairman), Carden (Opposition Spokesperson), Alford, Cobb, Davey, Hamilton, Kennedy, McCaffery, Simson, Smart and Steedman</p> <p><b>Co-opted Members:</b> Philip Andrews ((Chairman) Conservation Advisory Group) and Mr Roger Amerena (Conservation Advisory Group)</p>
Contact:	<p><b>Jane Clarke</b> Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

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## AGENDA

### 66. 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.*

### 67. MINUTES OF THE PREVIOUS MEETING

1 - 20

Minutes of the meeting held on 21 July 2010 (copy attached).

### 68. CHAIRMAN'S COMMUNICATIONS

### 69. PETITIONS

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

### 70. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 4 August 2010).

No public questions received by date of publication.

### 71. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 4 August 2010).

No deputations received by date of publication.

## **PLANNING COMMITTEE**

### **72. WRITTEN QUESTIONS FROM COUNCILLORS**

No written questions have been received.

### **73. LETTERS FROM COUNCILLORS**

No letters have been received.

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

No Notices of Motion have been referred.

### **75. APPEAL DECISIONS**

**21 - 44**

(copy attached).

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

**45 - 48**

(copy attached).

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

**49 - 50**

(copy attached).

### **78. PLANNING ENFORCEMENT POLICY DOCUMENT**

**51 - 64**

Report of the Director of Environment (copy attached).

*Contact Officer: Gerard McCormack                      Tel: 292031*

*Ward Affected: All Wards;*

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

### **80. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST**

(copy circulated separately).

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

### **82. 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.

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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](mailto:jane.clarke@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk).

Date of Publication - Tuesday, 3 August 2010



### BRIGHTON & HOVE CITY COUNCIL

### PLANNING COMMITTEE

2.00pm 21 JULY 2010

COUNCIL CHAMBER, HOVE TOWN HALL

### MINUTES

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

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

**Officers in attendance:** Jeanette Walsh (Development Control Manager), Nicola Hurley (Area Planning Manager (West)), Claire Burnett (Area Planning Manager (East)), Hilary Woodward (Senior Lawyer) and Jane Clarke (Senior Democratic Services Officer)

### PART ONE

#### 50. PROCEDURAL BUSINESS

##### 50a Declarations of Substitutes

50.1 Councillor Fallon-Khan declared that he was substituting for Councillor Simson.

##### 50b Declarations of Interests

50.2 There were none.

##### 50c Exclusion of the Press and Public

50.3 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.

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

**51. MINUTES OF THE PREVIOUS MEETING**

51.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 30 June 2010 as a correct record of the meeting.

**52. CHAIRMAN'S COMMUNICATIONS**

52.1 The Chairman addressed the Committee and stated that the pilot scheme for pre-application presentations was being discussed and she asked the Committee Members for suggestions of more appropriate timings. It was felt that the current timings were the most appropriate as different Members had differing commitments. It was also noted that site visits should be taken into consideration when planning the next schedule of meetings for the Council. The Head of Development Control stated that she would bring this up with Democratic Services.

**53. PETITIONS**

53.1 The Chairman stated that an additional 237 signatures had been added to the petition received in respect of application BH2010/01132, 41 Ladies Mile Road, Brighton.

**54. PUBLIC QUESTIONS**

54.1 There were none.

**55. DEPUTATIONS**

55.1 There were none.

**56. WRITTEN QUESTIONS FROM COUNCILLORS**

56.1 There were none.

**57. LETTERS FROM COUNCILLORS**

57.1 There were none.

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

58.1 There were none.

**59. APPEAL DECISIONS**

59.1 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.



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

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

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

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

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

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

<b>Application:</b>	<b>Site visit requested by:</b>
Varley Halls, University of Brighton	Head of Development Control

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

**(i) TREES**

63.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 7 of the report and resolves to refuse consent to fell the tree which is the subject of this application.

BH2010/01426, 1 Varndean Holt, Withdean.

63.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 7 of the report and resolves to grant consent to fell the tree which is the subject of this application, subject to the conditions listed in the report.

BH2010/01715, Sillwood Place, Brighton.

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

**A. Application BH2010/01054, Brighton General Hospital, Elm Grove, Brighton -** Demolition of the former nurses accommodation buildings and the construction of two residential apartment blocks (Blocks A and B) of 5 storeys and one apartment block (Block C) of 6 storeys comprising 95 units and a 106 square metre community facility with associated parking and landscaping.

(1) The Area Planning Manager (East), Ms Burnett, introduced the application and presented plans and elevational drawings. She highlighted that the applicant had

suggested alternative wording for conditions 3 and 4 to remove the word “premises” and replace with “community use” for condition 3 and to add the word “community” to use, and replace the word “customers” with “users” for condition 4. These changes were felt to be acceptable. Further it was requested that the public art contribution be reduced to £25,000, but as there was no viability evidence for this, the recommendation in the report was considered appropriate. There had been two further letters of objection received.

Ms Burnett explained that the site was not considered within the curtilage of the nearby listed building, and the nursing home was now considered surplus to requirements. A previous application had been refused in 2009. The new application would provide 80% affordable housing with a mixture of tenure between social rented accommodation and shared ownership. The design and impact of the scheme was acceptable and did not harm neighbouring amenity, with the nearest window to window distances 17 metres away. There was no adverse overlooking, but six of the balconies proposed required privacy screening. There was an equipped area of play, plus a Section 106 contribution to adult sports facilities, with £26,000 on adult/youth outdoor play provision. The scheme would reach sustainable homes standard code four, and an “excellent” BREAM rating.

- (2) Mr Laker from South Downs NHS Trust spoke in objection to the scheme and stated that his organisation had a duty of care to the public and their patients. He did not believe the scheme would create a consistent and safe care setting for patients. Whilst he supported increased access to affordable housing he felt there were serious health and safety, security and parking implications associated with this application. The service road which had been outlined as a pedestrian and cycle route was not large enough for a paved walkway to be added, which created safety problems, and as use of the adjacent NHS site next door increased, this would create security issues. Mr Laker was also concerned that the new application would overlook the existing NHS site and compromise patient confidentiality. There were vulnerable patients using the NHS site and their privacy needed to be protected. Finally, Mr Laker believed that parking controls would need to be implemented, where currently there was none. These issues presented significant problems to the NHS Trust and Mr Laker asked the Committee to refuse the application.
- (3) Councillor Davey asked whether parking was currently managed at all on the NHS site and Mr Laker replied that it was not.
- (4) Councillor Fallon-Khan asked how patients would be affected by the new application and Mr Laker felt that as there were special services such as child protection and a rehabilitation centre on site, these patients would be particularly vulnerable. Councillor Fallon-Khan was unsure if it was accurate to say that these patients would be stigmatised by the new application.
- (5) Councillor Smart asked if members of the public currently used the access road as a right of way and Mr Laker replied that as far as he was aware they did not and the Trust tried to keep the area clear. There was no paved walk area and the road was busy and tight.

- (6) Councillor Steedman asked if the service road was outside of the application boundary and the Head of Development Control, Ms Walsh, stated that it was.
- (7) Councillor Alford asked why the Trust did not secure the access road to ensure there was no unauthorised usage and Mr Laker replied that there was a right of way along the road. The Principal Transport Officer stated that he was not aware of a right of way on this road, but believed there was likely to be right of access to the application site. Mr Laker stated that the previous right of access of the NHS Trust that had sold the land had carried over to the new owners.
- (8) Councillor Fallon-Khan asked why the NHS Trust was unhappy with the application when they had sold the land in the first place. Mr Laker replied that a separate NHS Trust had sold the land to raise capital.
- (9) Councillor Randall, Ward Councillor for Hanover & Elm Grove, spoke in favour of the application and stated that this was a significant improvement on the previously proposed application. The new road layout on site was much more acceptable and the proposed finishes of the buildings were of a much higher quality. The increase in parking provision was welcomed and the space allowed in the flats was very generous. Overall the application was of a good standard with high environmental credentials. Wheelchair accessibility was much better now, and as a controlled parking zone had recently been rejected for the area, there would be ample provision of space on street. Residents in the area were largely in favour of the application and the flats would provide the community with alternative accommodation for those in council accommodation who wished to downsize but remain in the area. He commended the application and asked the Committee to grant planning permission.
- (10) Councillor Davey asked if there were any suggestions from the community on the use of the community space and Councillor Randall replied that there was a community centre in the area, but this was very small. This new provision would hopefully be used for the whole community and he was aware that the Residents Association were already interested in using it.
- (11) Mr Hawkins and Ms Hills spoke on behalf of the applicants, Southern Housing, and Ms Hills stated that the service road was an important pedestrian access from Elm Grove and the road was already marked in yellow for pedestrian users. They had worked closely with officers to redesign the square and play areas, change materials to a more suitable palette, increase the parking and improve the layout of the site. There would be a mixed tenure on site, but the mix was uncertain given the current economic climate, however the sizes of all the units were at least 5 metres squared larger than the Council's recommended standards.

Mr Hawkins added that two Elm trees would be retained on site and all of the objectors to the scheme lived at least 30 metres away, which was well within the minimum acceptable distances. The applicants had taken care to ensure there was no overshadowing and high quality materials would be used on site to ensure durability. The NHS Trust had been fully aware of the proposals from the start of the process.

- (12) Councillor Kennedy asked if the applicants had incorporated the new recommendations from the guidance leaflet Secured By Design 2010, and Mr Hawkins replied that the scheme was fully designed in accordance with all currently planning requirements.
- (13) Councillor Carden was concerned that the affordable housing element would not reach 80% and Ms Hills replied that this was part of the Section 106 agreement and would be achieved on site.

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

- (14) Councillor Smart asked about the community facility and Ms Burnett replied that the size would not give rise to any adverse affect on residential amenity.
- (15) The Chairman and Councillor McCaffery asked questions on the detailing of the application.
- (16) Councillor Alford asked for the reasoning behind the mix of accommodation. The Housing Officer, Ms Potter, replied that the Council always sought a mix of beds on each application and targeted smaller properties for council accommodation to give options to those who wanted to downsize.
- (17) Councillor Smart asked if the two bed accommodation could be used for families of four and Ms Potter replied that the accommodation provided a mix of two bed units suitable for three people, and two bed units suitable for four people.
- (18) Councillor Cobb asked about the Section 106 contribution for adult/youth play and Ms Burnett replied that in respect of policy HO6, the first two elements of the provision were provided on site in the equipped play areas. The last element would require money of £26,000 for off-site provision. Councillor Cobb asked for information to be sent around as to where this money would be spent.
- (19) Councillor Mrs Theobald asked why the road was offered for adoption and Mr Tolson explained that this would mean that the roadway would be maintainable by Brighton & Hove City Council if adopted.

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

- (20) Councillor Steedman felt the application had come a very long way since being refused and there had been a massive improvement on site. He fully supported the current application.
- (21) Councillor Kennedy concurred and thanked the applicants, Southern Housing for the improvements offered in the scheme. She felt that 80% affordable housing provision was excellent and noted the ecological mitigation to enhance the biodiversity of the area. She was also supportive of the public art element of the scheme.
- (22) Councillor Mrs Theobald felt the site now had a very good layout and she welcomed the increase in parking. She felt the cycle space provision was excessive but was pleased the Tree Preservation Order trees were being retained, and was pleased with the community facility.

- (23) Councillor Fallon-Khan was very pleased with the affordable housing element and supported the extra parking provision. He felt that if the NHS Trust did not wish to see certain uses on the land it would have been appropriate to stipulate this before they sold it. He felt the scheme was fantastic.
- (24) Councillor Alford added his support and was very pleased with the high quality materials used and the durability of the cladding proposed.
- (25) A vote was taken and on a vote of 12 for, 0 against and 0 abstentions minded to grant planning permission was granted subject to a s106 Planning Agreement, the conditions and informatives in the report, and the amendments to conditions 3 and 4.

63.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of the report, and resolves it is Minded to Grant planning permission subject to the applicant entering into a s106 Planning Agreement and the conditions and informatives set out in the report, with the amendments to conditions 3 and 4.

**B. Application BH2009/03014, 331 Kingsway, Hove** - Mixed commercial and residential development comprising of a four storey plus basement block of 40 apartments (16 affordable) and 870 square metres comprising of a D1 medical centre on ground and first floors and B1 office on second floor with associated parking and amenity space.

- (1) The Planning Officer, Ms Simpson, introduced the application and presented plans and elevational drawings. She noted that there were additional representations included on the late list. The site was currently vacant and horded. There had been a previous refusal in 2008 on the grounds of design, scale, bulk, impact on amenity, lack of affordable housing and lack of recreation space. The new scheme would provide 40% affordable housing with a mix of commercial and office space on site. There was underground parking for the main building of 43 spaces, with 4 disabled spaces provided. There was no undue pressure on local roads and the area was not in a parking controlled area. The building was comparable to existing building lines on the road and had been reduced in height to reduce impact. The separation distances were around 10-12 metres and the scheme would reach sustainable homes level 4 and an "excellent" BREAM rating. The general design was acceptable, and whilst there were objections from neighbours and the scheme would impact them, the loss of light was acceptable. A s106 agreement would provide money for local bus stop improvements, and details of the external lightning were conditioned.
- (2) Councillor Kemble, Ward Councillor for Wish Ward, spoke in favour of the scheme and stated that the site had been empty for a number of years now. Consultation had been conducted on the application and had given rise to a vast improvement. Local residents supported the scheme and it was a good mix of use with valuable underground parking proposed. The commercial use could be used as a state of the art doctors surgery for the area, as the current Wish Road Surgery was in a building no longer fit for purpose. He believed the application was well thought out with consideration given to the needs of the area.

- (3) Councillor Davey asked if there was any parking available at the current Wish Road Surgery and Councillor Kemble stated there was not and it was in a controlled parking zone.

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

- (4) Councillor Kennedy asked questions on the design of the building and asked if the public art element was associated with the lighting. Ms Simpson replied that there was a suggestion that the s106 monies would be for the lighting, but this would be negotiated with the Art Officers.
- (5) Councillor Kennedy noted the lack of any biodiversity credentials currently on site and asked if a condition could be added to ensure planting on site would increase the biodiversity to the satisfaction of the Council's Ecological Officer. Ms Simpson stated that this was usually agreed with the Planning Officers in conjunction with the Arboricultural Team. Ms Walsh agreed that a standard ecological condition could be added.
- (6) Councillor Davey asked why the cycle parking space was so low and Mr Tolson replied that this was an error in the report and that the spaces could accommodate two bicycles, so the total number needed to be doubled.
- (7) Councillor Mrs Theobald asked what the staffing levels of the proposed medical centre would be. Mr Tolson replied there would be 6 consulting rooms, with 4 GPs and 6 employees.

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

- (8) Councillor Carden felt the style was very good and he liked the design. He felt the application sat well on the site and was appropriate.
- (9) The Chairman noted that the site had been derelict for several years and this scheme was a great improvement on previous applications. She felt that the parking provision was adequate and this would be a good site for a doctor's surgery.
- (10) Councillor Smart also supported the scheme and was pleased to note the flat roofs were for maintenance access only. He liked the 40% affordable housing provision and the car parking provision was also good.
- (11) Councillor Mrs Theobald also liked the design and the car parking provision.
- (12) A vote was taken and on a vote of 12 for, 0 against and 0 abstentions, the committee resolved to grant minded to grant planning permission subject to no new representations, the entering into of a S106 Agreement and the conditions and informatives in the report, with the additional condition regarding ecology.
- 63.4 **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 no new additional representations from members of the public, and to the applicant entering into a section 106 Planning

Agreement and to the conditions and informatives listed in the report and as amended in the Late List, with the following additional condition:

Prior to the commencement of development a scheme for the provision of ecological mitigation and enhancement of the site, together with a Maintenance Plan shall be submitted to and approved in writing by the Local Planning Authority.

Reason: The scheme shall be implemented in accordance with policies QD15 and QD17, of the Brighton and Hove Local Plan 2005.

- C. Application BH2010/01132, 41 Ladies Mile Road, Brighton** - Change of use from betting shop (A2) to hot food take-away (A5) with the erection of a rear extension, new shop front and extract duct.
- (1) The Senior Solicitor, Ms Woodward, addressed the Committee and stated that this application had been discussed at the last Committee meeting where it had been the subject of a refusal. The Ward Councillor, Councillor Pidgeon, had spoken against the application and presented a petition to the Chairman, which the applicant did not have a chance to see and respond to. Members were being asked to reconsider the application in light of this additional information. She asked if Members would like another presentation of the application from Officers.
  - (2) The Committee declined a further presentation on this application, and Councillors Carden and Fallon-Khan, who were not present at the last meeting, asserted that they were familiar with the particulars of this application.
  - (3) Mr Unwin, Agent to the applicant, spoke in reference to the petition and stated that he disputed the claims that there would be a potential for increased traffic. A very detailed highways report had been conducted to show this would take the pressure off the St Georges Road site and the Police were very happy with the application. There would be no increase of anti-social behaviour and the company had a clean track record in terms of this. The premises would be closed by 23:00 hours and would not attract people when leaving the pub. A noise assessment of the application showed no issues arising from this. There were no sustainable grounds for refusal given in the petition. As far as healthy eating concerns were raised, the product the applicant sold contained no saturated fats or added salt and no colourings. He urged the Committee to follow the advice of Officers and grant the application.
  - (4) Councillor Mrs Theobald asked about the traffic problems at St Georges Road and Mr Unwin stated that there were concerns about the number of cars parking at this site and it was desirable for the company to not concentrate cars in one area. In consultation with the Police the company looked for sites outside of the city centre and this was the most appropriate site. It was sustainable in terms of transport and would create local jobs.
  - (5) Councillor Fallon-Khan asked about the healthy eating credentials of the product and Mr Unwin replied that the product was dry baked and all of the ingredients were made from fresh supplies. There were very little preservatives used and no frozen produce.

**Debate and Decision Making Process**

- (6) Councillor Mrs Theobald felt that it was unfair that Councillor Pidgeon was not able to be present today to give his view on the application. She did not believe that this additional information had changed her original opinion however and would not be supporting the application.
- (7) Councillor McCaffery believed there was no reason why the application could not be granted and would be supporting the application.
- (8) Councillor Hamilton believed that the three previous reasons for refusal were inadequate and that most areas had takeaway stores near them. He felt the arguments against the application were unconvincing and would be supporting the application.
- (9) Councillor Davey felt the premises in the city centre was unsuitable for the demand and this application would ease that situation. He also felt the application would assist with sustainable transport around the city and would be supporting the application.
- (10) A vote was taken and on a vote of 4 for, 5 against and 3 abstentions full planning permission was refused.
- (11) Councillor Mrs Theobald proposed an alternative recommendation for refusal on the three previous reasons given and Councillor Alford seconded the recommendation.
- (12) A second recorded vote was taken and on a vote of 5 for, 4 against and 3 abstentions, planning permission was refused for the reasons given.

63.5 **RESOLVED** - That the Committee has taken into consideration and does not agree with the reasons for the recommendation 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, Steedman and Mrs Theobald voted to refuse planning permission. Councillors Carden, Davey, Hamilton and McCaffery voted against refusing planning permission. Councillors Kennedy, Fallon-Khan and Smart abstained from voting.



**D. Application BH2010/00813, 53A New Church Road, Hove - Demolition of existing bungalow and erection of a new two storey dwelling house.**

- (1) The Area Planning Manager (West), Ms Hurley introduced the application and presented plans and elevational drawings. There had been two previous refusals on the site and a rejected appeal on the grounds of impact on residents and conflict between pedestrians and vehicle users. The new scheme proposed a like for like replacement of the current dwelling and therefore there was no objection in principle to the application. There was no detrimental impact to neighbouring properties and the design was acceptable. Parking was provided to the side of the scheme and as this was a like for like replacement there would be no additional impact on the driveway space.
- (2) Mr Hagard, on behalf of a local resident, spoke against the scheme on highway and pedestrian safety grounds. He stated that the driveway was currently used by only three dwellings as so any additional residents would impact on the driveway usage. The proposed new dwelling would increase the number of people living on the road and car usage could not be controlled by limiting the number of parking spaces available. The driveway would be used as overspill parking and there was no path for pedestrian access making it highly unsafe, especially at night. Manoeuvring cars on the driveway was difficult and there was already constant blocking of other vehicles occurring.
- (3) Councillor Steedman asked why Mr Hagard felt there would be more traffic created by a like for like replacement dwelling. Mr Hagard replied that the building would be significantly larger once built with more accommodation. There would also be access problems whilst the new dwelling was being built.
- (4) Mr Lewis, Agent for the applicant, spoke in favour of the application and stated that this would be a replacement of the existing dwelling with a contemporary design. There would be significant sustainability credentials with a green roof and solar panels included. There would be no impact on residential amenity and the traffic generation would be the same as this was a like for like replacement of the existing dwelling. There were no identified highway safety problems and the scheme would add to the architectural mix of the area.
- (5) Councillor Mrs Theobald asked if a recently constructed overhang on one of the buildings would impede construction and Mr Lewis stated that the applicant would only use the appropriate sized vehicles to access the site.
- (6) Councillor Smart asked if there were any restrictions on access of the site and Mr Lewis replied that the access was in the ownership of the application. All other dwellings on the site had rights of access.
- (7) Councillor Mrs Theobald asked if the applicant would agree to increase the boundary treatments on the north and west sides of the site and Mr Lewis confirmed he was happy with this condition.

### Questions/Matters on Which Clarification was Sought

- (8) Councillor Mrs Theobald asked if it was possible to include a condition to protect and enhance the trees and greenery on the north and west boundaries and this was agreed.
- (9) Councillor Smart asked if there would be any future sub-division of the dwelling and Ms Hurley stated that permitted development rights were removed and any sub-division would need to come back to committee in a further application.

### Debate and Decision Making Process

- (10) Councillor Kennedy stated that she was concerned around the hours of construction on site and residential amenity during this time. Ms Walsh replied that conditions were not usually attached to applications to regulate this as other statutory regulations were in place, such as Environmental Health laws. She also added that this was the construction of only one dwelling.
- (11) A vote was taken and on a vote of 12 for, 0 against and 0 abstentions full planning permission was granted subject to the conditions and informatives listed in the report.

63.6 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation as set out in paragraph 8 of the report, and resolves to grant planning permission subject to the conditions and informatives in the report and a further condition as follows:

- 1) The existing vegetation shown on the approved plans shall be retained at all times along the north and west boundaries.

Reason: To ensure that an adequate screen is provided between the application site and neighbouring properties to protect neighbouring amenity and to comply with policies QD1, QD2 and QD27 of the Brighton and Hove Local Plan

**Note:** Councillor Fallon-Khan gave his apologies and left after this application.

**E. Application BH2010/00736, 8 Cliff Approach & 1 Cliff Road, Brighton** - Erection of 6no 3 storey 4 bed dwelling houses with associated parking areas.

- (1) Ms Burnett introduced the application and presented plans and elevations drawings. There had been 17 letters of objection to the scheme. The proposed terrace of houses was two storeys in height and a broadly traditional design. Parking spaces were provided and the site was currently vacant with existing planning permission granted in 2008 for 9 flats. The proposals did not affect the amenity of neighbours and would improve the light and outlook for number 3. The application was conditioned to reach sustainable homes code level 3.

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

- (2) The Chairman asked which parts of the roof would be standing seem and Ms Burnett replied that the whole of the roof to the rear would be zinc and would be tiled at the front.
- (3) Councillor Alford was concerned about parking provision and asked where the nearest on street provision would be. Mr Tolson replied that there was space in the nearby locality for a small amount of displaced parking and the roads surrounding the site could accommodate this. As such it was not considered a sustainable reason for refusal.
- (4) Councillor McCaffery felt that it would be useful to see the site in relation to other properties and Councillors Cobb and Carden agreed.
- (5) A site visit was proposed and the Committee voted on and agreed to perform a site visit before deciding on the application. Therefore this application was deferred to the next meeting.

**F. Application BH2010/01268, 27 York Avenue, Hove** - Demolition of existing garage and erection of two storey side extension at lower ground and ground floor levels. Two storey rear extension. Alterations to roof including rear dormer and associated works and alterations.

- (1) There was no presentation given by Officers on this application.
- (2) A vote was taken and on a vote of 11 for, 0 against and 0 abstentions, full planning permission was granted subject to the conditions and informatives listed in the report.

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

**Note:** Councillor Fallon-Khan was not present during the discussion and voting on this application.

**G. Application BH2010/01182, Land to the rear of 43-45 Norway Street, Portslade** - Construction of 2 no two bedroom semi detached houses.

- (1) The Area Planning Manager (West), Ms Hurley, introduced the application and presented plans and elevational drawings. She stated that the area was residential in character with commercial properties to the west. There had been an approval in 2007 for conversion of the front two properties into residential properties with an office block, and a refusal in 2010 for four flats. Neighbouring residents and the local Ward Councillor objected to the scheme on the grounds of overdevelopment, loss of privacy, loss of light and overshadowing and loss of amenity. The new scheme proposals were lower than the refused scheme and this improvement was considered acceptable. There was obscured glazing to the first floors with roof lights for the bathrooms. The levels of sustainability on site were acceptable and the site was classed as "brownfield" and therefore the principle of development was acceptable.

- (2) Mr Bartha, a local resident, spoke against the application and stated that the application represented an overdevelopment of the site, loss of privacy, an increase in scale, height and proximity when compared with the original structure and a loss of light for residents. The site was previously a modest Victorian garden, and now the proposals for 2 houses on site was overdevelopment. There would be light pollution from the building and no parking was provided. Recent planning guidance protected local gardens and Mr Bartha urged the Committee to use their powers to protect this area. The application offered little for Portslade and was detrimental to existing residents.
- (3) Councillor Hamilton noted that offices were already approved on this site and asked Mr Bartha if the residents had any preferences. Mr Bartha felt that both applications were inadequate for the site although this was better than a block of offices.
- (4) Mr Theobald, Agent to the applicant, spoke in favour of the application and stated that following the previous refusal he had spoken to local residents and the Ward Councillor to address their key concerns. The Ward Councillor had indicated that these proposals were a significant improvement on the previous scheme, reflected in the significant reduction in depth, width and height of the application. There was also a improvement over the impact of the previous warehouse that had been on site. There was obscured glazing to all areas where overlooking could occur or could be perceived to occur and the scheme would reach lifetime homes standards and sustainable homes level 3. All existing residential amenity would be protected and the application would create a positive improvement to the existing street scene.

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

- (5) Councillor Kennedy asked why the letter from the Ward Councillor was no included in the papers and Ms Walsh replied that this was because the letter had been received on the morning of the Committee. Whilst late representations were added normally to the Late List, this representation had come in too late to be included.

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

- (6) Councillor Hamilton noted that all of the houses in the area followed a similar pattern, but properties of nos. 43 to 45 had much shorter gardens. This application was comparable to a recent refusal on the other side of the road and should also be refused. He added that the site had originally been for employment use, but the offices had not been built and so it was being released for residential use which was not affordable housing. He was unhappy overall with this application.
  - (7) A vote was taken and on a vote of 4 for, 2 against and 5 abstentions full planning permission was granted subject to the conditions and informatives listed in the report.
- 63.7 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives listed in the report.

**H. Application BH2010/00814, 63 Holland Road, Hove** - Erection of 1no 5 storey building incorporating retail/office and restaurant facilities at ground floor and basement levels and 7no self contained flats above.

- (1) Ms Hurley introduced the application and presented plans and elevational drawings. The site was in the Brunswick Town Conservation Area and had been the subject of a number of different schemes. A recent approval had been granted in 2009 and this application was for a revised scheme of fairly minor changes, but significant enough to form the subject of another planning application. There had been 13 letters of objection submitted. The development was in scale and in keeping with other properties in the conservation area and there was no demonstrable impact on the building or the area. There were no changes to the sustainability or energy elements of the scheme, and this was a car free scheme.
- (2) Mrs Shields, a local resident, spoke in objection to the scheme and stated the building would reduce her light, views and quality of life. There was already illegal parking in the area, and this application would exacerbate the situation. She felt the application would increase overlooking and decrease privacy for current residents and she was concerned about security issues at the back of the building. She asked if smokers from the proposed restaurant would use the rear of the building and asked for obscured glazing on all the rear elevations to prevent overlooking, and for extractors to be angled away from residential properties. There would be an increase in noise and pollution created by the application, and the new application would increase dampness suffered by existing properties. She asked for a site visit to be conducted to assess the impact on amenity for current residents.
- (3) Councillor Mrs Theobald asked for a site visit to be conducted but the Committee Members voted to decline this request.
- (4) Councillor Alford asked about issues of dampness and Mrs Shields stated that the properties were old and near the sea and as the new application would decrease the light available to these properties this may increase dampness issues.
- (5) Mr Fox, Agent to the applicant, spoke in favour of the application and stated that the majority of the scheme was already approved and these were minor changes to address three problems on the site. There was major floor risk and no disabled access associated with the current position of the front door to the restaurant on the plans, the passenger lift run needed to be extended on the roof to allow it to reach the top floor and the proposed passageway along the side of the building needed to be removed as there was no access granted by the rightful owner. Mr Fox stated that the views from Lansdowne Street would not be affected and two of the proposed changes would ensure the approved scheme complied with lifetime homes standards. These were minimal changes and there was no significant impact caused by the scheme.
- (6) Councillor Smart asked how the doorway could present a flood risk and Mr Fox replied that because it was on a sloping road and set below ground level, run off from heavy rain could flood the building.

- (7) Councillor Cobb asked if there was any access between the two buildings for residents and Mr Fox stated that the passageway was closed and not in the possession of the applicant. The driveway was open access for all residents.
- (8) Councillor Mrs Theobald asked how refuse deliveries would be organised and Mr Fox replied that deliveries would be via private contractors and residential refuse would be in communal bins to the front of the building.

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

- (9) The Chairman of the Conservation Advisory Group raised concerns over inaccuracies on the plans and elevational drawings that indicated window recesses on the elevations, which were in fact represented as sectional panels on the plans. This had been raised previously with the Planning Department and he asked which was correct. Ms Walsh stated that the issue had been addressed by the case officer and they were satisfied that the plans and elevational drawings were correct. She suggested that Mr Andrews raise this point again with the case officer after the meeting.
- (10) The Chairman asked if smokers would be allowed to the rear of the premises to smoke and Ms Hurley replied that they would not.
- (11) There being no debate on this application, a vote was taken and on a vote of 8 for, 0 against and 3 abstentions planning permission was granted subject to the conditions and informatives in the report.

63.8 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the applicant amending an existing Section 106 Obligation attached to application BH2009/01856 and the conditions and informatives listed in the report.

**I. Application BH2010/01342, 119 Church Road, Hove** - Replacement basement window, railings and wall to external basement stairs, and internal alterations to facilitate new seating areas and TV brackets (part retrospective).

- (1) Ms Hurley introduced the application and stated that this presentation would be combined with application BH2010/01343, 119 Church Road, Hove, Listed Building Consent. She presented plans and elevational drawings and stated that this was a grade II listed building currently with A3 restaurant use. The application was part retrospective and included internal alterations and alterations to the covered outside seating area. The principle of development was acceptable and the application would correct some previous work that did not have planning permission. Objections letters had been received and the Environmental Health Team recommended opening hours of 10:00 to 02:00 Monday - Saturday, and 10:00 to 01:00 on Sundays and Bank Holidays. This would coincident with the hours on the granted premises licence. The outside space could be controlled by condition and the changes did not harm the building.
- (2) Councillor Older, the local Ward Councillor, spoke against the scheme and stated that in 2001 the building had been turned into a restaurant. The alterations had been acceptable at the time, but the new application would turn this site into a vertical drinking

establishment. The garden to the rear caused the most significant concern and the covered structure was unable to deal with any noise pollution created by users. The proposed conditions did not address the issues and the new application would allow drinkers to be standing 3 metres away from a residential garden. There was no limit to the usage of the garden and it was in a completely unsuitable area. The application was contrary to policies SU9, SU10 and QD27 and she asked the Committee to refuse the application.

- (3) Councillor Davey asked if any complaints had been made about the new premises and Councillor Older stated that she had advised local residents to make formal complaints to the Environmental Health Team should the situation continue.
- (4) Mr Zahedian, the applicant, spoke in favour of the application and stated that the premises had been open for two months. There was a food menu available and the garden gate remained locked at all times. There were CCTV cameras installed to monitor the garden area at it was shut after 22:00 hours. The premises licence was from 10:00 hours to 02:00 hours and he was working in conjunction with the Police to ensure the premises remained crime free.
- (5) Councillor Smart asked if there was any intention of opening later hours and Mr Zahedian stated there was not.

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

- (6) Councillor Smart asked about the access and egress from the garden and Ms Hurley replied that this was an emergency fire exit only and condition 3 ensured that it would remain closed.
- (7) Councillor Smart asked if the roof structure was temporary and Ms Hurley replied that because its appearance was temporary it could be considered so, and therefore no harmful to the appearance of the building.
- (8) Councillor Steedman asked if there had been any complaints made about the new establishment and Ms Hurley replied that she was unsure if any complaints had been made, or how long the new venture had been running.

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

- (9) Councillor Mrs Theobald felt that it was inappropriate to create a pub garden in the outside area and felt that this was being created retrospectively because the works had already been done.
- (10) Councillor Smart felt he would be appalled if this application was at the end of his garden and he could not support the application.
- (11) Councillor Cobb referred to the conditions in the planning application which would limit opening hours to 23:30 Monday to Saturday and 23:00 hours on Sundays and asked if the applicant was aware of this restriction, as he was currently opening much later. Ms Walsh confirmed that it was in the powers of the Committee to consider any amenity issues for neighbours and amend opening hours as they saw fit.

(12) A vote was taken and on a vote of 5 for, 2 against and 3 abstentions, full planning permission was granted subject to the conditions and informatives in the report.

63.9 **RESOLVED** - That the Committee had taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report, and resolves to grant planning permission subject to the conditions and informatives listed in the report and the amended condition in the late list.

**J. Application BH2010/01343, 119 Church Road, Hove** - Replacement basement window, railings and wall to external basement stairs, and internal alterations to facilitate new seating areas and TV brackets (part retrospective).

(1) A vote was taken and on a vote of 11 for and 0 against listed building consent was granted subject to the conditions and informatives listed in the report.

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

**64. 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**

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

<b>Application:</b>	<b>Site visit requested by:</b>
Varley Halls, University of Brighton	Head of Development Control
BH2010/00736, 8 Cliff Approach & 1 Cliff Road, Brighton	Committee Decision

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

64.1 **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 6.30pm

Signed

Chair

Dated this

day of



### APPEAL DECISIONS

	<b>Page</b>
<b>A. ROTTINGDEAN COASTAL</b>	<b>23</b>
<p>Application BH2007/03454, Land at Brighton Marina, Brighton. Appeal against refusal to grant planning permission for redevelopment of land at Brighton Marina. <b>APPEAL DISMISSED (Committee).</b></p>	
<b>B. ST PETERS AND NORTH LAINE</b>	<b>35</b>
<p>Application BH2009/01951, 2-3 Camden Terrace, Brighton. Appeal against refusal to grant planning permission for removal of uPVC and timber boarding and replacement of render. <b>APPEAL DISMISSED (Delegated).</b></p>	
<b>C. HOVE PARK WARD</b>	<b>37</b>
<p>Application BH2009/02375, 44 Tongdean Avenue, Hove. Appeal against refusal to grant planning permission for extension and alteration to detached dwelling house. <b>APPEAL ALLOWED (Delegated).</b></p>	
<b>D. ST PETERS AND NORTH LAINE</b>	<b>41</b>
<p>Application BH2009/01600, 169 North Street, Brighton. Appeal against refusal to grant planning permission for change of use from A1 to A3. <b>APPEAL DISMISSED (Delegated).</b></p>	



David Gavin  
Nathaniel Lichfield and Partners  
14 Regents Wharf  
All Saints Street  
LONDON  
N1 9RL

Our Ref: APP/Q1445/A/09/2102048

13 July 2010

Dear Mr Gavin,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY EXPLORE LIVING (NO 1) LTD, X-LEISURE (BRIGHTON 1) AND X-  
LEISURE (BRIGHTON II) LTD  
APPLICATION REF: BH2007/03454  
LAND AT BRIGHTON MARINA, BRIGHTON, EAST SUSSEX, BN2 5UT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Martin Pike BA MA MRTPI, who held a public local inquiry on dates between 3 November and 16 December 2009 (and which was closed in writing on 1 March 2010), into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Brighton & Hove City Council to refuse planning permission for:-

- i) Demolition of the existing Asda retail store and redevelopment to create an enlarged retail store (Class A1) of 11,412 sq m along with 2,056.5 sq m of other retail uses in Class A1-A5 and 395 sq m of office accommodation (Class B1), a 342 sq m community hall (Class D1), with associated plant, refuse and parking facilities. This part of the redevelopment to also include 779 residential units with associated parking, public/private amenity space and a new bridge link for pedestrians/cyclists;
- ii) Demolition of part of the eastern end of the existing multi-storey car park to create a replacement Asda petrol filling station and pedestrian footbridge;
- iii) Demolition of the existing estates management office to create a 3 – 4 storey building comprising 35 residential units with associated private amenity space;
- iv) Demolition of the western end of the existing multi-storey car park to create a 6 – 11 storey building (Sea Wall) comprising 117 residential units with associated parking, private amenity space and seasonal kiosk 72.5 sq m;
- v) Demolition of the existing petrol filling station to create a 28 storey building comprising 148 residential units and 182.5 sq m of Class A1-A5 retail space with associated plant, refuse and parking facilities and a 26 sq m office unit (Class B1);
- vi) Demolition of the existing McDonald's and redevelopment to create a new 5 –16 storey development including a Drive-Thru restaurant facility (Class A3) comprising 555 sq m. This development also includes 131 sq m of other Class A1

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- A5 retail space and 222 residential units with associated parking and public/private amenity space
- vii) Change of use of two existing retail units (Class A1) within the Octagon development to create a Healthy Living Centre (Class D1) comprising 516 sq m;
- viii) Construction of a Combined Heat and Power unit;
- ix) Alterations to existing vehicular circulation, pedestrian and cycle access arrangements, areas for cycle parking and the creation of new and enhanced routes for access and servicing;
- x) A new bridge link for pedestrians and cyclists between the upper cliff and the north-western part of the Cliff Site (Asda site), along with associated engineering works;
- xi) New areas of hard and soft landscape, green roofs and formal and informal areas of amenity space including youth facilities.

on land at Brighton Marina, Brighton, East Sussex, BN2 5UT in accordance with planning application Ref: BH2007/03454, dated 14 September 2007

2. On 18 June 2009 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

### **Inspector's recommendation and summary of the decision**

3. The Inspector, whose report is enclosed with this letter, recommended that as submitted, the proposal is unacceptable and that the appeal be dismissed; but, if flaws in the s106 obligation could be resolved, then the appeal be allowed and planning permission granted subject to the conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation to dismiss the appeal. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR).

### **Procedural matters**

4. The Secretary of State notes that the description of the development has been subject to minor changes and amendments since it was submitted (IR1.1-1.3). Like the Inspector (IR1.3), the Secretary of State has determined the application on this basis and does not consider that any prejudice has been caused to any party in doing so.

5. In reaching his decision the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. He has also had regard to those matters addressed by the Inspector relating to the adequacy of the ES as set out in IR1.11-1.22. Like the Inspector, he is satisfied that the ES meets the requirements of the 1999 Regulations, and that sufficient information has been provided for him to assess the environmental impact of the appeal.

## Representations received after the close of the Inquiry

6. Following the close of the Inquiry, the Secretary of State received the written representations listed at Annex A of this letter. He has taken account of these representations in his determination of this appeal but, as they did not raise any new matters not considered at the Inquiry, he has not considered it necessary to circulate them to all parties. Copies of representations can be made available upon written request to the address at the foot of the first page of this letter.

## Policy Considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. On 6 July 2010 the Secretary of State revoked all Regional Strategies including the South East Plan and it is therefore no longer part of the development plan. In determining this appeal the Secretary of State has taken this into account but he does not consider it necessary to refer back to parties on the implications of this change before reaching his decision. This is because he has decided to refuse planning permission for this proposal for reasons unrelated to this matter and which are set out later in this letter.

8. In this case, the development plan comprises the saved policies of the Brighton & Hove Local Plan 2005 (BHLP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR4.6-4.9.

9. Other material considerations include those national planning policy documents listed at IR4.16, PPS5: *Planning for the Historic Environment*, and the Supplementary Planning Guidance mentioned at IR4.13-4.15. The Secretary of State agrees with the Inspector's assessment of the weight to be afforded to the latter. Circular 11/95: *Use of Conditions in Planning Permission*, Circular 05/05: *Planning Obligations* and the *Community Infrastructure Levy (CIL) Regulations*, which came into force on 6 April 2010, are also material considerations. The emerging Core Strategy is also a material consideration (IR4.10-4.12), but given that this is some way from adoption, the Secretary of State affords it limited weight.

10. The Secretary of State has had special regard to the desirability of preserving the nearby listed buildings and their settings, or any features of special architectural or historic interest which they possesses, as required by sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In view of the possible impact of the proposal on the Kemp Town Conservation Area, the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of this area, as required by section 72 of the same Act.

11. Since the inquiry closed, the Government has published PPS4: *Planning for Sustainable Economic Growth*. The Secretary of State agrees with the Inspector's assessment of the implications of this fact as set out in IR16.125. He does not therefore consider that there has been any material change in those policies to the extent that it would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.

### New national policy and other changes since the close of the inquiry

12. Since the inquiry closed a number of relevant changes have taken place, details of which are set out by the Inspector at IR1.23-1.28 and in Annex B of the Inspector's report. The Secretary of State's consideration of each of these is set out below.

#### *South Downs National Park and English National Parks and the Broads*

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on the designation of the South Downs National Park, and the publication of "English National Parks and Broads: UK Government Vision and Circular 2010", as set out in IR1.23-1.24 and paragraphs 1-2 of Annex B.

#### *Planning Policy Statement 25 (Revision) and Coastal Change Supplement*

14. The Secretary of State has considered the Inspector's assessment of the relevance of the PPS 25 (Revision) and Coastal Change Supplement as set out in IR1.26 and paragraphs 3-10 of Annex B. He agrees that the revision of PPS25 has no material effect on the consideration of this appeal (Annex B, paragraph 4). With regard to the implications of the Coastal Change Supplement, the Secretary of State understands that the shoreline management plan for this area identifies this section of coastline as subject to "hold the line". CCMA policies, including DCC5.1, do not, therefore, apply.

#### *Planning Policy Statement 5: Planning for the Historic Environment (PPS5)*

15. The Secretary of State has considered the Inspector's assessment of the relevance of PPS5 as set out in IR1.27 and Annex B, paragraphs 11-16. He agrees that the policy changes brought about by PPS5 are material to the consideration of this case. However, he is satisfied that the Inspector's assessment of the impact on the setting of Kemp Town has been thorough, and based on a detailed evidence base. He therefore does not consider that there have been any material changes in policy to the extent that they affect his decision or require him to refer back to parties for further representation prior to reaching a decision.

#### *Community Infrastructure Levy Regulation 2010*

16. As the Inspector notes at IR1.28 the Community Infrastructure Levy Regulations 2010 (CIL Regulations) came into force after the inquiry concluded and so they were not addressed by the parties and the Inspector has not taken them into account. However, the Inspector helpfully sets out his views on the extent to which he considers they are material to this decision in Annex B, paragraphs 17-23. The Secretary of State agrees with the Inspector that the CIL Regulations are material to the consideration of this appeal (Annex B paragraph 19). He also agrees that there is no material difference, in this application, of the three tests compared with the five tests in Circular 05/05 (Annex B, paragraph 20). The Secretary of State further agrees with the Inspector's reasoning and conclusions that certain elements of the off-site recreation elements set out in Annex B paragraph 21 do not meet either the tests of Circular 05/05 or those set out in the CIL Regulations. He agrees that no weight should be given to these matters in reaching his conclusion on whether or



not the s106 obligation is satisfactory. The Secretary of State is satisfied that the remaining provisions of the deed are relevant and necessary to the proposed development and do comply with the tests in both the Circular and the Regulations. However, he has other concerns about the deed which he addresses in paragraphs 30-33 of this letter.

#### Matters agreed between the appellants and the Council

17. The Secretary of State has noted those matters agreed between the appellants and the Council as set out in IR5.1-5.5. On the matter of retail impact, he is satisfied that the findings of the Retail Impact Statement indicate that there is capacity to support the amount of additional floorspace proposed, and that the proposal would not have any significant effect on the vitality and viability of any other shopping centre in the locality (IR5.2).

18. As for flood risk issues addressed at IR5.3-5.5, the Secretary of State, like the Inspector, is satisfied that the Flood Risk Assessment demonstrates that all of the tests set out in PPS25 are met (IR5.5).

#### Main Issues

19. The Secretary of State agrees with the Inspector that the main issues in this appeal are those set out in IR16.1.

#### Appearance/Visual Impact

20. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR16.2 – 16.59, on appearance and visual impact issues, including the design, height, siting and layout of the development, the effect on the rest of the Marina, and the effect on the surrounding area, including the Kemp Town Conservation Area and the South Downs National Park. He agrees with the Inspector that there is no credible challenge to the Council's analyses in the Marina masterplans that a substantial investment is needed to transform both the environment and the economy of the Marina, and that such a transformation would best be achieved by high density mixed use development that includes a large amount of housing (IR16.7). Like the Inspector, he considers that the proposed development represents a high quality design which would bring about a major beneficial change to the poor urban structure and physical environment of the western end of Brighton Marina (IR16.55).

21. The Secretary of State agrees with the Inspector that the scheme is not without some shortcomings, including constraints deriving from the retention of the access ramps, concerns about the success of Harbour Square, the loss of strategic cliff and sea views from parts of the western approach to the site, and the interaction between the taller buildings and listed Regency terraces in certain views from Kemp Town (IR16.55). He agrees with the Inspector's finding that the architectural merits of the development in views from certain locations west of the Marina would not be sufficient to outweigh the loss of an iconic link with the coastline and Downs, meaning that the proposal conflicts with BHP policy QD4 (IR16.57). He considers that there would not be any significant conflict with BHP policies HE3, HE6 and HE11, which aim to prevent development that would adversely affect the setting of

listed buildings, conservation areas and registered historic parks and gardens (IR16.58). The Secretary of State considers that, by conserving the setting of these designated heritage assets, the proposal also complies with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and with national policy in PPS5 (IR16.58). He agrees with the Inspector that whilst there is broad compliance with the development plan, the loss of certain strategic views means that the proposal does not fully comply (IR16.59).

### Residential Amenity

22. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR16.60 – 16.73, in respect of the impact of the proposal on residential amenity. He agrees with the Inspector that, whilst a sizeable proportion of the proposed flats would undoubtedly be small, the minimum unit size would nevertheless be acceptable (IR16.60) and that, overall, the residential component of the development would be provided with adequate levels of daylight and sunlight (IR16.62). He has had regard to the fact that the Council provided no evidence to suggest that unacceptable noise conditions for nearby residents would arise from the proposed LEAP and NEAP in Cliff Park but accepts that the potential for some disturbance to nearby residents would exist (IR16.66). The Secretary of State is satisfied that the conditions experienced in the least agreeable flats would not be below the standards that residents should reasonably expect of 21<sup>st</sup> century housing and agrees with the Inspector's conclusion that the proposal complies with BHLF policies QD27 and HO4 (IR16.68).

23. The Secretary of State has had regard to the representations made by BMRA, MGAG and some local residents with respect to the loss of light for existing residents living close to the proposed buildings (IR16.69). He agrees with the Inspector's conclusion that whilst the development would result in some loss of light to a relatively small number of residents living at the Marina, that loss would be within commonly accepted guidelines and would not cause a material nuisance to those occupiers and that the proposal thereby accords with BHLF policy QD27 (IR16.71).

### Housing

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on housing issues, as set out at IR16.74 – 16.83. Like the Inspector, he considers that the proposal would deliver a major boost to meeting the city's overall housing need (IR16.74). Given the substantial and continuing need for one and two bed properties to meet the demand from an ever-growing number of small households, he agrees with the Inspector that there is no basis for rejecting the proposals on the ground of inappropriate dwelling sizes (IR16.77). He further agrees that there is an adequate range of dwelling sizes to ensure a reasonably mixed and sustainable community (IR16.77).

25. The Secretary of State agrees with the Inspector that the supply of 40% of the dwellings as affordable homes would comply with the development plan and would go some considerable way towards making the Marina a more mixed and inclusive community (IR16.81). He shares the Inspector's view that the objective of creating a mixed and inclusive community would be better served had the affordable housing

been distributed through all the main residential blocks (IR16.83). However, having had regard to the fact that one third of the Cliff Site building would comprise private flats, all three tenures would be distributed across the building and individual units would be 'tenure blind' in terms of their appearance, he agrees with the Inspector that the distribution of affordable housing is acceptable (IR16.83).

### Infrastructure Provision

26. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR16.84 – 16.106, with respect to provision of infrastructure, including whether the demands that occupiers of the development would make on existing infrastructure are to be adequately mitigated, with particular regard to education and outdoor amenity space. Like the Inspector, the Secretary of State does not accept that the two contributions offered in the s106 undertaking, totalling £120,000, to provide enhancements for the terraced gardens at Rottingdean and enable the creation of an informal sports area at Rottingdean Beach, are necessary to enable the development to proceed, or that they are directly related to the proposal (IR16.96). He is also not satisfied that the unspecified contribution of £200,000 to '*such other facilities as the Council shall notify...*' is necessary or directly related to the proposal (IR16.97). He considers that these contributions do not meet the tests of Circular 05/05 (and hence the CIL Regulations) and he has given no weight to these provisions in determining this appeal (Annex B, paragraph 21).

27. The Secretary of State considers that, overall, the provision of on-site outdoor recreation and amenity space in accordance with the 2.4ha standard of BHL P policy HO6 would not be achieved, but that there is no conflict with the policy because it allows for contributions to be made for alternative sites, which, like the Inspector, he has found to be acceptable (IR16.100). He agrees with the Inspector that the design of the open space provision is satisfactory and that there is no conflict with BHL P policies QD1, QD2, QD3 and HO4 (IR16.100). He further agrees that the appellant's contribution of £594,000 is reasonably related in scale and kind to the education needs of the proposed development and therefore that it meets this test of the Circular and, as a result, there is no conflict with BHL P policy HO21 (IR16.106).

### Other matters

28. The Secretary of State agrees with the Inspector's reasoning and conclusions on transport and viability matters, as set out at IR16.107 – 16.114. He agrees with the Inspector that, coupled with a substantial package of improvements to public transport and the pedestrian and cycle network, and various traffic management measures and parking controls, the evidence suggests that the development would bring about an integrated and highly sustainable transport system at the Marina (IR16.109). He has had regard to the District Valuer's (DV) appraisal, which was commissioned jointly by the appellants and the Council, and shares the Inspector's view that nothing has arisen since, including the Council's point about a fixed land price negotiated at the bottom of the market, that causes him to depart materially from the DV's analysis and conclusions (IR16.114).

29. Like the Inspector, the Secretary of State has taken into account the huge number of representations which oppose the development and the wide ranging

matters that they raise (IR16.124). He agrees with the Inspector's assessment of concerns raised over flooding, crime, public disorder and emergency access, as set out at IR16.124.

#### Section 106 unilateral obligation

30. The Secretary of State has considered the provisions of the completed s106 obligation, alongside the Inspector's comments on this at IR15.2 – 15.9 and IR16.115 – 16.123. As stated in paragraph 16 of this letter he has given no weight to the provisions which he has concluded do not comply with either the policy tests in Circular 05/2005 or with those prescribed in the CIL Regulations. With regard to the deed as a whole, he agrees with the Inspector's reasoning and conclusions with respect to the shortcomings of the s106 obligation, as set out at IR16.115 – 16.123. He notes the absence of Asda and McDonalds as parties to the s106 obligation (IR16.115) and, like the Inspector, he has had regard to Circular 05/2005 which advises that all who have a legal interest in the land, including the freeholder and any lessees, should be bound in to the Deed (IR16.117).

31. The Secretary of State also has to consider the possibility, however remote this may be, of the Council disposing of its freehold interest in the site and this resulting in the successor in title being able to lawfully implement the planning permission without complying with the s106 obligation (IR16.119). He also has other concerns. Given the complexity of the proposed development, he would expect to see more effective sanctions to ensure compliance with the provisions of the s106 obligation. For example, he considers that the s106 obligation places no restriction on the development continuing in the event of a breach of covenant by either the Owners or the Developer. He also observes that the trigger for provision of many of the benefits secured by the s106 obligation is tied to "First Occupation" of a defined proportion of residential units or of the development as a whole but in the absence of any requirement for notice to be given when a trigger date has been reached, he considers this is likely to contribute to difficulties with enforcement.

32. The Secretary of State agrees with the Inspector that the consequences of certain provisions of the s106 obligation not being fulfilled are potentially very serious (IR16.120). Given that their respective leasehold interests are not bound by the deed he has had particular regard to the Inspector's view that if the release from covenants applied solely to the development built on Asda and McDonalds land this could affect the delivery of the benefits set out by the Inspector at IR16.120. He agrees with the Inspector that, given the seriousness of the consequences of non-compliance with the s106 obligation, a cautious approach is required and he needs to be satisfied that there is no foreseeable risk of the covenants being circumvented (IR16.121). The Secretary of State agrees with the Inspector's conclusion that because key interested parties are not joined in the Deed, there is a risk of the development being freed from the s106 obligation and, consequently, the appeal proposal is not acceptable in its current form (IR16.121).

33. The Secretary of State has considered the appellant's suggestion, referred to by the Inspector at IR16.123 that they be given an opportunity to seek a solution in the event of him being minded to allow the appeal. However, he considers that taking this course of action in an attempt to resolve what, in his opinion, are fundamental shortcomings in the s106 obligation would not offer a realistic prospect

of the matter being satisfactorily resolved at this stage of the process. He takes the view that the careful drafting and attention to detail needed to make unilateral obligations which deal with complex requirements work successfully are absent in this case and that rectifying these shortcomings is essentially the responsibility of the applicant and the parties to the s106 obligation.

### Conditions

34. The Secretary of State has had regard to the proposed conditions set out at annex A of the Inspector's Report, the Inspector's assessment of conditions, as set out in IR15.1, and the policy tests in Circular 11/95. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary, and meet the tests of Circular 11/95. However, he does not consider that they overcome his reasons for dismissing the appeal.

### Overall conclusions

35. The Secretary of State agrees with the Inspector's approach to the balance of considerations and his summary conclusions, as set out at IR16.126 – 16.139.

36. The Secretary of State considers that there are a number of factors weighing in favour of the proposal, such as regenerating a currently unattractive and economically fragile part of the city, and the provision of much needed housing in a sustainable location. He agrees with the Inspector's conclusion that, for the most part, the development would be a high quality solution to a challenging site (IR16.136). He is also satisfied that the proposal would preserve the setting of the Kemptown Conservation Area and listed buildings and would accord with national guidance in PPS5 in this respect. Factors weighing against the proposal include the loss of views of the cliffs, the Downs, and eastward glimpses of the sea. The Secretary of State agrees with the Inspector that the planning balance favours the grant of planning permission (IR16.138) but, for the reasons given previously in this letter, he concludes that the shortcomings in the s106 obligation together with the consequences of its provisions being unfulfilled are potentially so serious that the proposal in its current form is unacceptable and that planning permission should, therefore, be refused.

### Formal Decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for

- i) Demolition of the existing Asda retail store and redevelopment to create an enlarged retail store (Class A1) of 11,412 sq m along with 2,056.5 sq m of other retail uses in Class A1-A5 and 395 sq m of office accommodation (Class B1), a 342 sq m community hall (Class D1), with associated plant, refuse and parking facilities. This part of the redevelopment to also include 779 residential units with associated parking, public/private amenity space and a new bridge link for pedestrians/cyclists;
- ii) Demolition of part of the eastern end of the existing multi-storey car park to create a replacement Asda petrol filling station and pedestrian footbridge;



- iii) Demolition of the existing estates management office to create a 3 – 4 storey building comprising 35 residential units with associated private amenity space;
- iv) Demolition of the western end of the existing multi-storey car park to create a 6 – 11 storey building (Sea Wall) comprising 117 residential units with associated parking, private amenity space and seasonal kiosk 72.5 sq m;
- v) Demolition of the existing petrol filling station to create a 28 storey building comprising 148 residential units and 182.5 sq m of Class A1-A5 retail space with associated plant, refuse and parking facilities and a 26 sq m office unit (Class B1);
- vi) Demolition of the existing McDonald's and redevelopment to create a new 5 –16 storey development including a Drive-Thru restaurant facility (Class A3) comprising 555 sq m. This development also includes 131 sq m of other Class A1 -A5 retail space and 222 residential units with associated parking and public/private amenity space
- vii) Change of use of two existing retail units (Class A1) within the Octagon development to create a Healthy Living Centre (Class D1) comprising 516 sq m;
- viii) Construction of a Combined Heat and Power unit;
- ix) Alterations to existing vehicular circulation, pedestrian and cycle access arrangements, areas for cycle parking and the creation of new and enhanced routes for access and servicing;
- x) A new bridge link for pedestrians and cyclists between the upper cliff and the north-western part of the Cliff Site (Asda site), along with associated engineering works;
- xi) New areas of hard and soft landscape, green roofs and formal and informal areas of amenity space including youth facilities.

on land at Brighton Marina, Brighton, East Sussex, BN2 5UT in accordance with planning application Ref: BH2007/03454 (as amended), dated 14 September 2007.

### **Right to challenge the decision**

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

39. A copy of this letter has been sent to Brighton & Hove City Council and all interested parties.

Yours sincerely,

Michael Taylor  
 Authorised by the Secretary of State to sign in that behalf

## BRIGHTON MARINA POST INQUIRY CORRESPONDENCE

<b>Name</b>	<b>Date of letter / email</b>
S KIRBY MP	17/5/10
M HIGGINS	4/6/10
S HORROX	4/6/10
R POWELL	2/6/10
B SIMPSON	2/6/10
P WALLACE	2/6/10
R HENDERSON	4/6/10
M WEATHERLEY MP	3/6/10
S TINDELL	7/6/10
B IMPEY	5/6/10
V LIRAKIS	5/6/10
L SHRIMPTON	4/6/10
G VINCENT	8/6/10
A BRUCE	9/6/10
D COHEN	9/6/10
S DUMFORD	9/6/10
L GUNSEL	9/6/10
M HOGG	9/6/10
M LIPTON	9/6/10
L McCRICKARD	9/6/10
F MORRIS	9/6/10
D NEWBERY	9/6/10
S WALLACE	9/6/10
A BAH	9/6/10
E DREW	10/6/10
R HARRIS	10/6/10
D JEWELL	10/6/10
A PARKER	10/6/10
A RUPPRECHT	9/6/10
R STEWART	9/6/10
R CROSSLAND	9/6/10
L CHESTER	9/6/10
A & S GRANT	9/6/10
J ROBERTSON	9/6/10
M DALLEY	9/6/10
N SABINE	9/6/10
M LAWRENCE	9/6/10
M ANTRAM	10/6/10
M SMITH	10/6/10
M RICE	10//6/10
J GRAY	10/6/10
B FISHLEIGH	9/6/10
D GIBSON	10/6/10
K O'DWYER	11/6/10
PETER PHILLIPS	11/6/10
M GATES	11/6/10

**ANNEX A cont'd**

<b>Name</b>	<b>Date of letter / email</b>
PAUL PHILLIPS	11/06/10
M BRISLEY	11/06/10
S HUTCH	14/06/10
P STOCK	13/06/10
C BROOKE	14/06/10
C STIRK	14/06/10
A STOCK	13/06/10
A ABAZA	13/06/10
B BICKELL	14/06/10
M HUXLEY	14/06/10
G ALLEN	17/06/10
M SMITH	16/06/10
H RUSH	16/06/10
P JONES	15/06/10
R COWL	15/06/10
V DAVIES	15/06/10
M CHOWEN	15/06/10
J & G HARTLAND	02/06/10
P BRICKMAN	01/06/10
P SHIELDS	20/06/10
G PARISH	24/06/10





# Appeal Decision

Site visit made on 29 June 2009

by **Sheila Holden**  
BSc MSc CEng TPP MICE MRTPI FCIHT

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

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**Decision date:**  
**12 July 2010**

## Appeal Ref: APP/Q1445/A/10/2120741 2-3 Camden Terrace, Brighton BN1 3LR

- 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 Nicola Stevenson against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01951, dated 12 September 2009, was refused by notice dated 22 October 2009.
- The development proposed is the removal of UPVc and timber boarding and replace with render to match remainder of front elevation of 2 and 3 Camden Terrace.

### Decision

1. I dismiss the appeal.

### Main Issue

2. The main issue is whether the replacement of the existing UPVc and timber cladding with render would preserve or enhance the character or appearance of the West Hill Conservation Area.

### Reasons

3. Camden Terrace is a delightful twitten of residential properties which front onto a pedestrian route and, from the evidence presented appear to date from the 19<sup>th</sup> century. The houses vary in their design and style but a continuity of appearance arises from the predominance of white used for the treatments of the front elevations of the houses and the boundary walls. The twitten lies within the West Hill Conservation Area and is subject to an Article 4 direction which precludes alterations to the front of properties without planning permission.
4. Nos. 2 and 3 are a pair of semi-detached cottages which are viewed as a single building from the long oblique views along the terrace. The front of No 3 has been altered by the installation of UPVc windows and cladding. The retention of this cladding was dismissed on appeal (APP/Q1445/C/08/2071381). Its replacement by render was subsequently dismissed on appeal (APP/Q1445/A/09/2108478). No 2 has wooden window frames and wooden cladding. The proposal seeks to remove the timber cladding from No 2 and the UPVc cladding from No 3 and replace it with white painted render similar to that on other properties in Camden Terrace.
5. Although timber lap boarding is not a common feature on the properties in Camden Terrace in my view it contributes to the variety of features which

combine to create the character and appearance of the Conservation Area. It is also a feature of the adjoining property, No 1a. In this context I consider that its removal from No 2 would be detrimental to the area, resulting in the loss of original historic detailing and materials which add to the architectural and historic interest of the twitten.

6. The replacement of the UPVc cladding with render on No 3 has already been considered by a previous Inspector who concluded that this would unbalance the pair of semi-detached properties. The current proposal is an attempt to address this imbalance and I accept that by proposing render on both properties the symmetrical appearance of the building would be restored. However, this could only be achieved by the removal of a feature which I have found contributes to the character and appearance of the Conservation Area as well as the removal of the unacceptable UPVc cladding. In my view the creation of a more balanced appearance to the building as a whole is not a sufficient justification for the removal of the timber cladding on No 2. Furthermore, the use of render on No 3 would result in the UPVc frames being more visible and accentuating the difference in the materials used in the window frames of the two cottages.
7. Whilst it is unlikely that the existing timber lapping on No 2 was used in the initial construction of the building it appears to me that it represents the maintenance of an original feature. The West Hill Conservation Area Character Statement states that many of the buildings are rendered and painted either in white or a pale pastel colour. However, this does not imply that other features, such as the timber lapping on the cottages in Camden Terrace, are not worthy of retention. I do not consider that the absence of a specific reference to the timber lapping in the character statement is a reason to allow it to be lost.
8. For the reasons set out above I conclude that the removal of the existing cladding on both cottages and its replacement with render across the full width the building would harm the character and appearance of this pair of cottages and would fail to preserve or enhance the character or appearance of the West Hill Conservation Area. It would therefore be contrary to saved Policies QD2, QD14 and HE6 of the Brighton & Hove Local Plan which require alterations to be high quality, appropriate to the property and to make use of sympathetic materials, especially in areas protected for their historic interest.

### **Other matters**

9. I recognise that the appellant is facing difficult personal circumstances at this time. However, her financial position is an insufficient reason to set aside the permanent harm to the character and appearance of the Conservation Area which would result from the proposal.

### **Conclusions**

10. Having considered this and all other matters raised, I find nothing to alter my conclusion that the appeal should be dismissed.

*Sheila Holden*

INSPECTOR



# Appeal Decision

Site visit made on 29 June 2010

**by Sheila Holden**  
BSc MSc CEng TPP MICE MRTPI FCIHT

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

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**Decision date:**  
**9 July 2010**

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## **Appeal Ref: APP/Q1445/D/10/2128123** **44 Tongdean Avenue, Hove BN3 6TN**

- 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 and Mrs Prince against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02375, dated 26 September 2009, was refused by notice dated 24 December 2009.
- The development proposed is extension and alterations to detached dwelling house.

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### **Procedural matter**

1. The Council and appellant have agreed a more detailed and accurate description of the development as follows: "erection of a two storey pitched roof front extension, ground and first floor extension on north-west elevation including extending the main roof, pitched roof garage extension to south-east elevation, roof lights to rear and side elevations, reconfiguration of first floor windows and balustrading at rear". I have used this description of the proposal in my determination of the appeal.

### **Decision**

2. I allow the appeal and grant planning permission for the erection of a two storey pitched roof front extension, ground and first floor extension on north-west elevation including extending the main roof, pitched roof garage extension to south-east elevation, roof lights to rear and side elevations, reconfiguration of first floor windows and balustrading at the rear at 44 Tongdean Avenue, Hove BN3 6TN in accordance with the application Ref: BH2009/02375, dated 26 September 2009 and the plans submitted with it subject to the following conditions:
  - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the layout and details shown on drawing nos. 106-SK001 (dated 22 September 2009), 106-SK002, 106-SK003, 106-SK004 and 106-SK007 (all dated 14 September 2009).
  - 3) The materials and finishes to be used in the construction of the external surfaces of the extension hereby permitted shall match in colour and texture those used in the existing building.

## **Main Issue**

3. The main issue is whether the proposed alterations, extensions and use of roof lights would preserve or enhance the character or appearance of the Tongdean Conservation Area.

## **Reasons**

4. Tongdean Avenue is characterised by large detached dwellings which exhibit considerable variety and individuality in style and design. Some date from the early part of the 20<sup>th</sup> century whereas others have been constructed more recently. The majority of houses are sited on plots of generous proportions, set back from the road and within mature gardens. The road has a spacious and green appearance with grass verges on both sides and numerous street trees. There are also mature trees within the gardens and along the boundaries between the properties which reduce the inter-visibility between the buildings. These characteristics also feature elsewhere within the Conservation Area with some of the most prestigious properties located on Dyke Road Avenue.
5. No 44 is a substantial house which has been extended to the rear with the addition of a long building enclosing a swimming pool. The dwelling itself is rather utilitarian in appearance and lacks any striking features that are visible from the street. Much of the area in front of the house comprises brick paving which is starker in appearance than some neighbouring properties where there is a more greenery. The presence of mature trees and vegetation along the boundaries with both No 46 and No 42 reduces the visibility of these adjoining properties from within the curtilage of No 44.
6. The footprint of the building would be extended on the south-eastern side with the construction of a new garage whose front elevation would be forward of the existing house. This would require the removal of an existing brick wall and the construction of the garage close to the shared boundary with No 42. However, the profile of the garage would be low and it seems to me that with its proposed hipped roof it would integrate satisfactorily with the existing dwelling. When viewed from the street the replacement of a brick wall with a single storey garage would not significantly increase the apparent width or bulk of the building. I note that planning permission has been granted for redevelopment of the adjacent site at No 42, Ref: BH2008/03384, subject to conditions. From the evidence presented I consider that the gap at first floor level between this proposal and the extension at No 44 would be acceptable.
7. On the north-western side of the house the existing garage would be converted into habitable accommodation and the flat roof replaced by a hipped one which would mirror that of the proposed new garage. The insertion of a new gable and an extensive section of glazing would provide the property with a new identity with more visual interest than currently exists. I note that the Council consider this to be acceptable in design terms and not out of keeping with the conservation area. I concur with this assessment.
8. The proposed first floor extension would increase the width and bulk of the building. However, it would be set in from the side boundary with No 46 and would not occupy the full width of the existing garage. The extensive nature of the trees and vegetation along the shared boundary would reduce the visibility

of this first floor side extension from the road. Furthermore, since the garage of No 46 is sited close to the boundary I consider there would still be a reasonable gap between the dwellings at first floor level.

9. I will now move on to consider the effects of the proposed roof lights. The proposal would replace a flat roof dormer window in the rear roof slope with Velux roof lights. The width of these proposed roof lights would be similar to that of the existing dormer and although somewhat deeper would, in my view, be proportionate to the enlarged roof slope. I note that the Council welcome the removal of the dormer window and since it would not be visible from public view points there would be no adverse effect on the appearance of the conservation area, which would be preserved. The proposed roof light on the side elevation to serve a bathroom in the roof space is of more modest proportions. I consider this roof slope not to be prominent in the street scene and the roof light would not be dominant within it. In my view this element of the proposal would therefore comply with the Council's Supplementary Guidance on roof lights within conservation areas.
10. Drawing the threads of my assessment together I am of the view that the proposed alterations and extensions would improve the appearance of the front elevation of the dwelling, would not significantly alter the relationship between the building and its plot and that sufficient gaps between the enlarged dwelling and those on either side would remain at first floor level. In addition I consider the replacement of the rear dormer window by roof lights is to be welcomed and the addition of roof lights in the side roof slope would be acceptable. I therefore conclude that the proposal would preserve the character and appearance of the Tongdean Conservation Area and comply with saved Policies QD1, QD2, QD14 and HE6 of the Brighton & Hove Local Plan all of which seek high quality design, particularly within conservation areas.
11. I will therefore allow the appeal subject to conditions. I note that the Council has requested a materials condition which is justified in the interests of the appearance of the building. In addition to the standard time limit I have also imposed a condition to specify the plans, for the avoidance of doubt and in the interests of good planning.

*Sheila Holden*  
INSPECTOR





# Appeal Decision

Site visit made on 22 June 2010

by **Graham Dudley BA (Hons) Arch Dip**  
Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State  
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**Decision date:**  
**8 July 2010**

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## Appeal Ref: APP/Q1445/A/09/2118944

### 169 North Street, Brighton, East Sussex BN1 1EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Baron Homes Corporation Limited against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01600, dated 1 July 2009, was refused by notice dated 25 September 2009.
- The development proposed is a change of use of vacant hairdressers (A1 Class use) to Restaurant (A3 Class use)

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## Decision

1. I dismiss the appeal.

## Main issues

2. The main issues are:
  - The effect of the proposal on the vitality and viability of the shopping centre.
  - The effect of the proposal on the living conditions of neighbouring occupiers with particular reference to odour and noise.
  - Whether bin storage and collection arrangements would be adequate.

## Reasons

### *Vitality and Viability*

3. The adopted Brighton and Hove Local Plan [LP] Policy SR4 relates to change of uses in the regional shopping centre. In particular, it notes that outside the prime frontages, the loss of retail uses will be permitted provided that a healthy balance and mix of uses (including A1 retail) is retained and concentrations of uses other than A1 are avoided. It also notes that the proposed use should still attract pedestrian activity to the centre and should not have a significantly harmful impact on the amenity of the area.
4. In my view, it is reasonable for the council to seek to ensure that there is a mix of uses to maintain the vitality and viability of the area. I consider that the policy objective is to ensure that there remains a reasonable number and mix of A1 retail units and that the policy requirement relating to 'and concentrations of other uses other than A1 are avoided' does not relate solely to concentrations of other particular uses, but other non A1 uses. Otherwise



you could end up with a situation where there were no strong concentrations of particular individual non A1 uses, but with little or possibly no A1 uses.

5. While I accept that an A3 use should not be ruled out in principle as this would attract pedestrian activity and continue activity into the evening, it has to be considered in context. In this location there are a significant number of uses other than A1, particularly in the area identified by the council. However, even if you go further on and look at the other side of the road, uses include more non A1 uses, such as the Royal Bank of Scotland in one direction and Strada in the other direction. While there are some more retail uses beyond those identified by the council, I consider overall that the change of use of this unit would cause a significant concentration of non A1 uses in the immediate area and that the mix in the wider area is not sufficient to justify the proposal. While there would be increased activity at night time, because of the many other similar uses I attach little weight to the benefit of this.
6. I appreciate that the appellant has endeavoured to let the unit for retail uses, but it identifies that 'this has consistently failed because it is surrounded in this block by non retail uses'. However, I consider that the difficulty in letting the unit is likely to relate in part to the current economic situation, as much as the location of the unit amongst the other non A1 uses. More importantly, I do not consider that this is a good argument, but would back up the need to maintain a reasonable mix of A1 uses. While there are other vacant units nearby, the number of these is relatively small and this adds little weight to justify the conversion of this unit. I have also taken into consideration the location near to a bus stop, but do not consider that this would have a significant impact, there being a number of bus stops in the main shopping area near to shop units.
7. Overall, the proposal would not accord with the aims and objectives of LP Policy SR4 and would have a harmful impact on the vitality and viability of the area.

### ***Odour and Noise***

8. There are residential uses with windows facing the inner courtyard immediately above the proposed use. I consider that given this proximity it is necessary to demonstrate that odour can be controlled in a way acceptable to neighbouring occupiers and without causing undue noise and disturbance.
9. The appellant has submitted details of some equipment that is capable of dealing with odours arising from restaurant use and also that there is a ventilation flue at the back of the building that serves La Tasca. While I accept in principle that it should be possible to resolve this issue by the use of this type of well-maintained equipment, it is necessary for it to be specifically considered in the context of the proposed use. In particular, it seems likely that the ventilation flue for La Tasca was designed for it and presumably its size is necessary for that use, so it seems unlikely that it would be adequate to take the extraction from another separate kitchen. Given that this is a listed building, it is necessary that the implication of the flue should be specifically considered so that any new flue, or enlargement of the existing flue, can be considered. Without this it is not possible to conclude, as necessary with a listed building, that its special architectural and historic interest would be preserved.



### ***Bin Storage***

10. There is a large bin storage area at the rear of the building and I noted at the site visit that there is also a bin at the front. The council has identified that there have been representations/complaints in the past from nearby residents relating to bin storage and therefore it is necessary to make adequate provision for the storage of bins. While the area of bins is well used, I consider that the management of the waste from this unit could be controlled by measures such as more regular collections as occurs at La Tasca and that this could be ensured by the imposition of a suitable condition. I therefore consider that the proposal would be acceptable in relation to bin storage.

### **Conclusion**

11. Notwithstanding my finding in relation to bin storage and taking into consideration all matters raised, overall I conclude that the proposal would be unacceptable because of the harm in relation to vitality and viability of the area and because of the potential for harm in relation to the odour extraction. The appeal should be dismissed.

*Graham Dudley*



**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****CENTRAL HOVE**

BH2010/00268

Land To Rear Of 142 Church Road, Hove

Erection of 1no. single storey residential studio with single pitched roof.

APPEAL LODGED

01/07/2010

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

BH2010/01131

9 Brecon Court, Selborne Place, Hove

Replacement of existing timber windows with double glazed UPVC windows.

APPEAL LODGED

05/07/2010

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

BH2010/00651

3 Ovingdean Close, Brighton

Erection of side and rear extension at ground floor level. Roof extension to side and rear incorporating dormers to front and rear and rooflights to side and rear.

APPEAL LODGED

06/07/2010

**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****WOODINGDEAN**

BH2010/00157

412 Falmer Road, Brighton

Erection of two storey side extension and rear extension.

APPEAL LODGED

07/07/2010

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

BH2009/03001

27-29 Pembroke Crescent, Hove

Conversion of existing rest home (C2) into 2no. six bedroom dwellings.

APPEAL LODGED

06/07/2010

## NEW APPEALS RECEIVED

**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****WITHDEAN**

BH2010/00377

Chaily, 61 Valley Drive, Brighton

Demolition of existing garage and erection of a two storey side extension.

APPEAL LODGED

09/07/2010

**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****HOVE PARK**

BH2010/00848

34 Elizabeth Avenue, Hove

Erection of conservatory to rear

APPEAL LODGED

13/07/2010

**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****WITHDEAN**

BH2010/00380

20 Surrenden Crescent, Brighton

Formation of balustraded roof terrace at first floor level to rear of property.

APPEAL LODGED

09/07/2010

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

BH2010/00839

French Protestant Church of Brighton,  
Queensbury Mews, Brighton

Erection of a two storey extension and roof terrace to North elevation.

APPEAL LODGED

12/07/2010

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

BH2010/00817

141-143 Sackville Road, Hove

Conversion of roof space to form 1no one bedroom flat incorporating infill extension, rear dormer, front rooflight and sash windows to side.

APPEAL LODGED

14/07/2010

**NEW APPEALS RECEIVED**

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**ROTTINGDEAN COASTAL**

BH2010/01043

17 Shepham Avenue, Brighton

Erection of rear first floor balcony supported by timber posts. Replacement of existing rear first floor windows with patio doors.

APPEAL LODGED

19/07/2010

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**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

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

BH2009/03126

2 Camden Terrace, Brighton

Replacement of single glazed timber windows with double glazed UPVC windows.

APPEAL LODGED

20/07/2010

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Brighton & Hove  
City Council

### INFORMATION ON HEARINGS / PUBLIC INQUIRIES 11<sup>TH</sup> August 2010

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

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#### **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 7<sup>th</sup> 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





<b>Subject:</b>	<i>Planning Enforcement Policy Document (Draft)</i>		
<b>Date of Meeting:</b>	11 August 2010 23 September 2010 (Environment CMM)		
<b>Report of:</b>	<i>Director of the Environment</i>		
<b>Contact Officer:</b>	<b>Name:</b> Gerard McCormack	<b>Tel:</b> 01273 29 2031	
	<b>E-mail:</b> <a href="mailto:gerard.mccormack@brighton-hove.gov.uk">gerard.mccormack@brighton-hove.gov.uk</a>		
<b>Key Decision:</b>	N/A		
<b>Wards Affected:</b>	All Wards		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This Planning Enforcement Policy sets a framework for how the planning enforcement team will manage complaints and any subsequent investigations into breaches of planning control. It will aim to clearly set out the aims of the Planning Enforcement Team, the background to Planning Enforcement and the scope of enforcement powers. This Planning Enforcement Policy will set out priorities for responses to complaints and clarify the timescales for response by Enforcement Officers. This policy document also seeks agreement about how Members and the general public will be kept up to date in relation to the work being carried out by the Planning Enforcement Team.

#### 2. RECOMMENDATIONS:

- 2.1 That the draft planning enforcement policy be noted; and
- 2.2 That the Environment Cabinet Member be recommended to approve the policy for adoption by the Development Control Service.

#### 3. RELEVANT BACKGROUND INFORMATION:

##### **Policy Context and history**

- 3.1 Under Section 172 of the Town and Country Planning Act 1990 (as amended), the Council has the power to take enforcement action where it assesses that a breach of planning control has resulted in material harm in planning terms.
- 3.2 Guidance as to how to apply this power and when a Council should find enforcement action expedient is contained in PPG18 and Circular 10/97, both entitled 'Enforcing Planning Control'. The government urges local planning authorities to use enforcement action as a **last resort**. Formal enforcement action

will not be authorised unless it has been concluded that there is no other course of action available.

In addition to Government guidance the statutory Development Plan sets criteria against which to judge whether a breach of planning control is unacceptable.

3.3 When determining applications for planning permission, the authority is required to have regard to the development plan, so far as is material, and to any other material considerations. In addition, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

3.4 The Development Plan is the Brighton & Hove Local Plan adopted in 2005.

#### **4. CONSULTATION:**

##### **4.1 Methodology**

Consultation presentations were given to officers within the Council, professional users of the planning service at the Agent's Forum, Members, the general public and at the Conservation Advisory Group Meeting. Rottingdean Parish Council has been invited to comment also.

##### **4.2 Results and concerns**

Overall the planning enforcement consultation was well received by those who attended the presentations. There were some themes and these are set out below.

4.2.1 There was a strong feeling that it was important to increase public awareness of the planning enforcement service through press releases, city news articles, by improving the information contained within the planning enforcement section of the Council's website and submitting performance reports to planning committee. It was felt that greater public awareness would stop breaches of planning control occurring and reduce the need for retrospective applications having to be submitted.

4.2.2 Targeting (either geographically or by area) of enforcement action and education were described as being important factors in an effective enforcement service. Education in particular ensures that the public is aware of planning regulations as well as increasing public confidence in the service.

4.2.3 Anonymous complaints should not be accepted unless a significant amount of information is provided to warrant an enforcement investigation being set up.

4.2.4 There was support for the idea that complainants should be encouraged to contact the designated case officer four to five weeks after receiving their initial acknowledgement letter. It was felt that setting out a timeframe would allow for an investigation to be carried out and give certainty to complainants on response times. Such an approach would free up officer time as the onus would no longer be on them to update complainants.

- 4.2.5 To increase public confidence in the service enforcement cases would remain open until complainants had received confirmation from the case officer of closure either verbally, by letter or via email.
- 4.2.6 It was felt that the term transgressor sent out the wrong message and that it should be changed to those in breach.

The main priorities identified for the service were to:

- preserve and enhance the character and appearance of the cities conservation areas,
- seek to remove illegal advertisements that causes harm to local amenity or highway safety in a timely fashion,
- improve the character and appearance of buildings in disrepair, and
- ensure planning conditions are discharged and implemented.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### **5.1 Financial Implications:**

There are no financial implications relating to this policy document that fall outside the normal service delivery for the department.

### **5.2 Legal Implications:**

There are no legal implications relating to this policy documents that fall outside the normal service delivery for the department.

### **5.3 Equalities Implications:**

There are no equalities implications relating to this policy document that fall outside the normal service delivery for the department.

### **5.4 Sustainability Implications:**

There are no sustainability implications relating to this policy document that fall outside the normal service delivery for the department.

### **5.5 Crime & Disorder Implications:**

There are no crime and disorder implications relating to this policy document that fall outside the normal service delivery for the department.

### **5.6 Risk and Opportunity Management Implications:**

There are no risk and opportunity management implications relating to this policy document that fall outside the normal service delivery for the department.

### **5.7 Corporate / Citywide Implications:**

Setting out a clear operational framework supports the objective of improving communication and customer service.

## **6. REASONS FOR REPORT RECOMMENDATIONS:**

- 6.1 So that the planning enforcement policy can be formally adopted if agreed at the Environment Cabinet Member Meeting.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Draft Planning Enforcement Policy.

### **Documents in Members Room:**

None.

### **Background Documents:**

None.

## **Draft Planning Enforcement Policy**

### **1. Foreword**

Brighton & Hove City Council formed in 1997 is a historic and vibrant city housing some 247,817 people (2001) and employing over 10,000. Demands on land and its uses increases continually' thereby creating the groundwork for friction between competing users of land be they commercial or residential.

Brighton & Hove Council has numerous areas of special architectural or historic interest, within its boundaries, which it is committed to preserving and enhancing through effective use of its enforcement powers particularly in relation to its 900 plus listed buildings and 34 conservation areas. There is evidence of growing public concern over development that takes place without the appropriate planning permission or without proper reference to approved plans or attached conditions. The number of enforcement enquiries in Brighton & Hove has grown steadily over the years and the Government also recognises that public expectations in this area have become more demanding.

This Planning Enforcement Policy sets a framework for how the Planning Enforcement Team will handle complaints and any subsequent investigations into breaches of planning control. It will aim to clearly set out the aims of the Planning Enforcement Team, the background to Planning Enforcement and the scope of enforcement powers. This Planning Enforcement Policy will set out priorities for responses to complaints and clarify the timescales for response by Enforcement Officers. This policy document will also seek to formulise how Members and the general public will be kept up to date in relation to the work being carried out by the Planning Enforcement Team.

### **2. Introduction**

The Development Control service operates in connection with the Council's statutory role as local planning authority in the regulation of the use and development of land and buildings under the Planning Acts and related legislation. Given the high quality of its townscape, particularly its important conservation areas and listed buildings, the enforcement of planning controls is a priority for Brighton & Hove City Council in order to:

- a) Help ensure that the credibility of the planning system, and to ensure fairness for those who do adhere to planning controls.
- b) Protect it from the effects of unacceptable development.
- c) Remedy the unacceptable harmful effects of unauthorised development.
- d) Ensure the adopted planning policies applicable to this City are properly implemented.

This document sets out the Council's approach to handling planning related enforcement matters. It is designed to let the public know what action they can expect when a breach of planning control is reported, where resources will be targeted and the timescales they can expect for a response to certain key stages in the process.

It is an important principle of the planning system that the use of formal planning enforcement action is a **discretionary power** of the Council. In considering any enforcement action, the decisive issue for this Council is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings, and therefore merit such action in the public interest.

Educating residents in relation to both national and local planning legislation is a key element to effectively enforcing planning controls. As residents become more informed and aware of the regulations it is hoped that less unauthorised building work will take place within the city.

### **3. Principle of Enforcement**

Brighton & Hove City Council believe in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of:

- Proportionality in the application of the law and in securing compliance.
- Consistency of approach.
- Transparency about how the service operates and what those regulated may expect from the service.
- Targeting of enforcement action and education.

#### Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties, expect the action taken by the enforcing authority to be proportionate to the seriousness of any breach.

#### Consistency

Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in advice given, the response to incidents, the use of powers and decisions on whether to prosecute.

Officers need to take account of many variables:

- The scale of impact.
- Matters of fact and degree.
- The history of previous incidents or breaches.

Decisions on enforcement action are a matter of professional judgement and discretion needs to be exercised. The Planning Enforcement Team will continue to develop arrangements to promote consistency including

effective arrangements for liaison with other Council services and enforcing authorities.

#### Transparency

Transparency is important in maintaining public confidence in the service's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

#### Targeted enforcement action and education

Targeting of enforcement action and education are crucial factors in an effective enforcement service. They ensure that the public is aware of planning regulations as well as increasing public confidence in the service.

### **4. The Council's Approach to Planning Enforcement**

The Council recognises the importance of establishing effective control over unauthorised development and will not condone wilful breaches of planning control. It must however be remembered that enforcement is a discretionary activity. Apart from some listed building and advertisements cases it is not illegal to carry out works without the relevant consent. It only becomes, illegal after the Council issue an enforcement notice and those in breach fail to comply with the requirements of the notice. In considering whether it is expedient to take enforcement action, the Council will take into account its relevant planning policies and all other material considerations including relevant appeal decisions and case law. Consideration will also be given to the reasonable time and resources available to carry out the enforcement function.

The Council will assess whether a breach of planning control unacceptably affects public amenity or causes harm to land and buildings. The Council considers that the objective of planning enforcement is compliance not punishment and as such will encourage its officers to work with those in breach to achieve favourable outcomes without having to issue a formal notice. In cases where those in breach are not pro-actively working with officers or fail to meet agreed deadlines, formal action will be considered and notices issued where it is appropriate to do so.

### **5. Investigating Alleged Breaches**

In some cases the enforcement team may be unable to take formal action against developments that are reported by members of the public. For example when:

- The works or change of use fall within 'permitted development' tolerances under the terms of the Town and Country Planning Act

1990 (General Permitted Development Order as amended 2008) or use classes order.

- An advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) Regulations 2007.
- Immunity from enforcement action has occurred by way of a use being established for a period of 10 years (4 years for a self-contained dwelling) or building works have been being completed more than 4 years ago.
- The works are considered 'de minimis', i.e. too minor to fall under the scope of planning control.

Breaches of planning control regulations which may require action could include:

- Unauthorised works to a property containing a listed building, a property or building in a conservation area or property or building subject to, an Article 4 direction.
- Unauthorised change of use of a building or land.
- Conditions of a planning permission not being met or discharged.
- Unauthorised extensions to a residential property.
- Unauthorised display of a sign or advertisement.
- Engineering operations.

In addition to responding to complaints the service will carry out targeted pro-active campaigns where and when resources allow.

#### **6. What can the complainant expect from the enforcement service**

To initiate a planning enforcement investigation, complaints should only be made via the standard form which can be found on the Council's website, Council offices or can be sent out to complainants if requested. The complaint will only be accepted if this form is filled out in full including the identity and address of the writer, the site address at which the alleged breach of planning control has taken place, a description of the unauthorised development/use and the harm that is considered to be caused by it. Complainants will also be encouraged to send in dated context photographs of the alleged breach, in order to assist the enforcement investigation. Only in exceptional circumstances, such as when emergency action is required, or when there is a special reason why using the standard form is not feasible, will be possible to initiate investigations, by, telephone, or personal visit to speak to the Planning Enforcement Team.

The Council will not investigate anonymous complaints as it means we cannot verify particular aspects of the complaint at a later stage. All complaints received will be treated in the strictest confidence. However sometimes in exceptional circumstances complainants may be asked to provide evidence to assist the investigation legal proceedings.



Issues such as boundary positioning and land ownership disputes do not fall under the remit of town planning and are dealt with under separate pieces of legislation. Should complaints be made to the Planning Enforcement Team which fall outside the Teams discretion, the Team will endeavour to re-direct the complaint or to advise accordingly. Formal enforcement action will not normally be taken where a trivial or technical breach of planning causes no harm to the local environment.

In respect to complaints received about alleged breaches the following service standards apply:

- 1) Written acknowledgements of receipt of complaint within three working days.
- 2) Other than in cases where immediate or urgent action may be required (see (3) below) initial investigation to be undertaken within ten working days of receipt.
- 3) In cases of reported breaches in planning control involving a serious and/or irreversible harm, the complaint will be investigated as a matter of priority, usually within 48 hours of receipt. Urgent action will be instigated to stop unlawful activity where harm being caused makes this appropriate. Such cases include damage or demolition of listed buildings or any other cases where there is a serious and imminent danger of harm to people or irreversible damage to property,
- 4) The complainant is advised contact the designated case officer preferable by email or phone 4/6 weeks after receiving their acknowledgement letter. At this stage the officer will be able to inform the complainant on the progress of the investigation
- 5) Within 5 days of the decision to close an enforcement case the complainant will be notified by letter or email advising them why the case was closed.

#### **7. What can those in breach expect from the enforcement service**

Under normal circumstances, prior to taking formal enforcement action the officer concerned will fully and openly discuss the circumstances of the breach and where possible attempt to resolve any points of difference. A person in breach will be contacted within 5 days of a site visit having taken place advising them, what they are required to do in order to remedy the breach of planning control. Should a retrospective application for planning permission be applicable the letter will also advise the transgressor on the likelihood of obtaining a favourable recommendation in the opinion of the Enforcement Officer. In almost all cases written notification of the breach and opportunities to rectify the situation will be given prior to any action being taken. However, this may not be possible if urgent or immediate action is required, such as in examples given in (3) above.

When breaches appear to have occurred officers will:

- Communicate clearly to the responsible party or their planning agent identifying the problem and the measures that may need to be taken to achieve compliance.

- In the case of formal action being authorised the contravener's rights of appeal will be explained to them.
- Where officers consider there is no significant planning harm or that harmful effects may be satisfactorily addressed by mitigation measures, allow a reasonable period for the submission of a retrospective planning application to regularise a breach of planning control.
- Where initial attempts to persuade those in breach to voluntarily remedy the harmful effects of unauthorised development fails, negotiations will not hamper or delay whatever formal enforcement action may be required to make the development acceptable. Officers will be keen to see that persons in breach are pro-actively seeking to resolve breaches of planning control rather than attempting to delay matters.
- Initiate formal enforcement powers given to local planning authorities when necessary, after being satisfied that there is a clear breach of planning control that would unacceptably affect public amenity of the existing use of land and building meriting protection in the public interest.
- Persistent offenders and those who seek to exploit the planning process at the expense of others will be dealt with by all and any of the appropriate enforcement processes.

#### **8. What can officers expect from complainants and those in breach**

Planning Enforcement Officers often deal with heavy caseloads and can as a result experience many pressures on their time throughout the day. Therefore in order to allow Officers to make best use of their time and ensure that the enforcement service is as effective and efficient as possible members of the public are asked to adhere to the following:

- If people wish to speak to an Enforcement Officer in person at the Council offices they will be required to first book an appointment as walk in callers will not be seen.
- People are asked to treat officers with respect and listen to what is being said rather than what they 'think or want to hear'. Sometimes a favourable outcome cannot always be achieved. If this occurs the reason for no action being taken will be explained in full by the Officer in a clear language.
- Officers are happy to speak to members of the public on the phone provided the conversations are productive. If callers are unreasonable in their expectations or are rude to staff they will be asked to only communicate with the Officer via letters or email to which they can expect a response within 10 working days of receipt.

#### **9. Enforcement options**

As discussed earlier in this policy document Officers will seek to work with those in breach to voluntarily resolve contraventions whenever this is possible and appropriate thereby avoiding formal action having to be taken. When this is not possible or appropriate to obtain a satisfactory voluntary resolution to a contravention and it is considered expedient to

take formal enforcement action to rectify or resolve the breach the main options for action are summarised as follows:

Section 215 Notices:

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The Council also has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Breach of Condition Notice:

These can be used as an alternative to an Enforcement Notice. There is no right of appeal against this notice. There is no right of appeal against this notice.

Enforcement Notice:

This is the normal method of remedying unauthorised development although there is a right of appeal against the notice. This is an effective tool and will be served fairly early, on the cases that cause significant harm or where the transgressor has made clear they are unwilling to remedy the breach. The transgressor has the right to appeal against the notice for consideration by the planning inspectorate.

Stop Notice:

This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where Stop Notices are issued the Council may be liable to compensation claimed by those if it is served on if it is later decided that the Stop Notice was not appropriate.

Temporary Stop Notice:

These are similar to Stop Notices (above) but take effect immediately from the moment they are displayed on a site, and last for up to 28 days. A temporary Stop Notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

Injunction:

This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

Default Powers:

The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in

extreme cases and when resources allow. The Council will seek to recover all costs associated with carrying out works in default.

Appeals:

There is a right of appeal against most statutory Notices issued by the Council (exceptions are Breach of Condition Notices, Stop Notices). Appeals are in most cases made to the Department for Communities and Local Government (the Planning Inspectorate) or in some cases to the magistrates' court. When a notice is issued the recipient will also be given the necessary information on how to exercise their right of appeal.

**10. Informing the public**

The Council is committed to educating and informing Members and the public in relation to the work carried out by its Planning Enforcement Team. The Council will attempt to strike a balance between informing the public about planning legislation through articles in city news as well as publicising prosecutions and cases where direct action has been taken. It is considered important to highlight prosecution and direct action to discourage others from breaching planning regulations and ensure the public have confidence in the enforcement service.

Pro-active campaigns will be used to educate the public in relation to the targeted breaches of planning control through Council publications and press releases. Local community groups may also be encouraged to assist in targeted campaigns in their particular area.

As part of the Council's commitment to be open and accountable a full year report will be presented to the Planning Committee regarding planning enforcement. Throughout the year ward members will be made aware of cases where enforcement notices have been issued, appeal decisions and the outcomes of any court action taken in their ward.

The planning and investigations section of the website will be updated on a regular basis with relevant enforcement related new stories, before and after photographs and will identify the number of cases closed and the reasons why they were closed.

**11. Key Aims and Objectives**

- 45% of all cases reported to be resolved without formal enforcement action having to be taken.
- Preserve and enhance the character and appearance of the cities conservation areas.
- Seek to remove illegal advertisements that causes harm to local amenity or highway safety in a timely fashion.
- Improve the character and appearance of buildings in disrepair through the service of section 215 notices.
- Ensure planning conditions are discharged and adhered to.

## **12. Particular Customer Needs**

The service will endeavour to be flexible in responding to customer needs by adapting the method of operation to suit the customer. In particular, service leaflets, letters or other documents will be translated into other languages at no additional expense to the customers. Arrangements will also be made for interpreters when this is necessary.

## **13. Contacts and further information**

Our service provides a range of supplementary planning documents, design guidelines, planning information and forms. These can be obtained by:

- Looking on the Council website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk).
- Emailing [planninginvestiagtion@brighton-hove.gov.uk](mailto:planninginvestiagtion@brighton-hove.gov.uk).
- By writing to us or visiting us at.

Environment  
City Planning  
Hove Town Hall  
Norton Road  
Hove  
BN3 3BQ

General enquiries contact numbers Planning Contact Centre 01273 292222.

Hove Town Hall has full access for disabled people and induction loops in the general reception area. If you need any help getting into the building, please let us know beforehand and we will make arrangements to help you.

If you need this document in Braille, large print, audio tape, or another language, please contact us on 01273 292929.

# Appendix 1

## Service Indicators

Action	Target
Register and acknowledge all written complaints	3 working days
Carry out initial site visit	Within 10 working days of case being registered
Customers to contact case officer either by email or on the phone	4-6 weeks after receiving acknowledgement letter
The complainant to be informed of the outcome of the case	Within 5 days of case being closed