



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	3 November 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	<p>Councillors: Hyde (Chairman), C Theobald (Deputy Chairman), Carden (Opposition Spokesperson), Alford, Cobb, Davey, Hamilton, Kennedy, McCaffery, Simson, Smart and Steedman</p> <p>Co-opted Members: Philip Andrews ((Chairman) Conservation Advisory Group)</p>
Contact:	<p>Jane Clarke Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

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AGENDA

135. 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.

136. MINUTES OF THE PREVIOUS MEETING

1 - 28

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

137. CHAIRMAN'S COMMUNICATIONS

138. PETITIONS

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

139. PUBLIC QUESTIONS

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

No public questions received by date of publication.

140. DEPUTATIONS

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

No deputations received by date of publication.

PLANNING COMMITTEE

141. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

142. LETTERS FROM COUNCILLORS

No letters have been received.

143. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

144. APPEAL DECISIONS

29 - 52

(copy attached).

145. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

53 - 56

(copy attached).

146. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

57 - 58

(copy attached).

147. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

59 - 62

(Copy attached).

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

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

(copy circulated separately).

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

151. 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 plans for any planning application listed on the agenda are now available on the website at:

<http://www.brighton-hove.gov.uk/index.cfm?request=c1199915>

PLANNING COMMITTEE

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

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

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

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

Date of Publication - Tuesday, 26 October 2010

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 13 OCTOBER 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

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

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

Officers in attendance: Paul Vidler (Deputy Development Control Manager), Nicola Hurley (Area Planning Manager (West)), Hamish Walke (Senior Team Planner (East)), Steve Reeves (Principal Transport Planner), Hilary Woodward (Senior Lawyer) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

118. PROCEDURAL BUSINESS

118a. Declaration of Substitute Members

118.1 There were none.

118b. Declarations of Interests

118.2 There were none.

118c. Exclusion of the Press and Public

118.3 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.

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

119. MINUTES OF THE PREVIOUS MEETING

119.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the previous meeting held on 22 September 2010 as a correct record.

120. CHAIRMAN'S COMMUNICATIONS

120.1 There were none.

121. PETITIONS

121.1 There were none.

122. PUBLIC QUESTIONS

122.1 There were none.

123. DEPUTATIONS

123.1 There were none.

124. WRITTEN QUESTIONS FROM COUNCILLORS

124.1 There were none.

125. LETTERS FROM COUNCILLORS

125.1 There were none.

126. NOTICES OF MOTION REFERRED FROM COUNCIL

126.1 There were none.

127. APPEAL DECISIONS

127.1 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.

128. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

129. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

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

130. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

130.1 The Committee noted the position regarding Pre Application Presentations and Requests.

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

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

Application:	Requested by:
BH2010/01966, Mitre House, 149 Western Road	Deputy Development Control Manager
BH2009/03105, Medina House, King’s Esplanade, Hove	Deputy Development Control Manager

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

(i) TREES

132.1 There were none.

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

A. Application BH2010/01824, 112-113 Lewes Road, Brighton – Erection of four storey building providing retail space on ground and first floors and student halls of residence (39 units) on ground and upper floors.

(1) The Senior Planning Officer, Mr Thatcher, introduced the application and presented plans and elevational drawings. The site had been the subject of a previous approval in 2009 but the schemes were identical in height, bulk, scale and massing. Section 106 contributions had been recommended by statutory consultees and these were included in the report. The previous scheme had been considered acceptable and there were no significant changes in material planning terms to the new scheme. There were no policies in the Local Plan regarding student accommodation and so the scheme was acceptable in principle subject to normal development control considerations.

There would be a communal roof terrace provided with the scheme, but separation distances were adequate and so there would be no undue overlooking. Any additional noise and disturbance as a result of the scheme was dealt with by condition 22 to ensure that party walls were insulated above Building Regulations requirements. The scheme would not increase parking demands to the detriment of public safety and a Section 106 agreement would include contributions to Saunders Park and a public art contribution. The scheme would achieve a BREEAM excellent level for sustainable homes and a land contamination study and air quality study were completed. In terms of air quality it was recognised that a ventilation system would need to be provided.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Smart asked if the scheme was only for the use of university students. Mr Thatcher replied that the Section 106 agreement would stipulate that the building would only be for the use of university students and staff.
- (3) Councillor Smart asked if there would be a warden on site and Mr Thatcher replied that there would not be, but a management plan would be part of the Section 106 agreement to deal with the day-to-day running of the site.
- (4) Councillor Alford asked where the main access would be and Mr Thatcher replied that it would be from Newmarket Road.
- (5) Councillor Alford asked if the occupiers would be first year students and Mr Thatcher believed this would be the case.
- (6) Councillor Mrs Theobald asked if the units were of a standard size for university accommodation, whether they were accessible for disabled people, what the public art contribution would be spent on, how refuse and recycling would be dealt with and how the commercial units would be controlled.

Mr Thatcher replied that the units were of a typical size for the type of accommodation they were and there would be lift access to all floors. There was no scheme submitted as yet for the public art money, but there would be a £12,500 contribution. Refuse and recycling issues were dealt with by requirements in condition 4 of the report and the commercial units would be controlled through operating hours of 07:00 to 23:00.

- (7) Councillor Simson asked if other halls of residence in the city typically operated with a management plan or whether they had wardens provided. Mr Thatcher replied that he was not able to answer this question.
- (8) Councillor Davey asked questions around the use of retail space with the scheme and Mr Thatcher demonstrated the layout of the space and replied that the main entrance to the retail space would be on Lewes Road.
- (9) Councillor Davey asked what size the space was and what the business hours of the retail space would be. Mr Thatcher replied that there were 182 square metres of floor space on the ground floor and 55 square metres on the first floor, and the business hours were controlled by condition 13 and would be from 07:00 to 23:00 hours.
- (10) Councillor Cobb asked if there would be any sound insulation for the roof terrace and whether it could be used at all hours. She asked questions around the size of the motorcycle parking bay, which she felt was a more sustainable type of transport for students than cars, and noted that car parking was particularly difficult in the area. Mr Thatcher replied that the management plan would control the use of the terrace so that it would not be used all through the night. He added that the motorcycle parking bays could be retained through the Section 106 agreement and used partly for motorcycle parking and partly for car parking.

- (11) Councillor Cobb asked how the use of the terrace could be controlled if there was no warden on site. Mr Thatcher replied that if the Local Planning Authority was not satisfied that the management plan could adequately control this, it would not be agreed by the officers.
- (12) Councillor Smart asked if any screening would be provided with the roof terrace. Mr Thatcher replied that there would be a 1.1 metre high boundary wall with vegetation screen on top.
- (13) Councillor Steedman believed that there was a restriction on student parking within a certain radius of the Varley Halls scheme, and asked if this could be implemented for this scheme. The Principal Transport Planner, Mr Steve Reeves replied that a condition was recommended for a travel plan to be submitted, and parking could be managed through this.
- (14) Councillor Mrs Theobald asked what the size measurements of the rooms were and raised concerns over the lack of a warden on site to manage the students. Mr Thatcher replied that the typical layout was 3.2 metres and 5.1 metres.
- (15) Councillor Kennedy stated that she had been a student in the city and it was not normal for university accommodation to have a site manager.
- (16) The Chairman noted that there had been a scrutiny review on Phoenix Halls recently regarding the problems with students there, and asked how many students were at Phoenix Halls. Councillor Kennedy replied that there were hundreds of students who lived in Phoenix Halls, but the Council had a lot of success in working recently with the students and the university to better manage the premises.
- (17) Councillor Alford noted that this accommodation was in the centre of Brighton and felt that the management of these halls needed to be carefully considered. He felt that supervision was needed and that the definition of this supervision needed to be clear. He asked that the Committee Members be assured that the contents of the management plan were stringent enough. The Senior Solicitor, Mrs Woodward, replied that it was unusual for Section 106 matters to return to Committee, and the Chairman suggested that she, the Deputy Chairman and the Opposition Spokesperson consider the Section 106 agreement before it is agreed.

Debate and Decision Making Process

- (18) Councillor Davey stated that he had concerns over the hours of use for the retail unit, and felt the hours should be reduced.
- (19) Councillor Hamilton felt that this was a very good location and within easy reach of the university. He felt the rooms were a good size and the people living nearest to the site had not objected so he felt able to support the application.
- (20) Councillor Steedman did not believe this was a town centre site, but was convenient for the university. He felt that restrictions on student parking should be added as the area was well served by public transport.

- (21) Councillor Carden agreed that there was good public transport here, but did not think that students would be able to afford cars to park them in the area.
- (22) A vote was taken and on a vote of 10 for and 2 against, minded to grant planning permission was agreed subject to a Section 106 agreement, the conditions and informatives in the report and additional requirements and conditions, namely that the Chairman, Deputy Chairman and Opposition Spokesperson be consulted on the Site Management Plan prior to agreement, that the opening hours of the retail premises shall be 08:00 until 20:00 hours and that the parking bays shall be split on a 50:50 ratio between car parking and motorcycle parking.
- 132.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of this report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Agreement and to the conditions and informatives listed in the report.

B. Application BH2010/02012, 25-28 St James’s Street, Brighton – Redevelopment of first floor and airspace above to form residential development of 33 flats (including 13 affordable flats) over four floors above existing retail.

- (1) Mr Thatcher introduced the application and demonstrated plans and elevational drawings. A previous approval was identical in terms of size, bulk, scale and massing, with an extension over 24 Dorset Gardens. The units had been reduced by one and the principal of the development was acceptable. The revised scheme had an increase in amenity space and met lifetimes homes standards. The units were car free and a contribution to sustainable transport was sought. Thirteen of the units were affordable housing, and nine were wheelchair accessible. There was a public art contribution sought and this would likely be used along the frontage of Dorset Gardens. Code Level 3 for sustainability was sought.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Steedman asked what the colours of the panels would be. Mr Thatcher replied that all external materials were to be approved by the local planning authority and there would be glazing on the balconies.

Debate and Decision Making Process

- (3) A vote was taken and on a vote of 9 for, 2 against and 1 abstention minded to grant planning permission was granted subject to a Section 106 agreement and the conditions and informatives listed in the report.

- 132.3 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 9 of this report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Obligation and to the conditions and informatives listed in the report.

C. Application BH2010/02344, The Royal Pavilion, 4-5 Pavilion Buildings, Brighton
– Temporary ice rink on the Royal Pavilion Eastern lawns. Structure to include ancillary buildings for a restaurant, crèche, café, toilet facilities and skate hire. Proposed dates are 26 October 2010 to 23 January 2011 including set up and break down, with resurfacing to be completed by 23 February 2011.

(1) The Senior Team Planner (East), Mr Walke, introduced the application and demonstrated plans and elevational drawings. He noted that the current scheme was very similar to last year's scheme. There would be a new public access viewing area included for tourists to continue to view the Pavilion and English Heritage had not raised an objection, however some views of the Pavilion would be obscured, and the Conservation Advisory Group had objected and felt that a different location could be more appropriate.

The Conservation and Design Team recognised the harm to the Pavilion, but felt that as the application was temporary, and the landscape would be restored after use, it was acceptable in this instance. The Environmental Health Team had considered issues to do with noise and lighting intrusion and felt the application was acceptable. The Arboriculturists had raised concerns about the impact on the trees on site and had proposed ring fencing those trees most vulnerable whilst the ice rink was in situ. It was noted that energy use on site would be monitored to assist plans for renewable energy for future applications, if approval was obtained.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Steedman asked that an informative be included to ensure that information was gathered regarding the energy use of the scheme.
- (3) Councillor Smart asked if the ice rink users would have to walk on grass paths to access the site and whether the viewing area was raised and if the public had to pay to use this. Mr Walke replied that temporary grass-crete paths had been proposed with the scheme. There were limited views available from the proposed viewing area for the Pavilion, but this would be freely available to all. Mr Walke believed there would be a charge for the viewing area provided for the ice skating rink.
- (4) Councillor Alford asked for confirmation that the operator would restore the site after use and Mr Walke agreed, but added that this would form part of the lease agreement with the Pavilion.
- (5) Councillor Theobald asked if there would be extra lighting provided with the scheme and Mr Walke confirmed this, stating that there would be a Christmas tree on site and lights in the existing trees.
- (6) Councillor McCaffery asked how much of the Pavilion would be obscured by the scheme. Mr Walke demonstrated photographs and plans of the site and stated that part of the northern elevation of the Pavilion would be obscured. The temporary structures that formed part of the scheme would be up to 4 metres in height.

Debate and Decision Making Process

- (7) Councillor McCaffery felt this was an exciting idea but was concerned by the amount of the Pavilion that would be obscured. She did not feel it was necessary to have a café on site and was concerned by the number of temporary buildings that were needed.
- (8) Councillor Kennedy fully supported the scheme. She appreciated the concerns but noted that the application was temporary. She added that it was part of the strategy for the Pavilion to make better use of the gardens and would provide money to keep the Pavilion well maintained.
- (9) Councillor Carden welcomed the application and looked forward to seeing the ice rink in situ. He felt that proper skating provision was desperately needed for the city.
- (10) Councillor Theobald agreed that it was an exciting project and it would be wonderful to see skating brought back into the city.
- (11) A vote was taken and on a unanimous vote planning permission was granted subject to the conditions and informatives listed in the report, with an additional informative regarding collection of energy use data.

132.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 10 of the report and resolves to grant planning permission subject to the conditions and informatives in the report, and an additional informative to read:

- (1) The applicant is requested to monitor the energy usage of the ice rink during the period of its operation. This will be helpful in the consideration of any future planning applications and related energy use.

D. Application BH2010/02400, 2 Montefiore Road, Hove – Change of use of office building (B1) to Clinical Diagnostic and Treatment Centre with overnight patient accommodation (C2).

- (1) The Area Planning Manager (West), Mrs Hurley, introduced the application and presented plans and elevational drawings. She stated that an application had been approved in May 2010 for a Sports Orthopaedic Clinic with D1 class use.

The new application sought to change the class use to C2, to include overnight accommodation for patients. The office floor space proposed with the previous application would be removed under the new proposals. Policy EN5 of the Local Plan sought to retain office space unless it could be proved that the space was redundant. Whilst there was a loss in office space and net loss in jobs with the new scheme, Officers felt that as the jobs provided would be of a higher value, this was acceptable.

The scheme would meet community use requirements and had no additional impact on amenity or traffic flows to the previously approved scheme. One letter of support and one letter of objection had been received for the scheme.

- (2) Local Ward Councillor, Councillor Fallon-Khan, spoke in support of the scheme and stated that it would bring health care back into the community setting. The scheme would help to regenerate the economy and to boost the local economy bringing high value jobs into the area. There was an actual need for this type of facility in the area, and the building had been vacant for around five years. Councillor Fallon-Khan also noted that as more people led more active lifestyles, sports injuries would become more common and community treatment facilities were vital to ensure that hospital A&E departments did not get filled up with this type of injury unnecessarily. There were no particular objections to the scheme from statutory consultees and it would provide easier access to treatment for a large proportion of the population than would the Royal Sussex County Hospital.
- (3) Councillor Davey asked if Councillor Fallon-Khan felt there was enough parking provided with the scheme. Councillor Fallon-Khan noted that there was no difference between this scheme and the approved scheme in May 2010 in terms of parking. He added that residents in the city could easily reach this site through public transport and it was not a great distance from Hove train station.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Smart noted that there was no extra parking with this scheme and felt that people with injuries of this type would be likely to rely on cars or taxis to access the clinic. He asked if there was anywhere on site where extra parking could be added. Mrs Hurley noted that there would be no increase in floor space for this scheme compared to the previous scheme, and added that there was nowhere on site for extra parking to be included.
- (5) Councillor Mrs Theobald asked if there was a drop off point or ambulance space provided with the scheme. Mrs Hurley replied that the area was a controlled parking zone and there would be spaces on street that patients could pay to use. She added that there would likely be a drop off space near the clinic but not an ambulance space as patients would be attending as out-patients and not as emergencies in ambulances.

Debate and Decision Making Process

- (6) Councillor Mrs Theobald noted that the site had been vacant since 2005 and this was a good use for an attractive building that was an asset for the city.
- (7) A vote was taken on a vote of 11 for and 1 abstention, full planning permission was granted subject to the conditions and informatives listed in the report.

132.5 **RESOLVED** – That the Committee had taken into consideration and agrees with the reasons for the recommendation and resolves to grant planning permission subject to the conditions and informatives listed in the report.

(iii) MINOR APPLICATIONS

E. Application BH2010/02005, 30 Hove Park Road, Hove – Installation of part pitched and part flat roof to rear extension with ridge skylights, rooflights to rear elevation and alterations to patio doors and windows. Installation of raised deck (part retrospective).

- (1) Mrs Hurley introduced plans and elevational drawings and noted that the application was for changes to a previously submitted scheme, which was allowed at appeal. She added that it was relevant to note an application for a non-material amendment to the previously approved scheme. A split decision had been issued regarding the changes, and those that required further planning permission had come back to Committee for consideration. Letters of objection had been received regarding the impact on the building and surrounding area and the amenity of neighbours. There was potential for overlooking but the views were limited and would not warrant a reason for refusal. No overlooking would result from the decking area and it would not appear incongruous and so was acceptable.
- (2) Mr Neil, a neighbour, spoke in objection to the scheme and stated that the gap between his property and the applicant's property had been critical to receiving approval on appeal. The current gap was not appropriate however and was 2 inches at the smallest point. The proposed rear window also increased overlooking onto his garden and the appeal decision stated that there should be no overlooking, and that obscured glass would prevent this. The proposed window was clear glazed however. He asked that the Committee ensure there was a wider gap between the properties, that the windows overlooking his property be obscured with fixed openings and that the proposed eastern elevation window be removed.
- (3) Councillor Cobb asked if the gap would be acceptable if the existing boundary wall was removed. Mr Neil replied that the building material from the demolished garage should have been removed to provide a wider gap, but he was unsure if this would be wide enough anyway.
- (4) Councillor Smart asked if the application would be more acceptable if the new proposed window was obscurely glazed and Mr Neil agreed.
- (5) Mr Murray, the applicant, spoke in favour of the application and stated that there had been no gap between the properties before the building work was done as the garage abutted the existing boundary wall. The appeal decision recommended a 0.5 metre gap between the boundary and a 2.5 metre gap between the gable ends of the properties. Planning Officers had confirmed that what was existing was appropriate. The changes to the application included a reduction in the roof size of the extension and removal of three east elevation windows. The southern window had been increased in size, but this conformed with what was already typically existing in the area.
- (6) The Chairman asked if it was the recommendation of the Planning Inspector to have a smaller south facing window fitted. Mr Murray replied that the increase in window size formed part of the new application that had not been assessed by the Inspectorate.

- (7) Councillor Kennedy asked if there were plans to improve the look of the boundary gap as it appeared very unfinished. Mr Murray replied that he had not been permitted access by his neighbour to finish the works properly but would like to do so.
- (8) Councillor Cobb asked if there would be no overlooking if the application conformed to the Inspector's recommendations and Mr Murray confirmed this, but stated that the larger hipped roof as previously proposed was not desirable for the area and it was beneficial to all that this was reduced.
- (9) Councillor Smart asked if the window size was changed on Officer advice and Mr Murray replied that it was not.
- (10) Councillor Alford asked where the gap between the boundaries was measured from and Mr Murray replied it was from the east side of the boundary wall. An independent surveyor had been engaged to assess the correct line of the boundary.
- (11) Councillor Alford asked if the boundary line was disputed as the boundary wall currently took up part of the 0.5 metre gap. Mr Murray noted that his neighbour's porch was built up to and overhung the boundary wall, but that the two gable ends were 2.5 metres apart.
- (12) Mrs Hurley confirmed that the size of the extension was not something that the Committee could consider since the extension was allowed at appeal and the only matters of consideration were the changes now proposed. It was also confirmed that Enforcement Officers had visited the site and were satisfied that the 0.5 metre gap was appropriate and the scheme was built in accordance with the approved drawings.

Questions/Matters on Which Clarification was Sought

- (13) The Chairman asked the Officer's view on the enlarged window and Mrs Hurley replied that it was felt that the enlargement was not large enough to warrant a reason for refusal.
- (14) Councillor Theobald asked if a smaller window could be conditioned and Mr Vidler replied that Councillors needed to consider the application before them.

Debate and Decision Making Process

- (15) Councillor Cobb felt there was very increased overlooking to the neighbours garden and the appeal decision highlighted that there should be no overlooking. She did feel that there was overlooking generally in the area however and felt that if the window size was reduced in height this would be more acceptable. She added that if the roof size had remained the same this would have obscured any views.
- (16) Councillor Smart noted that if the roof size had remained the same the applicants would not have been able to have an enlarged window.
- (17) Councillor Theobald felt that the enlarged window was very large and gave views onto the neighbour's patio. She added that the boundary wall was very messy and unfinished and needed to be rendered properly.

- (18) Councillor Steedman noted that the Inspector had not removed Permitted Development rights with the scheme and so if the window had been constructed as per the Inspector's recommendations, there was nothing to stop the applicant inserting a larger window at a later date.
- (19) Mr Vidler clarified that the Inspector would have considered the plans before him and views would have been obscured by the previously approved roof. It was not possible to know what the Inspector would have decided with the new application, and it was for Committee Members to assess this based on the application's merits. Officers did not feel the application increased overlooking to the point where the application could be refused on these grounds, and the existing character of the area had been taken into account when determining this.
- (20) A vote was taken and on a vote of 5 for, 2 against and 4 abstentions planning permission was granted subject to the conditions and informatives listed in the report.
- 132.6 **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 Simson was not present during the debate and voting of this application.

F. Application BH2010/00391, 37-41 Withdean Road, Brighton – Demolition of three existing detached houses and construction of 3no. new detached dwellings.

- (1) Mrs Hurley introduced the application and demonstrated plans and elevational drawings. She noted that a scheme of five dwellings had already been approved and this application sought to reduce that to four dwellings.

Questions/Matters on Which Clarification was Sought

- (2) Councillor McCaffery asked if the profile of the houses would dominate the skyline and Mrs Hurley replied that the house that had already been built would be the most prominent and the others would recede away from this,
- (3) Councillor Smart asked why the trees had been removed at the front of the site. Mrs Hurley replied that some trees had been removed that should have remained and this information would be passed onto the Enforcement Team to investigate further.
- (4) Councillor Theobald asked how far away the dwellings would be from the road and Mrs Hurley replied that they would be approximately 6 metres from the frontage. She added that additional planting of trees would take place.

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- (5) The Chairman felt that the removal of the trees would have a significant impact on the street scene and felt these needed to be replaced.

- (6) Councillor Theobald felt the dwellings were out-of-character and that the replanting would soften the look of the dwellings.
- (7) Councillor Steedman did not like the application and did not feel it was an efficient use of land, but as approval had already been given for 5 dwellings he did not feel he could justify a refusal.
- (8) Councillor McCaffery raised concerns over the accuracy of the drawings and felt that the Officers needed to pay further attention to this.
- (9) Mr Vidler addressed the Committee and stated that the removal of some of the trees would be investigated further for a more accurate assessment but that Officers would endeavour to ensure that as many trees as possible were retained on site.
- (10) A vote was taken and on a vote of 4 for, 1 against and 4 abstentions planning permission was granted subject to the conditions and informatives listed in the report.

132.7 **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, and an additional condition to read:

- (1) No development shall take place until a retention and planting schedule for trees across the site has been submitted to and approved in writing by the Local Planning Authority. Those trees that area to be retained shall be retained as such thereafter. All planting comprised in the approved scheme shall be carried out in the first planting seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

Note: Councillors Simson, Davey and Hamilton were not present during the debate and voting on this item.

G. Application BH2010/00584, 227 Preston Road, Brighton – Change of use of car showroom/workshop (SG04) to 2no. retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM Cash Machine.

- (1) Mrs Hurley introduced the application and demonstrated plans and elevational drawings. She noted that the use of the site was sui generis. There would be minor alterations to the elevations. Letters of support and objection and a petition of objection had been received regarding concerns over noise, light and air pollution, and traffic and parking issues. A retail impact assessment had been conducted to show

there was capacity to accommodate another store of this type in the area and there would be no detrimental impact to the building.

Unresolved issues relating to parking, deliveries and highway safety were the proposed reasons for refusal. The proposed unloading bay would be situated on the A23 and the Sustainable Transport Team had raised an objection to the impact on safety that this would have to pedestrians and cyclists. There was a significant reduction in parking places that were required under Supplementary Planning Guidance 4 with this scheme.

- (2) Mr Gotham addressed the Committee as a local objector to the scheme. He stated that he was very concerned about the development and noted that over 500 people had petitioned against it. The development would create traffic, parking, pollution and safety problems and would be unsafe for pedestrians. He added that there was a school in the nearby area. Mr Gotham was also very concerned about the unknown impact of the second unit on site and did not feel that Planning Officers had been given the opportunity to assess this properly. He noted that the A23 at this point was a pinch point for traffic and the inclusion of an unloading bay here would exacerbate traffic problems and create highway safety issues.
- (3) Councillor Davey asked how a lorry would access the unloading bay and Mr Gotham believed it would have to travel around Preston Circus and return to be able to access it safely. He added that the proposed loading bay was not long enough for the tailgate of the lorry to be lowered and this would create further problems.
- (4) Mr Morris from WYG Planning spoke on behalf of the applicant and stated that the development was acceptable in principle and would provide economic benefits and create jobs in the local area. Most issues with the application had been resolved, and the unloading bay had been situated on the A23 following advice from the Transport Planners, and Mr Morris was unsure why this was now a reason for refusal of the application as it was not the applicant's preferred solution. The parking provision was the maximum recommended for the site and the applicant did not feel that more than this would be necessary. The scheme complied with policies and he added that the second unit was likely to be a pet shop, which would not be a high traffic generator. He added that there would only be one articulated lorry delivery per day to the site as the rest of the deliveries would be by smaller vans. He did not believe there were any valid grounds for refusal of the application.
- (5) Councillor Davey asked what route the delivery lorries would likely take down the A23 and Mr Morris replied that it would likely be a combined delivery to other stores in the city and this store would receive delivery as the lorry travelled out of the city.
- (6) Councillor Smart asked how much custom was expected to travel from the south of the city and Mr Morris replied that this would be a local store serving a local population and as such he did not expect much custom from elsewhere. Much of the custom would be by foot.
- (7) Councillor Alford asked why the parking area could not be used for turning lorries and Mr Morris replied that the unloading bay was originally sited in the parking area but the Transport Planners had advised the applicant to locate it on the A23.

- (8) The Chairman asked for a further explanation of how the unloading bay was sited from Mr Fowler. He explained that the existing access into the parking area was not wide enough for lorries to access and any lorries leaving the site would have to reverse onto a primary road route. The applicant had asked for proposals for an alternative solution to where the bay could be sited, but it was the applicant's responsibility to ensure that any proposals with the application resolved highway safety concerns. Mr Morris believed that the route the lorries would take into the parking bay was wide enough and lorries would be able to exit the site in a forward gear.
- (9) Councillor Cobb asked how long a lorry would take to unload and Mr Morris replied that the longest time would be around 45 minutes.
- (10) Councillor Theobald asked how many lorries would use the bay each day, and whether the bay could be cut further into the pavement. Mr Morris replied that one articulated lorry per day would use the bay and the rest of the deliveries would be by smaller vans. Cutting further into the pavement had not been considered as an option at this stage.
- (11) Councillor Davey asked how many vehicle movements to the store were likely and Mr Morris replied that he did not have the figures for this.
- (12) Mrs Hurley clarified some of the answers given to the questions and noted that analysis of the swept path of delivery vehicles showed that they would pass very closely or hit two of the walls on site. She added that there would be five deliveries per day and gave the dimensions of the vehicles.

Questions/Matters on Which Clarification was Sought

- (13) Councillor Davey asked if the proposed unloading bay would be dedicated to Sainsbury's vehicles. Mr Reeves replied that unloading bays could not be restricted to a particular user.
- (14) Councillor Simson noted a pedestrian access and asked if this could be used by cars and Mrs Hurley replied there would be bollards in place to prevent this.
- (15) Councillor Smart believed that the pavement had been increased in size at one end of the application site, and felt that this area might be used to provide an unloading bay.
- (16) Councillor McCaffery asked why so many parking spaces were needed if the store was supposed to support the local retail market. The Chairman replied that this formed part of the application which needed to be considered in its entirety.
- (17) Councillor McCaffery asked what the second unit on site would be used for and Mrs Hurley replied that it would be A1 non food use.
- (18) Councillor Simson asked if they applicants would need revised planning permission if they wished to use the second unit. Mrs Hurley replied that a restriction of use could be placed on the unit.

- (19) Councillor Cobb asked if Cumberland Road was wide enough to accommodate cars parked on both sides, with two cars passing in the middle of the road. The Transport Planner, Mr Fowler, replied that there were proposed double yellow lines on the west side of the street to prevent parking in that area. Mr Reeves added that the roadway was 6.2 metres wide and a parked car would take up 2.1 metres. There would not be enough room for cars to pass if there was parking on both sides of the road.
- (20) Councillor Smart asked why a cycle way was not proposed similar to the one on Dyke Road. Mr Vidler replied that the Dyke Road cycle way was an advisory scheme.
- (21) Councillor McCaffery asked how large delivery trucks would be able to turn around in the small roads around the area. Mr Reeves replied that issue would be a matter for the applicant to resolve.

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- (22) Councillor Simson was concerned about the traffic management in this area and noted that at this point the A23 reduced from two lanes to one lane. From knowledge of local supermarkets in her area there were at least two deliveries from large vehicles per day and the bus stop behind the unloading bay created further problems as the bus would have to pull out around the lorry into traffic that was already being reduced to one lane. She noted that Cumberland Road was already very busy and this application would considerably increase parking in the area.
- (23) Councillor Alford felt that traffic and road issues remained unresolved with this application and could not be disregarded.
- (24) Councillor Davey felt that the application was inappropriate on transport grounds and was concerned about the parking issues. He added that people could end up queuing on the A23 to access the store and he did not think the site was big enough to support the envisaged demand.
- (25) Councillor McCaffery did not believe as many parking spaces would be needed if this was to be a local store. Extra retail provision was needed for the area as there were no other sites nearby and this would increase shopping choice. She did feel that the turning from Cumberland Road was already dangerous however and the traffic issues needed to be resolved before the application was approved.
- (26) Councillor Theobald felt that when the site operated as Caffyns there would have been lots of traffic movement. She did feel that that site was difficult in terms of deliveries however and believe this problem needed to be resolved before the store could be approved.
- (27) The Chairman felt that as this was a local store then the deliveries could be made by smaller vehicles more suited to a local area.
- (28) Councillor Smart felt that a better solution to the deliveries could be found for the site and was concerned that this was a reason for refusal.

- (29) Councillor Hamilton felt that if the second unit could be removed there would be plenty of space for parking and for loading and unloading of delivery vehicles.
- (30) Councillor Alford felt that the delivery problem could be rectified, even if the wall around the store was removed to allow large vehicles access.
- (31) A vote was taken and on a vote of 9 for, 1 against and 2 abstentions planning permission was refused for the reasons given in the report.

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

H. Application BH2009/02847, 85 Tivoli Crescent North, Brighton – Single storey side extensions to north and south elevations and swimming pool and enclosure extension to rear (revised design).

- (1) There was no presentation given with this item.
- (2) A vote was taken and on a vote of 7 for, 0 against and 2 abstentions planning permission was granted subject to the conditions and informatives listed in the report.

132.9 **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: Councillors Simson, Davey and Hamilton were not present during the voting on this application.

I. Application BH2008/02546, Sainsbury's Supermarket, Lewes Road, Brighton – Application to vary condition 2 (delivery hours) of planning permission 92/0916/FP dated 15 July 1993, to allow deliveries from between 7am to 10pm Monday to Saturday, and increase delivery vehicles to 4 daily, on Sundays and Bank Holidays with delivery hours remaining as existing.

- (1) Mr Walke introduced the application and demonstrated plans of the application. A condition to restrict the delivery times was proposed to reduce these hours as there were concerns over the disturbance to the nearby residential properties. Complaints from residents had been received regarding this. No statutory noise nuisance had been identified but it was clear that there was some disturbance. The application requested the extension of delivery hours by one hour and increasing the number of deliveries from 2 to 4 on Sundays and Bank Holidays. It was not felt that the increased hour and deliveries would create additional disturbance and several conditions were proposed to control the noise on site.
- (2) Mrs Rimington, a local neighbour, spoke in objection to the scheme and stated that the delivery yard was very close to adjacent residential properties and was very noisy. The store was at least 30 years old and the existing conditions to control noise were regularly flouted. The store had changed over the years and was now also a

distribution centre for the city and the daily deliveries had vastly increased. The operation of the store was very different from the original permission that had been given. There had been no money spent on the delivery yard to mitigate this increased usage and residents were disturbed by constant, but erratic short term noise that registered up to 70 decibels. Mrs Rimington stated that existing ambient noise levels should not be breached and any conditions placed on the yard should be enforceable and apply after 21:00 hours and on Sundays.

- (3) Councillor Davey asked if there would be any improvement in the noise disturbance given the conditions that were proposed with this application. Mrs Rimington did not believe that Sainsbury's would adhere to these conditions as they had not done so in the past. She did not believe the store would receive approval for the way it was operating if the application was submitted now.
- (4) Councillor Davey asked if the yard was now being used as a distribution centre and Mrs Rimington confirmed this, stating that between 7 and 8 lorries would use the yard per day, creating noise all day.
- (5) Councillor West spoke as a local Ward Councillor against the application and stated that there had been long standing issues with disturbance and air pollution at this site. The store had not been adhering to the existing restrictions and was now frequently re-supplied, but was not big enough for its current use. There was constant banging and crashing noises from the yard and Councillor West was not confident that the conditions would be complied with or enforceable. He felt that deliveries at 22:00 hours was too late for children to sleep and the doubling of deliveries on Sundays would be very detrimental of the lives of the neighbours.
- (6) Councillor Kennedy asked if there had been any dialogue between the Ward Councillors and Sainsburys about the problems on site and Councillor West stated that Councillor Taylor had been involved in the past, but he had only recently been involved with the issue.
- (7) Mr Malkin from WYG Planning addressed the Committee on behalf of the applicant and stated that discussions for this application had been ongoing for around 2 years with lots of work and effort put into the application. The delivery times had only been increased by one hour and noise monitoring had taken place from 2008 in neighbouring gardens, and it was considered that noise levels from the yard would increase by 1 decibel on a worst case scenario. The tests were performed to industry standards. The acoustic fence on site would also be repaired as part of the application and the roll cages and reversing alarms would not be used between 21:00 and 22:00 hours. Monitoring of this would be undertaken to ensure compliance. The evidence that 70 decibels of noise was being emitted from the yard had been discussed with the Environmental Health Team and it was felt that the recording of this was unreliable.
- (8) Councillor Smart asked when the change from a purely retail store to retail and distribution had taken place. Mr Malkin replied that the operation of the store did not require planning permission to alter.
- (9) Councillor Kennedy was pleased to hear that the applicant was engaging with Officers and asked if any consultation had taken place with the local community. Mr Malkin

replied that no specific consultation had taken place but the store did respond to any complaints it received.

- (10) Councillor Kennedy noted that the nature of the store had changed, even if its use class had not, and asked Mr Malkin if the yard was still fit for purpose. Mr Malkin highlighted that a proposed condition did restrict the use of the yard between 21:00 and 22:00 hours.
- (11) Councillor Steedman recognised that Sainsbury's was already aware that the acoustic fence needed repairing and asked why this had not already been done out of good neighbourliness. Mr Malkin was unable to answer this question.
- (12) Councillor Cobb asked how deliveries would be made during the times that the roll cages could not be used. Mr Malkin replied that deliveries could be taken straight into the store during these times.

Questions/Matters on Which Clarification was Sought

- (13) The Chairman asked if the Environmental Health Team had any further comments. The Environmental Health Officer, Mr Bulger, stated that complaints regarding the yard had begun in 2000 and an investigation had continued until 2008. Most of the complaints were to do with deliveries being made to the yard and although this had been thoroughly investigated, no statutory noise nuisance had been identified under the Environmental Protection Act 1990.
- (14) Councillor Smart referred to proposed condition 5 in the report and noted that the refrigeration unit hours were controlled on Monday to Saturday, but not on Sundays, and asked why this was. Mr Walke replied that as no extra hours had been requested for Sundays, it was not reasonable to control hours on this day.
- (15) Councillor Davey asked if the restriction on deliveries between 21:00 and 22:00 hours would prevent lorries already in the yard from leaving after this time. Mr Walke replied that this was not clear in the condition, but it could be amended to cover this issue.

Debate and Decision Making Process

- (16) Councillor Kennedy felt that this was a difficult application to assess. Although Officers had recommended conditions to protect residential amenity she was disappointed that Sainsbury's did not appear to care about the community in which they were situated. She did not feel the yard was originally designed for this and felt it needed to be adapted and redeveloped to ensure it was fit for the purpose for what it was used for. Ideally she would like for the opening hours of the store to remain the same but with all of the proposed conditions of use imposed.
- (17) Councillor Davey felt that neighbourliness was the key issue here. The yard was now being used in a very different way with several more traffic movements. The proposed conditions would only apply to the extended hours of use and Councillor Davey felt that the store should be offering to do this anyway. He did not feel able to support the application and felt that the yard needed to be redesigned before Sainsbury's could come back with an application to extend hours.

- (18) Councillor Alford referred to the acoustic fence, which Sainsbury's were already aware was not in good repair. He felt that the store needed to generate good will in the community before asking for an extension of hours.
- (19) Councillor Smart felt that the use of the yard had changed dramatically and he did not believe that deliveries were appropriate on Sundays. There had been 10 years of complaints about the store and a lack on enforcement of the current conditions.
- (20) Councillor Steedman noted that the Government would be reviewing use classes in the near future and felt that the Committee should make representations that a home shopping delivery service would be a change of use from purely retail.

Mr Vidler addressed the Committee and noted that home deliveries were not a material change of use. There were no restrictions on these vehicles and the conditions would not apply to them. It was not possible for the Committee to impose more restrictive conditions on the use of the yard than what was required as part of the application. He added that condition 7 was recommended for the repair of the acoustic fence before the application could be implemented.

- (21) A vote was taken and on a vote of 3 for, 7 against and 1 abstention, planning permission was refused.
- (22) Councillor Kennedy proposed an alternative recommendation for refusal of the application and this was seconded by Councillor Davey. A short break was taken and the Chairman, the proposer and seconder, the Deputy Development Control Manager, the Senior Team Planner (East) and the Solicitor to the Committee recessed to ensure the accuracy of the wording for refusal.
- (23) A second recorded vote was taken and on a vote of 9 for, 1 against and 1 abstention planning permission was refused for the reasons stated below.

132.10 **RESOLVED** - That the Committee has taken into consideration and does not agree with the reasons for the recommendation set out in paragraph 8 of this report and resolves to refuse planning permission for the reasons that:

- (1) The increased vehicle deliveries during the hours proposed by the application would result in additional noise nuisance to the detriment of the amenity of nearby residents contrary to policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan 2005.

An informative was also attached to the decision to read:

- (1) The Planning Committee requests that Sainsbury's enter into constructive dialogue with nearby local residents to address the concerns around the delivery yard.

Note 1: Councillors Hyde, Alford, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and Theobald voted for refusal of the application. Councillor Cobb voted against refusal of the application. Councillor Carden abstained from voting.

Note 2: Councillor Simson was not present during the debate or voting on this item.

J. Application BH2010/02328, Land Adjacent to 20 Old London Road, Brighton –
Erection of a two storey 4no bedroom detached house with external works and landscaping to create one new vehicular access road.

- (1) Mr Walke introduced the application and demonstrated plans and elevational drawings. He noted that the site sloped from west to east and south to north. There were a lot of trees on site with a group Tree Preservation Order (TPO) placed on them. An application had been refused on the site in 2009 on the grounds of detrimental impact to neighbouring amenity, the risk of flood run off and the unsuitable access. The application went to appeal and was dismissed by the Inspectorate, but only on the grounds of the lack of a legal agreement for sustainable transport. The new scheme had been submitted after the Council had agreed to waive the need for contributions from smaller schemes as part of its temporary measures to assist the development industry, and as such a legal agreement for sustainable transport was not necessary with this application.

It was felt that any overlooking that occurred as a result of the scheme would not detrimentally impact neighbouring amenity as the views over 20 Old London Road were mainly over rooftops, and the next nearest dwelling was around 30 metres away. Some secondary windows did look over 17 Audrey Close, but this was not a significant impact. The trees on site, which formed a group TPO, were not individually worthy of protection, and any tree loss would be replaced by native species. The access to the site was steep, but deemed acceptable.

The Inspector did not feel the flood risk was significant enough to warrant a reason for refusal. As the site was now classed a “greenfield” land Code for Sustainable Homes Level 5 was sought as part of the application.

- (2) Mr Morgan, a local neighbour, spoke in objection to the scheme and stated that he lived at 22 Old London Road, and was speaking on behalf of numbers 17 and 18 Audrey Close as well. The overlooking that would occur at 17 Audrey Close would be into a room that was frequently used by the resident there and would result in a significant loss of privacy. The building sat too high within the site and the access road was very steep. Mr Morgan was concerned that vehicles using this access would illuminate his living area with headlights due to the sweep of the driveway that passed his house. There would be a distance of around 6 metres from the driveway to his house and this would have a detrimental impact on his quality of life. Mr Morgan felt the access road should be moved to travel around the front of the proposed dwelling and any inconveniences as a result of the development should be borne by the applicant.
- (3) Councillor Pidgeon, Local Ward Councillor, spoke against the application and raised the issue of the proposed balcony that would create unhindered views and overlooking of 17 Audrey Close. He felt the balcony was inappropriate and should not be built. The scheme would change the character of the Patcham Conservation Area, and he stated that there would be a significant increase to the risk of flooding. No major drainage or flood works had been carried out since the last flooding had occurred and as such this

was a valid reason for refusal. There would be an unacceptable loss of wildlife with the development and a loss of very many trees on site. Councillor Pidgeon also felt that the access road was too steep for emergency vehicles to access safely.

- (4) Mr Turner, agent speaking on behalf of the applicant, spoke in favour of the application and stated that there was no balcony proposed with the application but a small footbridge for the applicant to access the garden from the kitchen. There would be no views from this footbridge as the boundary wall would be too high. Mr Turner did not believe there would be overlooking anywhere on site, and he added that the Inspector felt that the house and access were acceptable. He noted there would be some loss of habitat, but additional planting would be put in place to mitigate this and this would not constitute a reason for refusal. The ecology of the area was quite diverse and would be enhanced by native planting. There were no technical objections to the flooding issue and a flood report had been commissioned that suggested that widening and easing the access would be beneficial. An attenuation tank had also been included as part of the scheme, as well as soak-aways on site. Mr Turner added that the scheme had been dismissed on a technicality that was now no longer relevant.
- (5) Councillor Steedman asked whether code level 5 for sustainable homes could be achieved and Mr Turner replied that they had not been through the exercise to determine this as yet. A more ecologically minded scheme had previously been submitted, but had been refused as it was out-of-keeping with the area. He added that to achieve code level 5 photovoltaic cells were needed in south facing positions and the scheme did not have very much of appropriate south facing elevations to achieve this.
- (6) Councillor Smart asked if an alternative access route had been considered. Mr Turner replied that it would not be possible to site the access elsewhere due to the gradient but boundary treatments and screening would prevent any intrusion into neighbouring properties.
- (7) Councillor Cobb asked if the access would pose a problem in icy or snowy conditions. Mr Turner replied that the gradient was 1:6, which was not untypical for the Brighton & Hove area.

Questions/Matters on Which Clarification was Sought

- (8) The Chairman asked about the proposed balcony on the east elevation and the potential for overlooking from this. Mr Walke replied that the east elevation was a distance of 10 metres away and as there was significant tree screening proposed it would not affect neighbouring amenity.
- (9) Councillor Steedman asked whether the scheme would be able to achieve code level 5 for sustainable homes without any changes to the design. Mr Walke replied that for schemes that were submitted before the change in classification of garden land, Officers were being more flexible in terms of whether the scheme could reach code level 5.
- (10) Councillor McCaffery asked how surface water drainage was being dealt with and Mr Walke replied that this was dealt with under condition 5.

- (11) Councillor Smart noted that many of the trees on the ridgeline of the site were being removed and replaced with trees at the bottom of the slope. He asked if this would have an affect on overlooking. Mr Walke replied that there were many trees on site, and whilst the removal of some would have an impact, this would be fairly low due to replanting.

Debate and Decision Making Process

- (12) Councillor Theobald stated that the application had been dismissed on appeal and felt that this should be upheld. She felt that garden land should be preserved, and as the site was steep there would be a lot of overlooking. She felt there were significant issues around the access road and the application would spoil the conservation area.
- (13) Councillor Steedman highlighted the fact that the application had been turned down at appeal on a technicality, which was not one of the reasons for refusal that the Council had given.
- (14) Councillor Hamilton stated that if the Committee turned down the application on the same reasons for refusal that had been dismissed by the Inspector then the Committee would be risking costs awarded against the Council in any future appeal. He felt this would be irresponsible.
- (15) A vote was taken and on a vote of 5 for, 1 against and 4 abstentions planning permission was granted subject to the conditions and informatives listed in the report.
- 132.11 **RESOLVED** - that the recommendation 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 Simson and Councillor Davey were not present during the discussion and voting of this item.

- K. Application BH2010/02093, 63 Marine Drive, Rottingdean** – Conversion of existing rear ground and first floor maisonette to create 3no two bedroom maisonettes and 1no two bedroom flat, incorporating erection of rear extension and additional storey with pitched roof with front, rear and side dormers and rooflights to side.

- (1) This application was deferred for a site visit.

- L. Application BH2010/02009, Costa Coffee, 13-14 George Street, Hove** – Installation of 4 air conditioning units, general and toilet extract and fresh air intake unit (part retrospective).

- (1) Mrs Hurley introduced the application and demonstrated plans and elevational drawings. She noted that the installation could not be seen from the highway or any open space, and had no impact on the Cliftonville Conservation Area. A mat colour for the installation had been requested. An acoustic report suggested that once the scheme was implemented the sound-scape would be similar to the existing one. The

Environmental Health Team were satisfied that the attenuators would resolve existing noise issues.

- (2) Mr Adams, a local neighbour, spoke against the application and stated that he had lived in his property all of his life. He worked on shift and slept during the day, but had no reason to complain before about noise disturbance. Following a change of use for the application in 2009 however he had been frequently disturbed by noise and had sent in numerous objections. He noted that the application was retrospective, but he felt that the installation should be sited elsewhere to ensure it did not affect local residents. Mr Adams believed that this would produce a far greater decrease in noise levels than the attenuator would, and felt that this would make the greatest difference to his enjoyment of his property and garden.
- (3) Councillor Theobald asked whether the installation would affect other residents if it was sited away from Mr Adams's property. He stated that the installation was currently only 12.75 metres away from his property and he had to suffer with the noise on a constant basis. If it was moved nearer to the front of the premises it would only affect other commercial premises and he believed that Costa Coffee needed to be more neighbourly in this regard.
- (4) Councillor Theobald asked what type of noise Mr Adams suffered. He replied that there was a constant humming from the installation and a reduction of 5 decibels would be meaningless to him. He currently had to sleep with his windows closed and he did not feel this was reasonable.
- (5) Ms Jarman from Walsingham Planning spoke on behalf of the applicant and stated that the application had been submitted following a previous refusal. It had been subject to extensive consultation and discussions with the Environmental Health Team and the revised proposals included the attenuator. The acoustic report was a robust, industry standard report and showed that the installation would not lead to disturbance to adjoining properties if the attenuators were fitted. The installation would only be used when the coffee shop was open and it was in a predominantly commercial area.
- (6) Councillor Theobald asked if the attenuators would reduce the noise by 5 decibels and Ms Jarman explained that this was a requirement from the Environmental Health Team, but the attenuators would reduce the noise by around 10 decibels.
- (7) Councillor Steedman asked why the attenuators had not been fitted already and Ms Jarman explained that they were quite costly to purchase and install, and the applicant wanted planning permission first before this was undertaken.
- (8) Councillor Kennedy asked if there was a physical impediment to locating the installation elsewhere on site. Ms Jarman replied that she did not know if there was.
- (9) Councillor McCaffery asked if the noise levels could be reduced further and Ms Jarman replied that they were already being reduced by 10 decibels rather than 5 decibels.

Questions/Matters on Which Clarification was Sought

- (10) Councillor Alford asked if the Committee could require the installation to be sited elsewhere.
- (11) Councillor Theobald asked if the Committee could give a temporary permission to ensure that the noise levels were reduced.
- (12) Mr Vidler replied that Members needed to consider the application before them. The application had been submitted to overcome the noise issues and the Environmental Health Team were satisfied that the noise levels would be reduced to an acceptable level. There were currently no restrictions on the hours of use and this application would include conditions for this. He added that the cost of attenuators were considerable and it was not appropriate to give the applicants a temporary permission for this.
- (13) Councillor Cobb asked what the noise levels currently were and if they could be lowered. Mr Vidler replied that this was a technical question that he could not answer, but the levels had been recommended by the Environmental Health Team. The noise levels would be 5 decibels below the background noise.

Debate and Decision Making Process

- (14) Councillor Kennedy felt that this was again an example of a large company who were not engaging with the local community to be neighbourly. She felt that the installation was posing a health hazard for Mr Adams and the applicant needed to show they were doing everything they could to resolve this issue before permission was granted.
- (15) Councillor Carden asked if the application could be deferred for more information to be received from the Environmental Health Team and the Chairman agreed to this.
- (16) A vote was taken and on a unanimous vote the application was deferred for more information on noise levels to be received from the Environmental Health Team and the cost of installing the noise attenuators and revised fan positions.
- 132.13 **RESOLVED** – That the application be deferred for more information on noise levels to be received from the Environmental Health Team and the cost of installing the noise attenuators and revised fan positions.

Note: Councillors Simson, Davey and Hamilton were not present during the debate and voting on this item.

M. Application BH2010/01782, 39 Salisbury Road, Hove – Application for removal and variation of conditions of application BH2009/00696. Variation of condition 2 to allow unrestricted D1 use of ground floor. Removal of condition 11 to allow rear access doors to be open or in use within unrestricted hours. Removal of condition 12 to allow occupation of the ground floor without submitting details of the management of the rear outdoor space.

(1) Mrs Hurley introduced the application and stated that demolition and redevelopment of the site had been agreed in 2009. This application sought to remove certain conditions attached to the permission that the applicant did not feel they were able to fulfil. Officers agreed to the variation of condition 2, the deletion of condition 12, but recommended that condition 11 be retained.

Questions/Matters on Which Clarification was Sought

(2) Councillor Steedman noted the comments from Cornerstone and felt this demonstrated that there could be a need for a community facility. He asked why no evidence was needed for the removal of this from the application. Mrs Hurley replied that the condition would be varied to allow other uses, but if Cornerstone had expressed an interest there was no reason that they could not use the facility.

Debate and Decision Making Process

(3) A vote was taken and on a vote of 7 for and 2 abstentions removal of planning conditions was agreed as per the recommendations in the report.

132.14 **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 in the report.

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

133.1 **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.]

134. 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

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

Application:	Requested by:
BH2010/01966, Mitre House, 149 Western Road	Deputy Development Control Manager
BH2009/03105, Medina House, King's Esplanade, Hove	Deputy Development Control Manager
BH2010/02093, 63 Marine Drive, Rottingdean	Councillor Mrs Theobald

The meeting concluded at 7.30pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

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A. EAST BRIGHTON	31
Application BH2010/01047, 19 Bristol Gardens, Brighton. Appeal against refusal to grant planning permission for racking in the rear yard of the build centre. APPEAL DISMISSED (delegated).	
B. PRESTON PARK	33
Application BH2010/01275, 22 Southdown Road, Brighton. Appeal against refusal to grant planning permission for single storey extension to the rear. APPEAL DISMISSED (delegated).	
C. SOUTH PORTSLADE	35
Application BH2010/00629, 41 Church Road, Portslade. Appeal against refusal to grant planning permission for extension of the existing conservatory. APPEAL ALLOWED (delegated).	
D. WISH	37
Application BH2009/02484, 80 Peacock Lane, Brighton. Appeal against granting of planning permission subject to conditions for single storey timber glazed frame orangery. APPEAL ALLOWED (delegated).	
E. WISH	39
Application BH2009/03154, Gala Bingo Hall and Adjacent Car Park, Portland Road, Hove. Appeal against refusal to grant planning permission for demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1/D2 unit at ground floor and 35 residential units above in part 2, 3, 4 & 5 storey building including 14 affordable unit (40%) surface parking for 18 cars, cycle parking and landscaping. APPEAL ALLOWED (committee).	



Appeal Decision

Site visit made on 4 October 2010

**by M A Champion BSc CEng FICE
FIStructE FCIHT FHKIE**

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

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

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

**Decision date:
7 October 2010**

Appeal Ref: APP/Q1445/A/10/2133017

Build Center, 19 Bristol Gardens, Brighton, BN2 5JR.

- 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 Wolseley UK Ltd against the decision of Brighton & Hove City Council.
- The application ref: BH2010/01047, dated 7 April 2010, was refused by notice dated 21 June 2010.
- The development proposed is: racking in the rear yard of Build Center.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

3. The appeal site lies in a predominantly residential area where Policies QD1 and QD5 of the Brighton & Hove Local Plan 2005 deal with the quality of design and street frontages. It is located on the northern side of Bristol Gardens, and comprises a builders' merchant's yard set back behind the frontage properties. Owing to the curvature of Prince Regent's Close the rear part of the western side of the site fronts onto this road.
4. The proposal has constructed racking used for storage along the western elevation of the main building on the site. It has four levels of storage and projects above the eaves of the building to a height of 5.0 metres, some 0.5 metres lower than the ridge.
5. Although there were some materials stored on the top level at the time of my visit, this level was generally empty and those materials could have been accommodated in the vacant spaces on the lower levels. Both the Council officer's report and photographs submitted by the appellant and a third party indicate that the top level of the racking was empty on those occasions. While I cannot be certain that this would necessarily be the case at all times, it does suggest that the top level is largely unused.
6. Owing to its set back from Bristol Gardens and the narrow access way therefrom, which reduces visibility from this road, I consider that it does not have a significant impact on this street scene.

7. However, having regard to the length and height of the racking seen against the backdrop of the existing building, it is, in my opinion, a dominant structure whether viewed from within the site or the street in Prince Regent's Close.
8. The main building is a steel clad single storey industrial structure. While its clean lines and plain colour enable the racking to be seen clearly against it, I do not consider that the racking, which itself is industrial in character, adversely affects the building.
9. Nevertheless, I observed that the racking is highly visible from Prince Regent's Close and that materials stored on the top level significantly increased its bulk, further detracting from the street scene.
10. While I acknowledge that such racking is a normal feature of builders' merchants' yards, in this instance its height and storage at high level result in a dominant structure that adversely affects the street scene in Prince Regent's Close, contrary to Policies QD1 and QD5.
11. A neighbouring resident expresses concern at the increased number of vehicles using the site since the racking was installed and the resulting increased intensity of operation. The Council does not object in this respect. While the number of vehicles may have increased, a degree of noise is to be expected in any urban area, particularly from a commercial enterprise such as a builders' merchant's yard where vehicle movements, loading and unloading, and movement of stock are all part of the normal operating pattern of the business. I do not consider that any increase in the level of noise resulting from the development is likely to be significant.
12. Another resident states that the racking is likely to result in security of employment for those working in the yard. While this may be so, no evidence has been presented to demonstrate that the absence of the racking would render their jobs any less secure. In any event I do not consider that this is sufficient to overcome the objection in terms of the main issue.
13. I conclude, therefore, that the proposal would adversely affect the character and appearance of the street scene in Prince Regent's Close, contrary to Policies QD1 and QD5.

M A Champion

INSPECTOR



Appeal Decision

Site visit made on 29 September 2010

by **M A Champion BSc CEng FICE**
FIStructE FCIHT FHKIE

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

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

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

Decision date:
4 October 2010

Appeal Ref: APP/Q1445/D/10/2134874 22 Southdown Road, Brighton, BN1 6FH.

- 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 Simon Hull against the decision of Brighton & Hove City Council.
- The application ref: BH2010/01275, dated 23 April 2010, was refused by notice dated 21 June 2010.
- The development proposed is: a single storey extension to the rear.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposed development on the living conditions of the residents of 21 Southdown Road with particular regard to visual impact.

Reasons

3. The appeal site lies in a residential area where Policies QD14 and QD27 of the Brighton & Hove Local Plan 2005 deal with extensions and alterations, and protection of amenity. It is located on the eastern side of Southdown Road within the Preston Park Conservation Area, and comprises a two-storey house with a loft conversion in a terrace of similar properties, each of which has an original part-width two-storey rear projection. Ground levels fall from north to south.
4. Although the submitted drawings indicate that the wall on the highway boundary at the front of the house would be altered, this did not form part of the application and was not considered by the Council. It does not, therefore, form part of the appeal before me.
5. There are a number of discrepancies on the drawings, for instance on the floor plans the north-points are incorrectly shown and No 21 is labelled as No 23. While such errors cast doubt on the accuracy of the drawings, and further errors, generally at roof level, have been drawn to my attention, I consider that the drawings are sufficient for me to reach my decision.
6. The proposal has demolished a conservatory at the rear of the rear projection, and constructed in its place a single storey rear extension which occupies the full width of the site and infills the space at the side.

7. Although this has been constructed in a modern style which contrasts with that of the terrace, I concur with the Council that it does not adversely affect the character and appearance of the surrounding area and preserves the character and setting of the Preston Park Conservation Area.
8. As the extension would effectively replace the previous conservatory adjacent to the northern boundary, I do not consider that the development would have a significant effect on the residents of No 23. Neither, in view of the separation distance and relative orientation, would it significantly impact on No 126 Preston Drove.
9. However the extension has resulted in a wall some 8.5 metres long and 3 metres high (above the ground level of No 21) adjacent to the boundary wall with this neighbouring property. Although I have not been provided with details of this property, and it was not possible to discern all its ground floor windows from No 22 owing to the high boundary fence and the falling ground levels, it is reasonable to assume that it has a similar arrangement of windows to that existing on the appeal site prior to the construction of the extension.
10. On that basis No 21 has a rear facing window in the main part of the building and a side facing window in the rear projection, both serving habitable rooms. Having regard to the height and depth of the extension and its proximity to the ground floor windows of No 21 I consider that the living conditions of the residents of this property would be significantly harmed by way of an overbearing visual impact, loss of outlook and an increased sense of enclosure.
11. I acknowledge that the present resident of this property has not objected to the extension but the development would remain long after his use of the property has ceased. Planning permission runs with the land and future residents, whose living conditions would be harmed, might well take a different view.
12. Neighbouring residents express their concern at the standard of building and drainage adopted. These, however, are not material planning considerations but are subject to other legislation. They also object to the noise and disturbance resulting from use of the extension.
13. The site is in an urban area and a degree of noise is to be expected when houses are closely grouped together. The design of the extension with wide folding doors and the hard surfaces used in the rear garden are likely to result in an increased level of noise, but I do not consider that in normal domestic usage this would amount to a sufficient reason to warrant refusal on its own. However it adds weight to my decision on the main issue.
14. I conclude, therefore, that the proposal would adversely affect the living conditions of the residents of 21 Southdown Road by way of an overbearing visual impact, loss of outlook and an increased sense of enclosure, contrary to Policies QD14 and QD27.

M A Champion

INSPECTOR



Appeal Decision

Site visit made on 28 September 2010

by **John Millard DipArch RIBA FCI Arb**

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

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

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

Decision date:
12 October 2010

Appeal Ref: APP/Q1445/D/10/2134603 **41 Church Road, Portslade, Brighton BN41 1LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss A Court against the decision of Brighton & Hove City Council.
- The application (Ref: BH2010/00629) dated 5 March 2010 was refused by notice dated 25 May 2010.
- The development proposed is described as extension of the existing conservatory by 475mm.

Decision

1. I allow the appeal and grant planning permission for extension of the existing conservatory at 41 Church Road, Portslade, Brighton BN41 1LB in accordance with the terms of the application Ref: BH2010/00629 dated 5 March 2010 and the plans submitted therewith.

Preliminary Matter

2. As the development was carried out before the date of the application, I shall treat the application as one made under section 73A of the Act.

Main Issue

3. The main issue in this appeal is the effect of the extension to the conservatory on the living condition of the occupiers of No 43 Church Road with particular reference to outlook and sense of enclosure.

Reasons

4. The appeal property is a two storey Victorian terraced dwellinghouse which has a recently constructed conservatory, located in the re-entrant space between the two storey projecting rear wing of the dwelling and the boundary with the mirrored No 43. It was built as permitted development to replace a previously existing conservatory in the same location, of similar height and profile. It is, however, of more robust construction and, in particular, has a 1.85m high brick wall on the common boundary, with clerestory windows above, compared with the previous conservatory which appears to have been of all timber construction with a higher proportion of glazing on the boundary.
5. To the extent that the conservatory is a direct replacement for its predecessor, the Council accepts that it is not subject to planning control. It has, however, been extended by a little under 500mm further into the garden and it is this extension to which the retrospective planning application relates. As extended,

the conservatory has an overall depth of about 3.4m and aligns with the face of the rear wing. It is of a design that is sympathetic to the host dwelling and causes no harm to the character and appearance of the property.

6. The re-entrant space to the neighbouring No 43 has been partially covered with corrugated plastic sheeting on a timber frame but has otherwise not been infilled. There are two windows that look out onto this space, one from the dining room, in the rear wall of the main part of the house and facing towards the garden, and the other from the kitchen, in the flank wall of the rear wing and facing directly towards the appellant's conservatory. Policies QD14 and QD27 of the adopted Brighton & Hove Local Plan 2005 (LP) seek, among other things, to protect the amenities of neighbouring occupiers, including outlook.
7. Because of its distance from the main rear wall, and as it can be seen from the dining room only at a very oblique angle, the modest addition to the conservatory has had little or no impact on view from that room. Seen through the kitchen window, the extension has marginally greater visual impact but, because of the extension's modest bulk, particularly when compared with previously existing boundary treatment, this is not sufficient to materially detract from the outlook or increase the viewer's sense of enclosure.
8. I therefore find that the extensions accords with the requirements of LP Policies QD14 and QD27, insofar as they relate to the effect of development on the amenities of neighbouring occupiers, and conclude that the extension causes no material harm to the living conditions of the occupiers of No 43 Church Road, with particular reference to outlook and sense of enclosure.
9. I have considered all other matters raised, including the neighbouring occupiers' concerns regarding a perceived loss of daylight, but found nothing that changes the balance of my decision that the appeal should be allowed and planning permission granted. I have also considered the need for conditions in the context of DoE Circular 11/95 – *The Use of Conditions in Planning Permissions* but, as none have been suggested by the Council, and as the development has already been satisfactorily completed, I have reached the conclusion that none are necessary.

John G Millard

INSPECTOR



Appeal Decision

Site visit made on 28 September 2010

by **John Millard DipArch RIBA FCI Arb**

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

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

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

Decision date:
19 October 2010

Appeal Ref: APP/Q1445/A/10/2122419 80 Peacock Lane, Brighton BN1 6WA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr J and Mrs S Richardson against the decision of Brighton and Hove City Council.
- The application (Ref BH2009/02484), dated 13 October 2009, was allowed on 9 December 2009 subject to conditions.
- The development permitted is the erection of a single storey timber framed glazed orangery.
- The first of the conditions in dispute is No 3 which states: *The west and east side facing windows of the conservatory extension hereby permitted shall not be glazed otherwise than with obscured glass and thereafter permanently retained as such.*
- The reason given for the condition is: *To safeguard the privacy of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton and Hove Local Plan.*
- The second of the conditions in dispute is No 4 which states: *Notwithstanding the submitted drawings, the proposed wall along the eastern elevation of the property shall not exceed 1.3 metres in height above the internal finished floor level of the conservatory extension hereby permitted.*
- The reason given for the condition is: *To safeguard the amenities of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton and Hove Local Plan.*

Decision

1. I allow the appeal and vary planning permission Ref: BH2009/02484 for the erection of a single storey timber framed glazed orangery at 80 Peacock Lane, Brighton BN1 6WA granted on 9 December 2009 by Brighton and Hove City Council by deleting Condition No 3.

Main Issue

2. The main issue in this appeal is the effect of removing Conditions 3 and 4 on the living conditions of the occupiers of No 82 Peacock Lane, with particular reference to outlook and privacy, and of No 78 Peacock Lane, with particular reference to privacy.

Reasons

3. The appeal property is a modern two storey detached dwellinghouse occupying a relatively narrow but deep plot on the south side of Peacock Lane. Neighbouring houses are of similar age and character and, whilst plots are

more or less consistent in shape and size, there is not a common building line. The land falls from north to south and from east to west so that the back garden of No 80 is lower than the ground floor of the house, whilst No 82 is at a higher level than No 80 and No 78 at a lower level.

4. There is a raised patio at the rear of No 80 upon which the orangery is to be constructed. On the west side of this patio, facing No 82, is a decorative block screen wall about 1.3 metres high whilst the other two sides of the patio are protected by open metal railings. There is a gap of a little over 1 metre between the screen wall and the plot boundary and a similar gap between the boundary and the flank wall of No 82, which extends much further into the garden than No 80.
5. There is a window in the flank wall of No 82 serving a semi-basement room and facing directly toward the patio screen wall. I estimate that the head of this window is about 500-600mm below the top of the wall, resulting in room which receives only poor daylighting and almost certainly requires the use of artificial lighting when used for its stated purpose as a workshop. The reason for Condition 4 is to minimise any further reduction in the daylight reaching this room, in order to satisfy criterion (b) of Policy QD14 of the adopted Brighton & Hove Local Plan 2005 (LP).
6. I agree with the Council that raising the height of the solid element of the flank wall would be likely to result in a modest but nonetheless unacceptable diminution of light to the neighbouring window and therefore conclude that to removal Condition 4 would cause such harm to the living conditions of the occupiers of No 82, with particular reference to daylight, as to conflict with the objectives of LP Policy QD14.
7. The existing patio is used by the appellants and their family and guests for sitting out and presently offers clear unobstructed views towards both Nos 78 and 82. Erecting the orangery would not increase visibility towards either of the neighbouring properties and, as such, would not materially reduce the level of privacy they currently enjoy. I therefore conclude that the proposal accords with criterion (b) of LP Policy QD14 without the disputed Condition 3 and that the Condition thus fails the test of necessity as set out in DoE Circular 11/95 - *The Use of Conditions in Planning Permissions*.
8. I have considered all other matters raised, including the concern of the occupiers of No 82 that the orangery would reduce daylight to their upper ground floor kitchen window, but have found nothing that changes the balance of my decision that the appeal should be allowed and Condition 3 removed.

John G Millard

INSPECTOR



Appeal Decision

Hearing held on 7 and 8 September 2010

by **Graham C Cundale** BA(Hons) MSc
MRTPI MIEEM

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

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

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

Decision date:
18 October 2010

Appeal Ref: APP/Q1445/A/10/2126978

Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB

- 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 Downland Housing Association against the decision of Brighton & Hove City Council.
- The application Ref BH2009/03154, dated 22 December 2009, was refused by notice dated 12 April 2010.
- The development proposed is described as: '*Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1/D2 unit at ground floor and 35 residential units above in part 2, 3, 4 & 5 storey building including 14 affordable unit (40%) surface parking for 18 cars, cycle parking and landscaping*'.

Decision

1. I allow the appeal and grant planning permission for the demolition of the existing building and redevelopment of the site to provide a new GP surgery at part ground and part first floor levels, a new Class D1/D2 unit at ground floor level, and 35 residential units above in a 2, 3, 4 and 5 storey building, including 14 affordable units (40%), surface parking for 18 cars, cycle parking and landscaping, at the Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB, in accordance with the terms of the application, Ref BH2009/03154, dated 22 December 2009, and the plans submitted with it, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary matters

2. For grammatical reasons and clarity I have, in my above decision, slightly amended the description of the proposed development as entered on the application form.
3. A similar form of development was the subject of an appeal that was dismissed in July 2009 (ref. APP/Q1445/A/09/2097917). I regard that appeal decision as an important material consideration, and I refer to those proceedings as 'the previous' appeal.
4. At the hearing I received from the appellant a unilateral undertaking dated 27 August 2010 and submitted as an executed 'Section 106' planning obligation. The Council had no objections to the undertaking and I take it into account,

being satisfied that, despite a few minor shortcomings raised at the hearing, it would effectively serve its purpose.

5. At the hearing an application for costs was made by Downland Housing Association against Brighton and Hove City Council. That application is the subject of a separate decision.

Main issues

6. I consider that the main issues are as follows.
 - (1) The effect on the character and appearance of the locality.
 - (2) The effects on the amenities of nearby residential properties, particularly in Marmion Road, and especially in terms of overlooking, outlook and light.
 - (3) Whether the scheme, and especially the proposed car parking provision, would have implications for road safety.
 - (4) Whether the proposed housing mix would be acceptable having regard to local needs.

Reasons

Character and appearance

7. I found this part of Portland Road to be characterised by mixed uses and long terraces of mainly 3 stories in height and with various building styles and materials. The height and scale of the proposed building is greater than is typical hereabouts, but I do not find it to be inappropriate having regard to the status of the road and to some other buildings including the existing bingo hall and, for example, some substantial modern development of up to 5 storeys a little further to the west. A prominent landmark building at this junction with School Road would be appropriate. As observed in the previous appeal decision, there is little of distinction to break the relentless east-west progress of Portland Road other than the tower of St Peter's Church and that of the bingo hall.
8. There is particular local concern about the degree of overhang of part of the building facing School Road. I would not see this as having any more than a minor effect on the visual impact of the proposal, and one that would not harm the building's appearance or conflict with good design principles. The overhang would be at first floor level, high enough to avoid any significant obstruction of pedestrian visibility, and well within the width of the footway below. Indeed the change to the previous design has been achieved by drawing back the ground floor and not just by extending the first floor. The glazed balconies would also project, but would do so at second floor level and above. In short, the overall effect on the street-scene would not be oppressive. I come to the same conclusion in considering the Portland Road frontage.
9. At the previous appeal the Inspector found the effect on the character and appearance of the area to be acceptable. With the revised design before me the effect of the proposed building would, I believe, be more favourable, primarily on account of the more emphatic stepping down of its elements and its reduced massing along School Road. There would be a more sympathetic

transition to the height and form of buildings in School Road and to the residential terraced properties in Marmion Road.

10. I conclude that the appeal proposal would not have an unacceptable effect on the character and appearance of the locality. In this respect it would not conflict with policy HO4 of the Brighton and Hove Local Plan 2005. I also find it to be in accordance with other Local Plan design requirements, such as in policies QD1, QD2, QD3 and QD5, and with the Council's references to 'Urban Design Compendium 1'. In particular, the density of the scheme satisfies the requirements of policy QD3 to make efficient and effective use of the site. That policy also indicates that higher development densities will be particularly appropriate in sustainable locations.

Amenities of neighbours

11. Although the amenities of many properties on Marmion Road would benefit from the proposed demolition of the bingo hall, the Inspector found that the previous appeal scheme had an unacceptable impact in respect of the outlooks from the backs of those properties.
12. The scheme before me would successfully reduce the impact on the backs of Nos 80 and 82 by reducing the height of the rear element of the School Road wing by one storey. Together with the change in roof form, the effect would be much closer to what would be considered as normal in this situation: that is, two storeys plus a gable end. Furthermore, the height of the adjoining section of the proposed building has also been reduced by one storey, which would further reduce the impact on outlook. While the proposed 5-storey height of the section on the corner would be retained this would not in my view be overbearing on the occupiers of Nos 80 and 82, taking into account its distance and the presence of the intervening 3 and 4 storey elements.
13. To the east of the School Road wing is the proposed 'block 2'. This would be 4 storeys in height. At the previous appeal this was found to have an unacceptably oppressive effect on the outlooks from the backs of Marmion Road properties owing to the top-heavy appearance of the fourth storey with its metal cladding and windows wider than those below. Again, I find that the proposals before me successfully address this matter by incorporating a sloping roof and dormers, with reduced and more sympathetic window sizes. If necessary the appellant would also be prepared to make changes to external materials – a matter that could be controlled by means of a planning condition. It is not necessary to replicate at the rear the fourth floor front elevation, or incorporate a greater set-back, to achieve adequate mitigation of the harm identified by the Inspector at the previous appeal.
14. Further to the east, the rear of the proposed 3-storey 'block 3' is similar to the previous scheme and, consistent with the previous appeal decision, the effect on the outlook of the Marmion Road properties would be tolerable, even though the building would approach a little nearer than the main rear elevations of the existing adjoining terrace on Portland Road.
15. With regard to overlooking, the previous Inspector found that there would be no unacceptable effects. For the same reasons, and taking into account the proposed mitigation measures, I reach the same conclusion with the proposals

before me. The latter incorporate no changes that would harm the privacy of Marmion Road residents.

16. The Council draws my attention to the **perception** of overlooking by those residents and to the consideration of this matter in appeal decisions in March 2009 at 149-151 Kingsway, Hove. The Council acknowledges that the separation distance is greater in the proposal before me. Also, although the back gardens of the Marmion Road properties are of limited length and adjacent to the appeal site, I saw that there is already a degree of overlooking of these gardens from the upper floors of neighbouring properties in the terrace. In the circumstances I judge that the adversity of any overlooking, or perception of overlooking, would not be sufficient to amount to material harm.
17. Local residents are also understandably concerned about the effects on their natural light. The appellant's assessment shows that the appeal proposals would result in lifting more of the Marmion Road properties above the BRE minimum. Some would remain below this minimum and two of these existing windows would actually suffer a negative effect. However, having examined the vertical sky component evidence, I do not find that this effect would be noticeable so as to be significant. The proposal before me has been reduced in terms of its massing on the Marmion Road side and would have a more favourable effect than the previous scheme. The harmful effect of that scheme was not considered by the Inspector to be a sufficient reason to dismiss the appeal before him, taking account of the effects of the existing bingo hall building. I come to the same conclusion in respect of the revised scheme before me, although I accept that the existing building does not represent an acceptable baseline against which to judge redevelopment schemes.
18. I have also considered the effects on other amenities of nearby occupiers, but as with the previous appeal decision, I do not find that these would be unacceptable. Taking all effects together I conclude that there would be no material nuisance or loss of amenity to adjacent residents and no detriment to human health. Consequently the appeal proposal is in accordance with Local Plan policy QD27 and I conclude that there would be no unacceptable effects on the amenities of nearby residential properties.

Parking and road safety

19. The Inspector did not find the previous appeal scheme to be unacceptable in terms of highway safety. With the provision of a Section 106 transport contribution and with evidence based on the same parking survey as that before me, he concluded that objections to the previous scheme's impact on transport infrastructure would be overcome. The scheme before me is a little smaller than the previous scheme, and the Council accepts that devoting the on-site parking space to the residential use rather than the surgery represents an improvement. It is not evident to me that there have been any changes since the previous appeal decision that are of such significance as to cause me to come to a different conclusion on this issue. My view on this is reinforced by the professional assessments and lack of objections to the scheme from the Council's access and sustainable transport staff.
20. The appellant's parking survey and assessment was professionally prepared and based on worst case conditions. Despite the discovery of an erroneous calculation of parking capacity on one road, it indicates an adequacy of

available on-street parking space for the proposed development. The Council's committee report recognises that it used a standard methodology agreed in advance by the highway authority. Moreover the 5 m length per vehicle falls within the range given for longitudinal marking in the Traffic Signs Regulations and General Directions 2002. The Manual for Streets suggests 6 m and while this may sometimes be observed in actual usage along unmarked bays I do not find 5 m to be inappropriate for the purpose of calculating capacity, taking account of the tendency for vehicles to park closer where there is greater parking pressure. Also I can see that it can be reasonable to take account of 'left over' lengths of less than 5 m in unmarked parking bays, as vehicle lengths will vary in practice.

21. Taking account of the assessment in the Council's committee report I have no good reason to doubt that there would be adequate parking and access opportunities for disabled people. I have considered other detailed criticisms of access arrangements. Some, such as the lack of a designated drop-off point by the surgery entrance, appear to be well founded in terms of convenience, but they do not amount to a sufficient basis for me to conclude that the scheme would cause increased danger to users of the roads and footways. I saw that there is already a good deal of nearby activity, especially by the school at the beginning of the school day, but it does not necessarily follow that an increase in traffic and parking demand would reduce road safety. I am satisfied that the location is sustainable and well served by bus services and facilities that would be enhanced by means of the appellant's sustainable transport contribution. The appeal scheme also involves highway works but again it is not evident that these would result in a danger to road and footway users.
22. All things considered I conclude that the appeal scheme does not conflict with Local Plan policy TR7, and that it would not be prejudicial to road safety.

Housing mix

23. The previous appeal decision does not indicate that housing mix was a significant issue in July 2009. Although combined with other matters in the second reason for refusal, the Council confirmed at the hearing its view that the proposed housing mix would stand on its own as a reason for refusal. Taking the city as a whole, the Council's preferred housing mix for affordable housing schemes is 40%:50%:10% for one, two and three bedroom units, respectively. It is particularly concerned that the appeal scheme's 29%:64%:7% mix would not provide sufficient family housing, and that the same could be said of the market housing provision.
24. As far as affordable housing is concerned I find specific support for the preferred percentage of family (3+ bedroom) units in the Council's 'Housing Strategy 2009 – 2014' (2009). At the hearing the Council confirmed that it allows some flexibility in applying its preferred mix. Some flexibility is also reflected in Local Plan policy HO3, which allows exceptions taking into account such factors as site limitations and location. The policy does not itself go as far as specifying the preferred mix.
25. Given that the appeal scheme provides for 14 affordable housing units, its shortfall of 3% for family units is marginal. Moreover, I note from the committee report that the Council's Housing Strategy team strongly supported

the application, and that, "given the location", it found the mix to be acceptable. The location is on a junction of a busy road. In this context, and not having heard anything that would lead me to support the need to take an inflexible approach in this case, I conclude that the proposed housing provision is adequately consistent with the Local Plan. There is no clear or material conflict with the spirit or letter of policy HO3.

26. The Council's committee report concludes that the scheme would provide a significant amount of residential development and make a valuable contribution to needs within the city. I heard nothing to cause me to doubt that assessment. I conclude that the proposed housing mix would be acceptable having regard to local needs.

Other matters

27. The Council's committee report acknowledges the significant improvement in the size and quality of the proposed outdoor recreation/amenity space. In my view the space would not be unsuitable for family use, and the improved provision overcomes the shortcoming identified in the previous appeal decision. Furthermore, following the production of the Council's Open Space, Sport and Recreation Study there are now identified deficiencies which would be adequately addressed by the related financial contribution proposed in the Section 106 planning obligation.
28. Like the Inspector at the previous appeal I find the standard of other amenities, such as privacy and outlook, to be acceptable for prospective occupiers of the proposed dwellings. There are no differences in the proposals before me that are such as to lead me to a different conclusion.
29. Local businesses are concerned about the effect on traffic congestion and their ability to operate following the additional traffic generated by the appeal scheme. This is backed by a petition. However, I do not find their prognosis to be substantiated in the evidence. This is a sustainable location and the scheme would make adequate provision to meet the resulting transport demand, while maximising the use of public transport, walking and cycling as required by Local Plan policy TR1. I note, in particular, that the reasoned justification of policy TR1 states that it is essential that new development does not encourage unnecessary car journeys that could be made by more sustainable alternatives. The appeal scheme is consistent with policy TR1 as it is with the other Local Plan transport policies.
30. Another, much larger, petition calls for the appeal site to be used as green open space. Beneficial though such a use might be, this is not a sound reason for rejecting a scheme that I find to be practicable and in accordance with the development plan.
31. As with the previous appeal scheme, there is no firm commitment to take up the proposed surgery use. I give little weight to that matter or to the identity of prospective users, bearing in mind that planning permission relates to the use of the land. Also, as the Council has suggested, the surgery use is capable of additional control through a planning condition. It would not be reasonable to add another condition requiring a written commitment by the Primary Care Trust.

32. PPS3 (paragraph 71) states that where local planning authorities cannot demonstrate an up to date 5-year supply of deliverable sites they should consider favourably planning applications for housing, having regard to other policies in PPS3, including paragraph 69. As with the previous appeal, the Council does not demonstrate such a supply. The changes in the scheme before me successfully overcome the shortcomings identified in the previous appeal decision and there are no longer any failures to satisfy the criteria in PPS3.
33. I have considered all the other matters raised in the written representations and at the hearing, including the effects on social cohesion and air quality, but I find nothing to outweigh the considerations that lead me to the overall conclusion that the scheme is in accordance with the development plan and deserves to succeed. Accordingly the appeal is allowed.

Conditions

34. Permission should be subject to conditions along the lines of those suggested by the Council, but with a few small changes for clarity and to meet the tests in Circular 11/95. These conditions are in the Schedule below. In addition I include condition 18 to avoid any doubt about the approved plans, which were agreed at the hearing.
35. Condition 2 is required to protect the privacy of prospective residential occupiers of the development, and similarly condition 3 protects the amenities of the site and its surroundings. Condition 5 is required to meet the changing needs of households and people with disabilities. Conditions 16 and 17 are required to protect the amenities of the wider locality, for example in terms of disturbance, traffic and parking. Condition 10 is included for the same reason, recognising that the constraints of this adjoining residential area provide exceptional circumstances for justifying control over changes of use within Class D1. By giving rise to different patterns of use, such changes could have serious implications.
36. Conditions 4, 8 and 9 are required to protect the character and appearance of the locality.
37. In the interests of sustainability, conditions 6 and 7 are to secure efficient use of energy, water and materials, while condition 11 secures satisfactory drainage. Conditions 13 and 15 are required to secure sustainable travel provision, and 12 and 14 are for highway safety.
38. I omit the Council's suggested conditions 6 and 8, which are unnecessary given their suggested conditions 7 and 9. I also omit their suggested condition 15, being unconvinced of the necessity for further recording of the building. I omit the last sentence of the Council's suggested condition 16 as it is reasonable to allow some flexibility if the supply of parking spaces exceeds the number of users able to use those spaces.

G C Cundale

Inspector

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
2. The first and second floor bedroom windows hereby permitted in the northern elevation of the building and facing the external walkways shall be fitted with obscure glazing up to a minimum height of 1800mm above the walkway level in accordance with the details shown on drawing P21. The obscure glazing shall be fitted prior to the first occupation of those rooms and shall thereafter be retained as such.
3. The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully installed and made available for use. These facilities shall thereafter be retained for that use at all times.
4. No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
5. The dwellings hereby permitted shall be constructed to Lifetime Homes standards.
6. Unless otherwise agreed in writing by the Local Planning Authority, none of the residential units hereby approved shall be occupied until a Final/Post Construction Code Certificate issued by an accreditation body confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code level 3 for standard residential units and Code level 4 for wheelchair units has been submitted to, and approved in writing by, the Local Planning Authority.
7. Unless otherwise agreed in writing by the Local Planning Authority, none of the non-residential development hereby permitted shall be occupied until a BREEAM Design Stage Certificate and a Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a BREEAM rating of 60% in energy and water sections of the relevant BREEAM assessment within an overall rating of 'Excellent' have been submitted to, and approved in writing by, the Local Planning Authority.
8. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping, which shall include hard surfacing, means of enclosure, and planting.
9. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out by the end of the first planting and seeding season following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting

- season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.
10. The ground and first floor areas indicated on drawings P07 and P08 as a "surgery" shall only be used for the purposes of providing a medical practice and for no other purpose including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 11. Prior to development commencing, a full report of investigation into the capacity of the existing surface water drainage system, and how the drainage system can accommodate the increase in flows caused by the proposed development of the site, shall be submitted to and approved in writing by the Local Planning Authority. Works shall be carried out in accordance with the approved details and retained thereafter.
 12. The development hereby permitted shall not be occupied until the parking areas have been provided in accordance with the approved plans, and these areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
 13. The development shall not be occupied until the cycle parking facilities have been provided in accordance with the approved plans. These facilities shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
 14. Prior to the commencement of development on site, detailed drawings, including levels, sections and constructional details of the proposed access road, surface water drainage, street lighting and off site highway works to be provided, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until these works have been fully implemented in accordance with the approved details.
 15. Within 6 months of the occupation of the surgery, a travel plan for its staff and visitors shall be submitted to the Local Planning Authority for its written approval. The plan should include a travel survey of staff and patients and include measures to encourage travel by sustainable modes of transport. The travel plan shall be reviewed annually and submitted to the Local Planning Authority for its agreement. The approved plan shall be implemented as agreed.
 16. The surgery hereby permitted shall not be open to patients and clients except between the hours of 0730 and 1930 on Mondays to Fridays, 0900 and 1230 on Saturdays, and not at any time on Sundays, Bank or Public Holidays.
 17. The Class DI/D2 unit hereby permitted shall not be open to users except between the hours of 0730 and 1930 on Mondays to Fridays, 0900 and 12.30 on Saturdays, and not at any time on Sundays, Bank or Public Holidays.
 18. The development hereby permitted shall be carried out in accordance with the following approved plans: P01A, P02A, P03, P04, P05, P06, P07, P08, P09, P10, P11, P12, P13, P14, P15, P16, P17, P18, P20, and P21.

APPEARANCES

FOR THE APPELLANT:

Mr J Escott BA(Hons) DipTP MRTPI	Partner, Robinson Escott Planning, Chartered Town Planning and Development Consultants
Mr B Meekings MIHT IEng	Divisional Manager, Project Centre
Mr P Zara BSc(Hons) DipArch RIBA FRSA	Director, Conran & Partners
Ms J Ferguson MCIH	Regional Development Director, Affinity Sutton Group
Ms D Bowles BSc(Hons) MSc MCIBSE	Sustainability Consultant, John Parker Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Councillor M Caulfield	Member of Planning Committee, Brighton and Hove City Council
Councillor D Cobb	Member of Planning Committee, Brighton and Hove City Council
Miss C Simpson MA MRTPI(licentiate)	Planning Officer, Brighton and Hove City Council

FOR MARMION ROAD RESIDENTS ASSOCIATION:

Mr D Rist	Chairman of Residents Association
Mr M Preston BEng(Hons)	Local resident
Miss J Greig	Local resident and teacher
Ms L Singh MCIH	Local resident

INTERESTED PERSONS:

Mr J Pearson	Local resident and with a business in School Road
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DOCUMENTS

Document	1	Notification of hearing and list of recipients
Document	2	Section 106 Planning Obligation submitted by Appellant
Document	3	E-mails of 16 and 17 August 2010 between Charles Field and Ben Meekings
Document	4	Page 49 of 'Providing for Journeys on Foot' (IHT)
Document	5	E-mails of 6 September 2010 concerning Brighton and Hove housing needs
Document	6	Plans of previous appeal scheme (APP/Q1445/A/09/2097917)
Document	7	Alternative wording for condition 9 suggested by Mr Escott
Document	8	Appellant's application for costs
Document	9	Bundle of 3 documents concerning the need for traffic calming in Marmion Road, submitted by Miss Greig
Document	10	Extracts from the 'Manual for Streets', submitted by Mr Preston
Document	11	Community petition submitted by Ms Singh



Costs Decision

Hearing held on 7 and 8 September 2010

by **Graham C Cundale** BA(Hons) MSc
MRTPI MIEEM

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

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

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

Decision date:
18 October 2010

Costs application in relation to Appeal Ref: APP/Q1445/A/10/2126978 Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Downland Housing Association for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for development described as: '*Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1/D2 unit at ground floor and 35 residential units above in part 2, 3, 4 & 5 storey building including 14 affordable unit (40%) surface parking for 18 cars, cycle parking and landscaping*'.

Summary of Decision: I refuse the application for an award of costs.

The Submissions for Downland Housing Association

1. The Council behaved unreasonably in refusing planning permission.
2. First, it persisted in objecting to a scheme that had been revised to satisfactorily address the three specific reasons given by the Inspector in dismissing the previous appeal (ref: APP/Q1445/A/09/2097917). That appeal decision clearly indicated that a scheme amended to address those three points would be acceptable. This is an example of the circumstances which may lead to an award of costs, as described in paragraph B29 (fourth bullet point) of Circular 03/2009.
3. Secondly, the Council failed to show reasonable planning grounds for taking a decision contrary to the recommendation of its officers. It appeared to be motivated by political rather than planning considerations. Such behaviour was unreasonable and brings the whole planning system into disrepute. It is contrary to guidance in paragraph B20 of Circular 03/2009.
4. Thirdly, none of the Council's arguments supporting each of its three reasons for refusal have any substance. With regard to the first reason for refusal the reduction of the building at its northern end plainly deals with the previous Inspector's concern about the outlook from Nos 80 and 82 Marmion Road. And the provision of privacy screens and partial obscure glazing were considered by that Inspector to acceptably prevent overlooking. At the hearing the Council gave no substantive answer to questions about the differences now compared with at the previous appeal.

5. With regard to the second reason for refusal the previous Inspector was not concerned about density or site coverage. His concerns about open space and massing have both been addressed in the revised scheme. The Council's evidence on housing needs is completely contrary to the advice of its own housing department.
6. In relation to the third reason for refusal the previous Inspector did not identify any highway or transport objection, and there have been no material changes in either policy or physical circumstances concerning transport matters since the previous appeal. The highway authority did not object to the present appeal scheme and there is no evidence to support an unacceptable impact in relation to transport or travel demand. In any event the impact would be mitigated by the sustainable transport contribution in the Appellant's unilateral undertaking. Evidence from third parties was no different to that before the previous Inspector. Mr Preston's reports were submitted after the Council's decision and are not, and cannot be, relied on by the Council.
7. Because the Council's evidence does not provide a respectable basis for its decision there is also a conflict with the guidance in paragraph B16 of Circular 03/2009.
8. For all these reasons the Council has behaved unreasonably and the Appellant has been put to unnecessary expense in taking this matter to appeal.

The Response by Brighton & Hove City Council

9. Both the Councillors at the hearing had read the application and were mindful of the previous appeal decision. The Council supports the finding of the previous Inspector, but, since then, circumstances have changed. In particular the Council's Housing Strategy has changed. Also, since the time of the Appellant's traffic survey in 2008 a new children's centre has started on School Road and there has been an increase in school places and in traffic. Furthermore, the footprint of the proposed building has changed so as to make worse the important effect of perceived overlooking.
10. The submitted webcast and transcript show that the Council's decision was based on **planning** matters. Evidence from newspapers cannot be taken as fact.
11. Despite the Appellant's response to the previous appeal decision, as reflected in the scheme now at appeal, the proposals remain unacceptable.

Conclusions

12. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. In supporting reason for refusal No.1 the Council referred to the massing of the proposed building to the rear of Nos. 80 and 82 Marmion Road. It indicated that, although reduced in comparison with the previous appeal scheme, this massing would still be excessive in terms of its effect on the outlooks from the Marmion Road properties. Having regard to the wording of the previous appeal decision, I do not consider the Council's view to be unreasonable even though

it is not one that I share. Similarly with regard to the second reason for refusal the Council was able to substantiate its concern about housing mix by reference to its new Housing Strategy. Having regard to Local Plan policy HO3 this was not an unreasonable basis for the reason for refusal. In terms of character and appearance the Council drew attention to the more emphatic overhang on the School Road frontage in comparison with the previous appeal scheme and the absence of such a feature elsewhere in the locality.

14. In other respects the reasons for refusal were inadequately supported by the Council's evidence and there were insufficient grounds for departing from the recommendation and professional advice of its officers, especially in the light of the limited and specific grounds for dismissal given in the previous appeal decision. To this extent, and with reference to paragraphs B16, B20 and B29 of Circular 03/2009, I accept that the Council's behaviour was unreasonable.
15. However, because there were some reasonable grounds for the Council's decision I do not accept that the appeal and hearing should have been unnecessary.
16. Parts of the appeal proceedings were devoted to the consideration of the effects on parking, road safety and the privacy of neighbours, which were not substantiated in the Council's evidence. However, the same matters were the subject of objections and some substantial evidence presented by the local residents. Therefore these matters would have been dealt with at the hearing in any event, and I am not satisfied that the shortcomings in the Council's evidence caused any unnecessary expense to be incurred by the Appellant.
17. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Formal Decision

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

G C Cundale

Inspector

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

PRESTON PARK

BH2010/01652

33 Chester Terrace, Brighton

Erection of single storey rear/side extension and loft conversion incorporating a rear dormer and rooflights to front and rear. Replacement of all existing uPVC windows with new timber sash windows and replacement of existing roofing materials with grey slate tiles.

APPEAL LODGED

27/09/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ST. PETER'S & NORTH LAINE

BH2010/00124

12 York Place, Brighton

Change of use of third floor from a restaurant storage area (A3) to a 1 bed flat (C3) incorporating a rear extension

APPEAL LODGED

27/09/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WITHDEAN

BH2010/01792

Land at rear of 48-50 Inwood Crescent Brighton

Erection of 2 No. two bedroom three storey houses on land to rear of 48-50 Inwood Cres.

APPEAL LODGED

23/09/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

QUEEN'S PARK

BH2010/01817

148 Freshfield Road, Brighton

Extension of existing single storey rear extension

APPEAL LODGED

04/10/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

WITHDEAN

BH2010/01214

Land Rear of Regency Court, London Road, Brighton

Erection of 1no detached chalet bungalow with associated car parking.

APPEAL LODGED

NEW APPEALS RECEIVED

APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

05/10/2010
Delegated

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

HANOVER & ELM GROVE

BH2010/01622
17 Cobden Road, Brighton
Recovering of existing roof and raising of ridge height by 400mm.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
30/09/2010
Delegated

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

PATCHAM

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.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
04/10/2010
Environmental Services Planning Committee

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION
APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

CENTRAL HOVE

BH2010/02192
Flat 2, 195A Church Road, Hove
Installation of roof-lights to rear roof slope.
APPEAL LODGED
11/10/2010
Delegated

WARD

APPLICATION NUMBER
ADDRESS
DEVELOPMENT DESCRIPTION

PRESTON PARK

BH2009/00446
Campbell House, 21 Campbell Road, Brighton
Demolition of existing workshop and ancillary office and storage areas. Construction of six self-contained one and two bedroom flats over three storeys.

APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
04/10/2010
Non determination

WARD

APPLICATION NUMBER
ADDRESS

HANGLETON & KNOLL

BH2010/00107
Land Adjacent To The Bungalow, 11 Hangleton Lane, Hove
Creation of new residential dwelling.

DEVELOPMENT DESCRIPTION
APPEAL STATUS
APPEAL RECEIVED DATE
APPLICATION DECISION LEVEL

APPEAL LODGED
11/10/2010
Delegated

NEW APPEALS RECEIVED

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

HOVE PARK

BH2010/01770

335 Dyke Road, Hove

Erection of single storey extension and detached garage to front elevation. New pitched roof to side over existing flat roof.

APPEAL LODGED

12/10/2010

Called in - Secretary of State

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

PATCHAM

BH2010/01854

22 Rotherfield Crescent, Brighton

Erection of 2 storey side extension.

APPEAL LODGED

13/10/2010

Delegated



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 3rd November 2010

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

7 Victoria Road, Brighton

Planning application no: BH2010/00346 (householder consent)
BH2010/00347 (listed building consent)

Description: Alterations to roof to form a hidden sunken external roof space incorporating removal and replacement of external features (householder consent).

Decision: Delegated

Type of appeal: Informal Hearing

Date: 11th January 2011

Location: Hove Town Hall

28 Marine Drive, Rottingdean

Planning application no: BH2009/02228

Description: Demolition of existing dwelling and erection of a block of six flats and two town houses (8 units in total) together with associated parking and bin store.

Decision: Committee

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

Campbell House, 21 Campbell Road, Brighton.

Planning application no: BH2009/00446

Description: Demolition of existing workshop and ancillary office and storage areas. Construction of six self-contained one and two bedroom flats over three storeys.

Decision: Delegated

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

41 Ladies Mile Road, Brighton

Planning application no: BH2010/01132

Description: 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.

Decision: Committee

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

Enforcement Appeal; Block K, New England Quarter, Brighton

Enforcement no: BH2010/0494

Description: Breach of condition 4 of planning application BH2005/05142.

Decision:

Type of appeal: Public Inquiry

Date: TBC

Location: TBC

Information on Pre-application Presentations and Requests

Date	Address	Ward	Proposal
17 March 2010	Former Nurses Accommodation, Brighton General Hospital	Hanover & Elm Grove	Demolition of the former nurses accommodation buildings and the construction of three residential apartment blocks comprising 95 units and a 105 square metre community facility with associated car parking and landscaping.
27 April 2010	N/A	N/A	N/A
18 May 2010	N/A	N/A	N/A
8 June 2010	N/A	N/A	N/A
29 June 2010	Former Royal Alexandra Children's Hospital, Dyke Road, Brighton	Regency	<i>A) Conversion scheme</i> Conversion of a retained main building to provide 118 units. The scheme is 100% private housing and does not include provision of a GP surgery. <i>B) New building scheme</i> Demolition of all existing buildings with a new development comprising 136 units with 54 affordable units (40%) and a GP surgery.
20 July 2010	The Keep, Wollards Field, Lewes Road, Brighton	St Peter's & North Laine	A new historical resource centre for East Sussex, Brighton & Hove.
10 August 2010	Former Sackville Hotel, Kingsway, Hove	Westbourne	Construction of 47 flats (mix of 1, 2, 3, & 4 bed units) within 6 to 9 floor building, and to incorporate basement parking of 49 spaces, and 2 spaces at ground floor level.

NOTE: The Pre Application Presentations are not public meetings and as such are not open to members of the public. All Presentations will be held in Hove Town Hall on the date give after scheduled site visits unless otherwise stated.

Date	Address	Ward	Proposal
31 August 2010	N/A	N/A	N/A
21 September 2010	3Ts	East Brighton	3T's (teaching, tertiary & trauma). Comprehensive redevelopment of southern half of RSCH on Eastern Road to provide replacement modern clinical facilities over three phases.
12 October 2010 Did not go ahead	Astoria	St Peter's & North Laine	Demolition of existing listed building and proposed erection of part 6 and part 2 storey building. The 2 storey element will contain smaller starter units whilst the 6 storey element will provide flexible B1 office floorspace with a café on the ground floor. The scheme also proposes to make improvements to Blenheim Place.
2 November 2010	Astoria	St Peter's & North Laine	Demolition of existing listed building and proposed erection of part 6 and part 2 storey building. The 2 storey element will contain smaller starter units whilst the 6 storey element will provide flexible B1 office floorspace with a café on the ground floor. The scheme also proposes to make improvements to Blenheim Place.
2 November 2010 Will not go ahead	Park House	Hove Park Ward	Demolition of former residential language school buildings and the residential redevelopment of the site by way of flats in buildings of between 4 and 5 storeys
23 November 2010			
14 December 2010			

Date	Address	Ward	Proposal
11 January 2011			
1 February 2011			
22 February 2011			
15 March 2011			
26 April 2011			
17 May 2011			

