



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	14 January 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

186. 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.

187. MINUTES OF THE PREVIOUS MEETING

1 - 16

Minutes of the meeting held on 15 December 2010 (copy attached).

188. CHAIRMAN'S COMMUNICATIONS

189. PETITIONS

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

190. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 7 January 2011).

No public questions received by date of publication.

191. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 7 January 2011).

No deputations received by date of publication.

PLANNING COMMITTEE

192. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

193. LETTERS FROM COUNCILLORS

No letters have been received.

194. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

195. APPEAL DECISIONS

17 - 82

(copy attached).

196. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

83 - 84

(copy attached).

197. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

85 - 86

(copy attached).

198. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

87 - 90

(copy attached).

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

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

(copy circulated separately).

201. REQUEST TO VARY S106 AGREEMENT SIGNED IN CONNECTION WITH PLANNING PERMISSION BH2004/03712/FP

91 - 94

Report of the Head of Planning and Public Protection (copy attached).

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

203. 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

PLANNING COMMITTEE

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>

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 - Thursday, 6 January 2011

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 15 DECEMBER 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

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

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

Officers in attendance: Jeanette Walsh (Development Control Manager), Nicola Hurley (Area Planning Manager (West)), Guy Everest (Planning Officer), Maria Seale (Planning Officer), Pete Tolson (Principle Transport Planner), Di Morgan (Arboriculturist), Hilary Woodward (Senior Lawyer) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

169. PROCEDURAL BUSINESS

169a Declaration of Substitutes

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

169.2 Councillor Fryer declared that she was substituting for Councillor Steedman.

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

169b Declarations of Interests

169.4 There were none.

169c Exclusion of the Press and Public

169.5 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.

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

170. MINUTES OF THE PREVIOUS MEETING

170.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 24 November 2010 as a correct record.

171. CHAIRMAN'S COMMUNICATIONS

171.1 The Chairman reported with great sadness the death of Councillor David Smart who had been a fantastic and conscientious Member of the Planning Committee. Councillor Smart had been known for his detailed work on the Committee and was a great contributor to the planning process. He took the business of planning very seriously and his contributions would be very much missed. In addition to his excellent work on the Planning Committee, Councillor Smart was also an amazing Ward Councillor and a well known figure in the community. He worked very hard to promote the use of allotments and was well known for his work in this regard. The Chairman asked for a minutes silence to be held as a mark of respect.

172. PETITIONS

172.1 There were none.

173. PUBLIC QUESTIONS

173.1 There were none.

174. DEPUTATIONS

174.1 There were none.

175. WRITTEN QUESTIONS FROM COUNCILLORS

175.1 There were none.

176. LETTERS FROM COUNCILLORS

176.1 There were none.

177. NOTICES OF MOTION REFERRED FROM COUNCIL

177.1 There were none.

178. APPEAL DECISIONS

178.1 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.

179. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

180. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

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

181. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

181.1 The Committee noted the information on pre-application presentations and requests.

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

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

Application:	Requested by:
BH2010/01967, Land Adjacent to 481 Mile Oak Road	Councillor Carden
Land at Redhill Close	Head of Development Control

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

(i) TREES

183.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 7 of the report and resolves to refuse consent to fell 1x Aesculus Hippocastanum (Horse Chestnut), 1x Betula Pendula (Silver Birch), 1x Fagus Sylvatica (Beech).

(ii) SUBSTANTIAL OR CONTROVERSIAL DEVELOPMENTS OR DEPARTURES FROM POLICY

(A) Application BH2010/03259, Woollards Field, Lewes Road, Falmer – Construction of a 1-3 storey archive centre comprising lecture and educational facilities, reading room, conservation laboratories, archivist study areas, offices, cleaning and repair facilities and archives, repository block and refreshment area. Associated energy centre, car, coach and cycle parking, waste and recycling storage, landscaping including public open space and access.

(1) The Planning Officer, Ms Seale introduced the application and presented plans and elevational drawings. She noted that the site had been last used as a playing field in 1990. Some trees on site were covered by a Tree Preservation Order. The site was allocated for high tech office use under policy EM2 of the Local Plan and had a

previous permission for offices. The main access was from the new highway works being undertaken and there would be parking space for up to 59 cars. There would be enhanced planting along the footpath and cycleways linking to Moulsecoomb. There was a demonstrable need for this facility as the current facilities for storing archives were untenable. There would be a green roof and the building would be set down in level, although still have a presence in the area. The materials were primarily white render and brick. A public art element was included on the blank wall of the stairwell and an information frieze included for events taking place in the building. The building was highly sustainable and would achieve BREEAM excellent rating. The masterplan for the site included additional offices. Whilst the building was in a sensitive area adjacent to the South Downs and Stanmer Conservation Area there would be minimal impact as it sat low in the site. No letters of objection and one letter of support had been received and statutory consultee comments were very positive. Whilst the application would be a departure from policy it would provide very positive benefits for Brighton & Hove and East Sussex.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Alford noted that the site was secluded and asked what type of security the building would have. Ms Seale replied that Sussex Police had worked very closely with the applicant at the pre-application stage, and had not raised any security concerns for the building. CCTV and suitable lighting would be included as part of the application, as well as a physical barrier over the car park at night to prevent joy riding.
- (3) Councillor Carden asked if a security guard would be employed at night. Ms Walsh addressed the Committee and stated that security arrangements were not a planning consideration. She added that the archive would be licensed separate for use by other authority who would take into consideration the proper management of the archives.
- (4) Councillor Mrs Theobald asked about the fire safety measures on site, what would happen to the open space on site and why the Elm trees had not been considered for preserving. Ms Seale replied that the building would meet the fire safety standards set down by the National Archive standards. The existing play space on site would be included as part of the open space.

The Council's Arboriculturist, Ms Morgan replied that many of the trees on site were over-mature Beech trees that had been vandalised and set fire to, which were not considered worth saving. There were some Elm saplings on site, but the applicant would be replanting Elms as part of the landscaping requirements.

- (5) Councillor Fryer noted that the management of the open space would transfer into Council ownership after 5 years and asked for more details on this. She noted that 20% of the works undertaken on site would be undertaken by the local construction workforce and asked for more details on the public art element. Ms Seale replied that the developer would carry the cost of maintaining the open space whilst the vegetation was established and then City Parks would take over the maintenance of the grounds. That a percentage of the local workforce should be used on a development site in the city had only been required in one previous instance, and the

percentage for this application had been increased to 20%. There was no policy relating to this, but the Economic Development Team felt it was a realistic target. The public art element was not agreed as yet, but it was likely that a display would be projected onto a blank outside wall of the building.

- (6) Councillor McCaffery asked about the wildlife pool on site and Ms Seale replied that this was to help increase biodiversity, but another feature could be installed if it was deemed more appropriate.
- (7) Councillor Davey asked about the cycling access across the A270 and Ms Seale replied that a cycle way linked the site to the train station at Falmer, and through to Moulsecomb. The Senior Transport Planner, Mr Tolson added that improved facilities for crossing the road at the flyer-over were being built.
- (8) Councillor Mrs Theobald asked why white render had been chosen and Ms Seale replied that the Design and Conservation Manager had been consulted and the materials were conditioned to ensure there was less impact. The render would be on the lower parts of the building.

Debate and Decision Making Process

- (9) Councillor Kennedy was pleased to see a samples board was available. She supported the application and recognised that the existing facility was no longer fit for purpose and a new home for the archives needed to be found urgently. Councillor Kennedy was pleased to see the comprehensive biodiversity work on site and felt the sustainability measures were praiseworthy. However, the design of the building was disappointing and she noted the concerns of the South Downs Society that the design could have been more appropriate. There may have been potential to use vernacular building materials such as flint work and she felt that this was a missed opportunity to produce something exciting.
- (10) Councillor Kemble supported the application and noted that very valuable contents would be stored inside. With this in mind he urged the applicants to consider using an automatic fire suppression system as recommended by the Fire Authority in their consultation response.
- (11) Councillor McCaffery agreed that the design was uninspiring and felt that the opportunity to produce something first class had not been taken.
- (12) Councillor Mrs Theobald agreed that the design could have been better. However it was a very good facility that would benefit the whole area.
- (13) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to a Section 106 Agreement and the conditions and informatives listed in the report.

183.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the applicant entering into a Section 106 Obligation and the conditions and informatives listed in the report, save that the S106 head of term for the highway works is no longer required.

(B) **Application BH2010/01684, Aldi Store, 2 Carlton Terrace, Portslade** – Application for variation and removal of condition 5 to allow an extended delivery period at the store, vary wording of condition 4 to allow the premises to trade to the public between 08:00 and 20.00 hours and for ancillary activities to take place outside of these hours when the store is closed to the public, vary condition 16 to reduce free car parking to all visitors of the Portslade Shopping Centre from 3 hours to 1 hour, removal of condition 15 in order not to provide 5 resident parking spaces.

(1) The Senior Planning Officer, Mr Earp introduced the application and presented plans and elevational drawings. He referred to a correction on the Late List relating to condition 5. There were 12 residential flats above the store and the application was to vary conditions.

The store wanted to extend its operational hours to allow for setting up and closing and to regularise with delivery times. There would be some impact on residential amenity and public representations had been received referring to noise and disturbance. A noise report submitted by the applicants concluded that any noise increase would be typical of the area. A noise report from the Guinness Trust on behalf of the residents contradicted this. The Environmental Health Team had been investigating noise issues on site and a suggested condition of trading hours between 08:00 and 20:00 had been proposed.

The store wanted to amend condition 5 to allow two deliveries to take place on Sundays as it was currently difficult to stock fresh food over bank holiday weekends. This was considered reasonable as the store was already open on Sundays. The store sought to remove condition 15 relating to provision of parking bays for residents. However, many of the residents were key workers and worked shift patterns so they required the use of a car. There was no evidence to suggest there was a lack of parking for the store in the car park and to it was recommended that this condition remain on the decision.

Finally, the store wanted to amend the condition relating to provision of 3 hours free parking for visitors to 1 hour free parking for visitors. This was in line with current practice at the store, however no evidence had been submitted to suggest this was needed, and so again it was recommended to retain the condition.

(2) Mr Wojtulewski spoke on behalf of the residents of Wannock House and stated that they were mostly key workers providing a valuable contribution to the city. They lived in close proximity to the store and if Sunday deliveries were granted they would be subject to noise and disturbance every day. The delivery area was directly under the flats and would have a big impact on night shift workers who were trying to sleep during the day. There was no other ventilation in the flats aside from opening the windows and deliveries would exceed background noise. He felt the business case

for these changes was unconvincing as the store was already operating successfully and if there were stock issues these could be resolved by better management of the produce available. He did not feel there was any evidence to support ancillary activities at the store and the changes would make the noise disturbance worse, eroding the quality of life for the applicants.

- (3) Councillor Fallon-Khan spoke on behalf of Councillor Harmer-Strange, local Ward Councillor, and stated that he strongly objected to this application. The applicants had not adhered to the condition relating to residents parking since the store had been built, and he felt the Council should be enforcing this condition rather than granting its removal. He did not feel condition 16 relating to 3 hours free parking should be changed as this would fail to support and encourage trade in the area. Amendment of condition 5 would impact on the amenity of the residents and there was a great deal of evidence regarding noise disturbance at the store already. Again, enforcement action needed to be taken to ensure the store was complying with their current conditions, which Councillor Harmer-Strange had witnessed they were not doing. The store was operating well without additional deliveries and altering this condition was unnecessary. Finally, condition 4 needed to remain unaltered to protect residential amenity, as activities in the store such as stacking shelves could be very noisy and make life for the residents untenable if these times were extended.
- (4) Ms Blackburn spoke on behalf of the applicants and stated that a detailed noise assessment had been undertaken to show that noise levels would remain at background levels. The store was an important anchor for trade in the area, and added to the vitality and viability of the centre. Additional Sunday deliveries would enable the store to stock fresh produce and the change of hours would allow activities that were vital to the operation of the store, such as cleaning, to take place. These activities would not involve machinery and background noise levels would remain the same. The longer hours were only to be able to perform these activities without customers in the store, and not to extend the trading hours of the store.

Questions/Matters on Which Clarification was Sought

- (5) Councillor Cobb asked what the current arrangements for parking at the store were and Mr Earp replied that the store should be providing 3 hours free parking, but were currently operating a system of 1 hour free parking, with payment for an additional 2 hours.
- (6) Councillor Mrs Theobald asked why the residents parking bays were not marked out. Mr Earp replied that this had never been done by the store but residents were allowed to park anywhere in the car park previously. As the store was now charging for parking however, they were not able to do this. The car park was not full most of the time and so there would be no harm to the store to provide these parking bays.
- (7) Councillor Kennedy asked if the applicant had taken any measures to engage with the residents about issues at the store. Ms Blackburn replied that the original architect had been liaising with the Guinness Trust, but not on parking issues at the store.

- (8) Councillor Kemble asked why the store didn't use delivery vehicles that could turn off their refrigerators whilst deliveries were taking place to reduce noise levels. Ms Blackburn replied that the refrigerators needed to remain on whilst deliveries took place to ensure the food was kept cool. This was for health and safety reasons.
- (9) Councillor Cobb asked why the store had not adhered to its current conditions. Ms Blackburn replied that the store was in discussions with the Council's Enforcement Team. They recognised the breeches and wanted to regularise the situation through this planning application. There had been no breeches of deliveries out of hours according to tacograph equipment on the delivery vehicles.
- (10) Councillor Alford asked why the hours of operation needed to be extended to clean the store and Ms Blackburn replied that the condition restricted any occupation of the store before 08:00 hours. The store could not be cleaned whilst it was open to customers and one hour between first occupation and opening time was not enough to complete all of the tasks. She added there would be no noisy activity taking place during this time.
- (11) Councillor Mrs Theobald asked how long the store had been charge to park for 3 hours and why they felt that 1 hour free parking was sufficient time. Ms Blackburn replied that she did not know how long the store had been charging for parking but it was felt that 3 hours was too long and did not provide a quick enough turn around of customers. The store was in discussion with officers about providing further evidence for this. One hour free parking was felt sufficient because the store was in close proximity to other stores that customers might need to use.

Debate and Decision Making Process

- (12) Councillor Carden stated that he regularly used this store and did not feel that unlimited parking should be allowed here as it had been difficult to find parking in the past when the car park was unrestricted. However, 3 hours free parking seemed a reasonable time. He did feel that the parking issues for residents needed to be resolved, but felt that as the store was already in operation when the residents moved in, they knew of its existence when deciding to live there. He added that he was undecided at this time, and would wait for the conclusion of the debate before deciding how to vote.
- (13) Councillor Davey felt that the problems between the store and the residents were being replicated at several sites across the city and the Council needed to find the right balance between commercial health and viability, and residential amenity when homes and business were so close together. Councillor Davey felt that extending the hours for setting up and closing the store seemed reasonable and necessary, but additional hours for deliveries on Sundays would be intolerable for residents who should be allowed some respite from the noise and disturbance.
- (14) Councillor Alford felt that the store needed to review its operating procedures and adhere to the conditions that were agreed at the time the application was granted.

- (15) Councillor Mrs Theobald was also not happy about allowing deliveries on Sundays and Bank Holidays, and believed that the residents parking issue needed to be resolved.
- (16) Councillor Barnett was happy with the extension of hours for set up and closing, but did not agree with additional deliveries and agreed that the residential parking needed to be resolved.
- (17) The Chairman took a vote on the recommendation for each condition as set out below.
- (18) A vote was taken on the officer's recommendation for condition 4 and on a vote of 11 for, 0 against and 1 abstention planning permission to vary condition 4 was granted.
- A separate vote was taken on the allied condition that the compactor machine only be operated during trading hours and on a unanimous vote this was agreed.
- (19) A vote was taken on the officer's recommendation for condition 5 and on a unanimous vote planning permission to vary condition 5 was refused.
- (20) A vote was taken on the officer's recommendation for condition 15 and on a unanimous vote planning permission to remove condition 15 was refused.
- (21) A vote was taken on the officer's recommendation for condition 16 and on a vote of 9 for, 0 against and 3 abstentions planning permission to vary condition 16 was refused.
- (22) The Head of Development Control, Ms Walsh addressed the Committee and stated that as a result of the decision, officers would need to vary condition 24 relating to car park barriers to ensure it was accurate.
- (23) Councillor Alford asked for special attention to be paid to any enforcement action that needed to take place on the site regarding the fulfilment of conditions.

183.3 RESOLVED –

1. 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 to vary condition 4 subject to the conditions and informatives listed in the report.
2. That an extra condition be placed on the planning permission to read:

The compactor machine shall only be operated during the actual store trading hours to the public and at no other times.

REASON: To protect the residential amenities of the occupiers of the flats above the store and to comply with policy QD27 of the Brighton & Hove Local Plan.

3. 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 to vary condition 5 for the reasons that the extension of deliveries to include Sundays/Bank Holidays by reason of increased noise and disturbance would have a detrimental impact on neighbouring amenity and would therefore be contrary to policies QD27 and SU10 of the Brighton & Hove Local Plan.
4. That the Committee has taken into consideration and agrees with the reasons to refuse planning permission to remove and vary conditions 15 and 16 respectively for the reasons given in the report.

(iii) MINOR APPLICATIONS

(C) Application BH2010/03061, 25 Hazeldene Meads, Brighton – Proposed roof extension incorporating additional roof light to front (part retrospective).

- (1) The Area Planning Manager (West), Ms Hurley, introduced the application and presented plans and elevational drawings. She stated that there was a current certificate of lawfulness under consideration for solar panels at the site. A previous application for an extension of the gable had been refused as it was felt this would create an unsatisfactory terracing effect, but this reason was not upheld by the Inspector on appeal. This new application for extension was therefore deemed acceptable and the application was recommended for approval.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Cobb noted that on the site visit to the site there was an additional window in the gable at the front of the building and asked if they needed planning permission. Ms Hurley replied that those works had been conducted under permitted development rights.
- (3) Councillor Kemble asked when the Certificate of Lawfulness would be determined and Ms Walsh replied in the next few days.

Debate and Decision Making Process

- (4) Councillor Cobb replied that she was not in favour of retrospective applications, but acknowledged that this would not form part of her considerations for this application. The Solicitor to the Committee, Mrs Woodward stated that retrospective planning applications were currently lawful and retrospective applications should be considered in the same way as prospective applications.
- (5) A vote was taken and on a unanimous vote planning permission was granted subject to the conditions and informatives listed in the report.

- 183.4 **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.

- (D) **Application BH2009/03105, Medina House, Kings Esplanade** – new build 9 storey development including 9 residential units, ground and first floor restaurant and basement parking.
- (1) The presentation for this application was taken together with application BH2009/03120, Medina House, Kings Esplanade.
- (2) The Planning Officer, Mr Everest introduced the application and presented plans and elevational drawings. He stated that the building was locally listed and contained features of historical interest. Its last use was B1 light industrial and there had been no evidence submitted to demonstrate that this should be changed, or that the building was beyond economic repair. The application would provide parking for 9 vehicles and include a two storey restaurant. There were no objections on transport grounds. Medina House was a tall building and so there was some justification for a tall building to replace it, but it was felt that a 9 storey building would have an overbearing effect on the surrounding area, and detrimentally affect views into the conservation area. The development would be highly visible from adjoining properties and would impact on loss of light, which would fall below recommended levels. It was recommended that both planning permission and Conservation Area Consent be refused.
- (3) Ms Bacheli spoke on behalf of local residents and stated that they would be severely affected by the application. The justification for the development was insufficient and would create an overbearing presence on the area. The loss of daylight and sunlight would detrimentally affect the neighbours, and although this was acknowledged, it was not listed as a reason for refusal. There would be severe overlooking created by the proposed balconies and this should also be included as a reason for refusal. The proposed tall building would neither enhance nor preserve the local conservation area and the small houses nearby should be protected. Medina House was perfectly suited to its surroundings and the applicant had failed to consider any other option in terms of refurbishment. This was a much loved building that was structurally sound and had important historical elements for the area.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Davey asked how the car park was accessed. Mr Everest replied that a section of the pavement would be lost to gain access to the car park. He added that permission from the Highways Authority would be needed to do this.

Debate and Decision Making Process

- (5) Councillor Barnett felt the development would overshadow and dominate the area, and agreed with the recommendation for refusal.
- (6) Councillor Kennedy agreed and felt that more consultation with the officers about what was appropriate for this site was needed. She also had significant reservations over the design aspects, and noted that this, as well as the loss of sunlight and daylight, could have been added as extra reasons for refusal.

- (7) Councillor Mrs Theobald felt that the building needed to be renovated and the historical features retained. Any proposals should not be higher than the existing building and she felt that the design of this scheme was bulky and top heavy, making the building seem out-of-place and creating significant overshadowing.
- (8) Councillor Carden felt that the building needed to be redeveloped. He did not think the design proposals were out-of-place, but he did believe that the original building needed to be retained.
- (9) Councillor McCaffery believed that Medina House was a very attractive building and these proposals did nothing to enhance the seafront setting.
- (10) A vote was taken and on a unanimous vote full planning permission was refused for the reasons given in the report.

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

(E) Application BH2009/03120, Medina House, Kings Esplanade – Demolition of existing building.

- (1) The presentation and discussion of this application was taken together with application BH2009/01305, Medina House, Kings Esplanade.

Debate and Decision Making Process

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

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

(F) Application BH2010/02315, Intergen House, 65-67 Western Road, Hove – Removal of 5no existing antennas and replacement with 5no antennas and installation of an additional equipment cabinet at ground level.

- (1) There was no presentation give with this application

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.

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

Note 1: Councillors Fryer and Alford were not present during the debate and voting on this item.

(G) Application BH2010/01418, 7 Orchard Road, Hove – Erection of a two storey side extension incorporating existing garage and roof alterations and enlargement of existing first floor side extensions.

(1) Ms Hurley introduced the application and presented plans and elevational drawings. A scheme was refused in 2009 for a two storey side extension and was dismissed on appeal. The Inspector believed that the scheme would affect the amenity of residents on Orchard Avenue and would not leave a sufficient gap between buildings. The new application was unduly bulky and would affect the character of the existing property. The extension would erode the visual spaciousness of the site and would not be sufficiently deferential to the existing building because of its excessive size.

(2) Mrs Camps-Linney, the applicant, spoke in favour of the application and stated that she had bought the house with her husband 23 years ago and it continued to be a family home. Her family circumstances had changed and her mother-in-law had multiple sclerosis, and they wished to provide respite care for her in their home. This meant that the house needed to be adapted and enlarged to accommodate space for a wheelchair and stair lift. They had worked closely with the Planning Department to address any remaining issues with the proposals, to produce a design that was subservient, carefully thought out and an attractive addition to their home.

Questions/Matters on Which Clarification was Sought

(3) Councillor Kennedy asked for more details about where development sat in the street scene, and Ms Hurley displayed details on the elevational drawings.

(4) The Chairman asked if the proposals remained an overbearing outlook on the nearest neighbours and Ms Hurley explained that the application had been brought back from the boundary line and so it was felt that this reason for refusal had been addressed.

(5) Councillor Mrs Theobald asked if the ground floor would be made disabled accessible and Mrs Camps-Linney replied that they had already created wider doorways to allow for wheelchair access.

(6) Councillor Davey asked how much extra space had been created and Mrs Camps-Linney replied that they needed an extra bedroom and a wider hallway to include stairlift access.

Debate and Decision Making Process

(7) Councillor Kennedy felt that this was a massive improvement on the previous scheme and it had addressed the previous reasons for refusal.

- (8) Councillor Davey felt that it was a massive improvement. There was no consistent street scene in this area and the proposals seemed appropriate.
- (9) A vote was taken and on a vote of 3 for, 7 against and 1 abstention the recommendation to refuse planning permission was lost.
- (10) Councillor Kennedy proposed an alternative recommendation for approval and Councillor Davey seconded this.
- (11) A second recorded vote was taken and on a vote of 7 for, 3 against and 1 abstention planning permission was granted subject to conditions.

184.7 **RESOLVED** – That the Committee has taken into consideration and does not agree with the reasons for the recommendation set out in the report and resolves to grant planning permission for the reasons that the proposed extension sits comfortably with the street scene and would not be unduly prominent. The proposal is acceptable in terms of policies QD1, QD2, QD14 and QD27. The following conditions are attached to the permission:

1. BH01.01 Full Planning Permission.
2. BH03.03 Materials to match non-Conservation Area.
3. The development hereby permitted shall be carried out in accordance with the approved drawings no. 01, 04, 05, 07 submitted on 17 November 2010.

REASON: For the avoidance of doubt and in the interests of proper planning.

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

Note 2: Councillor Fryer was not present during the debate and voting on this item.

(H) Application BH2010/01967, Land adjacent to 481 Mile Oak Road, Portslade – Erection of 2no three bedroom semi-detached dwelling houses with off-street parking.

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

(I) Application BH2010/03359, 31 Maldon Road, Brighton – Creation of additional floor at second floor level to create one 2no bedroom flat incorporating part mansard roof and Juliet balconies to front.

(1) Ms Hurley introduced the application and presented plans and elevational drawings. An application for flats was refused in 2008 and 2009. Letters of support and objection had been received regarding neighbouring amenity and the affect on the street scene. The additional storey had been deemed overly dominant on previous refusals, but this had not been upheld at appeal as a reason for refusal and so was not a consideration for this application. There was some concern over loss of light, and so the bulk of the scheme reduced along the boundary line with number 35. A

report had been submitted to suggest that there would be no additional effect on the existing overshadowing.

Debate and Decision Making Process

(2) Councillor Cobb referred to a previous approval and noted that a condition required that the height of the building be retained to keep in character. Ms Walsh replied that this was decided too long ago to take into account.

(3) A vote was taken and on a vote of 7 for, 2 against and 1 abstention planning permission was granted subject to the condition and informatives in the report.

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

Note 1: Councillors Fryer and Alford were not present during the debate and voting on this item.

(J) **Application BH2010/01805, Donald Hall Road and Chadborn Close, Brighton** – Installation of over-cladding with external insulation on 12 residential blocks of flats (Bluebell, Daisy, Stonecrop, Clematis, Magnolia, Sunflower, Sundew, Saffron, Hyssop, Pennyroyal, Chervil and Thyme).

(1) There was no presentation given with this application

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.

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

Note 1: Councillors Fryer and Alford were not present during the debate and voting on this item.

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

184.1 **RESOLVED** – That those details of applications determined by the Head of Planning and Public Protection 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 Head of Planning and Public Protection. 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.]

185. 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

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

Application:	Requested by:
BH2010/01967, Land Adjacent to 481 Mile Oak Road	Councillor Carden
Land at Redhill Close	Head of Development Control

The meeting concluded at 5.00pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS**Page****A. CENTRAL HOVE**

Application BH2010/00268, 142 Church Road, Hove – Appeal against refusal to grant planning permission for erection of single storey attached studio unit to rear garden. **APPEAL ALLOWED** (delegated).

B. HANOVER & ELM GROVE

Application BH2010/01261, 99 Shanklin Road, Brighton – Appeal against refusal to grant planning permission for a proposed loft conversion. **APPEAL DISMISSED** (delegated).

C. HOVE PARK

Application BH2010/00819, Flat A, 1 Frith Road, Hove – Appeal against refusal to grant planning permission for a loft conversion to provide additional living space with a rear dormer and 2 No front Velux windows. As part of the proposed works the applicant intends reinstating a slate roof. This will replace the “Redland 49” concrete tile cover affixed to the front and rear slopes. **APPEAL DISMISSED** (delegated).

D. HOVE PARK

Application BH2010/02423, 2 Tongdean Place, Hove – Appeal against refusal to grant planning permission for amendments to previous approval roof conversion of existing detached garage incorporating 3no dormers to South and separate entrance with external stairs to East to include North roof extension. The proposed development was described in the council’s refusal notice as: “Roof conversion of existing detached garage incorporating 3no dormers to South and separate entrance with external stairs to East”. **APPEAL DISMISSED** (delegated).

E. NORTH PORTSLADE

Application BH2010/00160, Land at 1-2 Newbarn Cottages, Foredown Road, Portslade – Appeal against granting of planning permission subject to conditions for Conversion of two semi-detached cottages into single family dwelling together with the extension and alterations to both cottages. **APPEAL ALLOWED** (delegated).

F. PATCHAM

Application BH2010/00431, Land at 9 Ridgeside Avenue, Patcham – Appeal against refusal to grant planning permission for erection of detached 2 storey, 2 bedroom house replacing existing garage. **APPEAL DISMISSED** (delegated).

G. PATCHAM

Application BH2009/02660, 9 Wilmington Close, Brighton – Appeal against refusal to grant planning permission for 1x single storey detached dwellings. **APPEAL DISMISSED** (delegated).

H. QUEENS PARK

Application BH2006/0541, Land at 8 Pavilion Parade, Brighton – Appeal against an enforcement notice. **APPEAL DISMISSED** (delegated).

I. QUEENS PARK

Application BH2009/0196, Land at 24 Walpole Terrace, Brighton – Appeal against an enforcement notice. **APPEAL DISMISSED** (delegated).

J. QUEENS PARK

Application BH2010/01817, 148 Freshfield Road, Brighton – Appeal against refusal to grant planning permission for extension of the existing rear ground floor extension. **APPEAL ALLOWED** (delegated).

K. REGENCY

Application BH2010/00954, 186 Western Road, Brighton – Appeal against refusal to grant planning permission for installation of an internally illuminated banner sign. **APPEAL ALLOWED** (delegated).

L. BRUNSWICK AND ADELAIDE

Application BH2009/03112, 55 Western Road, Hove – Appeal against refusal to grant planning permission for alterations to shop front, including insertion of ATM together with associated advertisement signage and installation of screened and enclosed plant. **APPEAL DISMISSED** (delegated).

M. ST PETERS AND NORTH LAINE

Application BH2009/01589, 14-16 York Place, Brighton - Appeal against refusal to grant planning permission for subdivision of the existing residential unit at Number 14 to create a maisonette and a new self-contained cottage, construction of a loft style apartment at Number 15 on the first and second floors to infill the gap between Numbers 14 and 16, subdivision of the existing residential unit at Number 16 to create a maisonette and a new self-contained cottage, and refurbishment of the shop unit at Number 16 by the installation of a traditional shop front. **APPEAL DISMISSED** (delegated).

N. ST PETERS AND NORTH LAINE

Application BH2010/00510, Downs Filling Station, Ditchling Road, Brighton – Appeal against refusal to grant express consent for 1 no. internally illuminated pole mounted display unit. **APPEAL DISMISSED** (delegated).

O. WESTBOURNE

Application BH2010/01431, 36 Walsingham Road, Hove – Appeal against refusal to grant planning permission for creation of a one bedroom flat including a first floor rear extension, 4 roof lights and the insertion of new windows on the north and south original flank walls. **APPEAL ALLOWED** (delegated).

P. WESTBOURNE

Application BH2010/02075, 81 Pembroke Crescent, Hove – Appeal against refusal to grant planning permission for roof extensions over existing flat roof sections, including new dormer window to West elevation and new dormer window to East elevation. **APPEAL DISMISSED** (delegated).

Q. WITHDEAN

Application BH2010/01750, 8 Peacock Lane, Brighton – Appeal against refusal to grant planning permission for a two storey extension to the rear including a roof conversion (hip to gable). **APPEAL DISMISSED** (delegated).

R. WITHDEAN

Application BH2010/02159, 118 Eldred Avenue, Brighton – Appeal against refusal to grant planning permission for the erection of a rear raised deck. **APPEAL DISMISSED** (delegated).



Appeal Decision

Site visit made on 8 November 2010

by Joanna C Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 25 November 2010

Appeal Ref: APP/Q1445/A/10/2131396

142 Church Road, Hove, East Sussex BN3 2DL

- 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 Peermark Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00268, dated 2 February 2010, was refused by notice dated 29 March 2010.
 - The development proposed is "erection of single storey attached studio unit to rear garden".
-

Decision

1. I allow the appeal, and grant planning permission for erection of single storey attached studio unit to rear garden at 142 Church Road, Hove, East Sussex, BN3 2DL, in accordance with the terms of the application, Ref BH2010/00268, dated 2 February 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than five years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: RFA09/136/OSBA, RFA09/136/02, RFA09/136/10, RFA09/136/11A, and RFA09/136/sk04.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 4) The dwelling hereby permitted shall not be occupied until the refuse and recycling store and the cycle store shown on the approved plans have been provided, and they shall be retained for those purposes thereafter.

Main issue

2. The main issue is the effect that the proposal would have on the character and appearance of the surrounding area.

Reasons

3. The appeal site is within the Cliftonville Conservation Area, which is characterised by mainly residential suburban development, with pockets of small scale workshop use and Victorian shop frontages along the main routes through the area. The rather small back gardens of the nearby mainly

- residential terraces in Osborne Villas and Seafield Road back onto one another. Most nearby buildings in Church Road include various back extensions.
4. The terraced building at 142 Church Road includes a ground floor retail unit and 2 apartments on the upper floors. The appellant states that the land at the back of the building is related to the ground floor retail unit, and that it is not available to the occupiers of the apartments as an amenity space. The Council agrees with the appellant that the site can be classed as previously-developed land, and not as a residential garden. I agree with their view.
 5. The land at the back of the building is deeper and wider than the nearby back gardens. It backs onto the small back garden of the end-of-terrace 34 Seafield Road, which has been subdivided into flats. At the sides it adjoins the tall wall of the rear extension at 140 Church Road, and the narrow space by the tall back extension to 144 Church Road. It is not visible from any nearby streets, but it can be seen from the upper floors of some nearby buildings.
 6. The proposed single-storey dwelling would be reached through the building at 142 Church Road and it would adjoin the wall by 140 Church Road. A similar side space to that by 144 Church Road would lead to a south-west facing amenity area at the back of the site, which would be about 2.5m deep. It would include modest stores for refuse and recycling, and a cycle. The layout and siting of the scheme would be in keeping with the nearby development.
 7. Because of its simple roof form, its small scale, its careful siting, its appropriate materials, and its sympathetic design the proposed studio dwelling would provide a spacious and well-lit home for future occupiers, and it would complement the character and appearance of the building at 142 Church Road. Due to the range of types and styles of extensions nearby, the proposal would also harmonise with the character and appearance of the locality. For the same reasons, it would preserve the character of the Conservation Area.
 8. The amenity space would be sunlit for some of the time, it would be well related to the studio, and it would be ample for the occupiers to tend plants, dry washing and sit outside. Its scale and siting would be in keeping with other back gardens in the area. The scheme would make efficient use of land within the urban area without compromising the quality of the local environment. It would provide a small dwelling in this relatively sustainable location.
 9. I have considered the Council's suggested conditions and re-worded them in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. The condition identifying the drawings is necessary for the avoidance of doubt and in the interests of proper planning. A condition to control external materials is necessary to protect the character and appearance of the area. A condition for cycle and refuse stores is reasonable in the interests of sustainable travel and amenity. I have not imposed a condition for Lifetime homes standards as level access cannot reasonably be achieved, and conditions for sustainable drainage and landscaping are not reasonable for the modest private amenity space proposed.
 10. I consider that the proposal would not harm the character and appearance of the surrounding area. It would satisfy saved Policies QD1, QD2, QD3, HE6 and HO5 of the *Brighton & Hove Local Plan 2005*.

Joanna C Reid

INSPECTOR



Appeal Decision

Site visit made on 23 November 2010

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 30 November 2010

Appeal Ref: APP/Q1445/D/10/2137246

99 Shanklin Road, Brighton, E Sussex BN2 3LP

- 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 Lee M^cLagan against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01261, dated 21 April 2010, was refused by notice dated 22 June 2010.
 - The development proposed is a loft conversion.
-

Decision

1. I dismiss the appeal.

Main Issue

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

Reasons

3. The appeal site is a mid terrace property that is divided into flats. There is a central rear projection to the property which gives the rear elevation an unusual appearance. The proposed loft conversion includes a rear facing dormer which, although it could not be seen from the street, could be seen from the gardens of neighbouring properties and the cemetery to the rear of the site.
4. The dormer would extend across the width of the roof, encroaching on the party wall upstands and it would be close to the roof ridge. By reason of its size the dormer would be prominent and appear incongruous; it would result in the house having a top heavy appearance. This effect would be accentuated by the render finish. While the materials to be used for the external finishes and the precise position of windows could be controlled by the imposition of suitable conditions, this would not overcome my concerns in respect of the size of the dormer. Although the rear elevation is not particularly attractive, the proposal would be detrimental to the character and appearance of the property.
5. The proposal would not represent a high standard of design for the reasons given above and would be contrary to Policies QD1, QD2 and QD14 of the Brighton and Hove Local Plan as well as the Council's Supplementary Planning Guidance Note BH1.

6. The appellant has drawn my attention to other dormers in the area but I am not aware of the particular circumstances of most of these developments. While I understand the consternation of the appellant over some of these local developments, I must deal with the facts of the case before me. Furthermore I do not consider that the other cases should set a precedent, particularly as some could equally be seen as a justification for rigorous application of Council policy. In any event each case falls to be considered on its own merits in relation to the development plan. I also acknowledge that some surrounding properties could be extended without the benefit of planning permission but this does not justify development that would be contrary to the provisions of the development plan.
7. Most of the roofs in the terrace are unaltered, although there is one dormer at No79 that was granted planning permission before the adoption of the current local plan and I have noted the Council's concern on precedent and the number of other similar properties in the area. However, as I have decided to dismiss the appeal, the Council's ability to resist further unsatisfactory applications will not be affected. The constraints of the site limit the opportunities for an attractive design and due account must be taken of benefits, including in terms of insulation. Nevertheless neither these matters nor any other matters raised are sufficient to outweigh the considerations which have led me to my conclusion.
8. For the reasons given above I conclude that the appeal should be dismissed.

J M Trask
INSPECTOR



Appeal Decision

Site visit made on 23 November 2010

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 9 December 2010

Appeal Ref: APP/Q1445/A/10/2136113

First Floor Flat A, 1 Frith Road, Hove, East Sussex BN3 7AJ

- 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 Mark Jackson against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00819, dated 13 March 2010, was refused by notice dated 8 June 2010.
 - The development proposed is described as a "loft conversion to provide additional living space with a rear dormer and 2 No front Velux windows. As part of the proposed works the applicant intends reinstating a slate roof. This will replace the "Redland 49" concrete tile cover affixed to the front and rear slopes."
-

Decision

1. I dismiss the appeal.

Preliminary Matter

2. The Council did not attend at the time of my site visit and I carried out an unaccompanied inspection.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the character and appearance of the host building.

Reasons

4. The appeal relates to an end of terrace property that is divided into flats. The dormer window would occupy a high proportion of the rear roof slope. It would be considerably wider than the windows below and there would be large areas of cladding to the side and below the windows of the proposed dormer. Thus the proposal would result in the dwelling having a top heavy appearance which would be detrimental to its traditional character and appearance. There would be some screening by trees but the side of the dormer could be seen from the street and the rear would be apparent from nearby properties. The proposed dormer window would not be well designed, sited or detailed in relation to the property to be extended and so has to be regarded as in conflict with the provisions of Policy QD14 of the Brighton and Hove Local Plan as well as those of Supplementary Planning Guidance (SPG) BH note 1.
5. There are a number of other dormers in the area but the Council has advised that none have the benefit of recent planning permission. Furthermore the

presence of inappropriate roof alterations cannot set a precedent and each individual case must be assessed on its merits in terms of how a particular proposal would affect its immediate environment.

6. The appellant has advised the proposal includes improving insulation and reinstating the original slate roof appearance. However, it has not been shown that the development proposed is required to obtain these benefits. While the appellant has also referred to conflict with the 2005 5 year plan *Sustainable communities: Homes for all* I have seen no details. I have also noted the concerns expressed by the appellant in his dealings with the Council. However, these are not matters for me to comment upon in the context of this decision. I have had regard to all other matters raised but they are not sufficient to outweigh the considerations which have led me to my conclusion.
7. For the reasons given above I conclude that the appeal should be dismissed.

J M Trask

INSPECTOR



Appeal Decision

Site visit on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 8 December 2010

Appeal Ref: APP/Q1445/D/10/2139368
Land at 2 Tongdean Place, Hove, BN3 6QW

- The appeal is by Mr David Roberts. It is made under Section 78 of the Town and Country planning Act 1990, against a refusal of planning permission by Brighton and Hove City Council.
 - The proposed development was described in the application as: "Amendments to previous approval roof conversion of existing detached garage incorporating 3no dormers to South and separate entrance with external stairs to East to include North roof extension". The proposed development was described in the council's refusal notice as: "Roof conversion of existing detached garage incorporating 3no dormers to South and separate entrance with external stairs to East".
-

Decision

1. I dismiss the appeal.

Reasons

2. The main issue raised by this appeal is whether the design and appearance of the proposed development would be satisfactory and whether its effect on the outlook from the property at No 4 Tongdean Road would be acceptable, taking account of applicable planning policies.
3. The existing outbuilding appears to be mostly used as a garage, incorporating a garden room, with adjacent store. The garage roof is higher than the roof of the store. The garage roof is pitched and hipped. The roof shape is such that when seen from the front (south-east) or rear (north-west), the ridge is comparatively short (about 3 metres) and the sloping sides are each about 4.5 metres in length.
4. The proposed enlargement would give the upper part of the building a "semi-hipped" or "barn-hipped" design. Seen from the front and rear, the roof ridge would be about 7 metres long and the semi-hips at each end would be a little over 1 metre in length. The height of the side and rear walls would be approximately doubled, from about 2.3 metres to about 4.9 metres. The front roof slope would remain, but three dormer windows would be inserted into the slope.
5. The overall effect of the development would be to increase the bulk of the upper part of the building. The side elevations would become asymmetrical. Looked at from the front, the building would look "top-heavy" but it would not be unattractive. However, from the rear (north-west), the increased bulk of

the upper part would be much more apparent. The building stands very close to the boundary between the appeal site and the back garden of No 4 Tongdean Road.

6. The property at No 4 Tongdean Road has a large garden, the rear part of which is mostly lawned and is at a higher level than the adjacent land within the appeal site. The enlarged building would be partly screened by trees and shrubs in the garden of No 4. These factors would help to limit the visual impact of the development when seen from the garden at No 4. Even so, the combination of its height, its increased rear wall area compared with the existing building, and its position so close to the site boundary would make the north-west elevation of the enlarged building a bulky, prominent and rather incongruous feature in the outlook from the rear part of the garden of No 4 Tongdean Road.
7. A different proposal for enlarging the appeal building has evidently been granted planning permission by the City Council. This alternative would have a gable-ended roof with its ridge at the same height as the appeal proposal (and as the existing building). However, the permitted scheme would not have as much vertical mass in its north-west elevation as the appeal scheme; and the ridge of the permitted scheme would be further away from the boundary than would be the top of the roof of the appeal proposal. Nor would the permitted scheme have what appears to be a quite large ventilation grille in the rear wall at a height above the proposed fence – a minor item in some ways, but one which would not help to improve the attractiveness of the structure.
8. Taking into account all the above factors relating to the design, appearance and impact of the proposed development, I find that the decision is marginal. On balance, I judge that the City Council's refusal of permission was soundly based and should not be overturned, primarily because the upper part of the enlarged building would be over-dominant and unattractive when viewed from the garden of No 4 Tongdean Road.
9. In reaching my decision I have had regard to relevant planning policies, in particular those in the Brighton and Hove Local Plan relating to design and residential amenity. This is a case where the policy background does not provide decisive guidance either way, because it is necessary to assess the impact of the proposal in order to judge whether it would comply with policy. Having reached the conclusions expressed above, I find that the proposal would conflict with policies QD14 and QD 27 of the local plan.

G F Self

Inspector



Appeal Decision

Site visit on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 6 December 2010

Appeal Ref: APP/Q1445/A/10/2128998

Land at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB

- The appeal is by Mr A R Uridge. It is made under Section 78 of the Town and Country planning Act 1990, against the grant of planning permission subject to conditions by Brighton and Hove City Council (see paragraph 1 below).
- The proposed development was described in the application as: "Conversion of two semi-detached cottages into single family dwelling together with the extension and alterations to both cottages".
- The condition in dispute is No 3 of those attached to the permission, which states:

"Notwithstanding the details of the proposed rear elevation as indicated on drawing no 2121/09/01, the proposed first floor gallery window shall be reduced in size, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter."

Legal Matters

1. Before considering the appeal it is necessary for me to deal with two legal matters.
2. First, in the form lodging the appeal, the appellant's agent has indicated that the appeal is against a decision by the local planning authority to refuse permission to vary a condition. That is not correct. As noted in the summary above, the appeal is against the planning authority's decision to *grant* permission subject to conditions (not to *refuse* a permission). Specifically, the appeal is under Section 78(1)(a) of the 1990 Act, not under either Section 73 or 73A. The appeal cannot be against a decision to refuse an application for permission to vary a condition (this is the type of appeal to which Sections 73 and 73A apply) because in this instance no such application has been made.¹
3. Second, in part of their written submission (the planning officer's report) the City Council say that the conversion of two properties into a single dwellinghouse "is not usually considered a material change of use and is therefore not classed as 'development' as specified in Part III, Section 55 of the

¹ This error may have occurred partly because the appeal was lodged using a "Householder Planning Appeal" form. Although the appeal was accepted by the Inspectorate as valid, it should have been made using the standard "Planning Appeal" form, which (unlike the Householder Appeal form) includes in Section F the option to specify that the appeal is against the planning authority's decision to grant planning permission for development subject to conditions to which the appellant objects.

Town and Country Planning Act 1990". The council here appear to be referring to the fact that the existing cottages are both "dwellinghouses" within the meaning of the 1990 Act, and so their use would fall within Class C3 of the Use Classes Order. The proposed house would also be within Class C3. So it might be thought that the change from two dwellinghouses to a single dwellinghouse would not constitute "development", by virtue of Section 55(2)(f) of the Act.

4. The legal position is rather more complicated than that, because the proposal would involve a change of "planning unit", and even allowing for the provisions of the Use Classes Order, it is necessary to make a "before and after" comparison of the planning unit or units to decide whether a material change of use is involved, and a change from two dwellings to one might be judged to be a material change.
5. The two matters mentioned above are relevant because the appeal against the conditional permission has put the whole permission at risk (a point which I suspect has not been realised by the appellant or his agent); and I have reservations about the original permission, especially in view of the objections and concerns expressed by the South Downs Joint Committee and the South Downs Society. The loss of two small dwellings could have planning consequences and affect the character of the area, having regard to what the local plan refers to as the "sense of history" of the South Downs. However, as the City Council have not opposed the general principle of the development or the scale of the proposed extension, I have decided on balance that it would not be appropriate to widen the matters of dispute at this stage. Therefore I shall confine my consideration to Condition 3 and the disputed window.

Reasons

6. The central issue is whether the large window in the north elevation of the proposed extension would be acceptable, taking account of relevant planning policies.
7. The appellant claims that the disputed window would be "wholly obscured from public view". That claim is not correct - the window would be visible from the nearby public right of way which passes close to the existing cottages. The window would be a significant feature in the north elevation of the extended property and would not be characteristic of rural cottages in this locality, so would draw attention to the fact that the property had become one large house.
8. On the other hand, given the council's lack of objection to the property being enlarged, the objections to the window on grounds of design or appearance (and related policies of the local plan) are weak. The window would be an integral part of the design of the extension, as it would provide light to the full-height entrance hall. The window would not materially harm the natural beauty of the area.
9. It is difficult to see how the window would enhance the visual or landscape quality of the South Downs - and a requirement to "enhance" is part of policy NC7 of the local plan. But it is equally difficult to see how the extension as a whole would achieve such enhancement, and that has not caused the local planning authority to refuse permission for the extension. Indeed, when granting permission for the development the council stated that the proposal "would not cause harm" to the visual or landscape quality of the national park,

and so was considered to be in accordance with development plan policies. If the local authority do not consider it appropriate to ensure compliance with their policy requirement to "enhance", it would seem unduly strict for me to impose such a requirement.

10. In summary, both sides have put forward weak cases based on some flawed arguments. Bearing in mind all the points discussed above, I have concluded that the window would be marginally acceptable. Therefore I have decided to grant permission for the proposed development without complying with Condition 3, so the appeal succeeds.

Costs

11. An application has been made on behalf of the appellant for an award of costs against the City Council. This application is the subject of a separate decision.

Decision

12. I allow the appeal and vary the planning permission issued by Brighton City Council on 13 April 2010 (reference BH2010/00160) for the conversion of two semi-detached cottages into a single family dwelling, together with the extension and alterations to both cottages, at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB. The permission is hereby varied by the deletion of Condition 3. All the other conditions remain in force.

G F Self

Inspector



Costs Decision

Site inspection on 24 November 2010

by **Graham Self MA MSc FRTPI**

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

Decision date: 6 December 2010

Costs application in relation to Appeal Reference:

APP/Q1445/A/10/2128998

Land at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB

- 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 Mr A R Uridge for an award of costs against Brighton and Hove City Council.
- The appeal was against the decision by the City Council to grant planning permission subject to conditions for the conversion of two semi-detached cottages into a single family dwelling together with the extension and alterations to both cottages. The condition in dispute is No 3 of those attached to the permission, which states:

“Notwithstanding the details of the proposed rear elevation as indicated on drawing no 2121/09/01, the proposed first floor gallery window shall be reduced in size, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.”

Decision

1. The application is refused.

Reasons

2. I have considered the application for costs in the light of Circular 3/09 and all the relevant circumstances. The circular advises that irrespective of the outcome of appeals, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily.
3. The disputed condition relates to a window in the proposed extension. The claim for costs as expressed when the appeal was lodged was based on the statement: “The applicant considers that the imposition of the condition [Condition 3] is unreasonable and unwarranted given that the window would be wholly obscured from public view”. When invited by the Planning Inspectorate to expand on this brief statement, the appellant’s agent referred to the location and siting of the proposed development “within the confines of [the] established farm”.
4. The City Council have not submitted any written response to the costs application.

5. As is pointed out in my decision on the appeal, the contention that the window would be wholly obscured from public view is incorrect. The later statement about the confines of the farm seems to be another way of saying that the window would not be visible to the public, and my previous comment applies again.
6. The council evidently considered that the proposed window would be “oversized” and out of keeping with the more traditional form of fenestration on the existing building. This was a reasonable concern, and partly reflected comments made by two local organisations (representing the interests of the South Downs National Park) which were consulted about the application.
7. The council could have refused permission for the whole development instead of imposing Condition 3, bearing in mind that the window appeared to be an integral part of the overall design. However, a smaller window could conceivably provide adequate light for the entrance hall and landing, so the condition as imposed would not necessarily have nullified the permission. The fact that I have allowed the appeal, for the reasons explained in the appeal decision, does not mean that the council acted unreasonably.
8. I conclude that the council did not behave in such an unreasonable way as to justify an award of costs. Therefore the application does not succeed.

G F Self

Inspector



Appeal Decision

Site visit on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 7 December 2010

Appeal Ref: APP/Q1445/A/10/2133151

Land at 9 Ridgeside Avenue, Patcham, Brighton BN1 8WD

- The appeal is by Mr and Mrs R Counsell. It is made under Section 78 of the Town and Country planning Act 1990, against a refusal of planning permission by Brighton and Hove City Council.
 - The proposed development was described in the application as: "Erection of flat roofed detached dwelling and creation of new off road parking space". The proposed development was described in the council's refusal notice as: "Erection of detached 2 storey, 2 bedroom house replacing existing garage".
-

Decision

1. I dismiss the appeal.

Reasons

2. The main matter of dispute in this case is the design of the proposed house and whether it would suit its surroundings, having regard to relevant planning policy.
3. The proposed house would face the end of a cul-de-sac which branches off Ridgeside Avenue. The house would have an essentially rectangular shape with a flat roof, which would be mostly bordered by a parapet. The attached single-storey garage would also have a flat roof. The garage roof and most of the house roof would be sedum-covered; the front part of the house roof would be metal-covered. The front elevation of the house would have floor to ceiling glazing on the ground floor, with similarly full-height glass panels at first floor level. These panels would be a mixture of obscure, opaque and partly translucent coloured glass.
4. Ridgeside Avenue serves a residential area which appears to have been developed from the 1930s onwards. There is a mixture of houses and bungalows. Most of the dwellings are built of brick, although the bungalow immediately west of the appeal site has rendered walls. The majority of the dwellings in the vicinity of the appeal site have tiled, hipped roofs.
5. The area around the appeal site does not have any special designation for policy purposes – for example, it is not part of a conservation area. Moreover, policy QD1 of the Brighton and Hove Local Plan provides that unless a development proposal is within an area featuring a distinctive historic style of architecture, the replication of existing styles and pastiche designs will be discouraged; and it is debatable whether this area has a "distinctive historic

style of architecture" within the meaning of policy QD1. Be that as it may, policy QD2 provides that new development should take account of local characteristics, including the design of existing buildings.

6. Taking into account the explanatory text of the plan, it is apparent that the general thrust of these policies is to support variety of design when new buildings are inserted into already developed areas, especially in residential areas described by local people (during consultation on the plan) as "bland", whilst also trying to ensure that new development respects and complements the character of areas which are attractive and worthy of preservation.
7. The residential area around Ridgeside Road near the appeal site is attractively mature, not bland. Although some aspects of the design of the proposed development (such as the brick material on some external walls) would reflect the characteristics of the surrounding area, other design elements such as the shape of the house, the finishing materials used on the front elevation, the window size and shape, and the proportion of window to wall areas would all contrast with the pattern of nearby development. The limited amount of space around the house itself would also contrast with the relatively spacious setting of most of the other properties in the neighbourhood.
8. The house (particularly its front elevation) would be prominent in views along Ridgeside Avenue from the south. The development would have a distinctive architectural quality; but in this prominent position, the house would be an incongruous feature in the street scene and would not reflect or complement the character of the surrounding area.
9. A technique of urban design sometimes referred to in textbooks as "closing the vista" is alluded to in part of the appellants' case, which contends that the proposal would "repair and complete the street scene". Since the appeal site does not appear as an unsatisfactory void in views northwards, this is not a situation where the street scene needs repairing, and even if that were so, the proposed development would not be suitable for such a purpose.
10. Part of the appellants' case is that in other parts of Patcham there are flat-roofed dwellings adjacent to properties of more traditional design. That is so, but other developments do not have the same combination of design and location factors which apply to the appeal proposal. For example, the flat-roofed houses in Braeside Avenue shown in one of the appellants' photographs have an obviously different shape to their pitched-roof neighbour; but the general scale and proportion of window openings and most of the external finishing materials are broadly similar, so there is variety without jarring disharmony. Development elsewhere has not set a precedent justifying the proposal.
11. I share the local planning authority's concern about the limited private outside amenity space which would be available to potential occupiers of the proposed dwelling. Even allowing for possible screening, significant parts of the garden would probably be overlooked from the higher ground within the plot of No 9 Ridgeside Avenue or from the house itself. Alternatively, to provide an effective screen, vegetation would have to be so high as to cause undesirable overshadowing. The garden area immediately north of the proposed house would be of limited amenity value because it would be very enclosed and would receive hardly any sunlight. These concerns by themselves might not justify refusing permission, but they are supplementary objections.

12. The proposed building would accord with current guidance on matters such as water run-off, biodiversity and insulation. Some letters from local people are in favour of the proposed development, and some of the objections raised by other residents (for example, relating to traffic generation, parking and nature conservation) are either weak or are based more on assertion than evidence. These points help to support the proposal, but do not outweigh the objections described above.
13. Several parties have commented on the recent change of national policy under which gardens to residential properties are not now to be regarded as "previously developed land". This is another issue which has only supplementary relevance, but tends to support the council's case more than the appellant's case.
14. I conclude that the City Council's decision to refuse planning permission should stand, so the appeal does not succeed.

G F Self

Inspector



Appeal Decision

Site visit made on 15 November 2010

by Joanna C Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 6 December 2010

Appeal Ref: APP/Q1445/A/10/2131348

9 Wilmington Close, Brighton BN1 8JE

- 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 Alan Blackburn against the decision of Brighton & Hove City Council.
 - The application Ref BH2009/02660, dated 3 November 2009, was refused by notice dated 30 December 2009.
 - The development proposed is 1 x single storey detached dwelling.
-

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are the effect that the proposal would have on the character and appearance of the surrounding area, and on the living conditions of the occupiers of 8 and 9 Wilmington Close with regard to outlook, daylight and sunlight, overlooking and privacy, and the occupiers of 9 Wilmington Close with regard to useable private amenity space.

Reasons

Character and appearance

3. National policy in Planning Policy Statement 3: *Housing* (PPS3) was revised by the Government in June 2010. Private residential gardens were removed from the definition of previously-developed land, and the national indicative minimum density was deleted. Whilst saved Policy QD3 of the *Brighton & Hove Local Plan* (LP) seeks the efficient and effective use of sites, these more recent changes to PPS3, which seek to prevent inappropriate developments on garden land, and which recognise the contribution of gardens as an environmental asset, are material considerations in this appeal.
4. The appeal site is an irregularly-shaped piece of land that has been subdivided from the residential garden of the semi-detached dwelling at 9 Wilmington Close. It is at the south end of Wilmington Close where the ground levels rise steeply towards the back of the site. The appellant also has an interest in the attached semi-detached dwelling at 10 Wilmington Close which includes a similarly subdivided plot.
5. The development in Wilmington Close is characterised by pairs of semi-detached dwellings on the east side and at the south end of the road.

Because of the steeply sloping topography most of the dwellings are sited above the level of the road and they share a strong and consistent building line. Their mainly long back gardens rise up behind them and back on to the similarly long back gardens of dwellings in Highfield Crescent. The spaciousness in their front and back gardens, and in the gaps between the pairs of dwellings which become more spacious towards the end of the cul-de-sac, contribute positively to the suburban character in the street scene in Wilmington Close, and to the character and appearance of the wider area. There are a number of low-key dwellings on the west side of the road which are mainly single-storey facing the road. These are closer to the road and set in shallower gardens which would seem to have been subdivided from the back gardens of dwellings in Greenfield Crescent. However, other than the spaciousness above their roofs, they do not contribute in a positive way to the street scene in Wilmington Close or to the character and appearance of the locality.

6. The proposal includes an irregularly-shaped single-storey dwelling which would be sited further from the road than, and at an angle to, the dwelling at 9 Wilmington Close. It would have a poor and unneighbourly relationship with the surrounding dwellings because of its minimal frontage to the road and its set back siting. Because it would be close to the back of the site and close to its side boundary with 8 Wilmington Close, the dwelling would look cramped and squeezed in. Its alien form and its incongruous siting would contrast starkly with the form and rhythm of most of the semi-detached dwellings in the street. Its substantial height above the road, and its unacceptable intrusion into the important spaciousness between 8 and 9 Wilmington Close would harm the street scene in Wilmington Close, and the character and appearance of the locality. Because the dwelling would unacceptably disrupt the pattern of development, it would fail to emphasise and enhance the positive qualities of the local neighbourhood.
7. The subdivision of the gardens at 9 Wilmington Close and at 10 Wilmington Close has left these dwellings with small back gardens which are out of keeping with their surroundings. The more intensive use of the resulting back gardens at the appeal site and 9 Wilmington Close, and the associated domestic paraphernalia in them, from 2 dwellings where there had been one before, would also be at odds with the larger gardens which contribute positively to local distinctiveness. Whilst the single-storey dwellings on the west side of the street have fairly small back gardens, these developments do not contribute positively to the street scene in Wilmington Close or to the wider townscape.
8. A Certificate of Lawfulness, ref BH2009/01460, was approved in August 2009, which would allow the construction of a building of a similar size to the dwelling within the same plot for use as a garage/gym/sauna ancillary to the living accommodation of 9 Wilmington Close. However, from the appellant's plan, its orientation and siting would differ from the proposal before me, so it would not have the same impact on the street scene as the proposed dwelling. In addition, it would not require the plot to be subdivided, with the consequent loss of local distinctiveness that I have found.
9. It is not disputed that there are relatively few developable areas within the city, and that some occupiers do not require large gardens, but these are not sufficient reasons to allow this harmful development. I consider that the proposal would harm the character and appearance of the surrounding area. It would be contrary to saved LP Policies QD1, QD2 and QD3.

Living conditions

10. The dwelling would be cut into the ground by about a metre, so its ridge height would be broadly similar to the ridges at 8 and 9 Wilmington Close, and the site boundaries would include fences about 1.8m high. Because of its scale, its single-storey height, its low pitched roofs, and its siting, the proposal would not be so overbearing or so oppressive that it would harm the living conditions of the occupiers of 8 or 9 Wilmington Close with regard to outlook. For the same reasons, the proposed dwelling would not cause a harmful loss of daylight or sunlight, or overshadowing, which would harm the living conditions of the occupiers at 8 or 9 Wilmington Close.
11. For the same reasons, and due to the orientation of the windows in the dwelling, and the height of the boundary fences, the occupiers of the proposed dwelling would not unacceptably overlook the occupiers of 8 and 9 Wilmington Close in their homes. The ground levels in the nearest parts of the proposed back garden could be reduced to prevent unacceptable overlooking of the back of the dwelling and the back garden at 9 Wilmington Close. I have found that the small back gardens at 9 and 10 Wilmington Close are out of keeping with the character and appearance of the surrounding area. However, the back garden at 9 Wilmington Close is not so small that it would harm the occupiers' living conditions due to insufficient private amenity space.
12. I consider that the proposal would not harm the living conditions of the adjoining occupiers at 8 and 9 Wilmington Close, with regard to outlook, sunlight and daylight, overlooking and privacy, and that it would not harm the living conditions of the occupiers of 9 Wilmington Close with regard to useable private amenity space. It would satisfy saved LP Policies QD15 and QD27.

Conclusions

13. In reaching my conclusions I have had regard to my colleague's decision, ref APP/Q1445/A/07/2056523. I do not have the drawings for that scheme, but I note that it was for a 2-storey dwelling at 10 Wilmington Close, so it differs in its details from the proposal before me, which I have, in any case, dealt with on its merits.
14. I have found that the proposal would not harm the living conditions of the occupiers of 8 and 9 Wilmington Close, with regard to outlook, sunlight and daylight, overlooking and privacy, and that it would not harm the living conditions of the occupiers of 9 Wilmington Close with regard to useable private amenity space. In these regards it would satisfy local and national policy. However, this would be substantially outweighed by the harm that the proposal would cause to the character and appearance of the surrounding area, which is a compelling objection to the scheme. It would be contrary to local and national policy in this regard. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna C Reid

INSPECTOR



Appeal Decision

Site visit made on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 8 December 2010

Appeal reference: APP/Q1445/C/10/2129041 Land at 8 Pavilion Parade, Brighton BN2 1RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton and Hove City Council.
- The appeal was made by "Mr Michael Blencowe (The Baron Homes Corporation Ltd)" (but see paragraph 1 below).
- The Council's reference is 2006/0541.
- The notice was issued on 14 May 2010.
- The breach of planning control as alleged in the notice is: "Without planning permission the conversion of B1(a) office floorspace on the basement, ground, first and second floors to residential use."
- The requirements of the notice are:
 1. Cease the use of the basement, ground, first and second floors as residential units.
 2. Restore use of the basement, ground, first and second floors to B1(a) office floorspace.
- The period for compliance is four months.
- The appeal is proceeding on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Ground (d) was also originally pleaded but was later withdrawn.

Summary of decision: The enforcement notice is varied. The appeal is dismissed and the notice as varied is upheld.

Identity of Appellant

1. The name of the appellant is quoted above from the appeal form. Until now, the Planning Inspectorate has taken it – quite understandably and, on the face of it, correctly - that the appellant is Mr Michael Blencowe. However, from all the available evidence I suspect that the appeal details were incorrectly specified. Indeed, it seems unlikely that Mr Blencowe had a right of appeal against the enforcement notice - although in lodging the appeal Mr Blencowe declared himself to be the owner of the appeal property other evidence

indicates that this was untrue.¹ I have therefore considered whether there is a valid appeal before me. However, in the interests of fairness and giving the appellant the benefit of the doubt, I have decided to assume that Mr Blencowe was acting as an agent for The Baron Homes Corporation Ltd. I shall therefore treat the appeal as if it had been made by The Baron Homes Corporation Ltd.

Costs

2. Two applications for awards of costs have been made, one by the appellant company against the City Council, and one by the City Council against the appellant company. These applications are the subject of a separate decision notice.

Ground (a)

3. Under this ground of appeal, planning permission is sought for the development enforced against. Although the allegation in the enforcement notice refers to "conversion", it is apparent from the stated reasons for issue and the requirements (neither of which refer to any physical works of conversion) that the notice was really directed at the change of use of the basement, ground, first and second floors of the premises from use as offices to residential use. The main issue is whether the change of use is acceptable in the light of relevant planning policies relating to office floorspace in this area.
4. Policy EM5 of the Brighton and Hove Local Plan provides that planning permission will not be granted for the change of use of offices to other purposes unless the offices are "genuinely redundant" in certain specified circumstances. There are three such circumstances: where the site is unsuitable for redevelopment; where the premises are unsuitable and cannot be readily converted to provide different types of office accommodation; or where a change of use is the only practicable way of preserving a building of architectural or historic interest. Under this policy, "redundancy" will also be determined by considering various factors. These include (in summary): the length of the vacancy period; the marketing strategy employed; the prevailing vacancy rate for similar offices in the city; various layout criteria; links to public transport; and the building's quality.
5. Policy EM6 has been mentioned by both sides, who appear to have agreed that this policy is not relevant because it refers to small business units of up to 235 square metres. Taking together all the four floors of the appeal property subject to this enforcement action, the floorspace would exceed 235 square metres, but individual floors could be occupied separately, and the property has apparently been marketed on that basis². Each floor evidently has a floorspace between about 35 and 53 square metres. Therefore policy EM6 does have some relevance. It provides that (among other things) small business

¹ Mr Blencowe's name appears in the "signature" box in the appeal form. The following box labelled "On behalf of (if applicable)" was left blank. In Section D of the form, Mr Blencowe ticked the box indicating that the appellant owns the property; taken together with other information naming him as the appellant, this appeared to indicate that Mr Blencowe owned the property. However, in later correspondence, Mr Blencowe's signature is followed by the words "For and on behalf of The Baron Homes Corporation Ltd" and this, plus statements referring to the company as the owner of the property, is the evidence on which I have based my assumption that the company is the real appellant.

² Correspondence from Stiles Harold Williams, for example, refers to "suites".

- premises will be retained for employment purposes unless various criteria are met.
6. Policy EM6 is poorly framed as there are five criteria (labelled (a) to (e)), but the word "or" appears after criterion (c) and there is a full stop after criterion (d). It seems that this policy should be read as if there was a semi-colon after criterion (d) followed by the word "or" – that is to say, as if the criteria were alternatives, as opposed to the situation relating to policy EM5 which has the word "and" after factor (e), showing that the factors are not alternatives.
 7. The general aim of these policies is evidently to strike a balance between maintaining a reasonable supply of premises for business or office use whilst allowing genuinely redundant premises to be used for other purposes to meet other needs. The essence of the appellant's case is that the premises are redundant as offices, as shown by the efforts made over a considerable period to market the premises for office use, but there has been no interest. The council contend that there has not been any significant change from the situation when a previous appeal seeking permission for change of use was dismissed, and that the appellant has not demonstrated that the premises are redundant office space for the purposes of policy EM5 of the local plan.
 8. The dispute in this case has been affected by the refurbishment and conversion work which was carried out after the appellant company bought the building in late 2005. Internal alterations were made which rendered the premises suitable for residential occupation as flats, with a kitchen and bathroom or shower room and toilet for each unit. As the appellant points out, the alterations did not drastically alter the internal layout; but as the council say, it would have been difficult to let the premises as offices while the work was being carried out, particularly at times when details were evidently not finalised because retrospective applications were being made. The use of the premises as flats and bedsit-studios would also not have helped to generate interest from potential office occupiers. Residential occupation evidently stopped in stages after the enforcement notice was issued in March 2010, but continued well into the summer, as two of the units (4 and 5) were still occupied in August 2010.
 9. The appellant's argument that the work to the inside of the property was merely to restore a listed building to its former glory and has not affected use as offices is somewhat artificial. The council rightly say that the floor layout now provided is more suited to living accommodation than to office floorspace. It is unusual for offices to have kitchen and shower facilities provided in the way they now are. But the layout does not prevent office use.
 10. There is evidence that the premises have been marketed for office use by established, well-known local agents. Initially, it appears that one agent was used. After the enforcement notice was issued, three local agents were evidently engaged to market the property by various means to attempt to achieve a letting. The appellant has supplied copies of correspondence from the agents confirming that there has been no interest in the office space.

11. The appellant's case is unconvincing, for five main reasons. First, there is no evidence to show how the rents sought (as shown in agent's particulars) compare with average or typical office rents for this part of Brighton. Second, it is not possible to detect from the available evidence how the disadvantages of the premises (such as lack of parking space, apparent lack of modern telecommunications access, inflexible room layouts, lack of a lift and air-conditioning, non-compliance with disability legislation, and rather basic heating with storage heaters) have been reflected in the way the premises were marketed and priced. Third, no evidence has been supplied about the prevailing vacancy rate for similar offices in Brighton and Hove (one of the factors mentioned in policy EM5)³. Fourth, there is no evidence to show that any attempt has been made to let the premises on terms other than the licences described by the agents.
12. Fifth, there are other office premises in the same terrace (including a solicitor's office and a building apparently occupied by staff of a university department), and this suggests that the building is not as unsatisfactory for office purposes as the appellant claims. Indeed, the property is described by a local chartered surveyor as being in a prime location.
13. In a letter written in August 2010, the same surveyor added that "there is simply no demand for office space at present". It is not clear whether this assessment related to the city centre, to Brighton as a whole, or perhaps to an even wider region; be that as it may, if such a complete lack of demand in August 2010 were to be accepted as justifying a finding that the premises were redundant, the same argument could logically be applied to vacant offices elsewhere in the area, which must have been affected by the same absence of any demand. Indeed, one of the appellant's arguments is that the recent recession has caused problems with office lettings as the number of empty offices in the city has increased. But it would not be right to accept the loss of office space, with its potential for employment-generating use, just because of the effects of the recession on the commercial property market.
14. For planning purposes, demand and need are not the same thing. The basic aim of development plan policy, which has been adopted by the City Council on behalf of the local community, is to balance the long-term need to retain premises for uses which can cater for employment-generating activity against shorter term fluctuations in demand; and demand can be influenced by price. Despite the appellant's claim that "there is no demand for this type of building due to the layout", I suspect that if the price were low enough, demand would arise. This is really another way of putting the point made by the inspector who decided the previous appeal in March 2010, who did not find evidence of an intention to achieve a sale or letting "at a realistic market value".
15. Part of the appellant's case is that the three agents engaged to market the property after the enforcement notice was issued were contracted to do so at what the agents believed was a realistic market price. It seems that the

³ Among the documents submitted for the appellant at various times during the appeal process there is a letter from Stiles Harold Williams which refers to an attached schedule "setting out all the available space currently in the city", but no schedule was attached, and in any case a schedule without information on similarity with the appeal premises would not have much helped.

agents' belief may not have been sufficiently realistic. In making this assessment, I have noted the written advice by Stiles Harold Williams to the appellant in April 2010 which refers to possible rents of £14-£15 per square foot, depending on assumptions about market trends and other matters, and I have compared that advice with the rents which have evidently been sought, although of course allowance has to be made for lease terms, incentives and other factors. The possibility that the appellant company might not be able to make a profit on their investment does not mean that the premises are redundant as offices; it would merely reflect the operation of the property market. Although agents have advised that the property is difficult to let as offices, this does not mean that it is impossible to let.

16. I return briefly to my earlier comments about the relevance of policy EM6. If I am wrong in interpreting the available evidence as showing that the appeal premises have been marketed for possible occupation as separate units (of less than 235 square metres), there is even more reason to believe that the work carried out before the residential occupation has hindered use as offices. If the premises have been marketed for occupation as a single unit, their attractiveness would be reduced as it seems unlikely that potential takers would be interested in having numerous kitchens. The decision to install kitchens to facilitate residential occupation rather than, for example, telecommunications ducting for potential office occupiers, seems to have been a commercial risk taken by the appellant company.
17. A point claimed by the appellant to be relevant is that "the application proposes an element of employment generating floor space in the ground floor unit....this will maintain at least some element of employment floor space at ground level that would be suitable for a small business such as a small office, studio or consulting room." On this matter, the appellant appears to be misguided. The application (that is to say, the application deemed to have been made under Section 177(5) of the 1990 Act) takes its wording from the allegation, and seeks permission for residential use on basement, ground, first and second floors. The application does not mention any office use of the ground floor. But the suggestion that at least part of the building could be used for offices undermines the appellant's own argument that the property is unsuitable and redundant as offices.
18. I have had regard to the comments about the premises at 12 St George's Place, where planning permission was granted on appeal for change of use to residential use. The recent history of that site, described by a local agent as being in a location having "a somewhat down trodden feel which is not helped by some of the neighbouring uses" does not set a precedent for deciding the present appeal. According to the decision, a material consideration in that case was the fact that the City Council had occupied the building as offices but had vacated it, ostensibly owing to its unsuitability for office use. As noted above, the presence of other office occupiers in nearby parts of the Pavilion Parade terrace weakens the application of the same argument in the appeal before me. Moreover, the potential for office occupiers to show interest in the premises in St George's Place does not appear to have been complicated by the carrying out of internal works or by residential occupation.

19. I conclude that the City Council's case is stronger than the appellant's case. There is a public interest in maintaining a supply of office space in the centre of Brighton; the appeal property is part of that supply and could still be used as offices. Allowing the change to residential use would conflict with development plan policies. Therefore planning permission should not be granted and the appeal on ground (a) does not succeed.

Step 2 of Requirements

20. Although the appellant has not objected to the second step of the requirements as drafted by the council, this step is clearly excessive – a property owner cannot reasonably be required to use a property for a specified purpose within a specified period (as opposed to leaving the property unused). The first step, ceasing the unauthorised residential use (which from my inspection appears to have happened already) is all that is required to remedy the breach of planning control. I shall therefore delete the second part of the requirements.

Request for Guidance

21. The appellant has asked for "guidance as to how the bar is set when it comes to considering extremely similar planning applications". (This request is in comments on the costs application.) Leaving aside the claim about "extremely similar" on which I have commented above, I can understand why this request is made but I regret that it would not be appropriate for me to provide specific advice which could be regarded as influencing a future application or appeal.

Formal Decision

22. I direct that the enforcement notice be varied by deleting Step 2 from the requirements. Subject to that variation I dismiss the appeal, uphold the notice as varied and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector



Costs Decisions

Site inspection on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 8 December 2010

(1) Costs application in relation to Appeal Reference:

APP/Q1445/C/10/2129041

Land 8 Pavilion Parade, Brighton BN2 1RA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by The Baron Homes Corporation Ltd for an award of costs against Brighton and Hove City Council.
 - The appeal was against an enforcement notice alleging: without planning permission the conversion of B1(a) office floorspace on the basement, ground, first and second floors to residential use.
-

(2) Costs application in relation to the same appeal

- The application is made by Brighton and Hove City Council for an award of costs against The Baron Homes Corporation Ltd.
-

Reasons

1. I have considered the applications for costs in the light of Circular 3/09 and all the relevant circumstances. The circular advises that irrespective of the outcome of appeals, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily.

Application by The Baron Homes Corporation Ltd

2. The appellant's costs application has three main arguments: first, that the council failed to substantiate their objection relating to local plan policy EM6, thereby causing the appellant to waste expense rebutting this matter; secondly, that the council failed to carry out diligent investigation, which would have shown that policy EM6 was not applicable; thirdly, that the council did not consider similar cases in a similar and fair manner and used policy EM6 as a spurious additional reason for refusal, as the change of use of No 12 St George's Place was permitted despite that property having been marketed for less time than No 8 Pavilion Parade.
3. As I have commented in my appeal decision, policy EM6 of the local plan has some relevance to the appeal, because it refers to business premises of 235 square metres or less and the appeal premises could be occupied as separate units within this size limit, and have apparently been marketed on that basis. The term "business premises" includes not just small workshops, as suggested

in one of the appellant's submissions, but also offices, as is confirmed by the reference within the policy to Use Class B1. Therefore, even though the council appear to have changed their mind about the applicability of policy EM6, for reasons which are not clear to me, the appellant did not waste any expenditure in commenting on this aspect of the case because the comments were relevant to my decision.

4. I do not know the full history of the site at 12 St George's Place; but as again I have explained in my appeal decision, the development there has not set a precedent for the decision relating to the appeal site. The council were at least consistent in refusing planning permission for the change of use of both properties. In this respect the appellant's reference to "the notes drawn up by the LPA when ruling the change of use at 12 St George's Place to be permissible" is difficult to understand: the local planning authority did not rule that the change of use at 12 St George's Place was permissible, they refused planning permission and opposed the resulting appeal.
5. Part of the appellant's case for a costs award is that the report submitted on the company's behalf on 18 August 2010 included new evidence "as requested by the LPA". I have two comments on this point. First, under the written representations procedure the submission on 18 August (which was an opportunity for final comments) should not have included any new evidence. Secondly, the local planning authority cannot be blamed for not considering evidence which was not submitted earlier.
6. I conclude that although there may have been an element of unreasonableness in the way the council changed their minds about the relevance of policy EM6, the council's conduct was not such as to justify an award of costs.

Application by Brighton and Hove City Council

7. The basis of the council's costs application is that the representations and evidence submitted for the appeal do not vary significantly from those submitted for the previous appeal, and that the appeal on ground (a) had no reasonable prospect of success. The previous appeal referred to here is an appeal against the refusal of retrospective planning permission for the change of use of the basement, ground, first and second floors at the appeal property from offices to residential. The appeal was dismissed in March 2010.
8. Circular 3/09 advises that appellants are at risk of an award of costs against them if, on the basis of the available evidence, the appeal plainly had no reasonable prospect of succeeding on the basis of the application submitted to the planning authority. The circular goes on to say that this may occur when the appeal follows a recent appeal decision in respect of the same, or very similar, development on the same site where an inspector has decided that the proposal is unacceptable and circumstances have not changed in the intervening period.
9. In this instance, the appeal against the enforcement notice under Section 174(2)(a) relates to the same development on the same site as the appeal under Section 78 against the refusal of planning permission. The Section 78 appeal decision was issued on 15 March; the enforcement appeal was made on 20 May. The events between those dates included initial steps to require residential tenants to leave, and the engagement (in about early April) of three agents to market the property as offices; but bearing in mind the short period of this marketing it is difficult to find any material change in circumstances

- between those dates which would have made the planning merits of a change to residential use differ from the appeal decision.
10. An email sent to the council on the appellant company's behalf on 6 April 2010 confirmed that: "We have instructed Stiles Harold & Williams to start marketing these units as offices". This message reflects a point in the appellant's written statement which says that following the serving of the enforcement notice in March 2010, the appellant instructed three agents to begin marketing the property as office space. The words "start" and "begin" cast doubt on whatever previous attempts may have been made to let or sell the premises as offices, but even assuming that they meant "re-start", it appears that the recent marketing effort would only have been started after the enforcement notice was issued and would only have been carried on for about six to seven weeks before the appeal was lodged.
 11. The council did not issue any written warning of their intention to apply for costs. However, on 27 May 2010 a casework manager in the Planning Inspectorate sent an email to the appellant's agent referring to the continuation of the enforcement appeal on ground (a) only, pointing out that the Section 78 planning appeal had been dismissed and that planning permission had not been granted by the inspector for the change of use alleged in the enforcement notice, and adding: "You may therefore wish to consider whether to continue with this appeal (though this is a matter for you to decide)". This message should have alerted the appellant to the risk being taken in pursuing an appeal concerning the same development as had recently been the subject of an appeal decision.
 12. The appeal decision relating to 12 St George's Place, which is quoted in support of the appellant's case, was not issued until 11 June 2010, and so, even setting aside considerations about whether it was directly relevant, could not have counted as a change in circumstances at the time the enforcement appeal was made.
 13. In support of the enforcement appeal, the appellant submitted a letter from Stiles Harold & Williams (SHW) to support the contention that this firm had marketed the appeal property between September 2004 and March 2006. One of the grounds of appeal was that this letter appeared not to have been submitted at the time of the Section 78 appeal. In the decision on that appeal, the inspector referred to submitted evidence "from which it would seem that No 8 was marketed from September 2004 until October 2005 when the appellant company purchased it". So it appears that the inspector did not have the letter from SHW now submitted by the appellant.
 14. However, this letter provides rather vague and partly conflicting information. In it, SHW say that "we have not been successful in letting of any suites at the above property since your purchase. Prior to your purchase we also carried out all necessary marketing since September 2004..." The letter does not state that the property was actively marketed as offices after the purchase. Moreover, a letter written by SHW in May 2009 (addressed to Mrs N Blencowe, Baron Homes) stated that the firm "have advised on this property for many years and were involved in the marketing of the property from September 2004 until the sale to Baron Homes in October 2005". This later letter does not mention any marketing after the purchase in October 2005, and I would have thought that if marketing had been carried out between October 2005 and when they wrote to their client in May 2009, SHW would have mentioned it.

15. There is evidence that another firm (Graves Son & Pilcher) were instructed to market the entire building at a rent of £25,000 per annum exclusive in about September 2008, and that their marketing was continuing in April 2009. But this was all in the period which would have been taken into account when the Section 78 appeal was decided, and appears to have been affected by the internal building work and by the residential occupation, although the appellant's evidence about the site's history does not make clear when the refurbishment or conversion work started and ended or when the residential use started.
16. I am aware that continuity of work on this appeal for the appellant was affected by serious illness. Although I have natural personal sympathy for all those involved, it would not be right to let my personal feelings alter the fact that the council have a sound case for their costs application, which is mainly related to the initial making of the appeal rather than to its later conduct.
17. In summary, when the appeal was made it followed a recent appeal decision relating to the same development on the same site, in respect of which an inspector had decided that the development was unacceptable; and circumstances had not significantly changed in the relevant period between March and May 2010. This is the type of situation described in Circular 3/09, where it should have been plain that the appeal had no reasonable prospect of success, so appealing against the enforcement notice on ground (a) constituted unreasonable behaviour and caused the council to incur expenditure which should not have been necessary. I conclude that the council's application for an award of costs is justified.

Decision on Application by The Baron Homes Corporation Ltd

18. I refuse this application.

Decision on Application by City Council, and Costs Order

19. I allow this application.
20. In exercise of my powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 to the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that The Baron Homes Corporation Ltd shall pay to Brighton and Hove City Council their costs of responding to the appeal. Such costs are to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by the City Council alleging: "Without planning permission, the conversion of B1(a) office floorspace on the basement, ground, first and second floors to residential use" at 8 Pavilion Parade, Brighton.
21. Brighton and Hove City Council are now invited to submit to The Baron Homes Corporation Ltd, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement on 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 Supreme Court Costs Office is enclosed.

G F Self
Inspector



Appeal Decision

Site visit made on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 7 December 2010

Appeal reference: APP/Q1445/C/10/2133994
Land at 24 Walpole Terrace, Brighton BN2 0ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton and Hove City Council.
- The appeal purported to be made by: The Company Secretary, Drivemanor Ltd (but see paragraphs 1 and 2 below).
- The City Council's reference is 2009/0196.
- The notice was issued on 1 July 2010.
- The breach of planning control as alleged in the notice is: "Without planning permission unauthorised installation of UPVC windows to front elevation.
- The requirements of the notice are:
 1. Remove all of the UPVC windows at the front elevation of the property.
 2. Install painted timber box sash vertically sliding windows to all window openings on the front elevation. The proportions of the windows and the external joinery dimensions and details, including horns to the meeting rails, must match those of the adjoining property, number 23 Walpole Terrace.
- The period for compliance is 20 weeks.
- The appeal was made on the grounds set out in Section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.

Summary of decision: The enforcement notice is varied. The appeal is dismissed and the enforcement notice is upheld as varied.

Identity of Appellant

1. The appeal was lodged by an agent, who specified the appellant as: "The Company Secretary Drivemanor Limited". Therefore that is how the appellant has been identified in subsequent correspondence by the Planning Inspectorate and by the City Council. However, the later statement submitted for the appellant is headed "Appeal Statement Prepared on behalf of Drivemanor Limited".
2. I suspect that the company secretary of Drivemanor Ltd had, and has, no right of appeal against the enforcement notice, as he or she (who as an individual

will be a different legal entity from the company) is apparently neither the owner of the appeal property nor an occupier by virtue of a licence. So I have considered the possibility that there is no valid appeal before me. However, it would be reasonable to assume that the appeal was meant to be made by Drivemanor Ltd. I am therefore treating the appeal on that basis.

Ground (f)

3. Under ground (f), it is claimed that the requirements of the enforcement notice are excessive.
4. The essence of the appellant's case on ground (f) is that the non-openable windows in the front elevation should be retained and that the openable windows could be replaced by uPVC sliding sash windows, in line with an application for planning permission which has been the subject of negotiation with the council. The appellant has suggested revised wording for the enforcement notice requirements, under which step 1 (the removal of windows) would only apply to the windows which can be opened, and step 2 (replacement) would be changed in two ways: first, allowing either timber sash windows or uPVC sash windows to be installed in place of the windows which can be opened; second, specifying that the details such as joinery dimensions must "closely match" (instead of "match" as in the council's notice) those of the adjoining property.
5. The appellant's case is legally flawed, for three main reasons.
6. First, the use of the words "closely match" would make the requirements imprecise and would introduce too much scope for disagreement. Therefore an attempt to adopt the approach sought by the appellant would make the enforcement notice either invalid or a nullity. At the same time, retaining the "match" requirement whilst allowing the use of uPVC material would be unworkably inconsistent, because this material would not provide matching joinery details.
7. The only really reliable way of precisely specifying proposed works such as installing windows is to have suitably detailed specifications, usually by means of plans or drawings of what is proposed. Presumably such drawings have been submitted as part of the planning application which I understand was made in August 2010 and has yet to be decided.
8. Second, the difficulties just mentioned reflect the fact that the appellant is trying to use a ground (f) appeal to obtain what would be tantamount to a planning permission, but without having pleaded ground (a) and in a situation where the deemed application for permission has lapsed because of non-payment of the fees. Much of the appellant's case is concerned with "planning merits" – for example, it is argued that the uPVC windows which the appellant seeks to install would not harm the conservation area, and would not be different to other windows in the terrace. But "planning merits" arguments would more properly be directed at an appeal on ground (a) and a related deemed application.
9. Third, the requirements of this enforcement notice derive from Section 173(4)(a) and not from Section 173(4)(b). That is to say, the notice seeks to remedy the breach of planning control by restoring the land to its condition

before the breach took place, not the alternative of “under-enforcing” so as to mitigate or remedy injury to amenity. In these circumstances an appeal made under Section 174(2)(f) can only claim that the steps exceed what is necessary to restore the land to its condition before the breach took place.¹

10. Boiled down to basics, the breach of control is the installation of the unauthorised windows, and all that is required to put matters right is the removal of the windows. Normal market forces should ensure that such removal would be immediately followed by replacement, by whatever windows have by then been approved by the planning authority.
11. Taking into account the points mentioned above and allowing for the limited scope of the ground (f) appeal, I have decided to delete the whole of step 2 from the requirements of the enforcement notice, leaving step 1 unaltered.

Ground (g)

12. Ground (g) concerns the period for compliance. I do not see any justification for an extension as sought by the appellant. Quite lengthy negotiations have apparently already taken place between the appellant’s agent and the council, and there is no good reason to believe that allowing another 40 weeks (or nearly ten months) is now needed for compliance or would enable anything more useful to be achieved. If the council do agree to the retention of some of the windows, a permission to that effect would partly override the requirements of the notice; but that remains a matter for the council, and since I am not dealing with any deemed application I make no comment on the merits or demerits of any such scheme.
13. The 20 week compliance period should be enough for the appellant to decide what to do, to obtain whatever permission may be needed from the council and to engage contractors. This outcome will still leave the council with control over replacement windows (unless the appellant company opts to leave the property windowless, which is most unlikely as explained above). The compliance period will not allow time for completion of any appeal against a refusal or non-determination of the undecided application, but there is no injustice in this, especially as the varied enforcement notice is less onerous than it was originally. I conclude that ground (g) does not succeed.

Formal Decision

14. I direct that the enforcement notice be varied by deleting Step 2 from the requirements. Subject to that variation, I dismiss the appeal and uphold the enforcement notice as varied.

G F Self

Inspector

¹ The words “as the case may be” in Section 174(2)(f) are relevant here. They refer back to Section 173 (4).



Appeal Decision

Site visit made on 23 November 2010

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 9 December 2010

Appeal Ref: APP/Q1445/A/10/2136164
148 Freshfield Road, Brighton BN2 9YD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Brignal against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01817, dated 14 June 2010, was refused by notice dated 5 August 2010.
 - The development proposed is to extend the existing ground floor rear extension.
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Decision

1. I allow the appeal, and grant planning permission to extend the existing ground floor rear extension at 148 Freshfield Road, Brighton BN2 9YD in accordance with the terms of the application, Ref BH2010/01817, dated 14 June 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) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the position, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the extension is occupied. Development shall be carried out in accordance with the approved details.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 01/1006490, 02/1006490, 03/1006490 and 04/1006490.

Preliminary Matter

2. The Council did not attend at the time of my site visit and I made an unaccompanied inspection.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on the living conditions of neighbours in terms of privacy and the effect on the character and appearance of the existing building and the area.

Reasons

4. There is an existing extension at the rear of the house and the proposal is to widen this extension by 1.4m. The existing window in the rear facing wall of No148 overlooks the adjoining garden as does the side facing window in the existing extension. However, the proposed extension would have a larger window and be closer to the boundary than the existing window so there would be a slight reduction in privacy and an increased perception of overlooking. A high wall or fence along the boundary would overcome these concerns and, as suggested by the appellant, this could be controlled by a suitable condition. I am content that there would be no other substantial adverse effects arising from the erection of suitable boundary treatment. Accordingly, subject to condition the proposal would not be detrimental to the living conditions of neighbours.
5. In addition to the extension there is a double garage at the end of the garden. While the existing structures occupy a considerable proportion of the garden, and were permitted under previous less stringent development plan policies, the fact is that they exist. The proposal in itself would not make a significant visual impact or difference to the character and appearance of the existing building or the area.
6. Subject to condition the proposal would not conflict with the requirements of the development plan, in particular Policies QD1, QD14 and QD27 of the Brighton and Hove Local Plan.
7. In addition to the condition described above requiring high level boundary treatment, and as suggested by the Council, a condition is necessary to control the appearance of the extension in the interests of the character and appearance of the area. Otherwise than as set out in this decision, it is also necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning and I shall impose a condition to that effect.
8. For the reasons given above I conclude that the appeal should be allowed.

J M Trask

INSPECTOR



Appeal Decision

Site visit made on 8 November 2010

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 29 November 2010

Appeal Ref: APP/Q1445/H/10/2134118
186 Western Road, Brighton BN1 2BA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Cotswold Outdoor Ltd against the decision of Brighton and Hove City Council.
 - The application Ref BH2010/00954, dated 31 March 2010, was refused by notice dated 22 June 2010.
 - The advertisement is the installation of an internally illuminated banner sign.
-

Decision

1. I allow the appeal and grant express consent insofar as it relates to the installation of an internally illuminated banner sign at 186 Western Road, Brighton BN1 2BA in accordance with the terms of the application, Ref BH2010/00954, dated 31 March 2010 and drawing nos. 7543-PP-001 Revision A, 7543-PP-002 Revision A, 7543-PP-003, 7543-PP-004 Revision A and 7916/M/1, subject to the standard conditions in Schedule 2 to the Regulations.

Main issue

2. The application to the Council was subject to a split decision. The main issue is therefore the effect of the internally illuminated banner sign on the character and appearance of the area.

Reasons

3. No. 186 is within a busy purpose built shopping frontage in Brighton town centre. Although this shop has a narrower frontage than some others nearby on this side of the street, there is a substantial gap between this first floor banner sign and other similar banner signs so that the street does not appear unduly cluttered with banner advertisements. Although internally illuminated and prominent, the banner sign is entirely appropriate in this city centre location and it does not therefore appear out of place or incongruous. Any future proposals for banner signs on nearby shops would be judged on their own merits.
 4. The opposite side of the shopping street lies within the Regency Square Conservation Area. That side of the street is very different in character having a historic facade on the upper floors. However, due to the separation distance the appeal sign has no material effect on the historic facade, so that the
-

character and appearance of the adjoining conservation area is preserved. I conclude that the internally illuminated banner sign does not harm the character and appearance of the area.

5. Although the Council refers to development plan policies in the reason for refusal, the regulations to control advertisements require that decisions are made only in the interests of amenity and public safety. The development plan policies alone cannot be decisive, but I have taken them into account as a material consideration.

Sue Glover

INSPECTOR



Appeal Decisions

Site visit made on 15 November 2010

by Joanna C Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 6 December 2010

Two Appeals at 55 Western Road, Hove, East Sussex BN3 1JD

- The appeals are made by Sainsbury's Supermarkets Limited against the decisions of Brighton & Hove City Council.
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Appeal A Ref: APP/Q1445/A/10/2128171

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref BH2009/03112, dated 21 December 2009, was refused by notice dated 12 March 2010.
 - The development is alterations to shop front, including insertion of ATM together with associated advertisement signage and installation of screened and enclosed plant.
-

Appeal B Ref: APP/Q1445/H/10/2128211

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The application Ref BH2009/03111, dated 21 December 2009, was refused by notice dated 22 March 2010.
 - The advertisement proposed is display of 2 no. internally illuminated fascia signs & 1 no. internally illuminated projecting sign.
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Decision: Appeal A Ref: APP/Q1445/A/10/2128171

1. I dismiss the appeal.

Decision: Appeal B Ref: APP/Q1445/H/10/2128211

2. I dismiss the appeal.

Appeal A

Main issue

3. The main issue is the effect that the development has on the character or appearance of the Brunswick Town Conservation Area.

Reasons

4. The appeal site is within the Brunswick Town Conservation Area which is characterised by its Regency and early-Victorian planning and architecture. The formality and order of the many classical buildings contribute in a positive way to the character and the appearance of the Conservation Area. The appeal building, which includes flats on the upper floors and shop units at ground floor level, is stated to date from about the 1930s. Its imposing neo-classical proportions and art deco detailing complement the scale and character of the nineteenth-century buildings in the locality, and thus, the building contributes positively to the character and the appearance of the Conservation Area. The

- original shop fronts would have respected the ordered appearance of the appeal building. However, some later unsympathetic replacement shop fronts have eroded this quality, and they detract from the character of the building.
5. The appeal premises include 2 adjacent ground floor shops. The development includes replacement shop fronts which have been installed. The Council do not object to the installation of the screened plant or to the installation of an automated teller machine (ATM) in the shop front. I see no reason to disagree.
 6. As the appeal site is within a conservation area, I shall take account of the statutory duty in section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended. The Development Plan includes the saved Policies of the *Brighton & Hove Local Plan 2005* (LP). Saved LP Policy QD5 seeks an interesting and attractive frontage at street level for pedestrians. Saved LP Policies QD10 and HE6 reflect the thrust of the statutory duty. The Council's *SPD02: Supplementary Planning Document: Shop Front Design* (SPD02) advises that well designed shop fronts which respect the proportions and architecture of the buildings above them, whilst retaining their own individual style, give shopping streets rhythm and harmony without monotony.
 7. The pilasters on each side and between the 2 shop units have been retained, but the proportions of the frames and glazing in each of the 2 shop fronts differs. The wide sliding door, whilst improving the accessibility of the shop, disrupts the rhythm of the mullions in one shop front, and the whole frame has a substantially deeper head to accommodate the sliding gear. Its minimal set back fails to adequately define the entrance, but draws attention to the unsympathetic proportions of the door. Thus, the 2 shop fronts have an inharmonious appearance which detracts from the character, proportions and generally consistent detailing in the upper floors of the appeal building. The fascia is not as deep as the similarly deep fascias on 5 of the 10 shop units in the frontage. This adds to its unsympathetic appearance. The appellant says that there are only 3 recessed entrances in the present frontage. However, the development has removed 2 recessed entrances from what is now a frontage of 8 shops including 2 double units. The sliding door at Tesco on the opposite side of the street is recessed so its circumstances differ from the development in this appeal. Thus, the development harms the character and appearance of the appeal building. In consequence, it fails to preserve or enhance the character or appearance of the Brunswick Town Conservation Area.
 8. My attention was drawn to the range of shop fronts in the locality, including 54 Western Road where there is no fascia at all. I have little information about them, and some may predate current Development Plan policy, so they are not very helpful to me in this appeal which I have dealt with on its merits. I note that the depth of fascia suggested by the Council is not defined by policy. However, in the absence of good reasons to do otherwise, the commonsense approach would be to harmonise with the proportions of the majority of the existing fascias in the same frontage in this historic Conservation Area. These include the adjoining and recently approved fascia at 57 Western Road, rather than those at 53 and 58 Western Road, referred to by the appellant, which are further away.
 9. I consider that the development harms the character and the appearance of the Brunswick Town Conservation Area. It is contrary to saved LP Policies QD5, QD10 and HE6, and national policy in Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5), as well as the advice in SPD02.

Appeal B

Reasons

10. The description on the application form is "alterations to shop front, including insertion of ATM together with associated advertisement signage and installation of screened and enclosed plant". As the Council's description on their decision notice more accurately describes the proposed advertisements, I have used it in the heading above.
11. The *Town and Country Planning (Control of Advertisements) (England) Regulations 2007* require that decisions made under the Regulations are made only in the interests of amenity and public safety. Section 54A of the *Town and Country Planning Act 1990* as amended, which has been replaced by section 38(6) of the *Planning and Compulsory Purchase Act 2004*, does not apply to advertisement appeals. I shall therefore have regard to the Development Plan as a material consideration in this appeal.
12. The Council have raised no concerns about public safety. The Council do not object to the proposed illuminated projecting sign, but its precise siting is not clear. I agree with those views.
13. There are temporary fascia signs at the site. The proposed fascia signs would differ in depth from the recently permitted fascia signs at 50 and 51 Western Road, and at 57 Western Road. Because the fascias would be shallower they would fail to respect the consistent depth of fascias that contributes to the cohesiveness of the shop frontage, and to the character and appearance of the appeal building.
14. The internally illuminated fascia at 55 Western Road would be a bulky addition which would project in front of the pilasters, which are important architectural features. This would damage their positive contribution to the integrity and character of the appeal building. Because of its large scale and its bulk, the internally illuminated canister lettering on the fascia at 56 Western Road, would be a strident and garish addition which would harm the ordered character and appearance of the appeal building. As the means of illumination for the advertisements on the 2 adjacent fascias would differ, the advertisements would also have an inconsistent character and appearance which would damage the uniformity in the appeal building. In consequence, these advertisements would fail to preserve or enhance the character or appearance of the Brunswick Town Conservation Area.
15. The corrosive effect of salt-laden seaside air and the ease of maintenance and cleaning are not sufficient reasons to allow these harmful signs. I consider that the proposed fascia advertisements would harm amenity. They would also be contrary to saved LP Policies HE9 and QD12, national policy in PPS5, and the guidance in the Council's *SPD07: Supplementary Planning Document: Advertisements*.

Conclusions: Appeals A and B

16. For the reasons given above and having regard to all other matters raised, the appeals fail.

Joanna C Reid

INSPECTOR



Appeal Decision

Site visit made on 8 November 2010

by Joanna C Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 26 November 2010

Appeal Ref: APP/Q1445/A/10/2130271

14-16 York Place, Brighton, East Sussex BN1 4GU

- 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 Harwood Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2009/01589, dated 3 July 2009, was refused by notice dated 3 February 2010.
 - The development proposed is subdivision of the existing residential unit at Number 14 to create a maisonette and a new self-contained cottage, construction of a loft style apartment at Number 15 on the first and second floors to infill the gap between Numbers 14 and 16, subdivision of the existing residential unit at Number 16 to create a maisonette and a new self-contained cottage, and refurbishment of the shop unit at Number 16 by the installation of a traditional shop front.
-

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are the effect that the proposal would have on:
 - Firstly, the street scene in York Place, and thus on the character or appearance of the Valley Gardens Conservation Area;
 - Secondly, the living conditions of the existing occupiers at 13 and 17 York Place with regard to outlook, and the living conditions of the future occupiers with regard to outlook, daylight and sunlight, overlooking and privacy, and amenity space;
 - Thirdly, the vitality and viability of the London Road Town Centre;
 - Fourthly, highway safety and the free flow of traffic in the nearby streets; and
 - Fifthly, whether the proposal would provide sufficient cycle parking.

Reasons

Character and appearance

3. The appeal site is within the Valley Gardens Conservation Area which is characterised by a range of different historic terraces, groups of buildings and larger buildings. They are linked by the extensive mostly public gardens which run the length of the Conservation Area and form a green valley from Park Crescent to the sea. Close by, the terraces in York Place include mainly

- commercial uses at ground floor level, and commercial and residential uses on the upper floors.
4. The appeal site presently includes 2 taller terraced buildings at 14 and 16 York Place which have a lower crenellated brick and stone archway between them at 15 York Place. The distinctive archway contributes positively to the street scene in York Place, and to the special historic character and appearance of the Valley Gardens Conservation Area. It also provides a valuable break in the tight frontage development in York Place. The archway allows important views through and, more importantly, above it, towards the significant taller Brighton & Hove City College building at the back, which contributes to the setting of the Valley Gardens Conservation Area in the wider townscape.
 5. The buildings at 14 and 16 York Place have a similar 3-storey appearance, but 16 York Place also includes accommodation in its roof space. The building at 14 York Place includes a barbers' shop at the front of the site, which is in use. It also includes a maisonette at the back and on the upper 2 floors which is not currently occupied, but some of its ground floor accommodation is being used in connection with the shop. The building at 16 York Place includes a ground floor shop with residential accommodation on the upper floors, but it is vacant and in a dilapidated state, with the shop front boarded up.
 6. The proposed development would include the conversion and extension of the existing buildings. It would include 2 shops facing York Place, 2 maisonettes on the upper floors of 14 and 16 York Place, 2 attached flat-roofed 2-storey dwellings at the back of 14 and 16 York Place, and a 2-storey pitched-roofed maisonette within and above the archway at 15 York Place.
 7. The open ironwork gates to the archway would be restored, so the openness through the archway would largely be retained. However, the proposed maisonette at 15 York Place would almost fill the gap above the archway, and its roof would be taller and more dominant than the roof at 14 York Place. The upper floor would be set back from the front of the archway to provide a balcony, but the resulting form of the extension would be poorly-related to the terraced buildings on each side. Its taller east-facing glazing would contrast with the scale and lower head heights of the ordered fenestration in the adjoining buildings, and it would harmfully disrupt the rhythm of the fenestration in the terrace.
 8. Because of its unacceptable scale, bulk, height, and siting, the maisonette would intrude into the important openness over the archway, and it would block out much of the significant view of the Brighton & Hove City College building beyond. Due to its scale, its height, its design and its use of materials, it would also dominate the archway, and it would unacceptably erode its integrity and its significance as a historic feature in the street scene in York Place. In consequence, it would fail to preserve or enhance the character or the appearance of the Valley Gardens Conservation Area.
 9. The appellant says that there was a terraced building at 15 York Place, which was demolished in about the 1890s to give access to the buildings behind the site, and that the proposal would reinstate a similar building mass at first and second floor level whilst retaining the archway. However, that building has long been gone. It is the archway, and the spaciousness through and above it, that now contributes positively to the street scene in York Place and to the character and the appearance of the Valley Gardens Conservation Area.

10. The 2 dwellings proposed at the back of 14 and 16 York Place would be 2-storeys tall, and they would include almost all of the remaining undeveloped land on their respective plots. The fenestration and detailing of the dwellings would potentially be sympathetic to the traditional qualities of the existing buildings at the site, but its squat flat-roofed form and contemporary sedum roofs would be at odds with them. Because their design and detailing would be neither contemporary nor traditional the dwellings would have an inconsistent character and appearance. Thus, they would not make a positive contribution to the visual quality of the existing buildings or the environment, and they would fail to preserve or enhance the character or appearance of the Valley Gardens Conservation Area. The benefits of the sustainable elements in the scheme, including the permeable paving and sedum roofs, would not outweigh this harm.
11. I consider that the proposal would harm the street scene in York Place, and that it would harm the character and the appearance of the Valley Gardens Conservation Area. It would be contrary to saved Policies QD1, QD2, QD4, QD14 and HE6 of the *Brighton & Hove Local Plan 2005* (LP), and national policy in Planning Policy Statement 5: *Planning for the Historic Environment*, as well as the advice in the Council's *Supplementary Planning Guidance Note 1 Roof Alterations & Extensions*.

Living conditions of existing and future occupiers

12. Because of their height, their width, and their depth, the dwellings behind 14 and 16 York Place would have an overbearing and oppressive impact on the outlook from the rear-facing first floor windows in the neighbouring buildings at 13 and 17 York Place which would harm the occupiers' living conditions. There would seem to be a taller extension beyond 17 York Place, and another at 12 York Place which I saw at my visit. I have little information about them, but their existence is not a sufficient reason to allow this harm.
13. Turning to the future occupiers, one of the 2 ground floor living room windows in each of the dwellings behind 14 and 16 York Place would face one ground floor living room window in the other. The windows in the un-named first floor rooms would do the same. Because the windows would be about 5.3m apart, the mutual overlooking that could occur would cause an unacceptable loss of privacy to the occupiers. This could be overcome by the use of blinds, but it would create oppressive living conditions in those rooms which would also harm the occupiers' living conditions.
14. The gardens around St Peter's Church, on the opposite side of York Place, would provide a fairly open outlook for the occupiers of the apartments in the existing buildings at 14 and 16 York Place and the maisonette at 15 York Place. However, due to their closeness to one another, the outlook from the dwellings at the back of 14 and 16 York Place would be enclosed and oppressive, which would harm the occupiers' living conditions.
15. Because of their 2-storey height and their distance apart the 2 dwellings at the back of 14 and 16 York place would be likely to receive adequate daylight. However, due its orientation, and the scale and siting of the nearby buildings, the dwelling at the back of 14 York Place would receive little sunlight for much of the year. There would also be no useable private amenity area where the occupiers could sit outside and enjoy the sunshine, so it would provide poor living conditions for the occupiers.

16. The occupiers of the south-facing dwelling at the back of 16 York Place would be able to enjoy reasonable levels of sunlight in their home, but they too would have no useable private amenity space. The landings leading to the maisonettes in the existing buildings at 14 and 16 York Place would be too narrow, too enclosed and too inconvenient to provide useable private amenity areas for the occupiers. The narrow balcony over the archway in the maisonette at 15 York Place would have some privacy because of its height, but it would be exposed to the noise of the fairly busy traffic in York Place.
17. The communal courtyard would also offer little privacy because the archway would remain largely open to the street. Thus, it could be overlooked by passers by in York Place, as well as the comings and goings of other occupiers of the development associated with the cycle, recycling and refuse storage, and their visitors. Moreover, in the absence of details to show otherwise, the cycles in their stands, and the refuse and recycling storage for the development would be unlikely to fit into the restricted spaces under the external stairs in the archway. This would further erode the limited useable space in the courtyard. The emergency pedestrian access and egress route between the Brighton & Hove City College buildings and York Place would also be through the courtyard, and its usability would be compromised by the planters, and, possibly, the cycles and storage under the archway. In consequence, the courtyard would provide little useable amenity space for the occupiers of the 5 dwellings proposed.
18. The availability of ample public open space in the local area, including at The Level, would not overcome the lack of private outdoor space at the site. The occupiers of the dwellings could reasonably expect lower standards of private amenity space in this town centre location compared with those living in suburban streets. It is also not disputed that there is a shortage of housing sites within the city, and that national and local policy seek the efficient and effective use of land in urban areas. However, the harm to the living conditions of the existing and future occupiers that I have found, together with the lack of private amenity space leads to the conclusion that the proposal would be an overdevelopment of the site.
19. I consider that the proposal would harm the living conditions of the existing occupiers with regard to outlook, and that it would harm the living conditions of the future occupiers, with regard to outlook, overlooking and loss of privacy, sunlight, and private amenity space. It would be contrary to saved LP Policies QD3, QD14, QD27 and HO5.

Vitality and viability

20. The appeal site is within the designated London Road Town Centre, but it is outside the prime retail frontage. The proposal would include a modest increase in the floor area of the shop unit at 14 York Place by providing a store in place of a staircase, but it would retain the awkwardly-shaped interior which detracts from the usability and attractiveness of the retail space. The shop unit at 16 York Place would be reduced by a similar modest amount.
21. The 2 shops may have operated successfully historically, especially if the shopkeeper lived above the shop and could use the facilities in the dwelling during the day. However, the shop units proposed would be too small to meet modern day needs. By contrast with the shop at 14 York Place, where the accommodation at the back of the building has provided a kitchen and rest room which has been used by the business, the shop at 16 York Place has a

small rear extension which could not sufficiently meet these needs, and the shop has been unoccupied for about 5 years. The ground floor accommodation at the back of 14 York Place, including the dining room, kitchen, bathroom and yard, is stated by the appellant to be part of the maisonette above the shop. However, it would seem to have enabled the present shop to survive where the shop at 16 York Place has failed.

22. Whilst there would be no net loss of retail floor space in the proposed development, the units proposed would not be viable because there would be insufficient ancillary accommodation in addition to meet contemporary retail needs. In consequence, the shops would not be attractive to future occupiers, and it is likely that they would not be occupied. If the shop units were to be unoccupied, they would not attract pedestrian activity in York Place, and this would damage the vitality and viability of the London Road Town Centre.
23. The proposed shop front at 16 York Place would clearly enhance the present character and appearance of the shop, but it would not overcome the harm due to the insufficient size of the proposed retail units. I consider that the proposal would harm the vitality and viability of the London Road Town Centre. It would be contrary to saved LP Policy SR5.

Highway safety and the free flow of traffic

24. The site is within a sustainable location with good access to public transport, shops and local services, where the proposed car free development would be acceptable. Since the Council's decision notice was issued, the Council has issued a policy note, *Planning – Temporary Measures to assist the Development Industry*, which states that transport contributions will only be sought for schemes of 5 residential units and above. As there would be a net increase of 3 dwellings at the site, a planning obligation for a financial contribution towards local sustainable transport infrastructure would not be necessary to make the development acceptable.
25. The Council also seeks a planning obligation for an amendment to the existing Traffic Regulation Order (TRO) to prevent the future occupiers of the development being eligible for on-street parking permits. However, the site is within Parking Zone Y, where there was about a 9 month waiting list for a permit at the time that the appellant's statement was written. As there would be no on-site car parking and future occupiers would be unable to obtain a parking permit to park in the nearby streets, the scheme would be car free without the need for an amendment to the TRO. As the Council can control the issue of parking permits, an amendment to the TRO would not be necessary to make the proposal genuinely car free in the longer term.
26. I therefore consider that the proposal would not be likely to add to parking stress and congestion in the nearby streets which would impede the free flow of traffic and endanger highway safety. It would satisfy the thrust of saved LP Policies TR1, TR19, SU15, QD28 and HO7 as well as the relevant guidance in the Council's *Supplementary Planning Guidance Note 4 Parking Standards*.

Cycle parking

27. Cycle spaces under the stairs by the south wall of 16 York Place are noted on drawing number AC/14-16YorkPI/02, but the positions of the cycles and their stands are not shown. The cycle parking is particularly relevant as the proposal would be car free. Because of the physical constraints imposed by the

buildings it is not clear how many spaces could be accommodated or how useable the cycle spaces would be. It is likely that the cycles in the 9 spaces required by local policy would project into the open space under the archway. This could have an unacceptable cluttered appearance which would harm the character and appearance of the archway, and the street scene in York Place, and thus, it would harm the character and the appearance of the Valley Gardens Conservation Area. For these reasons, the proposed cycle parking could not reasonably be dealt with by condition.

28. In the absence of an acceptable scheme for cycle parking, I am unable to conclude that the proposal would provide sufficient cycle parking. This would be contrary to saved LP Policy TR14 and the relevant guidance in the Council's *Supplementary Planning Guidance Note 4 Parking Standards*.

Conclusions

29. I have found that the proposal would not be likely to endanger highway safety or to impede the free flow of traffic in the nearby streets, and that it would satisfy the relevant saved LP Policies and Supplementary Planning Guidance in this regard. However, this would be substantially outweighed by the harm that the proposal would cause to the street scene in York Place, and thus to the character and the appearance of the Valley Gardens Conservation Area; the harm to the living conditions of the existing occupiers with regard to outlook, and the harm to the living conditions of the future occupiers, with regard to overlooking and privacy, outlook, sunlight, and private amenity space; and the harm to the vitality and viability of the London Road Town Centre. The absence of details to show that the cycle parking could be acceptably accommodated at the site adds to my concerns. In these regards it would be contrary to the relevant saved LP Policies, national policy, and Supplementary Planning Guidance. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should fail.

Joanna C Reid

INSPECTOR



Appeal Decision

Site visit made on 8 November 2010

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 29 November 2010

Appeal Ref: APP/Q1445/H/10/2133368

Downs Filling Station, Ditchling Road, Brighton BN1 4SG

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Primesight Ltd against the decision of Brighton and Hove City Council.
 - The application Ref BH2010/00510, dated 26 February 2010, was refused by notice dated 3 June 2010.
 - The advertisement is 1 no. internally illuminated pole mounted display unit.
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Decision

1. I dismiss the appeal.

Main issue

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

Reasons

3. The display unit is a large internally illuminated sign erected on poles about 4.4m high. The sign itself is about 1.9m high and about 1.3m wide. It is prominently positioned next to the shop and close to the footway. It is visible from both approaches along Ditchling Road. Although the display unit adjoins a petrol filling station and several small shops, it is not within predominantly commercial surroundings since there is a mix of residential and other uses along this part of Ditchling Road.
 4. The display unit, due to its excessive size and prominence, has a dominating visual impact on the street scene. It appears out of place and adds to a clutter of signage in this location. Paragraph 9 of Appendix E to the Annex to Circular 03/2007 says that in mixed commercial / residential areas much greater care should be taken in the siting of poster advertising than in a wholly commercial area. I conclude that there is harm from the advertisement to the character and appearance of the area.
 5. Although the Council refers to a development plan policy and a supplementary planning document in the reason for refusal, the regulations to control advertisements require that decisions are made only in the interests of amenity
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and public safety. These policies alone cannot be decisive, but I have taken them into account as material considerations.

Sue Glover

INSPECTOR



Appeal Decision

Site visit made on 9 November 2010

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 30 November 2010

Appeal Ref: APP/Q1445/A/10/2135492
36 Walsingham Road, Hove, East Sussex BN3 4FF

- 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 Roy Pook against the decision of Brighton and Hove City Council.
 - The application Ref BH2010/01431, dated 23 December 2009, was refused by notice dated 13 July 2010.
 - The development proposed is the creation of a one bedroom flat including a first floor rear extension, 4 roof lights and the insertion of new windows on the north and south original flank walls.
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Decision

1. I allow the appeal, and grant planning permission for the creation of one 2-bedroom flat including a first floor rear extension, 4 roof lights and the insertion of new windows on the north and south original flank walls at 36 Walsingham Road, Hove, East Sussex BN3 4FF in accordance with the terms of the application, Ref BH2010/01431, dated 23 December 2009, subject to the schedule of conditions set out in Annex 1.

Main issue

2. The main issue is the effect of the proposed first floor rear extension on the living conditions of the residents of no. 34 Walsingham Road in respect of outlook.

Reasons

Outlook

3. The proposed rear extension would project some 2.7m from the rear wall above part of the existing flat roofed single-storey rear extension. The extension would be significantly lower than the main roof and eaves. There would remain a gap of about 1m between the building at no. 36 and the boundary with the adjoining dwelling at no. 34.
 4. There are first and ground floor clear glazed windows in the rear and flank elevations of no. 34 closely positioned to the boundary with no. 36. No. 34's rear facing first floor bedroom window is at a high level. The roof of the
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- proposed extension would slope away from this window so that there would be no obtrusive or dominating effect.
5. The outlook from no. 34's ground floor rear facing room is already somewhat enclosed within a narrow light well. It is closely positioned near the boundary fence on one side with the single-storey extension at no. 36 protruding above the fence, and the rear projection of no. 34 on the other side. The outlook from this room would not be significantly altered by the proposed first floor extension.
 6. The 2 flank wall windows at no. 34 are a bedroom window on the first floor and a kitchen window on the ground floor. The kitchen window is secondary with patio doors facing the rear garden, which are unaffected by the proposed extension. There would therefore remain an acceptable outlook from the kitchen of no. 34.
 7. The first floor bedroom flank window is a principal window. It faces the existing first floor flank wall of no. 36, although this wall is set back from the boundary. Whilst the new wall would appear more dominating from this bedroom window, there would remain views across the flat roofed single storey extension. I therefore do not consider that the outlook from this bedroom window would be worsened to the extent that it would significantly harm residents' living conditions.
 8. The rear light well area of no. 34 currently houses a garden store and kayaks. There is limited space in the rear light well compared to the rest of the garden at no. 34 so that its further enclosure by the proposed extension would not unacceptably harm residents' living conditions in respect of the use of the garden.
 9. I conclude that there would be no significant increased sense of enclosure and therefore no material harm to the living conditions of the residents of no. 34 in respect of outlook. The proposal in this respect does not conflict with Policy QD27 of the *Brighton and Hove Local Plan 2005*.

Other matters and conclusions

10. Taking into account the scale and position of the proposed extension, and the position and orientation of windows in respect of no. 34's north facing projection, there would be no significant loss of daylight or sunlight to the residents of no. 34 from the proposal. There is no persuasive evidence before me to indicate that the proposal would introduce any security threat to nearby residents, or that the new bedroom created would have insufficient internal space.
11. The introduction of a new bedroom window on the existing flank wall of no. 36 would directly face the side wall of no. 34. There would be only oblique views towards no. 34's north facing windows, so that there would be no direct overlooking. Due to the positioning of the proposed roof lights and the separation distance, there would also be no additional overlooking towards no. 49 Carlisle Road. There would therefore be no harm to nearby residents' privacy.

12. The proposed rear extension is small and in keeping with the design of the existing building. Furthermore, it would not be readily visible from the street. The proposed window alterations are small scale and would not appear unduly prominent. The proposal would have no significant effect on the character of the host building and it would therefore preserve the character and appearance of the Sackville Gardens Conservation Area.
13. I have imposed conditions regarding details of external materials and the roof lights in order to ensure a satisfactory finished appearance. There are also conditions to ensure the implementation of the refuse and recycling facility and cycle storage facility.

Sue Glover

INSPECTOR

Annex 1

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: the 1:1250 location map, the 1:500 site plan, the existing plans dated Nov 09, the proposed details dated March 10, the daylight assessment dated March 10, and additional details, sheds for cycle storage and recycling and refuse storage.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The roof lights hereby permitted shall be of a conservation type with steel or cast metal frames and be fitted and maintained at a level flush with the roof slope.
- 5) The provision of storage facilities for waste and recycling, and for bicycles, shall be carried out in accordance with the approved details. The storage facilities shall be made available prior to the first occupation of the one bedroom flat hereby permitted and thereafter retained at all times.



Appeal Decision

Site visit made on 8 December 2010

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

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

Decision date: 14 December 2010

Appeal Ref: APP/Q1445/D/10/2139250

81 Pembroke Crescent, Hove, BN3 5DF

- 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 Ben Watkins against the decision of Brighton & Hove City Council.
 - The application Ref: BH2010/02075, dated 7 July 2010, was refused by notice dated 27 August 2010.
 - The development proposed is roof extensions over existing flat roof sections, including new dormer window to West elevation and new dormer window to East elevation.
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Procedural Matters

1. The appeal application is a revised scheme to that granted planning permission on appeal (APP/Q1445/D/10/2121001). The revised scheme incorporates a dormer window to the east elevation, instead of a roof-light in a different position, and in all other respects is the same as that permitted.
2. The appeal site is within the Pembroke and Princes Conservation Area (PPCA) for which I have a duty under section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* to pay special attention to the desirability of preserving or enhancing its character or appearance.

Decision

3. I dismiss the appeal.

Main issue

4. I consider the main issue in this case to be the effect of the proposed development on the living conditions of the adjoining occupiers, with particular reference to privacy.

Reasons

5. The appeal property looks to be the historic remains of a larger area now occupied by more recent houses to the east that back closely onto it. The appeal dwelling is a detached lodge building that abuts its rear plot boundary, which is also the shared flank boundary to nos.12 and 14 Pembroke Gardens. The dwelling is in a sensitive situation because of its siting and orientation, which give rise to mutual overlooking between adjoining occupiers.
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6. The proposed development would curtail the degree of existing mutual overlooking. However, it would introduce a larger and more prominent window than that of the permitted scheme in the east facing elevation. The thrust of the policies QD14 and QD27 of the Brighton & Hove Local Plan 2005 (LP) is to protect residential amenity, including from loss of privacy.
7. The Appellant produces cross-sectional drawings to show that the proposed dormer window would give a more restricted angle of view than the permitted roof-light. Whereas that may be true for the position of the observer shown, it would apply to the upward angle only (the downward one would remain the same). Moreover, in the case of the dormer, the observer is able to move closer to the window than shown, thereby obtaining a substantially increased angle of downward vision. I am left in no doubt that the proposed dormer window would result in a considerable propensity for overlooking of both nos.12 and 14.
8. Due to the above, I find the different position in the roof plane of the proposed dormer to that of the permitted roof-light to be insignificant. In my opinion, what is more telling than that is the prominence of the proposed dormer as it would heighten the perception of overlooking.
9. I acknowledge that there is substantial boundary planting that would block some views across to the adjoining occupiers, particularly those at no.14, but I give this little weight for a number of reasons. Firstly, the planting is under the control of the Appellant and may not be there in perpetuity. Secondly, from my examination of no.14, I came to the conclusion that it is a most undesirable and unwelcome feature because it gives rise to overbearing enclosure. Lastly, from my examination of no.12, I saw that such planting has little effect.
10. Given the orientation and proximity of the three houses concerned (the appeal house and nos. 12 & 14), the revised scheme is inferior to that permitted. I read my colleague's decision to mean that the permitted scheme is on the limit of acceptability, in the interests of curtailing the existing high levels of overlooking from the appeal house. From the evidence of my own site visit, I have no reason to take a different view.
11. I conclude on the main issue that the proposed development would unacceptably affect the living conditions of the adjoining occupiers, in conflict with the requirements of policies QD14 and QD27 of the Development Plan.

Other Considerations and Conclusion

12. I share my colleague's reasoning concerning the original permitted scheme that the character and appearance of the PPCA would be enhanced, through the removal of unpleasant rear dormer windows and uncharacteristic flat roof ground extensions. The revised scheme before me would do likewise.
13. I have considered all other matters raised, but none alters my conclusion on the main issue, which leads me to dismiss this appeal.

B C Scott

INSPECTOR



Appeal Decision

Site visit made on 23 November 2010

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 30 November 2010

Appeal Ref: APP/Q1445/D/10/2138811

8 Peacock Lane, Brighton, East Sussex BN1 6WA

- 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 David Daly against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01750, dated 26 May 2010, was refused by notice dated 29 July 2010.
 - The development proposed is a two storey extension to the rear including a roof conversion (hip to gable).
-

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this appeal are the effect of the proposal on the living conditions of neighbours in terms of outlook, light and visual impact and the effect on the character and appearance of the property and the area.

Reasons

3. The proposed extension would be across the full width of the house and the proposal would incorporate a new roof with barn ends. There is a first floor bay window serving a bedroom in the side wall of No10 which would be about 1.5m from the wall of the extension. The proposed wall would project about 5m beyond the bay window and more than one metre above it so that it would almost entirely occupy the outlook from the window. The extension would also substantially reduce the amount of light available to this window. The appellant has advised this is a secondary window but on my site visit I noted that the closest primary window was some distance further along the rear facing wall, which increases the importance of the bay window.
4. I have taken account of the BRE Report: *Site layout planning for daylight and sunlight*, the 45° rule and that the nearest first floor rear facing window at No10 has been blocked up. However, it is clear there would be a considerable loss of outlook and daylight to the side facing bay window at No10 and the proposed extension would be detrimental to the living conditions of the occupiers.
5. No6 is set forward of No8 and is at a lower level. The proposed 2 storey extension would infringe on the 45° line from the closest first floor rear facing window at No8 and, despite the trees on the boundary, the large unrelieved area of wall would dominate the conservatory and closest part of the garden.

Accordingly it would detract from the living conditions of the occupiers of No6 in terms of visual impact.

6. The houses in this location are of a similar design with hipped roofs and many have been extended. The proposal includes a large flat area of roof, which would be noticeable when seen at an angle, and barn ends that would be different to the prevailing roof type. The roof would appear larger than others in the area but the replacement of the incongruous flat roof to the existing side extension would be beneficial. While the proposed roof would not be the same as others, the houses are on a slope and the variation in height, together with the variations in roof shape resulting from previous extensions, means the proposal could be absorbed without significant detriment to the character and appearance of the area.
7. Although I have concluded that the scheme would not affect the character and appearance of the area to an unacceptable extent, I consider that on balance, that is insufficient to outweigh my conclusion on the effect on the living conditions of neighbours. The proposal conflicts with Policies QD14 and QD27 of the Brighton and Hove Local Plan which include the aim to protect the living conditions of the occupiers of adjoining properties.
8. I have seen no objections to the proposal from neighbours but, in itself, this is insufficient to justify the development. The proposal would include the removal of the elevated terrace which would improve the privacy of neighbours' rear gardens and the extension itself would reduce overlooking of the appellant's garden. However, neither this nor any other matter raised outweighs my conclusions on the main issues.
9. For the reasons given above I conclude that the appeal should be dismissed.

J M Trask
INSPECTOR



Appeal Decision

Site visit made on 23 November 2010

by J M Trask BSc (Hons) CEng MICE

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

Decision date: 30 November 2010

Appeal Ref: APP/Q1445/D/10/2138828
118 Eldred Avenue, Brighton BN1 5EH

- 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 White against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/02159, dated 12 July 2010, was refused by notice dated 8 September 2010.
 - The development proposed is the erection of a rear raised deck.
-

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is the effect of the proposed deck on the living conditions of the occupiers of the neighbouring property.

Reasons

3. The appeal site is a semi-detached property set on the side of a hill with the gardens sloping steeply downwards towards the rear. The proposed deck would be level with the existing ground floor of the house which is about 2m above external ground level. The deck would allow extensive views over the garden of No120. The potential for overlooking already exists, from neighbouring properties as well as the existing narrow terrace and the rear facing windows of the house. However, the deck would allow more intensive use than the existing terrace and the perception of overlooking from an outdoor space is more noticeable and disturbing than from a window.
4. In order to overcome any loss of privacy the appellant has proposed the inclusion of a glazed screen on the side of the deck. This would prevent overlooking of the rear windows of No120 and the area of garden closest to the house. While it would not obscure views of most of the garden, including the sitting out area at the bottom of the garden, it would improve the privacy of the areas most frequently used by the occupiers of the adjoining property.
5. The top of the screen would be about 4m above ground level. The rear wall of No120 is set back about one metre from that at No118 and the deck and screen would extend to about 5m from the rear wall of No120. The structure would dominate the area of the adjoining garden closest to the house and would be overbearing, it would also overshadow this part of the garden in the late morning. In addition the proposed deck would provide a large area for

outdoor seating and there would be a potential for increased noise and disturbance, particularly since the deck would be elevated.

6. There would be some limited improvement to the privacy of some areas but this would not outweigh the increased overlooking and detrimental visual impact. Taking all the factors into account I conclude that, by reason of the proposed height of the deck, the proposal would be detrimental to the living conditions of the occupiers of the neighbouring property. The proposed development would be contrary to the provisions of Policies QD14 and QD27 of the Brighton and Hove Local Plan which include the aim to protect the living conditions of the occupiers of adjoining properties. I have taken into account the support for the proposal by the occupiers of the adjoining property but this support in itself cannot justify a proposal that is at odds with the development plan.
7. For the reasons given above I conclude that the appeal should be dismissed.

J M Trask
INSPECTOR

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****HANGLETON & KNOLL**

BH2010/02193

179 Hangleton Valley Drive, Hove

Loft conversion incorporating dormers to front and rear.

APPEAL LODGED

25/11/2010

Delegated

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

BH2010/02288

344 Dyke Road, Brighton

Erection of single storey front extension at first floor level incorporating second floor balcony. Loft conversion including raising ridge height, hip to gable ends and pitched roof dormer on South elevation.

APPEAL LODGED

30/11/2010

Delegated

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

BH2010/02174

106 Woodland Drive, Hove

Construction of rear dormer.

APPEAL LODGED

09/12/2010

Delegated



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 14th January 2011

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

28 Marine Drive, Rottingdean

Planning application no: BH2009/02228

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

Decision: Committee

Type of appeal: Informal Hearing

Date: **WITHDRAWN**

Location: Hove Town Hall

Campbell House, 21 Campbell Road, Brighton.

Planning application no: BH2009/00446

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

Decision: Delegated

Type of appeal: **WRITTEN REPS**

Date: TBC

Location: TBC

41 Ladies Mile Road, Brighton

Planning application no: BH2010/01132

Description: Change of Use from betting shop (A2) to hot food take-away (A5) with the erection of a rear extension, new shop front and extract duct.

Decision: Committee

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

Enforcement Appeal: Block K, New England Quarter, Brighton

Enforcement no: BH2010/0494

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

Decision:

Type of appeal: Public Inquiry

Date: 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	N/A	N/A	N/A
18 May 2010	N/A	N/A	N/A
8 June 2010	N/A	N/A	N/A
29 June 2010	Former Royal Alexandra Children's Hospital, Dyke Road, Brighton	Regency	<i>A) Conversion scheme</i> Conversion of a retained main building to provide 118 units. The scheme is 100% private housing and does not include provision of a GP surgery. <i>B) New building scheme</i> Demolition of all existing buildings with a new development comprising 136 units with 54 affordable units (40%) and a GP surgery.
20 July 2010	The Keep, Wollards Field, Lewes Road, Brighton	St Peter's & North Laine	A new historical resource centre for East Sussex, Brighton & Hove.
10 August 2010	Former Sackville Hotel, Kingsway, Hove	Westbourne	Construction of 47 flats (mix of 1, 2, 3, & 4 bed units) within 6 to 9 floor building, and to incorporate basement parking of 49 spaces, and 2 spaces at ground floor level.

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

Date	Address	Ward	Proposal
31 August 2010	N/A	N/A	N/A
21 September 2010	3Ts	East Brighton	3T's (teaching, tertiary & trauma). Comprehensive redevelopment of southern half of RSCH on Eastern Road to provide replacement modern clinical facilities over three phases.
12 October 2010 Did not go ahead	Astoria	St Peter's & North Laine	Demolition of existing listed building and proposed erection of part 6 and part 2 storey building. The 2 storey element will contain smaller starter units whilst the 6 storey element will provide flexible B1 office floorspace with a café on the ground floor. The scheme also proposes to make improvements to Blenheim Place.
2 November 2010	Astoria	St Peter's & North Laine	Demolition of existing listed building and proposed erection of part 6 and part 2 storey building. The 2 storey element will contain smaller starter units whilst the 6 storey element will provide flexible B1 office floorspace with a café on the ground floor. The scheme also proposes to make improvements to Blenheim Place.
2 November 2010 Will not go ahead	Park House	Hove Park Ward	Demolition of former residential language school buildings and the residential redevelopment of the site by way of flats in buildings of between 4 and 5 storeys
23 November 2010	No Presentation Planned		
14 December 2010	Block J, Brighton Station	St Peters and 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
Date	Address	Ward	Proposal
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			
22 February 2011			
15 March 2011			
26 April 2011			
17 May 2011			

Subject:	Stanmer House, Stanmer Park, Brighton Request to vary S106 Agreement signed in connection with planning permission BH2004/03712/FP for change of use of ground floor from office use to art gallery, public exhibition, conference and reception rooms for public and private functions. First and second floor to retain existing office use.		
Date of Meeting:	14 January 2010		
Report of:	Director of Environment		
Contact Officer:	Name: Jonathan Puplett	Tel: 292525	
	E-mail: Jonathan.puplett@brighton-hove.gov.uk		
Wards Affected:	Hollingdean and Stanmer		

1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the Section 106 Agreement dated 12 July 2006 in connection with planning permission BH2004/03712/FP, in order to remove the requirement to provide a 3 metre wide route open to the public across the lawns to the south west of Stanmer House, required under clause 3.4 of the Section 106 Agreement.

2. RECOMMENDATION:

- 2.1 That the proposed variation be agreed subject to requirements that an alternative access route be formed and available for use and all associated landscaping be carried out prior to the access across the lawn being closed. Furthermore the temporary fencing currently in situ bisecting the lawn would be required to be removed within 28 days of the alternative access route being made available for use.

3. BACKGROUND INFORMATION:

- 3.1 Planning permission was granted in January 2007 (ref. BH2004/03712/FP) for the change of use of ground floor of Stanmer House from office use to art gallery, public exhibition, conference and reception rooms for public and private functions. The first and second floors were to remain in office use.
- 3.2 Approval was subject to a Section 106 Obligation, Clause 3.4 of which is worded as follows:

'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 BH2010/02000, 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 is sought 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 is also proposed 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 BH2007/01206) and landscaping (proposed under applications BH2007/01206 and BH2010/02000) 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 BH2010/02000 the works proposed to enclose the lawns and create an alternative access route are on balance considered acceptable.
- 5.2 The draft variation if approved would ensure that the alternative access route proposed 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.

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.