





**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	6 April 2011
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, Kemble, Kennedy, McCaffery, Simson and Steedman</p> <p>Co-opted Members: Mr Philip Andrews (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

251. 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.

252. MINUTES OF THE PREVIOUS MEETING

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Minutes of the meeting held on 16 March 2011 (copy attached).

253. CHAIRMAN'S COMMUNICATIONS

254. APPEAL DECISIONS

23 - 52

(copy attached).

255. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

53 - 54

(copy attached).

256. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

55 - 56

(copy attached).

257. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

57 - 60

(copy attached).

PLANNING COMMITTEE

APPLICATIONS ON BEHALF OF THE SOUTH DOWNS NATIONAL PARK AUTHORITY

- 258. APPLICATION BH2011/00286, STANMER HOUSE, STANMER PARK, BRIGHTON 61 - 74**

(copy attached).

- 259. VARIATION OF A SECTION 106 PLANNING AGREEMENT IN CONNECTION WITH APPLICATION BH2004/03712/FP, STANMER HOUSE, STANMER PARK, BRIGHTON 75 - 78**

(copy attached).

APPLICATIONS AS THE LOCAL PLANNING AUTHORITY

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

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

(copy circulated separately).

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

- 263. 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**

PART TWO

- 264. NON-PUBLIC MINUTES OF THE PREVIOUS MEETING - EXEMPT CATEGORY 5 79 - 82**

Minutes of the non public meeting held on 16 March 2011 (copy attached).

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, 29 March 2011

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 16 MARCH 2011

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), C Theobald (Deputy Chairman), Carden (Opposition Spokesperson), Alford, Allen, Barnett, Cobb, Davey, Kemble, Kennedy, McCaffery and Steedman

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

Officers in attendance: Jeanette Walsh (Head of Development Control), Hilary Woodward (Senior Lawyer), Claire Burnett (Area Planning Manager (East)), Steve Walker (Senior Team Planner), Annie Sparks (Environmental Health Manager), Steve Reeves (Principal Transport Planner), Pete Tolson (Principal Transport Planner) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

238. PROCEDURAL BUSINESS

238a Declarations of Substitutes

238.1 Councillor Allen declared that he was substituting for Councillor Hamilton.

238.2 Councillor Barnett declared that she was substituting for Councillor Simson.

238b Declarations of Interests

238.3 There were no Member interests.

238.4 The Senior Lawyer, Ms Woodward, advised that she was connected with the Scout Hut forming part of planning application BH2010/03540, Land west of Redhill Close, Withdean, and that she would be unable to advise the Committee in relation to this.

238c Exclusion of the Press and Public

238.5 In accordance with Section 100A of the Local Government Act 1972 ("the Act"), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in view of the business to be transacted or the nature of the proceedings, that if

members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of the Act.

238.6 **RESOLVED** - That the public be excluded from the meeting during consideration of item 249 on the agenda.

239. MINUTES OF THE PREVIOUS MEETING

239.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 23 February 2011 as a correct record with the following amendments:

A. Application BH2010/03744, Open Market

(42) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to the conditions and informatives listed in the report, and two extra informatives.

D. Application BH2010/03379, Royal Alexandra Hospital

(18) Councillor Cobb asked if the restoration work could be done first and whether the refuse collection was accessible. Mr Everest replied that a condition was included to ensure there was no occupation of the residential units until the full development was completed, which was considered adequate. Regarding refuse collection the development incorporated dedicated refuse storage for each block at basement level. This would be collected by City Clean from the rear service road via a refuse hoist.

(29) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to the applicant entering into a Section 106 Agreement, the conditions and informatives listed in the report, an additional condition and amendments to conditions 11 and 12.

E. Application BH2010/03380, Royal Alexandra Hospital

(2) A vote was taken and on a unanimous vote minded to grant conservation area consent was given subject to the issue of planning permission in respect of application BH2010/03379 and the conditions and informatives listed in the report.

F. Application BH2010/03714, 88 – 92 Queens Road and 4 Frederick Place

(2) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to the applicant entering into a Section 106 Agreement and the conditions and informatives listed in the report.

G. Application BH2010/03547, Flat 1, 100 St Georges Road

(11) A vote was taken and on a vote of 6 for, 2 against and 4 abstentions, planning permission was refused for the reasons given in the report.

H. Application BH2010/03279, Former Connaught House site

- (3) A vote was taken and on a vote of 9 for, 0 against and 3 abstentions minded to grant planning permission was granted subject to the applicant entering into a Section 106 Agreement and the conditions and informatives listed in the report.

I. Application BH2010/03968, 13-15 Old Steine

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

L. Application BH2010/03947, 5 Chailey Avenue

- (4) A vote was taken and on a unanimous vote planning permission was granted subject to the conditions and informatives listed in the report, and an additional condition.

Note: Councillor Hyde declared a personal and prejudicial interest and left the room during consideration of this item. She did not take part in the discussion and voting thereon.

240. CHAIRMAN'S COMMUNICATIONS

- 240.1 There were none.

241. APPEAL DECISIONS

- 241.1 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.

242. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

243. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

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

244. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

- 244.1 The Committee noted the position regarding information on pre application presentations and requests.

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

- 245.1 There were none.

246. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST**(i) TREES**

246.1 There were none.

(ii) SUBSTANTIAL OR CONTROVERSIAL DEVELOPMENT OR DEPARTURES FROM POLICY

A. Application BH2010/00692, Land West of Redhill Close, Westdene, Brighton – Outline application for 31 dwellings (0.62 ha) with public open space (2.11 ha) and approval of reserved matters for layout, access and landscaping.

(1) This application was the subject of a site visit.

(2) The Senior Planning Officer, Mr Walker, introduced the application and presented plans, photos and elevation drawings. The application was for outline planning permission and as such the Committee were only required to consider details of layout, access and landscaping. The land was currently privately owned and the main issue was loss of open space as its usage had been established as open space. Policy QD20 resisted the loss of open spaces and policy SR20 protected outdoor recreational space. The Brighton & Hove Outdoor Space Survey, Planning Policy Statement 3 and the South East Plan supported open space provision as well. Whilst the application would contribute to the housing stock of the city, this did not outweigh the open space policies.

However, there were clear benefits to the site from this application and the additional housing provision was a material consideration. The amount of housing had been reduced to enhance the space and the main concern was to bring the area back into public open space use. Separation distances between the houses were around 40 metres, and because of the gradients on the site officers did not want houses to be built closer than this. There was very good parking provision and the Traffic Manager had deemed the site acceptable, but had asked for a sustainable transport contribution under the Section 106 agreement. A five year management plan for the on site ecology had been provided. As the site was considered green-field land, the Planning Authority was asking for Code Level 5 for Sustainable Homes to be reached. Extensive work had been done with the District Valuer and it was concluded the Code Level 5 was achievable. The application was recommended for approval subject to the conditions and informatives, and the Section 106 agreement.

Mr Walker added that an additional representation had been received from Mr Gower, who lived on Redhill Drive, regarding objections to the application around exacerbation of traffic problems in the Close on evenings and weekends and a reduction in amenity for current occupiers, pollution problems and the issue of private covenants remaining on the land.

Questions/matters on which clarification was sought

- (3) Councillor Kemble drew attention to an error in the report which stated that there would be 112 units on site. Mr Walker confirmed this was a typographical error and it should read 12 affordable units.
- (4) Councillor Steedman asked if the District Valuer was asked to consider what would be the minimum number of units of site that would be profitable, or just the scheme that was before Members. The Head of Development Control, Ms Walsh, stated that the application was policy compliant due to very full and in depth discussions that had taken place with the District Valuer. It was considered that the scheme would be profitable, and the Authority needed to allow a reasonable profit to the developer whilst still ensuring policy compliance.
- (5) Councillor Allen noted that the affordable homes provision only reached 38.7% of the scheme, and asked whether an extra affordable home could be built to move the scheme into 40% provision. Mr Walker stated that it was not possible for this particular scheme. There would be substantial community benefit in terms of the open space provision already with this scheme. Ms Walsh added that as it would be ½ of a dwelling to reach 40% the scheme balance was right in this particular case.
- (6) Councillor Alford asked if there was any access for the public onto the site. Mr Walker confirmed that the site was privately owned. Although the public did use the site there were no rights of access.
- (7) Councillor Alford asked if the developer would try to increase the housing provision on site. Mr Walker replied that this could always be the case with any application, as applicants were free to apply for whatever schemes they wished. Regarding this scheme the Section 106 Agreement would bind the applicants to the scheme agreed by Members. Ms Walsh reminded Members that this scheme would return two thirds of the land back to the community into the ownership of the City Council and with infrastructure provided.
- (8) Councillor Mrs Theobald highlighted the concerns of the East Sussex Fire and Rescue Service and of Southern Water in the report and asked if these had been dealt with. She asked whether any money for maintenance of the land would be provided, how many Tree Preservation Order trees would be removed and if there were badgers on site. Mr Walker replied that the concerns of the East Sussex Fire and Rescue Service could be dealt with by informatives and building regulations, and although Southern Water had raised a concern, they had stated that this could be achieved if further work was conducted. There were trees indicated on the site plan, which suggested they would be retained where possible. The trees had value as a group, but not individually. There was no evidence of badgers on site.
- (9) The Senior Solicitor to the Committee, Ms Woodward, stated that the ability of the Council to fund maintenance of the public space was not a material planning consideration and should not be taken into account by Members.

- (10) Councillor Alford asked when the open space would be delivered to the public. Ms Walsh replied that conditions ensured that the open space would be available before first occupation of the houses.
- (11) Councillor Cobb asked whether the public could be prevented from using the land and Ms Walsh agreed, stating it was private land not designated as public open space.
- (12) Councillor Kemble asked if there had been any nature designation given to this site. Ms Walsh replied that the land was not a designated site either as a SNCI (Site of Nature Conservation Interest) or as an SSSI (Site of Special Scientific Interest). Whilst the Council's Ecologist was conducting survey work throughout the city there was no designation or special protection for this site.

Representations from Public Speakers

- (13) Mr Nemeth began his representation and stated that he was speaking on behalf of local residents who opposed the scheme. The area of land was known locally as Redhill field and whilst it was privately owned, it was amenity space used by local residents on a regular basis. Local children had unrestricted access to this land and it was a safe area as access by car was difficult. Residents were concerned about parking issues that would arise if the site was more formally accessible as open space. The original use of the site was undeniable and was an area for nature conservation. The site should be protected above all considerations and should stay as a local park that did not include dwellings on site.
- (14) Councillor Davey asked in what capacity Mr Nemeth was speaking. Mr Nemeth replied that he was speaking on behalf of local residents who objected to the scheme, and in particular Mr Tony White, who had raised objections to the scheme.
- (15) Mr Paul White, agent to the applicant, spoke in favour of the scheme and stated that the site had been in private ownership since the 1930s and public access rights had been removed in 1992. Previous planning applications had proposed a much higher density of housing, but through extensive work with officers and the District Valuer, the current scheme had been brought forward to provide a high community benefit also. Mr White noted that the site had been referred to as a sports field, but in fact it was not designated as such by Sports England.
- (16) Mr Whitty, Chairman of the Westdene and Withdean Community Association addressed the Committee and stated that he felt the scheme was viable and provided a high benefit to the community. The site was currently waste shrub land and he believed the community should take the opportunity to bring the majority of the site back into community use. The scheme was considered at a meeting of the Community Association where 70% of members had attended, and it had been approved at that meeting. The community did not want the site to be developed any further and he asked that the playing field provided by the scheme be gifted by the Council to the Fields in Trust organisation, to secure the use.
- (17) Councillor Davey asked if the applicant could stop members of the public using the land. Mr White replied that the site was dangerous and un-maintained. Access rights

had been removed in 1992 after problems with travellers on the site. It was currently private land only accessible if the public trespassed. The scheme would return much of the site to community use.

- (18) Councillor Mrs Theobald asked if the scheme would be three storeys high. Mr White replied that this was an outline scheme where only siting and layout would be considered. The intention by the applicant was to sell the land with planning permission to a developer, who could then put in a reserved matters application.

Debate and decision making process

- (19) Councillor Kennedy queried whether the Section 106 Agreement could deal with the request from the speaker regarding gifting the land to the Fields in Trust organisation. Ms Woodward replied that any obligation included in the Section 106 would need to be deemed as necessary to the application. The question of whether the Council could gift the land to the Fields in Trust organisation could be dealt with separately following planning approval.
- (20) Councillor Barnett felt that this application was excellent and welcomed the inclusion of so much community space.
- (21) Councillor Allen said there was a long history to the site with a great deal of involvement from the community. He felt that this application made the best of the situation and he would be supporting it.
- (22) Councillor McCaffery raised concerns over the access arrangements on site, and how many cars could pass along the access route. The Senior Transport Planner, Mr Tolson, replied that the site access was 5 meters in width and this would reduce car speeds to below 20mph.
- (23) Councillor Alford believed this was a sensible planning application and he would be supporting it.
- (24) Councillor Carden did not believe there were badgers on site as he had seen no evidence of this on the site visit. He also supported the application.
- (25) Councillor Mrs Theobald highlighted that there were 32 letters of objection from residents living around the site. She felt that the land could be used as a conservation area and the Close where the access would be sited was currently very quiet, and could become busy if this application was approved. She did not believe that £25,000 would be enough to improve the Scout's hut and felt that the whole land should be reserved for community use as the covenants on the site stated.
- (26) The Chairman of the Conservation Advisory Group (CAG), Mr Andrews, addressed the Committee and stated that whilst this application was in outline, the height of the buildings would be substantial because of the terraced layout.
- (27) Ms Walsh addressed the Committee and stated that the site was protected by policy QD20 Urban Open Space, whether it was publicly owned or privately owned. There had been a number of cases in the past where the Local Planning Authority had

sought to protect sites under this policy without going rigorously through the policy exception tests. As a consequence Planning Inspectors had been critical of the Authority's approach. In this instance therefore the policy had been explored.

- (28) Ms Woodward noted that there were various private covenants on site that were nothing to do with the Council, and these would be a private matter for the applicant to deal with. However there were covenants to restrict the site to open space contained in the planning agreements drawn up in the 1930s. These were a matter for the council as a local planning authority and could be released by the Council under the proposed Section 106 Agreement.
- (29) Councillor Alford queried how much land would be allocated to housing and open space. Mr Walker replied that 5.3 hectares would be open space and 2.3 hectares would be housing.
- (30) A vote was taken and on a vote of 11 for and 1 against, minded to grant planning permission was granted subject to a Section 106 Agreement, and the conditions and informatives listed in the report.
- 246.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves it is minded to grant planning permission subject to a S106 Agreement and the conditions and informatives listed in the report.

B. Application BH2010/03540, Former Flexer Sacks Site, Wellington Road, Portslade – Change of use of all floors to mixed use development comprising ground floor - leisure (D2) first floor – part leisure (D2) part offices (B1) part parking area. Second floor offices (B1) and second floor extension to south section comprising vertical circulation core ground to second floors with lift motor room at roof level. Also, external refurbishment and alterations to all elevations.

(1) This application was deferred from this agenda.

C. Application BH2010/03791, Saunders Glassworks, Sussex Place, Brighton – Application to extend time limit for implementation of previous approval BH2005/00343/FP for the demolition of existing former glassworks. Erection of a five storey block of flats, 2 bungalows and 1 house comprising a total of 50 units, including 20 affordable units. Creation of 3 on-site disabled car parking spaces.

(1) The Area Planning Manager (East), Ms Burnett introduced the application and noted an additional consultation response had been received from the Housing Team, which was available as part of the Late List. The scheme was unchanged from the original scheme, although a change to policy had occurred regarding SPD08 that required the scheme to reach Code Level 4 for Sustainable Homes. This could be secured by condition.

Debate and decision making process

- (2) A vote was taken and on a vote of 10 for and 2 abstentions minded to grant planning permission was granted subject to a Section 106 Agreement, and the conditions and informatives listed in the report.

246.3 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Agreement and to the conditions and informatives listed in the report.

D. Application BH2011/00255, Woodingdean Business Park, Sea View Way, Bexhill Road, Woodingdean - Erection of industrial and storage buildings with associated offices and a wind turbine together with provision for access, servicing, parking and landscaping.

- (1) Ms Burnett introduced the application and highlighted that this followed on from phase 5 of the application that had been agreed in August 2010. This applicant sought to reposition block 1 and this was considered a minor amendment. The application was otherwise identical to the scheme already approved.

Debate and decision making process

- (2) A vote was taken and on a unanimous vote planning permission was granted subject to the conditions and informatives listed in the report.

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

(iii) MINOR APPLICATIONS

E. Application BH2010/03911, 52 Downland Road, Brighton – Hip to gable loft extension with front and rear dormers and rooflights to front elevation (part retrospective).

- (1) This application was the subject of a site visit.

- (2) Ms Burnett introduced the application and presented plans, photos and elevational drawings. There was a complex plan history, including an original application for a hip to gable roof extension. The current application was part retrospective. A certificate of lawfulness had been refused in 2010 for part of the work completed, and a concurrent planning application had also been refused as the dormer failed to meet 5 key areas of design. It was also felt that the plans for the current application were incorrect and the arrangement was an undesirable layout. There would be visual clutter to the roof and the application would be detrimental to the street scene and overly bulky.

Questions/matters on which clarification was sought

- (3) Councillor Cobb noted that the pictures used in the presentation were different to what was in existence on site. Ms Burnett replied that the approved application had been for a hip to gable roof extension and small dormer with fenestration. Evidently building work had been completed that did not match the approved application.
- (4) Ms Walsh added that partial permission had been implemented and extra works also undertaken on site. The plans submitted for this application were also different to the existing situation on site, and this could be added as another reason for refusal.
- (5) Councillor Carden asked if the patio terrace required planning permission and Ms Walsh replied that this would depend on the depth of a patio. For this application it was deemed that this structure did require planning permission.

Representations from Public Speakers

- (6) Mr Bean, the applicant, addressed the Committee and stated that he had purchased the building in April 2010 to convert into a four bedroom family home. He had not believed this would be a problem due to the prevalence of large dormer extensions in the surrounding area. He had not intended to circumvent planning permission and this was not done for financial gain but to provide a home for his family. Advice from the planning department had been that Mr Bean could secure planning permission by doing part of the works through permitted development rights, and then securing planning permission for the rest of the works. He had completed part of the works under permitted development, and was now seeking authorisation for the rest of the works via planning permission. Mr Bean added that there had been several letters of support and no objections to his planning application.
- (7) Councillor Cobb recognised that Mr Bean had encountered difficulties with the planning regime, but noted that the works on site were still different to what was being applied for today. Mr Bean replied that he had been given advice to do works under permitted development, and then apply for planning permission to make the building symmetrical. He had currently undertaken part of the works.
- (8) The Chairman reminded Members that they needed to decide on the plans they had before them.
- (9) Councillor Steedman asked why Mr Bean had not constructed his home according to the approved planning permission. Mr Bean replied that he had needed to start work quickly, and so although the dormer had not been approved he had been told he was allowed to do this under permitted development rights.
- (10) Ms Woodward asked if Members were clear on what they would be voting for or against. Members indicated they were concerned about aspects of the application.
- (11) Councillor Mrs Theobald noted that the application showed the dormer at its full width, whereas the pictures showed a dormer that had not been built to the full width. Mr Bean replied that he could only build as far as he had under permitted

development rights, but he would like to take the dormer further out to balance the building.

- (12) Councillor Kemble felt that there were contrary views as to the advice that had been given to the applicant. Ms Walsh replied that all correspondence with applicants was available as part of the case file. Plans and detailed drawings were available on the website and when Member briefings were given these files were available for Members to scrutinise. Ms Burnett added that the applicant had been advised that the works were at risk because they did not have planning permission.
- (13) Councillor Steedman asked if the work to the hip to gable roof extension had been carried out under permitted development rights, would a full dormer then be permissible under the permitted development rights of the new building design. Ms Burnett replied that it would have to be measured before a decision could be reached, but this had not been what was applied for under the certificate. A front dormer had also been included in the planning application before Members.

Debate and decision making process

- (14) Councillor Kemble felt that the surrounding properties had various sizes and styles of gables and dormers and could not see a problem with this application.
- (15) Councillor Carden felt that the building works needed completing to make the building look better and felt he should support the application to achieve this.
- (16) A vote was taken and on a vote of 3 for, 8 against and 1 abstention the resolution to refuse planning permission was not carried.
- (17) A second recorded vote was taken and on a vote of 8 for, 3 against and 1 abstention minded to grant planning permission was granted subject to the conditions and informative listed below.

246.5 **RESOLVED** – That the Committee has taken into consideration and does not agree with the reasons for the recommendation set out in paragraph 8 of the report and resolves to delegate to the Head of Development Control authority to grant planning permission subject to such conditions as she considers appropriate for the reason that the scheme complied with policy QD14 of the Brighton & Hove Local Plan and would not detrimentally affect visual amenity and the street scene.

Note: Councillors Hyde, Alford, Carden, Cobb, Allen, Kemble, Barnett and Theobald voted for the proposal. Councillors Davey, Kennedy and Steedman voted against the proposal. Councillor McCaffery abstained from voting.

F. Application BH2010/03843, Amber Court, 38 Salisbury Road, Hove – Creation of additional floor at fourth floor level to form 2no two bedroom flats with terraces to rear.

- (1) Mr Walker introduced the application and presented plans, photos and elevational drawings. There had been a previous refusal on the grounds of height and the design of the windows. The application was determined on appeal and the Inspector had not agreed that the height would have a detrimental affect on amenity. Therefore the only grounds that the Committee could consider for the new application were the design details regarding fenestration. Extra information had also been submitted by the applicant to show there was not a great affect on amenity or overlooking.

Questions/matters on which clarification was sought

- (2) Councillor Mrs Theobald asked if there was a lift to access the top floor and Mr Walker replied there would be a stairwell.
- (3) Councillor Cobb asked why the windows were not symmetrical for the proposed new floor and Mr Walker replied that it was deemed better to have a general mirroring of the windows that were already in existence, but not exact replicas of what were there already.

Debate and decision making process

- (4) Councillor Mrs Theobald did not like the application and felt it would be a great upheaval for the people living in the building. There would be no extra car parking provided and no lift provision and she felt that this was inappropriate.
- (5) A vote was taken and on a vote of 7 for, 1 against and 4 abstentions planning permission was granted subject to the conditions and informatives listed in the report.

246.6 **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.

G. Application BH2011/00083, 5-6 Western Road, Hove – Application for removal of condition 1 of BH2007/02454 (Part retrospective application for the erection of a four storey building over an existing basement level nightclub, comprising a ground floor bar (A4) and six flats over the floors above, and including alterations to existing elevations) which states that the ground floor bar hereby permitted shall not be used in connection with the basement nightclub at any time.

- (1) Mr Walker introduced the application and presented plans, photos and elevational drawings. During refurbishment of the site the building had started to collapse and enforcement action had been taken. In 2008 an application had been approved and the works for that application had been almost completed. Part of the permission had included an agreement not to use the ground floor in conjunction with the basement

floor, to prevent the premises becoming a large nightclub. Permission was sought for ground floor changes to allow access to the basement. This was perhaps a sensible solution to noise complaints in the area, but the Local Plan prohibited the establishment of large nightclubs within 400 metres of a similar establishment and residential properties. The site also lay within the Special Stress Area that was an area of special attention where problems of noise and anti-social behaviour had been recognised. The Environmental Health Team had received several noise complaints since 2010.

Questions/matters on which clarification was sought

- (2) Councillor Kemble asked how many noise complaints had been received and Mr Walker replied that there had been five since 2010.
- (3) Councillor McCaffery asked if a condition could be imposed so that each floor was open and closed at a separate time to prevent the establishment being used as a large nightclub and Mr Walker replied that this would not be possible.

Representations from Public Speakers

- (4) Mr Turner, agent to the applicant, spoke in favour of the application and stated that the bar operated on two levels with similar uses for each bar. Private functions could take place in one or both bars, but customers had to go outside to access the basement bar. This caused problems with noise and disturbance and the inclusion of a door between the floors would alleviate this situation. It was also recognised by the Environmental Health Team that this situation would be alleviated by the inclusion of a door between the floors. The Police objected to the creation of a large nightclub, which was defined at 150 square metres. The premises including the two bars would be only 157square meters, and if bar space and associated chairs and tables etc were removed from the calculation it would in fact be on 145 square metres. As such, Mr Turner questioned whether the policy should be applied to this premises. There were many letters of support for this proposal from local residents and the only result would be a potential benefit to the area. He suggested that a temporary permission might be possible to ensure that no problems ensued.

Questions/matters on which clarification was sought

- (5) Councillor Mrs Theobald asked how many customers were allowed in the premises. Mr Turner replied that it was currently 350.

Debate and decision making process

- (6) Councillor Kennedy stated that she would be supporting the officer's recommendation. She was concerned that this application would turn this establishment into a large nightclub, and this would set a precedent for the area. The area was very sensitive to anti-social behaviour and she believed the application might exacerbate this.

- (7) Councillor Kemble felt that this was already a large premises and the Committee could consider giving a temporary permission to ensure there were no problems as a result of the application.
- (8) Ms Woodward advised that a temporary permission could be considered by the Committee for this application, but it was prudent to deal with the officer's recommendation first.
- (9) A vote was taken and on a vote of 8 for, 1 against and 3 abstentions planning permission was refused for the reason given in the report.

246.7 **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 following reason:

1. Policy SR12 of the Brighton & Hove Local Plan seeks to resist the formation of large A4 drinking establishments where the premises would be within 400m of another establishment falling into the above category; the premises would operate within, or abutting, premises containing residential accommodation; or where the use would cause nuisance or an increase in disturbance to nearby residents by reason of noise either from within the premises or as a result of people leaving the premises late at night. Policies SU10 and QD27 seek to protect the amenities of residential occupiers from noise disturbance. The proposed removal of the condition and the installation of an internal door to connect the two units would result in the creation of a single large drinking establishment in close proximity to an existing large drinking establishment, thereby significantly harming the amenities of adjacent residents by way of late night noise disturbance in an area identified as being prone to late night disturbance and anti-social behaviour, contrary to the above policies.

Informatives:

1. This decision is based on the site plan, block plan and drawing nos. TA570/1 & TA570/10 received on the 11th January 2011.

H. Application BH2010/03648, 149-151 Kingsway, Hove – Demolition of 2no semi detached houses and erection of 4no 3 bed apartments and 1no 2 bed apartments with basement car park.

- (1) This application was taken together with conservation area consent application BH2010/03649, 149-151 Kingsway, Hove.
- (2) Mr Walker introduced the application and presented plans, photos and elevation drawings. He highlighted that the relationship with Viceroy Court was of most concern. Planning permission had been refused on this site and was the subject of an appeal. At the appeal the Inspector agreed that there would be a poor outlook for Viceroy Lodge, but did not agree with the Authority that there would be a detrimental impact caused by overshadowing. The new application was slightly lower in height with concrete cladding and balconies or winter gardens. The building was 1 metre further away from neighbours compared with the previous application and 15 metres away from the boundary. It was recognised that seafront buildings are generally

higher and so the height was acceptable, and it was difficult to refuse the principle of flats on the seafront. There were five car parking spaces and one disabled car parking space provided with the flats.

Questions/matters on which clarification was sought

- (3) Councillor Kennedy asked for more information regarding the materials proposed for the scheme and Mr Walker replied that it would be predominantly concrete cladding and glass. There were no suggested details available for the render. The glazing to the rear rooms, which were kitchens, would be obscured.
- (4) Councillor Kemble asked if this site was the subject of enforcement following a fire and Mr Walker confirmed this.
- (5) Councillor Kemble asked why cycle storage was necessary and only five parking spaces provided with the scheme. He also asked about the contributions to tactile paving, which he did not feel would be enough to lay paving on both sides of the road. Mr Walker suggested that this site would be ideal for those wishing to use bicycles and the parking was deemed adequate. Ms Walsh responded that a recent paper had been agreed at Cabinet regarding "Interim Developer Contribution Guidance on 17 February and the level of contribution was in accordance with that guidance. The Senior Transport Planner, Mr Reeves, added that the contributions were based on the impact of extra traffic in the area generated by the scheme. The developer then paid a proportion towards mitigating this impact. The contributions from all the schemes in an area would be used for mitigation measures.
- (6) Councillor McCaffery raised concerns over the scheme, which she felt was particularly difficult to envisage. She felt the visuals were not coherent. The Chairman suggested that officers would agree the final finish of the scheme.
- (7) Councillor Steedman agreed that the application was difficult to understand. He suggested deferring the application to wait for more details of the design to be submitted by the applicants.
- (8) Mr Andrews agreed and stated that CAG also felt it was difficult to interpret the plans, especially in terms of the relationship between the solid and void parts of the building. He accepted the height, mass and scale, but believed that more details were needed regarding design.
- (9) Councillor Mrs Theobald requested a sample board to be submitted, and for details as to whether the lift could accommodate wheelchair users.
- (10) A vote was taken and on a vote of 9 for, 0 against and 3 abstentions the application was deferred for more information.

I. Application BH2010/03649, 149-151 Kingsway Hove – Demolition of 2no semi detached houses.

- (1) This application was taken together with application BH2010/03648, 149-151 Kingsways Hove.
- (2) A vote was taken and on a vote of 9 for, 0 against and 3 abstentions the application was deferred for more information.

J. Application BH2010/00529, 68 Western Road, Brighton - Demolition of existing rear three storey section of the property and erection of 1 no four storey residential block (4 residential units) fronting onto & with access via Stone Street. Refurbishment of existing retail unit and refurbishment of residential unit above.

- (1) Mr Walker introduced the application and presented plans, photos and elevational drawings. The building dated from the 19th century and had been much altered and built upwards over the intervening period. The current dwelling did not contribute to the street scene. The application sought to reduce the storage area and slightly increase the shop area and this was deemed acceptable. Comments received from CAG expressed disappointment that there was a lack of upgrading to the Western Road frontage and that the pace and light provided for the residential element was substandard. Mr Walker agreed that the mix within the building was not ideal, but the space was narrow and so there was a limited amount of provision. The scheme would meet Code Level 3 for Sustainable Homes and there were no traffic contributions requested. Additional information was also included on the Late List.

Questions/matters on which clarification was sought

- (3) Councillor Mrs Theobald asked if the application was taller than the existing building and Mr Walker confirmed this, but added that the top was set back.
- (4) Councillor Mrs Theobald asked if an informative could be added to ask the applicant to improve the Western Road frontage. Ms Walsh replied that informatives were usually included to provide the applicant with useful information, and the Committee would need to think carefully about why this informative was necessary.
- (5) Councillor Kemble asked if CAG were allowed to request that an application be considered at Committee. Ms Walsh replied that as a non-voting advisory group, CAG had the same rights to request that an application be considered at Committee as a Ward Member.
- (6) Mr Andrews asked if the front space of the building indicated on the plans was the living/dining/kitchen space, and asked for the width of this. Mr Walker replied that it was, and the dimensions were 4.5 metres by 2.5 metres.

Debate and decision making process

- (7) Mr Andrews was very concerned about the living space provided with the accommodation, which he felt was exceptionally narrow. He was also disappointed

with the summary of the comments from CAG that officers had provided to the Committee, which he felt did not express their concerns accurately. Ms Walsh replied that the officers had a duty to summarise the comments from CAG and provide this to Members. She indicated that if CAG wished to provide their own summary for the report she would include this.

- (8) Councillor Barnett felt it was ludicrous to expect someone to live in such a limited space. The accommodation provided was far too small.
- (9) Ms Walsh addressed Members and stated that schemes had come before Committee in the past that had provided 16 square metres of living space. This application provided 35 square metres and so was generous in that respect. She added that there were no minimum space standards.
- (10) Councillor Barnett felt that the width of the premises was the main concern.
- (11) Councillor Cobb asked if the scheme met with lifetime homes standards and Mr Walker replied that it did.
- (12) Mr Andrews still felt that 35 square metres was very minimal living space, and much of it would need to be dedicated to circulation space. He did not believe it was adequate for lifetime homes standards and was appalled that the application was recommended for approval.
- (13) A vote was taken and on a vote of 0 for, 6 against and 6 abstentions the recommendation to approve planning permission was not agreed.
- (14) Councillor Mrs Theobald proposed to refuse the application and Councillor Cobb seconded this proposal.
- (15) A second recorded vote was taken and on a vote of 8 for, 0 against and 3 abstentions planning permission was refused for the reasons given below.

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

1. The scheme as currently proposed by reason of the narrow layout and limited size of the lower ground floor unit and the second floor unit would result in a cramped scheme having an adverse impact on the amenity of the potential occupiers contrary to policy QD27 of the Brighton and Hove Local plan 2005.

Note 1: Councillors Hyde, Alford, Carden, Cobb, Allen, Kennedy, Barnett and Theobald voted for the proposal. Councillors Davey, Kemble and Steedman abstained from voting.

Note 2: Councillor McCaffery was not present during the voting on this item.

K. Application BH2010/00530, 68 Western Road, Brighton – Demolition of rear 3 storey section of property facing Stone Street.

(1) This application was taken together with application BH2010/00529, 68 Western Road, Brighton.

Debate and decision making process

(2) A vote was taken and on a vote of 0 for, 9 against and 2 abstentions Conservation Area Consent was not granted.

246.9 **RESOLVED** – That the Committee has taken into consideration and does not agree with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse Conservation Area Consent for the reasons given below:

1. Policy HE8 of the Brighton & Hove Local Plan states that where demolition of buildings within a conservation area are proposed, the redevelopment of the site should preserve the character or appearance of the Conservation Area. The existing rear three storey section of the property is not of merit, however to allow the demolition where no acceptable replacement building or boundary treatments have been identified would have a negative impact on the character and appearance of the Regency Square Conservation Area. The proposal is therefore considered to be contrary to Policy HE8 of the Brighton & Hove Local Plan.

L. Application BH2011/00248, 36 Hollingdean Terrace, Brighton – Replacement and enlargement of timber platform incorporating steps and glazed screens (part retrospective).

(1) Ms Burnett introduced the application and presented plans, photos and elevational drawings. The main concerns were overlooking of number 34 that this application would afford.

Questions/matters on which clarification was sought

(2) Councillor Kemble asked if there were terraces on either side and Ms Burnett replied that there were enclosed structures on either side, but they did not have planning permission. They did not set a precedent for this application.

Debate and decision making process

(3) A vote was taken and on a unanimous vote planning permission was refused for the reasons given in the report.

246.10 **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 following reasons:

1. Policy QD14 of the Brighton & Hove Local Plan requires that all extensions and alterations are well designed, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area. The raised decked

structure and proposed contrived screening option is an inappropriate addition to the rear garden area by reason of its highly prominent and incongruous appearance, resulting in a detrimental impact on the character and appearance of the existing building and a dominant and overbearing visual impact on the residents of neighbouring properties. The scheme is therefore contrary to policy QD14 of the Brighton & Hove Local Plan.

2. Policies QD14 and QD27 state that planning permission will not be granted for alterations which would cause material nuisance and loss of amenity to existing / future residents. Use of the raised terrace area would result in unacceptable levels of overlooking of neighbouring gardens and the rear elevations of neighbouring dwellings, causing significant harm to the privacy of neighbouring residents. The scheme is therefore contrary to policies QD14 and QD27 of the Brighton & Hove Local Plan.

Informative:

1. This decision is based on drawing nos. OS/01, 01, 02, 03, 04, 05revA, 06revA received on the 27th January 2011.

M. Application BH2010/03477, 42 George Street, Brighton - Addition of second floor and internal and external alterations to first floor to create student accommodation (Sui-generis) and retention of 160sqm of Retail (A1) to ground floor together with cycle and bin storage.

- (1) Ms Burnett introduced the application and presented plans, photos and elevational drawings. The site had previously been student accommodation and was in a mixed residential and commercial area. Letters of objection had been received regarding overlooking to the rear. There was a separation distance of around 9 metres from the properties opposite the proposal. No off street parking was provided with the development, but secure cycle storage was available. The development would reach Code Level 3 for Sustainable Homes and a BREEAM rating of very good.

Questions/matters on which clarification was sought

- (2) The Chairman asked how many students currently lived in the dwelling and Ms Burnett believed there were five.
- (3) Councillor Kemble asked about parking permits and Ms Burnett replied that the site was in zone C parking with 168 available permits.
- (4) Councillor Cobb asked if there was potential for noise disturbance from the balconies and Ms Burnett agreed that there might be.
- (5) Councillor Mrs Theobald asked if there was any other amenity space provided with the application and Ms Burnett replied that there was a communal kitchen on each floor.

Debate and decision making process

(6) A vote was taken and on a vote of 8 for, 0 against and 3 abstentions planning permission was granted subject to the conditions and informatives listed in the report.

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

N. Application BH2010/01338, 5 Steine Street, Brighton – Alterations to frontage (retrospective).

(1) Ms Burnett introduced the application and stated that it had previously been considered at Committee on 22 September 2010, where it was deferred for further information from Environmental Health and the applicants regarding acoustic glazing.

The area was mixed use and an application had been refused in 2008 due to noise concerns. No other objections had been received since this time. A noise limiter was reviewed in 2010 and a recent meeting with residents had confirmed that there had been a great improvement following the installation of sealed glazing units. The Environmental Health Team was now satisfied with the noise limiting device and the design of the units had overcome the design concerns.

Questions/matters on which clarification was sought

(2) Councillor Steedman asked if the letters of objection had been received before or after the residents meeting. Ms Burnett replied that they had been received as part of the original application that had been before the meeting.

(3) The Chairman noted that the residents had requested for glazing to be sound proof up to 84 decibels, or 10 decibels higher than the sound limiter. The Environmental Health Manager, Ms Sparks, noted that historically complaints had been regarding people and music noise. There were a number of different ways in which this noise could be managed, and at a residents meeting on 29 November 2010 it was agreed that the situation had much improved. There was a lack of further complaints and so it was concluded that further attenuation was not necessary. For the current use of the building further glazing was not necessary.

(4) Councillor Mrs Theobald asked if there was an internal lobby door, as had been recommended and Ms Burnett agreed that this was shown on the plans.

(5) Councillor Steedman asked if the issues around overlooking had been addressed and Ms Burnett agreed, but stated that this had not been a significant issue or a reason for refusal.

Debate and decision making process

- (6) A vote was taken and on a vote of 9 for, 2 against and 1 abstention planning permission was granted for the reasons given in the report.
- 246.12 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to grant unconditional planning permission for the reasons given in the report.
- 247. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY**
- 247.1 **RESOLVED** – That those details of applications determined by the Strategic Director of Place 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 Strategic Director of Place. The register complies with legislative requirements.]
- [Note 2: A list of representations received by the Council after the Plans List reports had been submitted for printing was circulated to Members on the Friday preceding the meeting. Where representations are received after that time they should be reported to the Chairman and Deputy Chairman and it would be at their discretion whether they should in exceptional circumstances be reported to the Committee. This is in accordance with Resolution 147.2 of the then Sub Committee on 23 February 2006.]
- 248. 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**
- 248.1 There were none.
- 249. VARIATION OF A SECTION 106 AGREEMENT - EXEMPT CATEGORY 5**
- 249.1 The Committee considered a report from the Monitoring Officer regarding variation of a Section 106 Agreement.
- 249.2 Ms Woodward gave legal advice in respect of the agreement, and the Area Planning Manager (West), Ms Hurley, updated Members as to the planning history of the site.
- 249.3 **RESOLVED** – That the recommendations at paragraphs 2.1 and 2.2 of the report are agreed.
- 250. PART TWO ITEMS**
- 250.1 **RESOLVED** – That business and decisions under item 249 of the agenda remain exempt from disclosure to members of the press and public.

The meeting concluded at 6.30pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

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Appeal Decision

Site visit made on 21 February 2011

by Sheila Holden BSc MSc CEng TPP MICE MRTPI FCIHT

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

Decision date: 4 March 2011

Appeal Ref: APP/Q1445/D/10/2143465
103 Goldstone Crescent, Hove, BN3 6LS

- 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 Stephen Dugard against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/02815, dated 2 September 2010, was refused by notice dated 8 November 2010.
 - The development proposed is alterations and extension to a dwelling.
-

Decision

1. I allow the appeal and grant planning permission for the erection of rear extension replacing existing conservatory. Alterations including installation of rooflight to side and dormers to rear and side and altered fenestration at 103 Goldstone Crescent, Hove, BN3 6LS in accordance with the application Ref BH2010/02815, dated 2 September 2010, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those of the existing building.
 - 3) The development hereby permitted shall be carried out in accordance with the layout and details shown on the following approved plans: Drawing No. 938.00, dated 2 September 2010 and Drawing Nos. 938.09, 938.10, 938.11 and 938.12a, dated 19 April 2010.

Procedural matter

2. The Council describe the development as erection of rear extension replacing existing conservatory. Alterations including installation of rooflight to side and dormers to rear and side and altered fenestration. I have used this fuller description of the proposal in my determination of the appeal.

Main issue

3. The main issue is the effect of the proposed extension and rear dormer windows on the character and appearance of the host dwelling.

Reasons

4. No 103 is a detached two-storey house dating from the 1930s set in a modest sized plot. The house was altered and extended in the 1960s and again in the mid 1970s. The existing first floor rear extension has a flat roof and angled mansard style walls with three windows, two of which look over the rear garden and the third towards the adjoining property, No 105.
5. If the extension was going to be visible from the street it would be important for the eaves to line up with those of the original house. However, as the proposal would be entirely to the rear of the property it seems to me that it would be equally appropriate for the eaves to be a little lower, giving the impression of a more traditional rear projection or outrigger. I consider that the extension could therefore be satisfactorily integrated into the existing dwelling, particularly as the proposed pitched roof would be more compatible with the style and appearance of the original property.
6. The two proposed half dormers would not dominate the new roof and their roof slopes would match those of the proposed extension. The size of the windows would be proportionate to the extension, compatible with others on the rear elevation and relate well to the new ground floor windows. The dormers would be close to one another but the sketch showing a possible alternative proposal with a single window would not, in my view, offer substantial advantages over the appeal proposal. The overall proposal would, in my view, result in a significant improvement to the appearance of the rear of the house.
7. I conclude that the proposed extension would not be harmful to the character and appearance of the host property and would comply with saved Policy QD14 of the Brighton & Hove Local Plan which seeks high quality alterations that respect the host property and its surroundings. The dormer windows would also be in general conformity with the guidelines set out in the Council's Supplementary Planning Guidance: *Roof Alterations and Extensions*. As this extension would not affect the wider street scene I consider it to be one of the rare cases where locating the dormer flush with the rear elevation, rather than set back from the eaves, would not be harmful.
8. I shall therefore allow the appeal, subject to conditions. In addition to the standard time limit I have imposed a materials condition in the interests of the appearance of the building and specified the approved plans for the avoidance of doubt and in the interests of good planning. The officer's report refers to the need for obscure glazing in the windows that face Nos. 101 and 105. The plans show those facing No 101 fitted with obscure glass so a condition is not necessary to secure these details. The window facing No 105 would be both smaller and further from the shared boundary than the existing plain glass one. Since the development will not increase the amount of overlooking of this adjacent property I consider that a condition requiring obscure glazing is not justified.

Sheila Holden
INSPECTOR



Appeal Decision

Hearing held on 2 February 2011
Site visit made on 2 February 2011

by L Rodgers BEng CEng MICE MBA

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

Decision date: 3 March 2011

Appeal Ref: APP/Q1445/A/10/2136372

41 Ladies Mile Road, Brighton, BN1 8TA

- 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 Domino Pizza Group Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01132, dated 20 April 2010, was refused by notice dated 26 July 2010.
 - The development proposed is a change of use from A2 to A5, erection of rear extension, new shopfront and extract duct.
-

Application for costs

1. At the Hearing an application for costs was made by Domino Pizza Group Ltd against Brighton & Hove City Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for a change of use from A2 to A5, erection of rear extension, new shopfront and extract duct at 41 Ladies Mile Road, Brighton, BN1 8TA in accordance with the terms of the application, Ref BH2010/01132, dated 20 April 2010 subject to the conditions in Annex A.

Main Issues

3. I consider the main issues to be the effect of the proposed development on the living conditions of local residents; and its effect on their health and well being, particularly pupils and users of the local schools and community facilities.

Reasons

Background

4. The currently vacant appeal property is part of a parade of commercial premises situated opposite to the playing fields associated with Patcham High School. It is close to the High School entrance as well as to another school and community facilities. There are already a number of food outlets in the area, both within the parade itself and further along Ladies Mile Road, some of which offer hot food takeaways. The parade includes residential accommodation above the ground floor commercial premises.
5. The Appellant has submitted evidence based on the operation of the premises as a Domino's Pizza outlet. However, planning permissions normally run with

the land, not with the occupier. Circular 11/95 advises that conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal. Therefore, whilst I have considered the arguments directly related to use of the site by the Appellant, I have also had in mind the potential for other A5 users.

Living conditions of local residents

6. In terms of living conditions, the local residents likely to be most affected are those living above the parade. Despite the former use of the premises as a betting shop it is likely that the proposal would lead to increased levels of noise and disturbance as a result of the arrivals and departures of delivery drivers and customers, particularly into the evening period. It is also likely that any new extraction equipment and other plant would generate additional noise and the potential release of odours should also be taken into account.
7. However, it must also be recognised that the appeal property is in a commercial parade in which hot food takeaways can already be obtained. As such, it would be unrealistic of residents to expect to benefit from the kind of noise levels that might occur in a wholly residential area.
8. I saw on my late afternoon visits to the area that Ladies Mile Road was busy and congested, an observation supported by the submissions of local residents. It is therefore clear that residents already experience appreciable traffic noise and disturbance at certain times of the day. Whilst the area is likely to be quieter at other times, including later in the evenings, the parade is located close to a crossroads and has an appreciable number of parking spaces and a recycling point nearby. In these circumstances I do not consider that the noise and disturbance likely to be generated by any customers and deliveries associated with an A5 use would be exceptional.
9. Concern has nevertheless been raised that the particular operation proposed is likely to require a larger number of delivery vehicles than might normally be associated with an A5 use. However, the transportation and noise assessments submitted by the Appellant conclude that the proposed operation would not have a material impact on noise or traffic in the area. Whilst the Council's officers noted that these reports were based on experiences from other Domino's outlets, the officers nevertheless agreed that the proposed use would not cause significantly increased disturbance to neighbouring residents or generate a material increase in traffic flow.
10. Although there was some debate at the hearing as to the basis of the operation and the actual numbers of delivery vans likely to be in use at any one time, given the ambient noise levels identified in the noise assessment, even a significant increase over the assumed number of arrivals and departures would be unlikely to increase noise levels, measured in terms of L_{Aeq} , by an unacceptable amount. Whilst L_{Aeq} may not fully reveal the impact on residents of sharp noises, such as a car door slamming, I note that the peak hours for deliveries and collections tend to be earlier in the evenings when the area is likely to be busier. In any case, noise in the early evening is likely to be less disturbing to residents than noise late at night.
11. Local residents also claim that the area has been designated as an Anti-Social Behaviour Control Area. However, I was given no substantive evidence to support this assertion and although the Council referred to historic problems

with anti social behaviour in the vicinity of the site I was also told that this had since moved away. Whilst the Appellant acknowledged an awareness of anti-social behaviour issues, the information sheet submitted by the Appellant indicated that the Ward was in the lowest category of police recorded incidents of social disorder. In any event, Sussex Police have raised no objections to the proposal and the suggested opening hours mean that the use would cease at 23.00. This would reduce the potential for late night disturbance and particularly for any that might be associated with drinkers leaving the nearby pub at or after 23.00. Subject to the proposed restriction on hours, which would not be unusual for an A5 outlet and which could be controlled by condition, I do not consider material harm would arise.

12. The Appellant has submitted a proposal for a ventilation system. Based on the submitted details the Council's Environmental Health section considers that any impacts would be mitigated to an acceptable level. The location, despite its proximity to residential accommodation, would not be unusual for an A5 use and modern ventilation systems should be capable of effectively mitigating odour. According to the noise assessment, no material harm would arise and in terms of the ventilation being proposed I see no reason to take a different stance to that of the Council's officers.
13. Against this background I find that the proposed development would not result in material harm to the living conditions of neighbouring residents and in this respect there would be no conflict with Policies SU9, SU10 and QD27 of the Brighton and Hove Local Plan 2005 (LP).

Health and well being

14. Despite reference to the amount of fat and salt contained in a Domino's pizza I heard no cogent evidence to demonstrate that a Domino's pizza was any more or less healthy than any other pizza nor that pizzas, consumed as part of a balanced diet, were intrinsically unhealthy. In any case I have already noted that it is not usually reasonable to seek to control the occupier of the premises and I must also consider other potential A5 users. It would also not be reasonable to argue in the context of this appeal that, as an accepted use class, hot food takeaways should not be permitted. In terms of any effect on health and well being of pupils and users of the local schools and community facilities, the key issues must therefore be location and opening times.
15. The appeal site is close to both the High School entrance and the community facilities and it is suggested that in this location the proposed use is likely to prove attractive to pupils, particularly when leaving school in the afternoons. I was made aware of Patcham High's Healthy School Status and the efforts being made to encourage healthy eating as part of the National Healthy Schools Programme. All parties agreed that this was a material consideration for me to take into account.
16. My attention was also drawn to some general and high level objectives aimed at improving health and well-being across the City. These are contained in a document entitled 'Creating the City of Opportunities' – A sustainable community strategy for the City of Brighton & Hove (third edition) (Brighton & Hove Strategic Partnership). However, the Council accepted that this was not a statutory planning document and it is unclear as to the level of any public consultation that may have been carried out. In my view this document can carry little weight. The Council confirmed that there are no adopted local plan policies dealing with hot food takeaways in the vicinity of schools.

17. The Appellant's view is that its products are aimed at family consumption and because of the high transaction cost and the cooking and waiting time the product would not be attractive to school pupils. Whilst these matters were challenged at the hearing, I have in any case already noted that any permission would run with the land and it would be possible for another operator to offer a cheaper and more readily available alternative - even if this too were pizza.
18. I am in no doubt that a hot food takeaway in the proposed location would prove attractive to pupils of the High School. In consequence it could, by making readily available whatever food was on offer, lead to an unbalanced diet and undermine the school's efforts to promote a healthy lifestyle for its pupils. Notwithstanding the lack of any directly applicable development plan policy I consider this a matter deserving of substantial weight. However, the Appellant has suggested that any permission could be subject to a condition such that no counter service could take place before 16.00 hours - thus assuaging the concern that pupils would be able to use the facility on schooldays. Telephone and internet sales would be unaffected.
19. Enforcement of such a condition would prevent over the counter sales to pupils at lunchtimes and immediately after normal school times. It would not stop all sales of hot food takeaways to pupils, as some may leave school later, nor would it prevent sales to users of the community centre. However, it would remove the immediacy and easy availability from a large number of pupils, the factor most likely to undermine the school's healthy eating aims. If such a condition were to be imposed I see no reason to believe that the proposed development would result in material harm to the health and well being of pupils or indeed to local residents or users of the community facilities.
20. I am conscious that there are already a number of other food outlets in the area and whilst I saw on my visits that some were closed at school leaving times, I also noted that others were open. However, those which were open were either further from the school entrance or were not solely takeaways. In any case I have not been made aware of their planning history, nor of the considerations taken into account in the grant of any permission. I have therefore considered the proposed scheme on its own merits.

Other matters

21. Local residents object to the increase in traffic and the anticipated congestion. However, whilst the Council is also concerned that there would be increased traffic flow and increased pressure on parking, the Highway Authority has not objected in terms of highway safety or the flow of traffic. The Appellant's transportation assessment concludes that there would be no material harm in terms of traffic flows and that adequate parking would be available. Notwithstanding the debate over vehicle numbers I am not persuaded that, in normal circumstances, the proposed use would lead to material harm.
22. However, I saw on my visits, made around school leaving times, that the area around the parade was congested and that there was a clear shortage of parking spaces. This in turn resulted in a significant degree of potentially hazardous parking as some children were collected from school. Albeit that the congestion was only for a short period of time, in my view it is likely to be made appreciably worse if the proposed hot food takeaway were to offer counter sales at the same time. Notwithstanding that a small volume of deliveries may still take place during this busy traffic period, the prevention of

counter sales before 16.00 hrs is also likely to avoid material harm to highway safety.

23. Although the matter of unfair competition has been raised in the submissions of third parties, the planning system does not exist to protect the private interests of one person against the activities of another. Whilst public and private interests may sometimes coincide I am not, in this case, persuaded to change my earlier views. It has also been suggested that alternative, and potentially more suitable, premises may be available elsewhere. I must, however, consider the proposal before me.

Conditions

24. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. I have considered these, and those suggested by the Appellant and third parties, in the light of Circular 11/95.
25. In order to ensure that there would be no material harm to the living conditions of neighbouring residents, conditions governing opening hours and the installation, operation and maintenance of a ventilation system would be required. In seeking not to undermine the High School's approach to promoting a healthy lifestyle for its pupils, and in the interests of highway safety, amending the suggested opening hours condition to prevent counter sales before 16.00 hrs would be both reasonable and necessary and would meet the other tests of Circular 11/95.
26. To preserve the privacy of neighbouring residents and to avoid harm in terms of noise and disturbance a condition would be needed to control the use of the flat roof to the rear. In the interest of sustainability a condition would be required to provide cycle parking. Notwithstanding the existing litter bins in the area the nature of the development is such that a condition requiring the provision of a further litter bin would be needed. Proper planning also requires a condition listing the drawings.
27. Whilst it was suggested that a condition should be imposed to prevent cars from parking on the pavement, this area does not fall within the appeal site and such a condition would not be appropriate. Although the Appellant has also suggested that the type of food being sold could be controlled by condition I do not consider that necessary. Excepting the standard timeliness condition I see no need for any others.

Conclusion

28. Subject to the conditions above the proposed development would not conflict with the development plan nor would it have an unacceptable effect on the living conditions, health or well being of local residents and pupils. It would, however, provide some local employment and investment which must weigh in its favour. Against this background, and having had regard to all other matters before me, including the petition presented on behalf of local residents, I conclude that the appeal should succeed.

Lloyd Rodgers

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr R Unwin FRICS	Chartered Surveyor
Mr R Gregory MCIHT	Mayer Brown Ltd
Mr N Jarman C Eng, MIOA, MCIBSE	Cole Jarman Associates
Mr D Cox	SNR Denton
Mr T Poulton	Domino Pizza Group Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Cllr L Hyde	Chair, Planning Committee
Cllr C Theobald	Deputy Chair, Planning Committee

INTERESTED PERSONS:

Cllr B Pidgeon	Representing Patcham residents
Mr Z Solomon JP	Local resident
Mrs L McRae	Local resident
Mr N Poyner	Chairman Patcham Utd FC and local resident
Mr J McKee	Deputy Head Teacher, Patcham High School
Mr B Dodd	Glawood Ltd (on behalf of building owner)

DOCUMENTS HANDED IN AT THE HEARING

- 1 Notification of the hearing. Submitted by the Council.
- 2 Copy of a permission to develop land in respect of 56 London Road, Brighton (Ref BH2010/02854). Submitted by the Appellant.
- 3 Written representation. Submitted by Cllr Pidgeon.
- 4 Information sheet in respect of Anti-Social Behaviour including analysis of incidents by Ward April 08 – March 09. Submitted by the Appellant.
- 5 Copy of OS Sitemap showing the red line site boundary. Submitted by the Appellant.

Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The use hereby permitted shall not take place outside the following times: 09.00 to 23.00 on Mondays to Saturdays and 10.00 to 23.00 on Sundays and Bank Holidays excepting that, prior to 16.00 hours on Mondays to Fridays during Patcham High School term time the use hereby permitted shall consist only of an order and delivery service and there shall be no counter service and no customer shall be permitted to be on the premises.
- 3) The use hereby permitted shall not commence until the ventilation system detailed in 'Proposed Ventilation System Statement Revision A', 'Standard Specification for ventilation and air conditioning system' and manufacturer's brochure submitted on 4 May 2010 has been installed and is fully operational. Such approved equipment shall thereafter be operated at all times when cooking is carried out and shall be maintained in accordance with the manufacturer's instructions.
- 4) Other than the railed walkway hereby approved, access to the flat roof over the rear extension shall be for maintenance or emergency purposes only and the flat roof shall not be used as a terrace, patio, roof garden or similar amenity area.
- 5) The development hereby permitted shall not commence until details for the provision of secure cycle parking facilities have been submitted to and approved in writing by the local planning authority. The use hereby permitted shall not commence until the approved cycle parking facilities have been provided. The approved facilities shall thereafter be retained.
- 6) The development hereby permitted shall not commence until details of an outdoor litter bin have been submitted to and approved in writing by the local planning authority. The use hereby permitted shall not commence until the approved litter bin has been provided. The litter bin shall thereafter be retained.
- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: 4462-A5-01, 4462-A5-02 Rev C, 4462-A5-04 Rev A, 4462-P03, 4462-BP04, Existing and Proposed Shopfront Sections Dated 12.3.09 (Unnumbered).



Costs Decision

Hearing held on 2 February 2011

Site visit made on 2 February 2011

by L Rodgers BEng CEng MICE MBA

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

Decision date: 3 March 2011

Costs application in relation to Appeal Ref: APP/Q1445/A/10/2136372

41 Ladies Mile Road, Brighton BN1 8TA

- 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 Domino Pizza Group Ltd 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 a change of use from A2 to A5, erection of rear extension, new shopfront and extract duct.
-

Decision

1. I allow the application for an award of costs in the terms set out below.

The submissions for Domino Pizza Group Ltd

2. The Applicant seeks a full award of costs considering that the Council failed to provide evidence to support its reasons for refusal contrary to Circular 03/2009 paragraphs A3, B16, B20, B21 and B22.
3. The only technical evidence submitted is that put forward by the Applicant in support of the proposal; none has been submitted by the Council. Instead, the Council relies on supposition and brief policy references put forward by Members and third parties, not officers. The application is therefore made on both procedural and substantive grounds.
4. In respect of highway matters the Committee report acknowledges that there is no technical objection to the scheme and Members were advised that previous technical objections had been overcome by the current scheme. Highway objections were voiced solely by Members and local residents.
5. The Environmental Health Officer did not object to the proposal on noise or amenity grounds and the only technical evidence before the hearing was the Cole Jarman report submitted by the Applicant. Nothing was said at the hearing that supports the reason for refusal in noise terms and it was not part of the case advanced at the hearing that there was an objection on amenity grounds.
6. Although the matter of anti-social behaviour has been raised the police have been consulted on two occasions but have not raised anti-social behaviour as an issue. It is not even clear that anti-social behaviour is an issue but in any case there is nothing to suggest that a Domino's pizza outlet would exacerbate any existing problem.

7. In terms of the health effects of the proposal the Committee report is quite clear that there are no local policies which support a refusal on health grounds; nothing said at the hearing contradicts that stance. Neither the community strategy nor the Patcham School Strategy refers to fast food outlets and consequently there is no policy basis supporting the Council's position.
8. The costs being sought are largely the professional costs in preparing for and attending the hearing.

The response by Brighton & Hove City Council

9. With reference to Circular Paragraph A3 the Council believes its reasons for refusal do stand up. Having regard to Paragraph B16, the refusal reasons make reference to planning policy - except in the case of the third reason which refers to a material consideration. The Tower Hamlets case clarified that fast food outlets were capable of being a material consideration in planning terms and the Council maintains that that is the situation here.
10. Paragraph B16 also says that the Council must produce evidence to support its stance - a matter that has been discharged both at the hearing and in the appeal statements. The traffic evidence benefited from the views of Members familiar with the area, including one who lives in it, as well as from the knowledge of local residents.
11. It is clearly the case that the proposed development would attract more vehicles than a vacant unit and the Applicant admitted that vehicle issues at St George's Place were the cause of some problems. The Council was not, at decision stage, aware of the new permission at London Road and until the hearing was not aware that the new unit (if implemented) would take the majority of deliveries from St George's Place. As the Council summing up noted, the numbers of vehicles involved continue to cause concern and there remain apparent discrepancies such as the use of 4 vehicles at times when only 2/3 parking bays are likely to be free.
12. In respect of anti-social behaviour the Council again takes advantage of the local knowledge of the Councillors and, albeit anecdotal, that of local residents including in respect of the creation of an Anti-Social Behaviour Control Area.
13. In terms of health effects, Patcham High School entrance is very close to the proposed outlet and the Councillors also referred to the presence of local community centres which will be open beyond the school opening times - when the pizza outlet would also be open.
14. The Council's evidence does therefore provide a respectable basis for its stance (Circular Paragraph B16) and the Council has not relied on vague, inaccurate or generalised assertions referred to by Paragraph B18. With respect to Paragraph B20, whilst the Council's decision was contrary to officer recommendation it was made on reasonable grounds. The Council gave relevant evidence to support its refusal and no costs should be awarded.

The rebuttal by Domino Pizza Group Ltd

15. In respect of the third reason for refusal and Paragraph B16 the Council refers to the Tower Hamlets case. However, and whilst the Applicant has never disputed that this is a material consideration, the Council has not provided any planning evidence to support its stance.

16. The Applicant disagrees that the evidence supplied by the Council is sufficient to provide a respectable basis for its stance and considers that, with respect to Paragraph B22, most came from third parties. The Council was able to benefit from Members' experience but the Applicant supplied clear professional and technical evidence to support its case.
17. Whilst there has been reference to the outlet at St George's Place, the issue is whether this location is acceptable. In respect of Councillor's reference to discrepancies in vehicle numbers, this did not form part of the reason for refusal and the Council has always been aware of the nature of the application.
18. Despite the Councillors' local knowledge in respect of anti-social behaviour it was acknowledged that the problem had 'moved around the corner' to the clock tower and there is no evidence to suggest that the proposed development would make matters worse.
19. The key sentence in Paragraph B16 in respect of whether the Council has provided a respectable basis for its stance refers to the evidence produced on appeal. In this case, the evidence was largely provided by third parties.

Reasons

20. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
21. In determining whether the Council behaved unreasonably in refusing the application it is necessary to determine whether, on appeal, the Council was able to provide evidence to substantiate its reason for refusal with reference to the development plan and all other material considerations. Paragraph B16 of Circular 03/2009 says that the key test is whether evidence is produced on appeal which provides a respectable basis for the authority's stance and Paragraph B20 explains that whilst authorities are not bound to accept the recommendation of their officers they will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.
22. The first reason for refusal notes that the proposal would result in increased pressure on parking, increased traffic flow and resulting vehicle noise contrary to Policies SU9, SU10 and QD27 of the Brighton and Hove Local Plan 2005 (LP). All of these policies are concerned with development that may cause nuisance.
23. In support of its position the Council refers to the likely increase in traffic flow which it claims would result in increased parking pressure in the locality and increased noise. However, although the Council suggests that a hot food takeaway of the type proposed would attract customers collecting food by car and delivery vehicles would be arriving and departing on a regular basis, these concerns were expressed only in a very general way. In contrast the Applicant presented professional reports into the noise and transport implications of the development. These concluded that the proposed use would not cause significantly increased disturbance to neighbouring residents or generate a material increase in traffic flow. Despite noting that the Applicant's reports were based on findings at other Domino's outlets the Council's officers found no reason to believe the reports incorrect and raised no objections to the proposal.

24. Although the Applicant refers to the lack of technical evidence on behalf of the Council I would not expect the Council to commission its own experts as a matter of course and the absence of any technical reports does not itself make the Council's stance unreasonable. However, the Council's hearing statement contains no substantive evidence to show why the conclusions of the noise and traffic reports should be seen as erroneous.
25. At the hearing itself the Council did refer to residents' complaints in respect of the Domino's outlet at St George's Place pointing to the consultation response of Sussex Police. However, the police raised no objections to this application and I saw on my visits that the two locations are clearly different. Although it emerged during the hearing that there were some apparent discrepancies in the number of vehicles involved this did not form part of the Council's statement and is unlikely to give rise to significant harm.
26. Paragraph B18 makes it clear that even where an appeal involves a matter of judgement, vague or generalised assertions about a proposal's impact, unsupported by any objective analysis, are more likely to result in a costs award. Even taking account of the local knowledge of some Members, the weight of evidence on this first issue is distinctly unbalanced and in respect of the first reason for refusal, the Council's evidence does not provide a respectable basis for its stance nor has it shown reasonable planning grounds for taking a contrary decision to that of its officers.
27. In respect of the second reason for refusal concerning anti-social behaviour, the Council again went against the recommendation of its officers. In doing so it relied on the local knowledge of some Members and residents. However, whilst I have no reason to doubt their statements concerning historic anti-social behaviour problems I was also told that these problems have since moved away from the parade. Although it was also said that the area has been designated as an Anti-Social Behaviour Control Area, this remained an anecdotal statement. I was given no cogent evidence to demonstrate that the proposed use would be particularly prone to attracting anti-social behaviour and I am conscious that, despite being formally consulted, Sussex Police raised no objections to the proposal.
28. Whilst I do not doubt that the concerns of residents and Members in respect of anti-social behaviour are genuinely held, Circular Paragraph B20 makes it clear that if officers' professional advice is not followed authorities will need to produce relevant evidence on appeal to support the decision in all respects. In my view the Council has failed to produce such evidence.
29. Turning to the third reason for refusal, all parties accepted that the proximity of a fast food outlet to a school is capable of being a material consideration. That said, the weight to be assigned to it in any planning balance is then a matter for the decision maker. Although the officer's report considered it should be given only limited weight, the Council is entitled, based on the particular circumstances and within the bounds of reasonableness, to assign it more weight.
30. The Applicant points out, and the Council accepts, that there are no directly relevant local plan policies. However, the Council does refer to Patcham High's Healthy School Status and the efforts being made to encourage healthy eating as part of the National Healthy Schools Programme - as well as to wider community strategies aimed at improving health and well being. It is a matter of judgement as to whether a pizza takeaway (or indeed any other type of

takeaway) close to the school gates would prove attractive to pupils. It is also a matter of judgement as to whether any such attraction would encourage eating patterns that would undermine the school's stated objectives on healthy eating and if so, how important that is seen in the overall planning balance.

31. In proffering a condition restricting counter sales before 16.00 the Applicant clearly recognised the sensitivity of the location. Based on the information before me I have found in my decision letter that such a condition would be both reasonable and necessary and in so doing I have thereby acknowledged that in its absence the appeal should be dismissed. However, I have also acknowledged that such a condition would not prevent all sales to pupils or to users of the community facilities. Whilst this would not, in my view, lead to material harm that is my judgement on the information before me. The Council must be entitled to conclude otherwise.
32. For these reasons it is my view that the Council has, in respect of the third reason for refusal and despite the absence of any directly relevant development plan policy, demonstrated reasonable planning grounds for taking a contrary decision to that of its officers, has supported its position with sufficient relevant evidence and has provided a respectable basis for its stance.

Conclusion

33. I have found in respect of reasons for refusal 1 and 2 that the Council has failed to produce evidence on appeal to substantiate its reasons for refusal and as such has behaved unreasonably. However, in respect of the third reason for refusal the Council did substantiate its position and its behaviour was not unreasonable. The Applicant was not, therefore, compelled to contest the appeal unnecessarily and whilst the Applicant is seeking a full award of costs, any award should be limited to those costs specifically incurred in appealing against reasons for refusal 1 and 2. I therefore conclude that, in accordance with paragraph A20 of Circular 03/2009, an award of partial costs is justified.

Costs Order

34. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Domino Pizza Group Ltd, the costs of the appeal proceedings limited to those costs incurred in contesting refusal reasons 1 & 2, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
35. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Lloyd Rodgers

Inspector



Appeal Decisions

Hearing held on 11 January 2011
Site visit made on 11 January 2011

by David Prentis BA BPI MRTPI

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

Decision date: 24 January 2011

Appeal A: APP/Q1445/E/10/2134493

7 Victoria Road, Brighton BN1 3FS

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr and Mrs Christopher Jackson against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00347, dated 8 February 2010, was refused by notice dated 18 May 2010.
 - The works proposed are the formation of a sunken hidden outside roof space.
-

Appeal B: APP/Q1445/A/10/2134492

7 Victoria Road, Brighton BN1 3FS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Christopher Jackson against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00346, dated 8 February 2010, was refused by notice dated 19 May 2010.
 - The development proposed is formation of a sunken hidden outside roof space.
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Main issue

3. The works include the provision of a staircase leading to the proposed roof terrace. The Council raises no objection to this aspect of the scheme and I see no reason to disagree. The main issue, for both appeals, is the effect of the works/development at roof level on the special interest of the listed building and its setting within the Montpelier and Cliftonhill Conservation Area.

Reasons

4. The listing description noted that the property is an early to mid 19th century terraced house and shop comprising 3 storeys over a basement. Although the shopfront has been retained the whole building is now in residential use. The Conservation Area Character Statement comments that the area has a varied and highly attractive townscape. No 7 stands at the junction of two terraces,

in Victoria Road and Victoria Street, which are characteristic of this townscape. It has recently been renovated and makes a positive contribution to the character and appearance of the area.

5. The Council and the appellants disagreed over the significance of the roof structure to the special interest of the building. The appellants argued that the listing description emphasises the importance of the shopfront and states that the roof is obscured by parapets. However, Policy HE7.1 of Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5) requires that a full assessment is made of the significance of a heritage asset. Any designation records, such as the listing description, will be just one element of such an assessment.
6. There are two sections of pitched roof, each with a ridge running north/south. In common with many other roofs in the locality, the roof was not intended to be seen from ground level and is partially concealed behind parapets. This approach reflects the architectural style and building technology of the period and does not mean that the roof is unimportant in terms of the special interest of the building.
7. The western section of roof has been rebuilt using modern materials, including concrete tiles, following fire damage. Nevertheless, the Council and the appellants agreed that the form of this roof is likely to be similar to the structure it replaced. The eastern section of roof is also covered in modern tiles. However, the internal structure is clearly much older. The appellants suggested that the roof is unlikely to be original, based on evidence that rainwater drains to a modern down pipe together with evidence of works to the north parapet. Whilst there have been works to the valley, and a section of parapet has been rebuilt, I do not regard that as conclusive evidence that the roof structure has been substantially altered.
8. Having regard to the appearance of the roof timbers, I consider that the greater part of the structure may well be original. If not, it is of considerable age and is of a design which is consistent with the period of the building. In either case, I consider that the fabric of the eastern section of roof is important to the significance of the listed building. Moreover, the form of the roof as a whole is important because it is likely to be very similar to the original roof.
9. The *Historic Environment Planning Practice Guide* which accompanies PPS5 states that retention of as much historic fabric as possible is a fundamental part of any good alteration. The proposal would not accord with this advice because it would result in the removal of over half of the eastern roof. This would amount to a significant loss of historic fabric. Moreover, the replacement of a characteristic pitched roof with an uncharacteristic sunken terrace would be harmful to the special interest of the listed building. The fact that the alterations would not be widely visible from outside the site, (a point I shall expand on below), has little relevance to this assessment.
10. I conclude that the proposal would fail to preserve the special interest of the listed building and would be harmful to its significance. It would therefore conflict with Brighton and Hove Local Plan 2005 (LP) Policy HE1 which seeks to protect listed buildings.
11. I turn to the effect on the street scene and conservation area. The scheme would retain the roof slope facing Victoria Street and the infill walls facing Victoria Road would be set back from the parapet. Consequently, the

alterations would not be visible from street level. The flat roof and stairway enclosure would not be readily visible other than from the air. The infill walls could be seen from the upper floor windows of a few nearby properties although they would form a very minor element in the roofscape of the wider conservation area. The impact could be reduced further by the use of appropriate materials, a matter which could be controlled by a condition.

12. It is probable that any items such as trellises or sun umbrellas placed on the terrace would be seen from the street. This would appear incongruous and would be harmful. However, it is a matter which is capable of being controlled by a condition. Subject to appropriate conditions, I consider that the alterations would not be materially harmful to the conservation area. The character and appearance of the conservation area would therefore be preserved. The proposal would accord with LP policy HE6 which seeks to protect conservation areas.

Other matters

13. The appellants have offered to replace the modern roof tiles with slate, which would have been the original roof material. This is a matter which could be secured by a condition. The use of slate would be more appropriate to the listed building and would be an enhancement to the conservation area.
14. The house is a family sized property which has very limited private amenity space. The appellants drew attention to LP Policy HO5. That policy deals with private amenity space in new residential development and is not therefore relevant to the appeals. Even so, I consider that providing amenity space would be a benefit to the occupiers. On the other hand, the Council pointed out that there are many family sized properties in the older parts of Brighton which do not benefit from such space. There is therefore no reason to think that the lack of a roof terrace would call into question the continued use of the property as a dwelling.
15. My attention has been drawn to other locations where roof terraces have been permitted. None of these appear to be directly comparable with the circumstances of the current appeals which should be determined on their own merits.
16. The occupiers of No 22 Victoria Street are concerned about overlooking and noise. However, I saw that the roof terrace would not cause overlooking because of the differences in levels between the properties. I do not consider that normal domestic use of this small area would result in harm to the living conditions of nearby residents.
17. I have taken account of Supplementary Planning Guidance SPGBH Note 1 *Roof Alterations and Extensions* which highlights the potential for roof terraces to impact on the amenity of neighbouring residents and on the street scene. For the reasons given above, I do not consider that the appeal scheme would be harmful in these respects. Whilst I have noted the English Heritage leaflet *Mansard Roofs*, I attach greater weight to the more recent advice in PPS5 and the accompanying practice guidance.

Conclusion

18. I have concluded that the proposal would be harmful to the significance of the listed building although it would not be harmful to the character and appearance of the conservation area. Having regard to the advice of PPS5,

I consider that the harm to the listed building would be less than “substantial harm”. In these circumstances, Policy HE9.4 requires the harm to be balanced against any benefits of the proposals.

19. The appellants have offered to replace the modern roof tiles with slate. In addition, the scheme has the benefit of providing amenity space. However, I do not consider that these benefits, alone or in combination, are sufficient to outweigh the harm to the listed building.
20. I have considered all other matters raised, including representations in support of the proposal, but find nothing to alter my conclusions. The appeals should not therefore be allowed.

David Prentis

Inspector



Appeal Decision

Site visit made on 28 February 2011

by David Hogger BA MSc MRTPI MCIHT

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

Decision date: 9 March 2011

Appeal Ref: APP/Q1445/D/11/2144060

6 Arlington Gardens, Saltdean, East Sussex BN2 8QE

- 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 Michael Milburn against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/02803, dated 29 August 2010, was refused by notice dated 26 October 2010.
 - The development proposed is a sun deck to the front elevation.
-

Decision

1. I allow the appeal, and grant planning permission for a sun deck to the front elevation at 6 Arlington Gardens, Saltdean, East Sussex BN2 8QE in accordance with the terms of the application, Ref BH2010/02803, dated 29 August 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 808/06 A, 808/04 and 808/05 A.

Preliminary Matters

2. The plan of the existing elevations shows a Juliet balcony in front of the living room patio doors but that was not there when I visited the site. I also saw that the neighbouring dwelling had a sun deck to the front but the Council advises that this is unauthorised. I have taken these matters into account in my determination of the appeal.

Main Issue

3. The main issue is the effect of the proposed sun deck on the character and appearance of both the host dwelling and the street scene of Arlington Gardens.

Reasons

4. Many of the properties in Arlington Gardens are relatively small bungalows or chalet bungalows, including the appeal property and I saw no particular features of interest or architectural significance. Number 6 is set back from the road in a slightly elevated position but because the main entrance to the

dwelling is not to the front, the property presents a comparatively uninteresting elevation to the road.

5. The proposed sun deck would be about 3m wide and 1.7m deep, extending just beyond the width of the existing patio doors. The base and supports would be timber and it would include vertical steel railings (painted white). The height of the deck above the ground (at the front) would be about 1.35m but this has been determined by the existing finished floor level in the living room.
6. I agree with the Council that because of its positioning the sun deck would be highly visible from the street but because of its size, design and the use of the materials proposed, it would not appear as an over-dominant feature either in relation to the host dwelling or the overall street scene. The relationship between the railings and the fenestration would be as one would expect for an area of decking and would not appear awkward or incongruous. Indeed I consider that the deck would appear as an integral part of the dwelling and not as an ad hoc addition and that it would add interest not only to the property itself but also to the general character of the area.
7. With regard to the living conditions of neighbours I agree with the Council that these would not be significantly harmed.
8. Saved policies QD1, QD2 and QD14 of the Brighton and Hove Local Plan require development to be of a high standard of design and siting, provide visual interest and take into account the character of the neighbourhood. I conclude that this proposal would meet those requirements and that the sun deck would not have a detrimental impact on either the host dwelling or the character or appearance of Arlington Gardens.
9. The Council has not suggested any conditions but I impose the standard time condition and for the avoidance of doubt a condition requiring the development to be undertaken in accordance with the approved plans.
10. For the reasons given above I conclude that the appeal should be allowed.

David Hogger

Inspector



Appeal Decision

Site visit made on 28 February 2011

by David Hogger BA MSc MRTPI MCIHT

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

Decision date: 14 March 2011

Appeal Ref: APP/Q1445/A/10/2136787
48 Inwood Crescent, Brighton BN1 5AQ

- 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 Reefsouth against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01792, dated 2 June 2010, was refused by notice dated 9 August 2010.
 - The development proposed is two dwellings on land to the rear of 48-50 Inwood Crescent, both with rear patios and associated refuse and recycling areas.
-

Decision

1. I dismiss the appeal.

Preliminary Matter

2. I have been given a Unilateral Undertaking (UU) by the appellant dated 24 November 2010 with regard to the construction of a footpath along the frontage of the site. However, the wrong application number has been referred to in the section sub-titled 'Interpretation' – the reference is to application BH2010/00083. I consider this to be a significant error and can therefore attach little weight to the obligation.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character of the area;
 - the adequacy of the proposed amenity space; and
 - highway safety.

Reasons

Character of the Area

4. The appeal site, which is currently not well maintained, lies on land that slopes down from Inwood Crescent to The Drove. From the front the host property (which I was told is used as flats) has the appearance of a single storey building but from the rear it appears as a four storey property. There are buildings of a similar scale and appearance on both sides of the host premises. Immediately adjacent to the site in The Drove is a detached two storey dwelling and in terms of the street scene I consider that development on this

- site would relate primarily to the more traditional scale of housing as found in The Drove.
5. The roof-line of properties on the south side of The Drove reflects the changing topography and although the proposed dwellings would appear taller than the neighbouring property at No15 they would respect the general appearance of the street scene in terms of height and stepping up. The building would not include a traditional pitched roof, as can be found elsewhere in The Drove, but in terms of design I consider it would provide a successful transition between the domestic scale of The Drove and the larger scale flats in Inwood Crescent.
 6. The proposed materials and the architectural detailing, including the front wall, would result in a significant improvement to the street scene. Existing trees would be retained and there would be the opportunity for some additional planting.
 7. Planning Policy Statement 1: Delivering Sustainable Development advises that originality of design should not be stifled and that opportunities for improving the character and quality of an area should be taken, provided the design is appropriate to its context. This proposal reflects that advice and on the first issue I conclude that the requirements of saved policies QD1, QD2 and QD3 of the Brighton and Hove Local Plan (LP), which seek to ensure that new development would be of an appropriate design, contribute to the quality of the environment and make efficient and effective use of sites, would be met.

Amenity Space

8. The proposed dwellings would have very small paved areas to the rear and the configuration of the space to the back of the western property in particular would be cramped and awkward to utilise beneficially. These areas would be bounded to the south by a retaining wall, on top of which the appellant states would be additional screening/balustrading. This feature together with the proximity of the significant buildings in Inwood Crescent would contribute to a very poor quality environment.
9. To the front would be very small garden areas which because of their orientation and the presence of the tree to the front of the eastern property, would also be of a relatively low quality in terms of potential use. Balconies are proposed to the front at second floor level but these are accessed through a bedroom and are north facing, so again the quality and 'usability' of the space would be compromised.
10. In terms of privacy I note that the appellant acknowledges that the amenity areas to the back have the potential to be overlooked from the properties to the rear and I agree. In topographical circumstances such as this, it is inevitable that some overlooking may occur and bearing in mind there is some amenity space to the front (albeit of poor quality), this is not a matter on which my decision has turned. It does however add weight to my conclusion on the second issue.
11. Although Planning Policy Statement 3: Housing advocates the effective and efficient use of land, one of the considerations to be taken into account is the provision of private outdoor space. The Council does not have any amenity space standards and each proposal must be assessed on its own merits. I also acknowledge that the marketing judgement of the developer is a consideration. Nevertheless in this case I conclude that the proposed amenity space would be

inadequate in terms of size and quality for two 2 bedroom properties. The requirements of LP saved policies HO5 and QD27, which seek the provision of private usable amenity space which would not be overlooked, would not be met.

Highway Safety

12. The Council's third reason for refusal relates to the lack of a footway to the front of the site. The existing footway from the east stops before it reaches the site and bearing in mind the width and gradient of the road I consider that for highway safety reasons the footway should be extended to the front of the appeal site. The appellant has confirmed that it would be the intention to continue the existing footway.
13. Although (as referred to above) the UU to secure this improvement is flawed I consider it would be possible to secure the provision of the footway by the imposition of an appropriate condition. In that way I could be confident that the works would be undertaken.
14. In these circumstances I conclude that the requirements of LP saved policies TR7 and TR8, which seek to ensure the safety of highway users and pedestrians, would be met.

Other Matters and Conclusion

15. I have taken into account the concerns raised by residents, for example about increased traffic, parking, construction works and structural damage. However, I am satisfied that the traffic and parking implications of the proposal would not cause significant harm and that issues related to construction could be dealt with through the imposition of appropriate conditions.
16. I have found that the character of the area would not be harmed by the proposed development, that highway safety would be improved and that the concerns of residents on other matters carry little weight or could be satisfactorily addressed. However, these findings are outweighed by my conclusions with regard to the inadequacy of the amenity space which would be provided for the dwellings. Therefore for the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

David Hogger

Inspector

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

BH2010/03353

50 Arundel Drive East, Saltdean, Brighton
Alterations to existing front dormer to create
new balcony.

APPEAL LODGED

24/02/2011

Delegated

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

BH2010/03443

10 The Vale, Ovingdean, Brighton
Erection of single storey front extension and
associated roof alterations. Installation of
side rooflight and creation of balcony at first
floor level to front elevation.

APPEAL LODGED

28/02/2011

Delegated

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

BH2010/01967

Land adjacent 481 Mile Oak Road,
PortsladeErection of 2no three bedroom
semi-detached dwelling houses with
off-street parking.

APPEAL LODGED

25/02/2011

Planning Committee

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

BH2010/01685

Dubarry House, Newtown Road, Hove
Erection of one bedroom penthouse flat
incorporating terrace.

APPEAL LODGED

01/03/2011

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****HOLLINGDEAN & STANMER**

BH2010/02996

348 Ditchling Road, Brighton
Loft conversion to form a one bedroom
studio flat incorporating 2no rear dormers.

APPEAL LODGED

25/02/2011

Planning Committee

NEW APPEALS RECEIVED

<u>WARD</u>	HANGLETON & KNOLL
<u>APPLICATION NUMBER</u>	BH2010/00935
<u>ADDRESS</u>	82 Elm Drive, Hove
<u>DEVELOPMENT DESCRIPTION</u>	Installation of new shop front (Retrospective).
<u>APPEAL STATUS</u>	APPEAL LODGED
<u>APPEAL RECEIVED DATE</u>	07/03/2011
<u>APPLICATION DECISION LEVEL</u>	Delegated

<u>WARD</u>	WITHDEAN
<u>APPLICATION NUMBER</u>	BH2010/03187
<u>ADDRESS</u>	67 Valley Drive, Brighton
<u>DEVELOPMENT DESCRIPTION</u>	Erection of two storey side extension to east.
<u>APPEAL STATUS</u>	APPEAL LODGED
<u>APPEAL RECEIVED DATE</u>	10/03/2011
<u>APPLICATION DECISION LEVEL</u>	Delegated



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 06th April 2011

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

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: Wednesday 27th & Thursday 28th April 2011

Location: Brighton Town Hall

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	Open Market	St Peter's & North Laine	Proposed replacement, covered market, 87 affordable housing units, 12 x B1 workshops and public realm improvements.
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.
2 November 2010	N/A	N/A	N/A
23 November 2010	N/A	N/A	N/A
14 December 2010	Brighton Station, Block J	St Peters & North Laine	Proposed mixed use scheme comprising 3500 sq m B1 commercial office space, 147 residential units, 3* hotel in buildings of between 5-8 storeys, provision of civic square, Southern SNCI, and 250 sq m A1 retail / A3 café
11 January 2011	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.
1 February 2011	N/A	N/A	N/A
22 February 2011	N/A	N/A	N/A
15 March 2011	Anston House, 137-147 Preston Road	Preston Park	Demolition of existing building and proposed mixed scheme. Exact details of the scheme are not finalised. The presentation is to show Cllrs the concept of the scheme and how they have come to the point that they are now at.

05 April 2011	N/A	N/A	N/A
26 April 2011			
17 May 2011			



South Downs
National Park Authority

PLANNING COMMITTEE

Agenda Item 258

Brighton & Hove City Council

No:	BH2011/00286	Ward:	HOLLINGDEAN & STANMER
App Type:	Full Planning		
Address:	Stanmer House, Stanmer Park, Brighton		
Proposal:	Proposed installation of fences to the garden area at the side of the building, replacement of fencing and walls to either side of gates with 1.8 metre high walls, and additional landscaping (part retrospective).		
Officer:	Jonathan Puplett tel: 292525	Valid Date:	11/02/2011
Con Area:	Stanmer	Expiry Date:	08/04/2011
Agent:	Purvis Draughting Ltd, 13 Petworth Road, Brighton		
Applicant:	Cherrywood Investments Ltd, Stanmer House, Stanmer Park, Lewes Road, Brighton		

1 RECOMMENDATION:

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 to **GRANT** planning permission subject to the following Conditions and Informatives.

1. The development hereby permitted shall be carried out in accordance with the approved drawing nos. 1588/79A, 1588/54 Issue I, 1588/51 Issue D, and SHF/01/10 Rev. A received on the 1st of February 2011.
Reason: For the avoidance of doubt and in the interests of proper planning.
2. Within six months of the date of this consent, the landscaping scheme shown on drawing no. SHF/01/10 A received on the 1st of February 2011 shall be implemented in full. 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 ensure a satisfactory appearance to the development and to comply with policies HE1, HE3, HE6, HE11, QD15 and QD16 of the Brighton & Hove Local Plan.
3. The construction of the walls hereby approved shall not take place until samples of the materials to be used in their construction have been



South Downs

National Park Authority

submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development and to comply with policies HE3 and HE6 of the Brighton & Hove Local Plan.

Informatives:

1. This decision to grant Planning Permission has been taken:

(i) having regard to the policies and proposals in the Brighton & Hove Local Plan set out below, including Supplementary Planning Guidance and Supplementary Planning Documents:

Brighton & Hove Local Plan:

QD15 Landscape design

QD16 Trees and Hedgerows

NC3 Local Nature Reserves (LNRs)

NC7 Sussex Downs Area of Outstanding Natural Beauty

HE1 Listed Buildings

HE3 Development affecting the setting of a listed building

HE6 Development within or affecting the setting of Conservation Areas

HE11 Historic parks and gardens

HE12 Scheduled monuments and other important archaeological sites

National Planning Policy:

PPS5: Planning for the Historic Environment; and

(ii) for the following reasons:-

The proposed fencing is of a utilitarian design and whilst parts of the fencing will be obscured by existing trees and planting, the railings split the lawns from the wider park in a manner without historic precedent. Such concerns are however balanced with the landscaping improvements proposed, and the priority which must be giving to securing the ongoing maintenance and preservation of Stanmer House which is reliant on the property remaining a viable and successful business concern. The fencing will not cause material harm to the House and the park; it could be removed in the future if no longer required. The proposed walls alongside the Italian gates are considered to be of an appropriate design in keeping with the gates and the historic park setting. Overall, the proposed works are considered to be acceptable in compliance with local and national planning policies.

2 THE SITE

Stanmer House is a grade I Listed Palladian Mansion built between 1722 and 1727 by Nicholas Dubois, incorporating part of an earlier, possibly Jacobean, structure into the service wing.

The grade I listed building is part of the wider historic estate at Stanmer, set in landscaped parkland within the Stanmer Conservation Area and the South Downs National Park. Stanmer Park is listed grade II in English Heritage's Register of Parks and Gardens of Special Historic Interest. Stanmer House forms the focal point of a traditional rural landscape with the adjoining 19th Century estate village, church, farm, garden buildings and the Stable Block.

Stanmer House and grounds benefit from extant permission for use of the ground floor for public and private functions and for office use on the first and second floor.

This application specifically relates to the formal gardens located to the southeast of Stanmer House. The garden is formed of two distinct areas comprising the original lawn and fountain located directly southeast of the house and the 20th Century addition to the garden area that extends further southeast of the formal garden. The 'Cedar Lawn' to the west of this garden comprises a gently sloping grassed area with a number of large and particularly majestic cedar trees. The size, shape and colour of these trees are distinctive, and they are visible from many areas across the park.

3 RELEVANT HISTORY

Stanmer House has been subject to varying uses over the past decades, through which time the condition of the building was deteriorating. This deterioration led to a substantial grant from English Heritage for external repairs to Stanmer House, and the building being marketed by the Council for reuse. The 125-year lease for Stanmer House and gardens immediately to the southeast of house together with the stables was awarded to Cherrywood Investments.

BH2010/02000: Proposed installation of fences to the garden area at the side of the building, replacement of fencing and walls to either side of gates with 1.8 metre high walls, and additional landscaping. (Part retrospective). Refused by the Planning Committee at the meeting of the 14th of January 2011 for the following reason:

The utilitarian design and excessive height of the proposed fencing would have an adverse impact on the adjoining listed building and the open nature of Stanmer Park contrary to policies HE3, HE6 and HE11 of the Brighton & Hove Local Plan.

An appeal has been lodged against this decision.

BH2007/01206: Proposed fencing to the garden area south east of Stanmer House and formation of alternative access route. Approved by the Planning Committee at the meeting of the 14th of January 2011.

BH2007/00165: Proposed fencing to the garden area south east of Stanmer House. Refused 9th March 2007. The application was refused for the

following reasons:

1. The proposed fence and planting around the extended garden area adjoining Stanmer House would compromise the historic open relationship between Stanmer House, the garden and wider setting of Stanmer Park within a rural landscape, separating the House and garden from the remainder of the Park, and would therefore be detrimental to the architectural and historic character and appearance of Stanmer House and Stanmer Park, the Stanmer Park conservation area, contrary to Brighton & Hove Local Plan policies HE1, HE3, HE6 and HE11.
2. The proposed fence and planting, by reason of detriment to the biodiversity of Stanmer Park, in particular to an existing Glow-worm population and habitat, would have an adverse impact on the nature conservation features of the Proposed Stanmer Park Local Nature Reserve, contrary to Brighton & Hove Local Plan policy NC3.

BH2006/02966: Proposed alterations to cellar and external alterations to means of escape hatch. Approved April 2008.

BH2006/02951: Proposed alterations to cellars to enable change of use from storage areas to function rooms for use in conjunction with ground floor function rooms. External alterations to means of escape hatch. Approved March 2008.

BH2006/02947: Display of free-standing poster sign. Refused 25 October 2006.

BH2006/02945: Installation of painted galvanised steel gates and fencing to height of 2.5 metres. Withdrawn May 2009.

BH2006/00068: Installation of bollards and timber posts around parking area to front of building (Retrospective). Approved May 2009.

BH2006/00063: Installation of lighting posts and fences to the garden area at the side of the building. Approved June 2009.

BH2005/02387/FP and **BH2005/02395/LB:** Reconstruction of north-west wing to provide 7 terraced houses, comprising 6 x three-bedroom units and 1 x four-bedroom unit and provision of 15 car parking spaces and demolition of existing detached public toilet block. Approved July 2009.

BH2004/03712/FP: An application for Stanmer House to change the use of ground floor from office use to art gallery, public exhibition, conference and reception rooms for public and private functions with the first and second floor to retain existing office use was granted planning permission subject to S106 agreement to secure public access to the building and the setting up of a maintenance fund for the sustainable maintenance of the building.

BH2001/01173/FP and **BH2001/01174/LB:** Planning permission and listed building consent was then granted in 26 June 2003, subject to a S106 agreement, for the restoration/refurbishment of Stanmer House for residential use (2 flats) on the upper floors and an art gallery open to the public at ground floor. This permission also included the reconstruction of the north west wing to provide seven houses. Demolition of an existing toilet block and replacement with new public toilets/changing room facilities in the north corner of the site was also secured.

Other matters currently under consideration

A Deed of Variation to the s106 agreement signed in relation to planning permission ref. **BH2004/03712/FP** is proposed. **Clause 3.4** of this legal agreement secures public access over a 3 metre wide strip of the garden attached to Stanmer House. The Deed of Variation proposed would secure the forming of an alternative access, and the access route across the garden would be removed. (Reported elsewhere on this agenda)

4 THE APPLICATION

Consent is sought for the same scheme of works proposed under the previously refused application BH2010/02000.

At present, fencing in the form of railings encloses the area of lawn / garden alongside the House. Under application BH2006/00063 permission was granted for railings of 1.5 metres in height to the western side of the lawn, and 1.7 metres in height to the eastern side of the lawn. Railings of 1.7 metres in height are in situ to both sides of the lawn.

Consent is therefore now sought for the retention of railings of 1.7 metres in height to the western side of lawn (the railings to the eastern side of the lawn having been granted consent under application BH2006/00063). The railings which bisect the lawn to the southern side are temporary and unauthorised; consent is not sought for this section of fencing under the current application. It is also proposed that the curved low level walls and railings to either side of a pair of 'Italian' gates be replaced with brick walls. In conjunction with the fencing approved under application BH2007/01206 the proposed works would provide a secure enclosure around the entire lawn / garden area to a height of 1.7 metres.

5 CONSULTATIONS

[N.B. Many of the comments received refer to the access route across the lawns; the current application does not include any proposal to block this route.]

External

Neighbours: Representations have been received from occupiers of **no. 51 Montefiore Road, 10 Southdown Road, 19 Cambridge Road, 14 Waldegrave Road, 104 Waldegrave Road, 20 Friar Crescent, 9 Milner Road, 'The Innovation Centre', 27 Wilbury Gardens, 5 Cornwall Gardens, 8 Southdown Place, 35 Braybon Avenue and no address provided** objecting to the proposed development on the following grounds:

- The proposed development would block the access over the lawns which is available to the public at present and should be retained as a public right of way.

- The Section 106 agreement should stay in place to retain the public right of access.
- The proposal would block access into an area of the park which has been 'in the public domain' for many years.
- All of Stanmer Park should remain public land as was the intention when it was purchased by the Brighton Corporation in 1947.
- The proposed works would harm the setting of Stanmer House, a listed building.
- To prevent crime it would be more effective to open up views and access into the lawns to increase levels of natural surveillance.
- The lawns should be open to the public; private functions/events could still take place as per the Pavilion Gardens.
- The proposed walls are of an inappropriate design and excessive height, and would block views across the park / of Stanmer House. Any boundary treatment proposed should be as low as possible.
- The proposed fencing is of an inappropriate design, out of keeping with its setting and Stanmer House.
- Previous works around the House have harmed its setting, the proposed scheme cause further harm.

Councillor Pat Hawkes objects to the application – further comments awaited.

C.A.G.: Object to the proposed scheme of works, and recommend that the railings to either side of the Italian walls should be retained

Brighton & Hove Archaeological Society: A watching brief may be required; it is recommended that the County Archaeologist be consulted.

County Archaeologist: Although the site is located within an Archaeological Notification area, it is considered that no archaeological remains are likely to be affected by the proposal.

Friends of Stanmer Park: The proposed landscaping would restrict use of the area for 'passive recreation'. The proposed walls will have an obtrusive impact and block views of the house. Proposed pruning / removal of shrubs indicated on the submitted details should not be allowed as it 'acts as a foil of the house from the park' and encloses the garden area. The revoking of the existing undertaking which retains public access over the lawns is objected to; this has been a presumed right of way since the 1940's.

Stanmer Preservation Society: Object to the application.

Open Spaces Society: Object to the application.

Natural England: No comment.

English Heritage: Will be reported on the Late Representations List. Comments on previous application BH2010/02000: No comment.

South Down National Park Authority: Will be reported on the Late Representations List. Comments on previous application BH2010/02000: *The enclosure of garden is not welcomed, however no objection is raised subject to the proposal being considered acceptable by the Council's Conservation and Design Department. It is suggested that the garden should remain publicly accessible during the daytime when no private events are taking place.*

Sussex Gardens Trust: No comments received. Comments on previous application BH2010/02000: *Appreciate the need for an increased fence height therefore no objection is raised in principle, it is however recommended that masonry piers should also be increased in height to provide a balanced design.*

Internal

Conservation and Design: The proposed fencing will appear at odds with the house's open garden setting, but there is no substantial harm, particularly having regard to the existing landscape condition. The enclosure of the lawn is important to the successful operation of the conference and events centre within the house, to which considerable weight may be given. It will contribute positively to maintaining the building in active use.

The proposed landscape works will compensate in a modest but meaningful way for the visual harm caused by the height and detail of the fencing. The proposed walling [to either side of the Italian gates] will ensure a comfortable relationship between the ornamental gate and gate piers and the utilitarian railings.

Arboriculture: No comments received. Comments on previous application BH2010/02000: *Recommend a condition requiring landscaping to be carried out in accordance with the scheme shown on drawing no. SHF/01/10 A.*

6 PLANNING POLICIES

Brighton & Hove Local Plan:

QD15	Landscape design
QD16	Trees and Hedgerows
NC3	Local Nature Reserves (LNRs)
NC7	Sussex Downs Area of Outstanding Natural Beauty
HE1	Listed Buildings
HE3	Development affecting the setting of a listed building
HE6	Development within or affecting the setting of Conservation Areas
HE11	Historic parks and gardens
HE12	Scheduled monuments and other important archaeological sites

National Planning Policy:

PPS5: Planning for the Historic Environment

7 CONSIDERATIONS

The main considerations in the determination of this application relate to visual impact of the proposed fencing and walls, the effect on the historic park and the setting of Stanmer House and the Stanmer Conservation Area, security, and matters relating to trees and landscaping.

Background

Stanmer House is a grade 1 listed building of exceptional architectural importance. It is set in an 18th century park landscape, registered as a park of special historic interest. The house is the centre piece of this landscape. It also falls within the Stanmer Conservation Area and the South Downs National Park.

The house has two principal fronts, one looking over the drive way and ‘green’ toward the church to the north east, and the second, the garden front, facing the park to the south east. The building dates from the 1720s, and was designed to be seen within the wider landscape.

It is believed that the area of lawn adjoining the garden front was levelled during the early C18th phase of development. By the late C18th this lawn was incorporated into an area of paddock sweeping around the principal fronts, in a natural fashion. In the mid to late C19th the lawn was laid out in a formal manner with perimeter paths, evidence of which remains, including the central fountain pool and two flights of steps.

The lawn was extended further in the early part of the C20th along the lines that now exist, when the land was reshaped creating the bank and ‘knoll’. The screen tree and shrub planting and the cherry orchard nearby are more recent. These C20th landscape features enclose the garden and obscure the open undulating parkland.

The Stanmer Park Historic Landscape Survey & Restoration Management Plan (2003) advised ‘that the house is now rather less visible from the surrounding parkland than has previously been the case’ and that the planting referred to above ‘significantly alters the character of the gardens and parkland alike, contradicting the historic designed layout.’

The 1840 tithe map and 1870s OS map illustrate a meandering path from the driveway running to the south of the formal lawn and through the Cedar Lawn to the Great Wood i.e. through the informal pleasure grounds.

Recent History

A lease (of 125 years) on the house and adjoining land, including the lawn to the south east of the house was granted to the applicant in 2002, to secure

the restoration of the house, and its preservation. The inclusion of the lawn within the lease was considered important to assist the sale and restoration of the house.

It is now restored as a conference venue, with reception rooms for public and private functions, including wedding receptions; the success of which depends in part on the exclusive use of the lawn.

Planning permission was granted for this use (ref. BH2004/03712/FP) subject to a degree of public access to the house, and subject to a legal agreement to maintain public access across the lawn. It appears that these requirements are currently being met.

At present only the northern section of the lawn allocated to the house is used in association with private functions, with permanent fencing in situ to either side of this lawn area, and temporary fencing bisecting the lawn to provide a secure enclosed area alongside the House. A pair of 'Italian' gates on the eastern side of the lawn provide access to the pedestrian route across the lawn which is secured by the legal agreement attached to permission ref. BH2004/03712/FP.

The remainder of the lawn allocated to the house has no formal boundary treatment at present, relatively dense trees and planting surround the lawn to the eastern side and southern end, with a more open aspect to the western side. Fencing around this area of the lawn, and the formation of an alternative access route around the lawn was granted planning permission under application BH2007/01206 in January 2011.

The current application

At present fencing in the form of railings encloses the area of lawn / garden alongside the House. Under application BH2006/00063 permission was granted for railings of 1.5 metres in height to the western side of the lawn, and 1.7 metres in height to the eastern side of the lawn. Railings of 1.7 metres in height are in situ to both sides of the lawn.

Consent is therefore now sought for the retention of railings of 1.7 metres in height to the western side of lawn (the railings to the eastern side of the lawn having been granted consent under application BH2006/00063). The railings which bisect the lawn to the southern side are temporary and unauthorised; consent is not sought for this section of fencing under the current application.

It is also proposed that the curved low level walls and railings to either side of a pair of 'Italian' gates be replaced with brick walls. In conjunction with the fencing approved under application BH2007/01206 the proposed works would provide a secure enclosure around the entire lawn / garden area to a height of 1.7 metres. The applicant states that a secure enclosure around the garden is required as a number of intrusions into the garden and the House have

occurred in the past.

Visual Impact

The Council's Stanmer Park Historic Landscape Survey & Restoration Management Plan (2003) describes the significance of the park and means by which it might be preserved or enhanced.

The Council's Character Statement for the Stanmer Conservation Area (2009) similarly highlights the parkland setting of the house as significant and refers to the harm caused by the 20th C planting, which obscures the traditional relationship between the parkland and the House and pleasure gardens. The area the subject of this application is described as having a character 'somewhere between the formal space of the fountain garden and the more informal character of the rest of the park. It is accessed via a 20th century decorative iron gate.' The sense of enclosure is described as being 'overemphasised by 20thC vegetation, including a cherry tree orchard and dense hedge, (which) have a harmful effect on the originally more open aspect between the House and parkland to the south.' The statement recommends improvements to the cedar lawn including opening up views out of the area.

Local Plan Policies HE3 (development affecting the setting of a listed building), HE6 (development within the conservation area) and HE11 (Historic Parks and Gardens) require that no harm is caused to the setting, character or appearance of heritage assets of architectural, historic or landscape importance.

Policy HE10 of Planning Policy Statement 5 (Planning for the Historic Environment) states that applications that make a contribution to or better reveal the significance of a heritage asset should be treated favourably. Any harm caused should be weighed against the wider benefits of the application. The greater the negative impact, the greater the benefits necessary to justify approval. Policy HE9 of PPS5 requires LPAs to weigh the public benefit of the proposal (for example that it helps to secure the optimum viable use of the building in the interests of its long term conservation) against the harm.

The application seeks consent for the retention of railings of 1.7 metres in height to the western side of the lawn. These are currently in place and along the western fence line an evergreen hedge has been planted which accentuates the fence line. Approval was previously granted (application ref. BH2006/00063) for lower railings, 1.5m in height, i.e. below eyeline. At that time a railing of traditional detail was recommended. A more attractive railing would still be preferred, but it is accepted that for the most part the railings will be concealed by existing vegetation and from the cedar lawns the impact on the garden landscape will be softened by the proposed native tree and shrub planting, which will draw the eye away from the fence.

These works of enclosure, whilst without historic precedent and contrary to the recommendations of the Restoration Management Plan, will ensure the use of the garden for events at the house is maintained, and give privacy and security for the house and its users. The proposed fencing will appear at odds with the house's open garden setting, but there is no substantial harm, particularly having regard to the existing landscape condition. The enclosure of the lawn is important to the successful operation of the conference and events centre within the house, to which considerable weight may be given. It will contribute positively to maintaining the building in active use. The proposed landscape works will compensate in a modest but meaningful way for the visual harm caused by the height and detail of the fencing.

Brick walls with stone copings to match the materials and detail of the existing gate piers are proposed to either side of the gates. The proposed walling will ensure a comfortable relationship between the ornamental gate and gate piers and the utilitarian railings. Samples of the materials to be used in the construction of the proposed walls would be required by condition.

Security

A secure boundary treatment around the garden is required for two reasons:

- To restrict public access into the garden whilst private functions such as wedding receptions take place.
- To restrict access into the gardens and house as a number of intrusions / break-ins have occurred in the past.

In regard to the second reason, a security survey report from a Sussex Police Crime Prevention Officer dated 25/09/2007 has been submitted. This report details that anti-social incidents occurred where members of the public had intruded upon private functions, and motor vehicles had driven across the gardens causing a safety risk. It is recommended that the erection of a boundary fence would clearly indicate the boundary between the park and the garden. Whilst no further evidence of incidents occurring in the last three years has been submitted, it has been stated by the applicant that break-ins into the House have occurred, and further incidents of members of the public disrupting private functions have also taken place.

Overall, it is considered that there are valid security concerns which the proposed fencing and walls would address to some extent.

Trees and landscaping

The proposed works include the planting of additional landscaping, in the form of native tree and shrub planting, to the western side of the lawn. The design of this landscaping has been formulated following discussions with the Conservation and Design Officer, with the intention of drawing the eye away from the fencing alongside when viewed from the west. The landscaping proposal is considered appropriate by the Arboriculturist / City Parks who will be responsible for the ongoing maintenance of the landscaping following its

planting by the applicant. The planting of the proposed landscaping within a reasonable timescale can be secured by condition.

Conclusion

Whilst the proposals are the same as those refused in January 2011 under application BH2010/0200, the approval of application BH2007/01206 at the same Committee meeting for the fencing around the remainder of the garden area south east of Stanmer House and the formation of an alternative access route is a material consideration. The height and design of the fencing in both applications are identical.

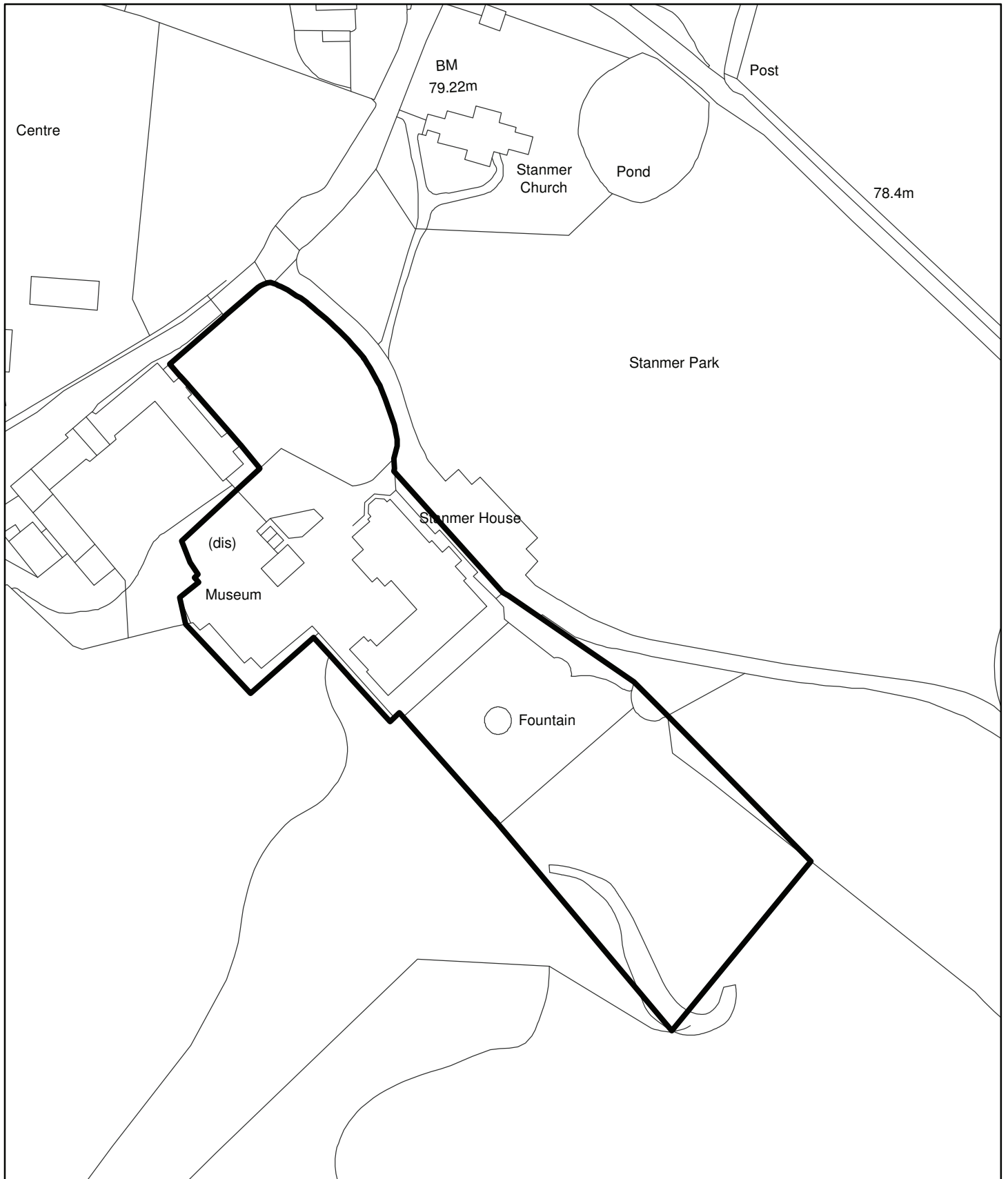
8 REASONS FOR RECOMMENDATION TO GRANT PERMISSION

The proposed fencing is of a utilitarian design and whilst parts of the fencing will be obscured by existing trees and planting, the railings will split the lawns from the wider park in a manner without historic precedent. Such concerns are however balanced with the landscaping improvements proposed, and the priority which must be giving to securing the ongoing maintenance and preservation of Stanmer House which is reliant on the property remaining a viable and successful business concern. The fencing will not cause material harm to the House and the park; it could be removed in the future if no longer required. The proposed walls alongside the Italian gates are considered to be of an appropriate design in keeping with the gates and the historic park setting. Overall, the proposed works are considered to be acceptable in compliance with local and national planning policies.

9 EQUALITIES IMPLICATIONS

None identified.

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'The developer shall ensure that the part of the Property shown for identification purposes coloured purple on the attached plan marked "C" (having a width of 3 metres) shall remain open to the public at all times from dawn until dusk for the purpose of access to the adjacent land edged in part yellow on the said plan marked "C" subject to those using that means of access not causing any nuisance disturbance or annoyance to the developer, provided always that nothing in this sub clause 3.4 will permit the Developer to terminate the right of way but shall entitle the Developer to seek injunctions and/or damages against any member of the public causing such nuisance, disturbance or annoyance.'

- 3.3 The Agreement is dated 12th July 2006 and planning permission was granted in January 2007.
- 3.4 The three metre wide route across the lawns which Clause 3.4 requires to be open to the public leads from the front (eastern) side of Stanmer House to an area known as the 'Cedar Lawns'.
- 3.5 In recent years fencing / railings have been erected around the northern end of the lawns including temporary fencing bisecting the lawn located alongside the public access secured by legal agreement. These railings provide an enclosed area which is used in conjunction with private events such as weddings held at Stanmer House. Consent for the railings in situ to the eastern side of the lawns was granted under application BH2006/00063 in June 2009. Consent for the railings in situ to the western side of the lawns is sought under application BH2011/00286, the replacement of low walls and railings to either side of a pair of 'Italian' gates to the western side of the lawns is also proposed under this application. Consent was approved in January 2011 to erect fencing around the southern end of the lawns under application BH2007/01206, including a gated access to the western end of the public access over the lawns. The formation of an alternative access route to the Cedar Lawns running around the southern end of the gardens was also approved under this application.

4. PROPOSAL

- 4.1 As part of a comprehensive scheme to create a secure enclosure around the entire lawn area associated with Stanmer House, the developer has written to the Council to request that Clause 3.4 of the legal agreement associated with planning permission BH2004/03712/FP be removed. This would remove the requirement for a route across the lawns to be open to the public during daylight hours. A Deed of Variation of the agreement has been drafted in an agreed format. This variation requires an ordered schedule of works to be carried out which includes the formation of an alternative access route (proposed under application



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BH2007/01206) and landscaping (proposed under applications BH2007/01206 and BH2011/00286) to be completed prior to the Clause being made null and void. Within 28 days of the completion of works being confirmed, the temporary fence currently in situ which bisects the lawn area would have to be removed.

5. COMMENT

5.1 The proposed comprehensive scheme of works, if completed in its entirety, would provide an enlarged secure outdoor area to be used in association with private functions at Stanmer House. This would improve the future financial viability of the House as a business and consequently would help to ensure the future preservation of the listed building. An alternative public route from the eastern side of the house to the 'Cedar Lawns' would also be formed, running around the southern end of the lawn area associated with Stanmer House. As detailed in the reports relating to applications BH2007/01206 and BH2011/00286 the works proposed to enclose the lawns and create an alternative access route are considered acceptable.

5.2 The draft variation, if approved, would ensure that the alternative access route approved under application BH2007/01206 is completed along with all associated landscaping works, prior to the Clause which requires public access over the lawns being made null and void. Within 28 days of the completion of works being confirmed, the temporary fence currently in situ which bisects the lawn area would have to be removed.

5.3 Whilst it is regrettable that a route to the Cedar Lawns would be closed to the public, this concern must be balanced with the need to secure the ongoing maintenance of Stanmer House which is reliant on the property remaining a viable business concern. It appears reasonable that the lawns which form part of the Stanmer House leasehold be enclosed in some manner to enable their use for private functions. Furthermore, the alternative access route proposed across public land is considered to be acceptable, and the comprehensive scheme of works proposed enables the removal of the temporary railings in place which bisect the lawn, and cause significant harm to the setting of the listed building.

6. FINANCIAL & OTHER IMPLICATIONS

6.1 Financial Implications:

There are no direct financial implications associated with the proposed variation to the Section 106 Agreement.

Finance Officer Consulted: Karen Brookshaw

Date: 22/12/2010

6.2 Legal Implications:

S.106A of the Town and Country Planning Act 1990 provides that a s.106 obligation may be modified by agreement between the authority by whom the obligation is enforceable and the persons against whom the obligation is enforceable. This mechanism enables the Agreement to be modified. The modification gives rise to no human rights implications.

Lawyer Consulted: Alison Gatherer

Date: 20/12/2010

6.3 Equalities Implications:

The works proposed under application BH2007/01206 include the formation of an alternative access route to the 'Cedar Lawns', this route is of a reduced gradient in comparison to the existing, and does not involve any steps. The variation proposed requires that the works associated with the formation of the new route be completed prior to the clause which secures access across the lawns being made null and void. A usable public route to the Cedar Gardens would therefore be in place at all times should the variation be approved.

6.4 Sustainability Implications:

None identified.

6.5 Crime & Disorder Implications:

The proposed comprehensive scheme of works is intended to improve security and reduce crime.

6.6 Risk and Opportunity Management Implications:

None identified.

6.7 Corporate / Citywide Implications:

None identified.

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