



**Brighton & Hove  
City Council**

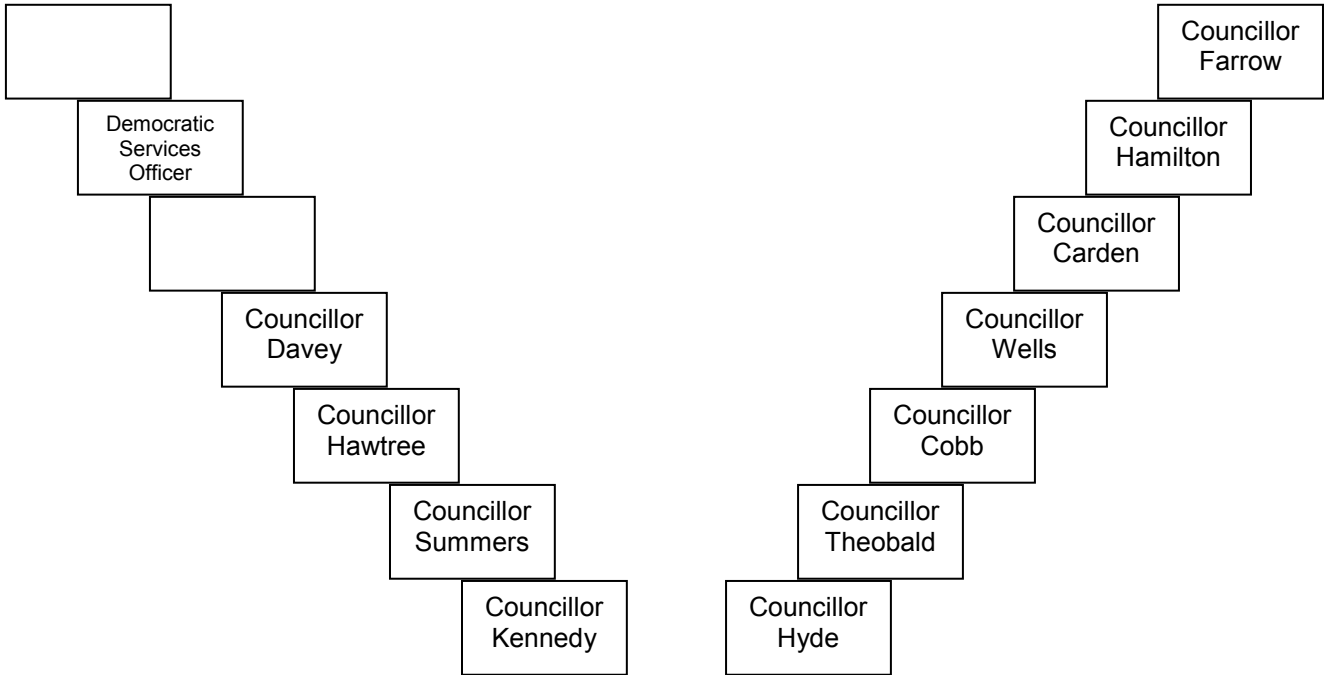
# Planning Committee

Title:	<b>Planning Committee</b>
Date:	<b>1 February 2012</b>
Time:	<b>2.00pm</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<p><b>Councillors:</b> MacCafferty (Chair), Hyde (Deputy Chair), Carden (Opposition Spokesperson), Cobb, Davey, Farrow, Hamilton, Hawtree, Kennedy, Summers, C Theobald and Wells</p> <p><b>Co-opted Members:</b> Mr Graham Towers (Conservation Advisory Group)</p>
Contact:	<p><b>Ross Keatley</b> Democratic Services Officer 01273 291064 ross.keatley@brighton-hove.gov.uk</p>

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# Democratic Services: Meeting Layout

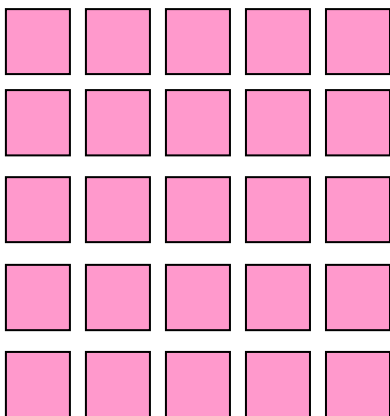
Senior Solicitor      Chairman      Head of Development Control



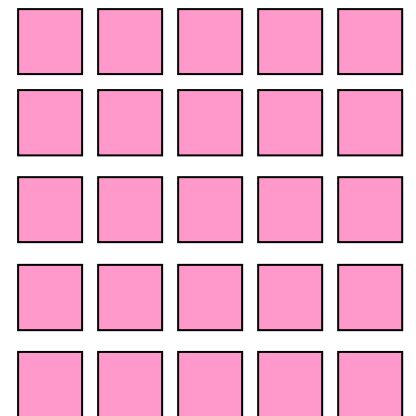
Chairman of CAG

Officers      Officers

Press



Public Seating



Public Seating

AGENDA

**127. 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 or Lobbying - All Members present to declare 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, and to declare any instances of lobbying they have encountered regarding items on the agenda.
- (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.*

**128. MINUTES OF THE PREVIOUS MEETING**

**1 - 12**

Minutes of the meeting held on 11 January 2012 (copy attached).

**129. CHAIR'S COMMUNICATIONS**

**130. APPEAL DECISIONS**

**13 - 74**

(copy attached).

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

**75 - 78**

(copy attached).

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

(copy attached).

**133. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS**

## PLANNING COMMITTEE

(copy attached).

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

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

(copy circulated separately).

### **136. TO CONSIDER AND NOTE THE CONTENT OF THE REPORTS DETAILING DECISIONS DETERMINED BY THE LOCAL PLANNING AUTHORITY INCLUDING DELEGATED DECISIONS**

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

Members are asked to note that plans for any planning application listed on the agenda are now available on the website at:

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

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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## PLANNING COMMITTEE

area.

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For further details and general enquiries about this meeting contact Ross Keatley, (01273 291064, email [ross.keatley@brighton-hove.gov.uk](mailto:ross.keatley@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk).

Date of Publication - Tuesday, 24 January 2012



### BRIGHTON & HOVE CITY COUNCIL

#### PLANNING COMMITTEE

2.00pm 11 JANUARY 2012

#### COUNCIL CHAMBER, HOVE TOWN HALL

#### MINUTES

**Present:** Councillors MacCafferty (Chair), Hyde (Deputy Chair), Carden (Opposition Spokesperson), Cobb, Davey, Farrow, Hamilton, Hawtree, Summers, Wells, Pidgeon and Randall

**Co-opted Members:** Mr Duncan Cameron, CAG

**Officers in attendance:** Jeanette Walsh, Head of Development Control; Nicola Hurley, Area Planning Manager (West); Jason Hawkes, Planning Officer; Andy Renaut, Head of Transport Strategy and Projects; Geoff Bennett, Senior Planner (Conservation); Francesca Iliffe, Sustainability Officer; Hilary Woodward, Senior Lawyer and Ross Keatley, Democratic Services Officer.

#### PART ONE

#### 113. PROCEDURAL BUSINESS

##### 113a Declarations of substitutes

113.1 Councillor Randall was present in substitution for Councillor Kennedy, and Councillor Pigeon was present in substitution for Councillor Carol Theobald.

##### 113b Declarations of interests

113.2 Councillor Carden declared a personal but non prejudicial interest in application BH2011/02824 as he had, in the past, been a governor of the school.

113.3 Councillor Hamilton declared a personal but non prejudicial interest in application BH2011/02824 as he was the Chairman of the Mile Oak Football Club; who used the sports centre on the site.

##### 113c Exclusion of the press and public

113.4 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.

113.5 **RESOLVED** - That the public are not excluded from any item of business on the agenda.

**114. MINUTES OF THE PREVIOUS MEETING**

114.1 At item 110A, application BH2011/02417, Councillor Hawtree requested that the minutes reference his comments in relation to 'boil in the bag architecture'.

114.2 **RESOLVED** – That, with the above amendment, the Chairman be authorised to sign the minutes of the meeting held on 12 December 2011 as a correct record.

**115. CHAIR'S COMMUNICATIONS**

115.1 The Chair noted that Mr Duncan Cameron was representing the Conservation Advisory Group at Committee on this occasion as the Chair was unavailable.

115.2 The timetable for the special meeting of the Planning Committee, to be held on 27 January 2011, was highlighted, and the following dates were noted: Monday 23 January members briefing; Wednesday 25 January site visit; and Friday 27 January special meeting.

**116. APPEAL DECISIONS**

116.1 Councillor Hyde explained she had been approached by a local resident who requested the Council legally challenge appeal APP/Q1445/A/11/2160370, Land to the rear of the 33 Sackville Road, Hove. The Senior Lawyer, Hilary Woodward, explained she had reviewed the decision, and considered there to be no grounds for a legal challenge; she would be writing to the member of the public concerned to this affect.

116.2 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.

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

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

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

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

**119. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS**

119.1 The Committee noted the position regarding pre application presentations and requests as set out in the agenda.



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

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

Application:	Requested by:
BH2011/103093 Maycroft and Parkshide, London Road 2-8 Carden Avenue Brighton	Head of Development Control
BH2011/03227 11B (Former Ice Rink) and 11 Queens Square Brighton	Head of Development Control

**121. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST : 11 JANUARY 2012**

**(i) MAJOR APPLICATIONS**

**A. Application BH2011/02824, Portslade Aldridge Community Academy, Chalky Road, Portslade** - Demolition of parts of existing school buildings and remodelling and refurbishment of remainder. Construction of new three storey extension to north elevation with associated landscaping, revised vehicle and pedestrian access on Chalky Road and altered car parking arrangements.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Planning Officer, Jason Hawkes, drew Members attention to the late list and gave a presentation detailing the scheme as set out in the report by reference to plans, photographs and elevated drawings showing the scheme in the context of the existing buildings. At page 20 of the report it was clarified that there should be 155 parking spaces associated with the school and 47 with the sports centre. The Heads of Terms on page 3 were clarified; the highways contribution, as part of the Section 106 agreement, would be used for bus waiting facilities and cycling provision. The employment strategy had been amended to read “at least 20% local labour”, rather than up to 20%, and Condition 25 should be amended to provide that the Framework Travel Plan would now need to be submitted within three months of occupation. An additional condition had also been added that details of the plant enclosure be submitted.
- (3) The site included a sports centre, and was mainly in a residential area where most of the buildings were two storey dwellings. The scheme would demolish some areas of the existing site, and provide a new extension to the front which would largely be used

for a new sixth form; increasing the capacity of the school by 650 pupils. The proposed extension would be a three storey building set at a low level to keep it comparative in height. The scheme included revised parking arrangements, and proposed an additional pedestrian access point, but retained all three of the existing vehicular access points. The sports centre would have 47 dedicated spaces, but be able to make use the school allocated spaces during the evenings. The scheme included suitable cycling parking and proposed no change to the current playing fields.

- (4) Mr Hawkes outlined the key issues taken into consideration as set out in the report.
- (5) Officers recommended that the Committee be minded to grant the application subject to the Section 106 agreement and conditions and informatives.

### **Questions, Debate and Decision Making Process**

- (6) Councillor Hamilton sought clarification on the interim parking arrangements while work was ongoing, and the arrangements for the library. It was explained that a minimum of 85 parking spaces would be available at any one time during construction, and the library would be relocated within the existing school buildings.
- (7) Councillor Hawtree enquired regarding the catering arrangements at the site, and it was explained that they formed part of the proposed scheme.
- (8) Councillor Carden asked where, during construction, the 85 parking spaces would be. Officers explained that they did not currently have this information, but the provision of parking spaces would be managed during the construction. The Head of Development Control, Jeanette Walsh, suggested the Committee could be minded to amend condition 24 to secure the west car park prior to the commencement of the construction of the buildings on site.
- (9) Councillor Cobb had specific queries in relation to motorcycle parking and the safety of balconies. In response the proposed sites for motorcycling parking were highlighted, and Officers explained no specific safety concerns had been identified. A further query was raised by Councillor Hamilton, in relation to the balconies, and it was clarified that they were not enclosed.
- (10) Councillor Hyde asked a question concerning the additional number of students it was envisaged would attend the school, after the completion of works, and the potential impact this would have. In response the Head of Transport Strategy and Projects, Andy Renaut, explained that the rise in numbers would be gradual and staggered over several years; and by drawing equivalences, across the city, it was envisaged this would not affect highway safety and capacity in the area.
- (11) Councillor Cobb asked a question regarding the highways scheme outside of the school, and it was confirmed that any scheme would be subject to consultation, to establish the principles, before implementation.
- (12) Councillor Summers queried the number of pre-commencement conditions, and asked why the scheme did not propose the use of renewable technology. The Head of Development Control explained that the conditions were reasonable and necessary,

and the Sustainability Officer, Francesca Iliffe, highlighted that the scheme was acceptable as it met the 60% standard set in SPD08, and the Council had no specific renewable targets. The Senior Lawyer noted that if the Committee were minded it could add an informative in relation to use of renewable technology.

- (13) Councillor Randall asked a question in relation to training opportunities as part of the 20% local labour requirement, and it was confirmed that such opportunities would be available. In response to a further query from Councillor Hawtree it was noted that 20% was the agreed target in the guidance, and this had recently been revisited.
- (14) Councillor Davey asked for the number of cycling spaces available on the site, and it was explained the scheme proposed 67 for the school, 28 for the sports centre, 10 for staff and 16 for visitors.
- (15) Councillor Carden reiterated his concerns in relation to the provision of parking on the site during construction, and highlighted that the site was also used in the evenings, as it offered adult learning classes, which created further need for adequate parking.
- (16) Councillor Hamilton also highlighted concerns in relation to the provision of parking during construction, and expressed his support for an amended condition requesting completion of the west car park before the commencement of the construction of the buildings on site.
- (17) Councillor Hawtree noted that, although not offensive, the proposed building was not distinctive, but clearly fit for purpose.
- (18) Councillor Cobb suggested the vehicular access be reversed, from what was proposed in the report, to better accommodate the flow of traffic. Officers confirmed that a more in-depth study would be necessary before any such decision could be taken; however, this could be made as a formal request to the highway authority from the Planning Committee.
- (19) A vote was taken and the 12 members present voted unanimously that planning permission be granted.

- 121.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and the policies and guidance in section 7 and resolves to be **MINDED TO GRANT** planning permission subject to the completion of a section 106 agreement and subject to the conditions, with an amended condition 24 and an additional condition as set out below, and informatives set out in the report.

The 155 car parking spaces in the proposed western car park, as shown on drawing PL/91.103/P5, shall be provided in accordance with the approved plans prior to the construction of any extension to the school. The 155 spaces shall be retained as such throughout the construction of the rest of the approved works and made available for parking for the use for the Academy, library and Sports Centre users.

**Reason:** To ensure the provision of adequate parking for the users of the Academy, library and Sports Centre, to ensure the safety of persons and vehicles entering and

leaving site and to comply with policies TR1, TR7 & TR19 of the Brighton & Hove Local Plan.

‘No development shall commence until full details of the proposed plant enclosure adjacent the Sports Centre, including elevation drawings, have been submitted to and approved in writing by the Local Planning Authority. The enclosure shall be constructed in accordance with the agreed details and thereafter retained as such.

**Reason:** To ensure a satisfactory appearance to the development and to comply with policy QD1 of the Brighton & Hove Local Plan.’

(ii) **MINOR APPLICATIONS**

**B. Application BH2011/03093, Land rear of 25 Dyke Road Avenue, Hove –** Erection of new two storey four bedroom detached dwelling house with basement.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Area Planning Manager (West), Nicola Hurley, gave a presentation detailing the scheme as set out in the report by reference to photographs, plans and drawings. It was highlighted that the ground would be excavated to facilitate a lower ground floor; however, the footprint of the building would be comparable with surrounding properties in Chalfont Drive. A number of non-protected trees had been removed at the site; however, there was no objection to this from the Council, and Officers were also recommending an additional condition to secure planting on the boundaries to mitigate over-looking. The application was recommended for approval.

**Public Speakers**

- (3) Mrs Hewitt spoke in objection to the application. She stated a number of other objections had been submitted by residents in the area, and a similar application had been withdrawn in 2010. The main concerns from Officers, in relation to the previous application, had been the size of the proposals and the potential loss of privacy. Mrs Hewitt stated the same concerns existed with the proposed development, and it would harm the visual affect of the area, as well as being intrusive and directly visible by neighbours.
- (4) Councillor Brown spoke in her capacity as a Local Ward Councillor setting out her objections to the scheme. She stated an objection to infilling in an area with many large detached houses, and felt this changed the character of the area. The letters of support were not from people directly affected by the development. The proposed development would create a loss of privacy, and cause visual harm to the area.
- (5) Ms Julie Cattell, the agent for the applicant, spoke in support of the application. She stated it had taken over three years for the application to gain a recommendation to grant from the Council. The proposed development responded appropriately to the surrounding area; however, the objections were not unexpected. It was also stated that all aspects of the scheme concerning trees had been agreed with the Council.

**Questions, Debate and Decision Making Process**

- (6) Councillor Summers asked Mrs Hewitt if the additional planting on the borders of the site would help to alleviate her objections. In response Mrs Hewitt explained that she, and her husband, had already undertaken planting of their own on their property, but she felt it would take years for planting to reach maturity and properly mitigate the effects of overlooking.
- (7) Councillor Randall asked how high the line of the building would be in relation to existing trees shown in the photographs provided, and Mrs Hewitt explained that she could not say for certain and a scale model of the proposal would give neighbours greater clarity.
- (8) Councillor Summers asked if overlooking was the main basis for Mrs Hewitt's objection. Mrs Hewitt confirmed this, and explained that the rooms at the back of her property had a 'strong relation' to the garden, and, as such, would also be overlooked.
- (9) Councillor Hawtree requested more information on Councillor Brown's comments in relation to the character of the Hove Park area. It was explained that the proposed flat roof and white concrete design would be in contrast to the brick buildings with pitched roofs that would neighbour it.
- (10) Councillor Davey asked how high the above ground portion of the design would be. The architect, Mr Alan Phillips, confirmed it was 6.7m, and went on to explain that measures had been taken in the design to ensure the aspect from the windows on the first floor did not overlook the neighbouring properties.
- (11) In response to a query from Councillor Hyde it was confirmed the type of glass proposed would be recycled. Councillor Hyde also asked if unprotected trees had been removed from the site, and it was explained that this had been the case; however, the applicant would be willing to adhere to any additional conditions in relation to trees, and a 4-1 ratio of replanting would be used for all trees removed.
- (12) Councillor Davey enquired how far the proposed development would be from the nearest existing property, and it was confirmed this distance was 31.5m. Officers also explained a daylight impact study had not been undertaken, as it had not been considered necessary.
- (13) An inaccuracy, in relation to protected trees, in the comments made by the Arborist was highlighted. Officers confirmed there was one protected tree at the rear of the site and one at the side; not five as stated in the report. A copy of the TPO was provided to confirm this, and a recent photograph showed the rear tree had not been felled.
- (14) Councillor Hawtree noted his support of the application, and highlighted that this was in an area that was changing in nature.
- (15) Councillor Davey felt it was a high quality, well thought out design, and stated that a condition requesting the planting of mature trees would help alleviate problems with overlooking for the neighbours.

- (16) Councillor Randall noted his support for the application, and referenced that this type of development was low density in a city with high density.
- (17) Councillor Cobb expressed her concerns in relation to the development overlooking surrounding properties, and the failure of the proposed design to be in keeping with the area.
- (18) Councillor Hyde expressed similar concerns to Councillor Cobb, and referenced the character of the area.
- (19) Before the vote was taken the Head of Development Control suggested the Committee could be minded to add an informative in relation to the planting of mature trees.
- (20) Twelve of the members of the Committee were present and on a vote of 9 to 2, with 1 abstention, planning permission was granted on the grounds set out below.

121.2 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and the policies and guidance in section 7 of the report and resolves to **GRANT** planning permission subject to the following Conditions and Informatives set out in the report, with an additional Condition and Informative set out below.

Condition:-

- 19. The new dwelling hereby permitted shall not be occupied until trees have been planted along the rear (south-western) boundary of the application site, which adjoins the back gardens of Nos. 15, 16, 17 and 18 Woodlands, in accordance with details to include species, heights at the time of planting, planting density and specimen age, which shall first be submitted to and approved in writing by the Local Planning Authority.  
**Reason:** In order to provide planted screening and safeguard the amenity of adjoining residents, in the interests of visual amenity and in order to comply with policies QD1, QD15 and QD27 of the Brighton and Hove Local Plan.

An informative will be agreed in consultation with the Arborist.

**C. Application BH2011/02485, 52 Preston Road, Brighton** – conversion of single dwelling property into 4no self contained flats, erection of single storey rear extension and construction of new frontage at ground floor.

- (1) The Head of Development Control highlighted there was an error in the transport section of the report and recommended the application be deferred.

121.3 **RESOLVED** – That the application be deferred to allow the error in the transport section of the report to be rectified.

**D. Application BH2011/03016, 68 Western Road, Brighton** – Demolition of existing rear three storey section of the property and erection of four storey building of 3no residential units fronting and with access via Stone Street. Refurbishment and extension of existing retail unit and refurbishment of the existing flats above to create a 2 bedroom maisonette.

- (1) The Area Planning Manager (West), Nicola Hurley, gave a presentation detailing the scheme as set out in the report by reference to photographs, plans and drawings showing how the scheme would look against the existing buildings. An application at the same site had been refused by the Committee in 2011 due to concerns over the size of the proposed units on the lower ground floor and second floor. The revised scheme had addressed this by increasing the size of the lower floor unit and reducing the number of units by redesigning the first and second floors as a maisonette. The existing building was in a poor state of repair and did not contribute to the appearance of the area. The applications for planning permission and conservation area consent were recommended for approval.

### **Questions, Debate and Decision Making Process**

- (2) Councillor Hyde asked if the protected wall at the rear of the Western Road property would be retained, and it was confirmed that this would be the case.
  - (3) Councillor Randall asked if any of the current buildings above the retail unit were occupied, and it was confirmed they were all empty.
  - (4) Councillor Wells explained he welcomed the scheme, and was pleased to see empty units above retail premises being bought back into use. Councillor Hyde noted she agreed with Councillor Wells.
  - (5) Mr Cameron from the Conservation Advisory Group (CAG) noted the Groups objection to the scheme. He explained that the proposed design was inappropriate for Stone Street and would dilute the character of the area; he suggested a more sympathetic redevelopment would be preferable. The Senior Planning Officer (Conservation), Geoff Bennett, explained that the building was in too poor state of repair to achieve the detailing. He went on to highlight that the proposal picked up on some of the design aspects in the street in a modern approach.
  - (6) Councillor Hawtree noted that he welcomed the redevelopment.
  - (7) The Chair highlighted that Members' suggested conditions in relation to the frontage of the Stone Street property would require a whole new application.
  - (8) A vote was taken and the 12 members present voted unanimously that planning permission be granted.
- 121.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and the policies and guidance in section 7 of this report and resolves to **GRANT** planning permission subject to the conditions and informatives set out in the report.

### **E. Application BH2011/03017, 68 Western Road, Brighton (Conservation Area Consent)** – Demolition of three storey section of property facing Stone Street.

- (1) A vote was taken and the 12 members present voted unanimously that planning permission be granted.

121.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation, and the policies and guidance in section 7 of the report and resolves to **GRANT** conservation area consent subject to the conditions and informatives set out in the report.

122. **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**

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

Application:	Requested by:
BH2011/103093 Maycroft and Parkside, London Road 2-8 Carden Avenue Brighton	Head of Development Control
BH2011/03227 11B (Former Ice Rink) and 11 Queens Square Brighton	Head of Development Control

123. **TO CONSIDER AND NOTE THE CONTENT OF THE REPORTS DETAILING DECISIONS DETERMINED BY THE LOCAL PLANNING AUTHORITY INCLUDING DELEGATED DECISIONS**

123.1 **RESOLVED** – That those details of applications determined by the Strategic Director of Place under delegated powers be noted.

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

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



The meeting concluded at 4.28pm

Signed

Chair

Dated this

day of



**APPEAL DECISIONS**

	<b>Page</b>
<b>A. HANGLETON &amp; KNOLL</b>	<b>17</b>
Application BH2011/01263, Land to rear of 86 Dale View, Hove – Appeal against refusal to grant planning permission for a new treble garage. <b>APPEAL ALLOWED</b> (delegated decision)	
<b>B. WITHDEAN</b>	<b>19</b>
Application BH2010/02425, Land to rear of 47 Surrenden Road, Brighton – Appeal against refusal to grant planning permission for the conversion and extension of an existing garage and store to form a private dwelling house together with alterations to the existing access.. <b>APPEAL DISMISSED</b> (delegated decision)	
<b>C. WITHDEAN</b>	<b>23</b>
Application BH2011/00336, 227-233 Preston Road Brighton – Appeal against refusal for a change of use car showroom/workshop (SG04) to 2no retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM cash machine. <b>APPEAL ALLOWED</b> (committee decision)	
<b>D. WITHDEAN</b>	<b>37</b>
Application BH2011/02120, 3 Hazeldene Meads, Brighton – Appeal against refusal to grant planning permission for a two-storey side and front extension and single storey rear extension. <b>APPEAL DISMISSED</b> (delegated decision)	
<b>E. WESTBOURNE</b>	<b>39</b>
Application BH2010/02682, 218 TO 234 Portland Road, Hove – Appeal against refusal to grant planning permission for the demolition of existing workshop and store building and erection of two 2 bed 2 storey live/work units including cycle spaces, bin storage areas and 2 car parking spaces. <b>APPEAL DISMISSED</b> (delegated decision)	

**F. HOVE PARK 43**

Application BH2011/01970, 8 Hove Park Way, Hove – Appeal against refusal to grant planning permission for a side extension above a garage to form a bedroom at first floor and additional roof space accommodation at the second floor. **APPEAL ALLOWED** (delegated decision)

**G. PATCHAM 45**

Application BH2011/01189, 9 Ridgeside Avenue, Brighton – Appeal against refusal to grant planning permission for the erection of a detached single dwelling to replace existing garage. **APPEAL DISMISSED** (committee decision)

**H. ST. PETERS AND NORTH LAINE 49**

Application BH2011/00475, 62 Roundhill Crescent, Brighton – Appeal against refusal for a new window to first floor elevation. **APPEAL DISMISSED** (delegated decision)

**I. ST. PETERS AND NORTH LAINE 51**

Application BH2011/01031, 54A Upper Lewes Road, Brighton – Appeal against refusal to grant planning permission for an extension at second floor level to form an additional flat. **APPEAL DISMISSED** (delegated decision)

**J. ST. PETERS AND NORTH LAINE 55**

Application BH2011/00767, 22 Queens Road, Brighton – Appeal against refusal to grant planning permission for the conversion and change of use of lower ground floor stores to form 1no 1 bed flat. **APPEAL DISMISSED** (delegated)

**K. EAST BRIGHTON 57**

Application BH2011/02267, 51 Upper Abbey Road, Brighton – Appeal against refusal to grant planning permission for a wood based roof terrace to sit on top of existing flat roof of 51 Upper Abbey Road and accessed via the existing dormer lost conversion. **APPEAL DISMISSED** (delegated decision)

**L. EAST BRIGHTON 61**

Application BH2011/02219, 14 Desmond Way, Brighton – Appeal against refusal to grant planning permission for a single storey rear/side extension and roof conversion with front dormer. **APPEAL ALLOWED IN PART & DISMISSED IN PART AS PER THE REPORT** (delegated decision)

**M. WOODINGDEAN** **65**

Reference 2010/0428, 44 Crescent Drive South, Brighton – Appeal against enforcement notice for the installation of a glass panelled safety rail on the rear elevation of the property at the first floor without planning permission. **APPEAL DISMISSED** (enforcement)

**N. ROTTINGDEAN COASTAL** **69**

Application BH2011/02122, 32 The Cliff, Brighton – Appeal against refusal to grant planning permission for a dormer window to front-facing roof slope. **APPEAL ALLOWED** (committee decision)

**O. ROTTINGDEAN COASTAL** **71**

Application BH2009/02424, reference 2011/0017, Land at 7 Greenways Corner, Greenways, Ovingdean – Appeal against enforcement notice for the non-compliance of a condition in relation to the material used for roof tiles. **APPEAL ALLOWED** (enforcement)

**P. ROTTINGDEAN COASTAL** **73**

Application BH2011/02463, 63 Coombe Vale, Saltdean – Appeal against refusal to grant planning permission for the erection of a single-storey rear extension, loft conversion, raised ridge height, side roof lights, Juliet balcony to rear and front window. **APPEAL ALLOWED** (delegated)





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# Appeal Decision

Site visit made on 3 January 2012

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

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

**Decision date: 9 January 2012**

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**Appeal Ref: APP/Q1445/A/11/2160536**  
**Land to rear of 86 Dale View, Hove BN3 8LF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr R Dyson against the decision of Brighton & Hove City Council.
  - The application ref BH2011/01263, dated 3 May 2011, was refused by notice dated 6 July 2011.
  - The development proposed is a new treble garage.
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## Decision

1. The appeal is allowed and planning permission is granted for a new treble garage at Land to rear of 86 Dale View, Hove BN3 8LF in accordance with the terms of the application, ref BH2011/01263, dated 3 May 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The garages hereby permitted shall be used for domestic purposes only and no trade or business shall be carried out therefrom.
  - 3) The front paved area shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site.
  - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location & Block Plan; drawing no. 792/01A.

## Main Issues

2. The main issues are the effect of the proposal on the character and appearance of the street and on the amenities of nearby residents.

## Reasons

3. The site is located at the end of the rear garden of 86 Dale View, with a frontage onto the highway at Kingston Close, which is a privately owned no-through road. The west side of the street (at the rear of Dale View) is predominantly composed of single-storey garages, including five sets of triple
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- garages that are owned by the city Council and let to residents. Opposite the site is a four-storey block of flats known as Kingston Court.
4. The proposed garages would be set back from the street frontage, in order to allow for easier access and egress and to provide space so that vehicle owners can pull off the highway to open the garage doors. Some of the existing garages are set back from the road, with parking space in front. However, several triple blocks have been erected on the back edge of the highway, making them difficult to manoeuvre into and out of, with the result that the Council has added "no parking" markings to the surface of the highway. I note that planning permission (BH2009/00125) was granted in 2009 for a double garage on the adjoining site at the rear of 88 Dale View, which was also set back from the highway, though not quite as far as in the present case, and which is a material consideration in my evaluation of the appeal.
  5. The design of the garages would be similar to those already constructed and, with the set back, would be less prominent in the street scene. There is presently only a single garage on the site, which is also set back with close-boarded fencing to either side. The area is softened somewhat by some scrubby planting, though that appears to be mainly within the adjoining site at the rear of 88 Dale View. Nevertheless, although the garages and hardstanding might not be said to positively enhance the visual qualities of the neighbourhood, they would be in keeping with the character and appearance of the street and not materially detract from it. The proposal would therefore not conflict with the objectives of Policies QD1 and QD2 of the Brighton & Hove Local Plan, which set out the standards for the design of new development.
  6. The Highway Authority has confirmed that the likely additional traffic associated with the garages would not have a significant impact on the levels of traffic using Kingston Close, or on highway safety in the Close or at the junction with West Way. The forecast possible increase in traffic movements is not sufficient to be readily noticeable by residents and, with the set back, there would be likely to be less noise and disturbance from the manoeuvre of vehicles than if the garages were sited at the back edge of the highway.
  7. In order to prevent commercial use of the garages, which could be noisy, I will add a condition restricting the use of the site to domestic parking, as was attached to the permission at the rear of 88 Dale View. I will also add a similar condition to provide for drainage of surface water on the paved area. Subject to these conditions, I conclude that the proposed garages and associated parking would not materially harm the amenities of nearby residents and would not therefore conflict with Policy QD27 of the Local Plan. For the avoidance of doubt, I will attach a condition requiring the development to be carried out in accordance with the approved plans.
  8. I have considered all other matters raised, but find no compelling reason that would outweigh my conclusion that the appeal should be allowed.

*J Mansell Jagger*

INSPECTOR





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# Appeal Decision

Site visit made on 6 December 2011

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

Decision date: 3 January 2012

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## **Appeal Ref: APP/Q1445/A/11/2159979**

### **Land to rear of 47 Surrenden Road, Brighton, BN1 6PQ**

- 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 Adelphi Midland Estates Ltd against the decision of Brighton and Hove City Council.
  - The application Ref BH2010/02425, dated 2 August 2010, was refused by notice dated 9 March 2011.
  - The development proposed is the conversion and extension of an existing garage and store to form a private dwelling house together with alterations to the existing access.
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. The main issues in this case are the effect of the proposal on:
  - the character or appearance of the Preston Park Conservation Area;
  - the living conditions of neighbouring occupiers;
  - the safety of vehicular and pedestrian users of the access lane leading to the site.

### **Reasons**

#### *Character and Appearance*

3. The statutory requirement to preserve or enhance the character or appearance of the Conservation Area is supported by policy HE6 of the Brighton and Hove Local Plan (LP). LP policy QD1 deals with design quality and QD2 with enhancing the positive qualities of local neighbourhoods.
  4. The appeal site comprises a domestic garage and adjoining land which has been separated from the rear garden of 47 Surrenden Road. It is served by an unmade and unadopted lane which provides access to the rear of a number of houses on Surrenden Road and the adjoining Cornwall Gardens. Many of the houses have detached garages or similar outbuildings accessed from the lane. The building at number 49 abuts the appeal garage and has been converted to domestic use. However a Certificate of Lawfulness for use of the building as an independent dwelling has been refused. As such the appeal proposal would create the only separate dwelling served by the lane.
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5. The appeal site is within the Preston Park Conservation Area which the Character Statement describes as containing many large, originally family, houses, domestic, and reasonably tranquil in character. The vicinity of the appeal site between Preston Road and Surrenden Road is characterised by Edwardian and later houses with large, well planted gardens. This depiction fits well with my impression of the area with the quiet, intimate environment of the lane complementing the more open and active space along Surrenden Road. Whilst the lane does provide secondary access to the houses on Surrenden Road and Cornwall Gardens, the level of activity appears to be very low and the area has the feel of an amenity space as much as an access route.
6. The introduction of an independent dwelling would materially alter its function and therefore its character. Increased vehicle movements would disturb the current tranquillity of the area. The design of the dwelling's west elevation facing the lane is restrained in an attempt to fit in with its surroundings. Nevertheless the glazed screen, personal door, parked cars, the inevitable paraphernalia and activity which go with a dwelling would significantly change the character and appearance of the area. It would no longer have the look or feel of a tranquil 'backwater' which is its distinctive contribution to the Conservation Area.
7. The appellant argues that the proposed extension would create a harmonious grouping of three elements (with the existing building at number 49). However, in the context of a lane containing domestic scale outbuildings, the group would become a substantial structure. Taken with the concerns regarding the proposed changes in appearance and activity therefore, the scale of the extended building would be out of keeping with the existing character of the lane.
8. There are a number of other garages and outbuildings along the lane which, potentially, could be extended and/or converted to create separate dwellings. If the appeal proposal were allowed, the lane would take on a more residential character in the ways described above. In those circumstances it would become difficult to resist other proposals for separate dwellings, leading to a further erosion of the lane's contribution to the character of the Conservation Area.
9. The appeal proposal includes rebuilding the wall adjoining number 43 in a new position to widen the lane at its junction with Surrenden Road. Local residents have objected to this element of the proposal, among other things, on the basis that it would harm the Conservation Area. Whilst the wall does contribute to the character of the area, I note that the section closest to Surrenden Road has been rebuilt already and that the proposal would close a gap in that frontage. Therefore, although there would be some loss of the original fabric of the wall, on balance its repositioning and rebuilding with appropriate materials and detailing would preserve the character and appearance of the Conservation Area.
10. Repositioning the wall would result in the loss of planting including a tree in the rear garden of number 43. Given its size and position, the tree makes a modest contribution to the area and I consider that appropriately specified and located replacement planting would preserve the Conservation Area.

11. Overall therefore, notwithstanding my conclusions on rebuilding the wall and the loss of the tree, the proposal would not preserve the character and appearance of the Conservation Area. As such it would be contrary to the requirements of the statutory test and the presumption in favour of the conservation of designated heritage assets set out in policy HE9 of Planning Policy Statement 5: Planning for the Historic Environment (PPS5). In terms of the assessment required by policy HE9.4 of PPS5, whilst the harm caused to the Conservation Area would be less than substantial, there are no public benefits sufficient to outweigh it.
12. The proposal does not meet the aims of policy HE6 of the LP which, amongst other things, requires proposals in Conservation Areas to have building forms which reflect the scale and character of the area and to protect the spaces between buildings. Nor does it comply with LP policies QD1 and QD2 which require proposals to enhance the positive qualities of their setting.

#### *Living Conditions*

13. There would inevitably be increased vehicular activity as a result of the proposed dwelling and I have already concluded that this would disturb the tranquil character of the area. However, in view of the length of the gardens along the lane and the presence of, in most cases, substantial boundary walls or fences, I do not consider that the noise and disturbance created by the increased vehicular activity would have an unacceptable effect on neighbouring occupiers. Vehicles would pass closer to the sides of numbers 43 and 45 as they exit the lane. However here the traffic on Surrenden Road already creates a noisier environment and the additional effect of the appeal proposal vehicle movements would not be material. Therefore the proposal is not in conflict with LP policy QD27 which seeks to protect residents from amenity impacts including noise and disturbance.

#### *Pedestrian and Vehicular Safety*

14. I agree with Council that the section of the lane leading from Surrenden Road, if widened as proposed, would provide a suitable access to serve the number of vehicle movements generated by the appeal scheme. Rather the Council's concern regarding pedestrian and vehicular safety is to do with the north-south section of the lane closest to the appeal site. Local residents say that the lane is well used by pedestrians and given its amenity value, this is understandable.
15. The lane turns at a right angle around the rear garden of number 45 and, from that point to the appeal site, is narrow. Whilst this is a relatively short length, there are no turning places, meaning that delivery and service vehicles in particular would need either to reverse passed the right angle bend into the garage courtyard behind number 43 or continue the entire length of the lane and exit at Varndean Road. Taking into account the narrowness of the lane, the poor quality of its surface, the scarcity of passing places and the presence of pedestrians, neither option is satisfactory and would unacceptably increase the risk of vehicle and pedestrian conflict.
16. The appellant argues that widening the access at its junction with Surrenden Road would benefit all users of the lane and cites appeal decision APP/Q1445/A/07/2052564. As that Inspector said, there may be 'a degree of benefit', but there is no evidence that the current arrangement is unsafe or

inefficient. As such the benefit is not sufficient to outweigh the concerns expressed above.

17. I therefore conclude that the proposal would unacceptably reduce vehicular and pedestrian safety contrary to LP policy TR7 which requires development not to increase danger to road and pavement users. The second reason for refusal also refers to LP policy Q27 on the protection of amenity. However this appears to add little to my consideration of this issue.

*Other Matters*

18. The appellant sets out of the history of the proposal which I have read as background information. However the appeal decision must be based on the final proposal and its determination by the Council.
19. I have taken into account the other concerns of residents and Councillors including loss of privacy and biodiversity, highway safety and disabled access shortcomings and the potential impacts of infrastructure provision, waste collection, lighting and construction works. However these matters have not led me to a different overall conclusion.

*Conclusion*

20. For the reasons set out above the appeal does not succeed.

*Simon Warder*

INSPECTOR



# Appeal Decision

Hearing opened on 8 November 2011

Site visits made on 7, 8 and 24 November 2011

**by David Smith BA(Hons) DMS MRTPI**

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

**Decision date: 4 January 2012**

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**Appeal Ref: APP/Q1445/A/11/2157320**  
**227-233 Preston Road, Brighton, BN1 6SA**

- 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 Sainsbury's Supermarkets Ltd/Caffyns plc against the decision of Brighton & Hove City Council.
  - The application Ref BH2011/00336, dated 4 February 2011, was refused by notice dated 10 May 2011.
  - The development proposed is a change of use of car showroom/workshop (SG04) to 2 no retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM cash machine.
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## Decision

1. The appeal is allowed and planning permission is granted for a change of use of car showroom/workshop (SG04) to 2 no retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM cash machine at 227-233 Preston Road, Brighton, BN1 6SA in accordance with the terms of the application, Ref BH2011/00336, dated 4 February 2011, subject to the conditions in the attached schedule.

## Application for costs

2. At the hearing an application for costs was made by the appellants against the Council. This is the subject of a separate Decision.

## Preliminary Matters

3. The hearing was adjourned on 8 November to enable the Council to consider the appellants' Air Quality Assessment. In the event its findings were not disputed and so the hearing did not resume as originally intended but was subsequently closed in writing. As well as unaccompanied inspections of the appeal site and its environs at various times of the day I made a further visit on 24 November to see the other stores referred to in representations.
4. A unilateral undertaking was submitted at the hearing. This provides for contributions to be made in respect of various highway and transport works and towards the planting of 3 new trees along Cumberland Road in the event that the existing horse chestnut has to be removed. Further consideration is given to these payments in the light of the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations later in the decision.
5. The draft National Planning Policy Framework is subject to change and therefore little weight should be attached to it.

## **Main Issues**

6. The main issues are the effect of the proposal on:
- Highway safety in Preston Road and surrounding residential roads;
  - The living conditions of adjoining residential occupiers in Cumberland Road and Lauriston Road with particular regard to noise and disturbance arising from additional traffic movements and deliveries;
  - The character and appearance of the surrounding area which is within Preston Park Conservation Area;
  - The vitality and viability of the nearby parade.

## **Reasons**

7. The appeal site is on the western side of Preston Road (A23) and comprises vacant commercial premises last used as a car showroom with associated car servicing at the rear. The northern part of the site was a car park. To the south is a parade but the area to the west is residential. Preston Road is heavily trafficked and carries about 24,000 vehicles each day.
8. It is intended to convert the existing building into 2 retail stores. The front unit would be occupied as a Sainsbury's Local and the rear one would be used as a pet store. The net sales areas would be 280 sq m and 261 sq m respectively. The car park would be re-configured and 25 spaces provided with access from Cumberland Road. Two further spaces would be available off of Lauriston Road. Deliveries would be restricted to 0700 to 2100 hours on Mondays to Saturdays and 0900 to 1700 hours on Sundays and Public Holidays. There would be 4 deliveries a day to Sainsbury's and 2 a week for the pet store.
9. A personal permission has not been suggested and the brand of the pet store is not in the public domain. In any event, planning permission should run with the land. Nevertheless, the proposal is clearly presented for one of the units to be occupied by a specific supermarket chain. The traffic and other implications likely to arise can reasonably be assumed to be similar to those experienced elsewhere. Therefore in general terms this forms a reliable basis for considering the development.
10. The past use of the site is characterised by residents as 'low key' although there were deliveries by transporters and MOTs. The site has been empty for some time and there is no indication that a resumption is likely if the appeal failed. That said, there have been commercial uses on the site historically and no one would wish it to remain unused. Therefore, whilst the precise 'benchmark' is not clear the appeal site is not an entirely 'blank canvass' in terms of assessing the impact on the locality.

## **Highway safety**

11. The appraisal of traffic related issues begins with the likely traffic movements that would be generated. As part of the application the appellants presented predictions based on surveys undertaken at Paignton and Worcester Park. The Council was particularly critical about relying on the former as a comparator. However, as part of the appeal further studies of Sainsbury's Locals at Aylesbury, Rotherham and Nottingham were carried out. Two of these are sited on 'A' roads with similar volumes of passing traffic to the appeal site.



12. Based on this information it is disconcerting for the Council that the modal split analysis expects that up to 45% of trips to and from the store would be undertaken by car as opposed to the previous indication of 10-15%. Whilst the operational characteristics are said to be different it is also strange that a similar store in Redcar is identified but then ignored. That said, there is no reason to doubt the veracity of the figures now presented and the Council gave no evidence of its own to call them into question. Therefore the appellants' latest data provides a reasonable starting point for the purposes of the appeal.
13. Of course, local people use the roads around the appeal site on a daily basis and so can provide a first hand account of actual conditions. In this regard, I have taken on board all that was said at the hearing and the comments made in representations. However, it is notable that the impressions and experiences that I heard varied and so do not paint a wholly consistent picture of the current situation and its gravity.
14. The proposal would result in additional use of the Cumberland Road junction with the A23 as vehicles enter and leave the site. The main parties interpreted the traffic numbers differently in respect of the most appropriate peak hour. Nevertheless, it is expected that total proposed traffic movements would be 251 between 1800-1900 hours on a Friday compared to 81 movements at the moment. A greater uplift of over 5 times would occur between 0700-0800 hours on Saturdays but overall levels would be much lower. At other times both total traffic flows and the change in percentage terms would be less.
15. Although the Council claimed that visibility to the north is "poor" it did not explain by what yardstick this assertion was made which directly contradicts the officer report. Indeed, it was accepted that it is technically safe. The junction coincides with the merging of 2 lanes on the A23. There is also a wall alongside, a cycle lane and a bus stop just to the south. However, these "complications" are typical urban features and there is no technical evidence that the junction is inherently hazardous by reason of a plethora of activities. Moreover, the appellants' uncontested analysis shows that the junction would be operating within capacity with few queuing problems.
16. Particular concern was raised about right turns out of Cumberland Road. Some residents highlighted the present difficulties of this. At most, the predicted turning proportions indicate that 63 such manoeuvres would take place during the Friday PM peak. However, the signals to the south afford gaps in the traffic and the road is wide enough to enable such turns to be conducted in two parts. I saw examples of vehicles entering the A23 from Cumberland Road at busy times to head southwards. This was accomplished safely although sometimes requiring the 'give and take' that is often necessary in such circumstances. Furthermore, there is no accident record at the junction to suggest that this is a dangerous turn rather than one that is sometimes awkward.
17. Details were given of an accident along the A23 in August 2011 involving a delivery lorry just to the north of the appeal site. This involved a front-to-rear collision when the driver overtook a bus. Although this was serious and the road was closed for nearly 6 hours incidents of this nature are likely to occur from time-to-time along a main arterial route into Brighton. It does not, of itself, indicate that Preston Road is abnormally dangerous.
18. Up to 61 pedestrians were observed crossing Cumberland Road during the vehicular peaks. This is likely to increase as a result of the development and

- the road would also be busier. However, everyone, including any school children, needs to take care when crossing the road and this is a typical situation with no obvious hazards. Therefore account would be taken of pedestrian routes in line with Policy TR8 of the Brighton & Hove Local Plan.
19. Deliveries to Sainsbury's would take place in the car park. The largest lorry would be a 10.7m articulated vehicle that would visit daily. The Council criticises the swept path as "convoluted and highly optimistic" particularly on exit. There would be little margin for error but equally the technical evidence demonstrates that it is feasible and that there would not necessarily be a conflict with the pedestrian island just to the north in Preston Road. However, it is possible that lorries waiting to turn left would sit across the centre line especially as servicing could occur during the morning peak.
  20. That said, the incidence of deliveries would not be high. Moreover, vehicles leaving the site would be moving slowly and because of their size would be readily seen by any drivers seeking to proceed along Cumberland Road or to turn into the site. These arrangements are perhaps not ideal but the Council has rejected the option of servicing directly from Preston Road. However, there could, at times, be something of a hiatus caused by exiting delivery vehicles. This might lead to a brief delay or irritation but the risk of accidents would be very low. There is no clear indication that access from or egress onto the A23 would be unsatisfactory.
  21. In order to facilitate loading and unloading 6 parking spaces would be cordoned off including one for disabled persons. It is anticipated that this would only be required between 0700-0930 hours. In any event, it would be in the interests of any operator to minimise the disruption to customer parking and to ensure that the practicalities of making deliveries worked effectively.
  22. The appellants modelling based on average duration of stay indicates that there should be adequate capacity to meet parking demand (including staff) with a generous tolerance. Consequently it is unlikely that customers or potential customers would be obliged to search for a space in surrounding streets which are heavily parked. Furthermore, there is no other logical reason why drivers visiting the stores would percolate into this residential area since Cumberland Road is the shortest and easiest link onto the A23. The angle of the entrance is also designed to discourage left turns out of the site.
  23. Servicing of the second store would be achieved via the existing loading bay in Lauriston Road immediately to the south. Such vehicles would have to negotiate a 'loop' including Cumberland Road where conflict may occur due to the prevalence of parked cars. However, other premises use the bay which has been designed for this purpose and no doubt other domestic delivery vehicles enter these streets from time to time. Furthermore, deliveries would be infrequent. Therefore neither this nor the potential 'overspill' of vehicles from the food store would lead to a serious deterioration in safety for these roads.
  24. Clearly the proposal would increase traffic levels but there are no factors which show that the degree of risk would be unacceptably high as a result. So in view of all of the above the proposal would not harm highway safety in Preston Road and surrounding residential roads. As the danger to users of adjacent pavements, cycle routes and roads would not be increased there would be no conflict with Local Plan Policy TR7. Similarly there would be no adverse impact on transport so that Policy TR1 would be complied with in this respect.



### ***Living conditions***

25. The limited number of deliveries to the pet store from Lauriston Road would be unlikely to lead to a noise nuisance. Such objections are nevertheless raised about the proposed food store.
26. As part of the application the appellants carried out a Delivery Noise Assessment (DNA). This identified 4 sensitive receptors nearby and assessed noise intrusion with windows open and closed and compared predicted noise ratings from deliveries with background noise. None of the technical assumptions have been challenged and following a further assessment it is also accepted that noise levels from traffic and car parking would be imperceptible and therefore not problematic in themselves. Since customer vehicles would be unlikely to enter the residential streets to the west a general reduction in the peaceful living environment within them would not occur.
27. However, some houses are near to the car park where servicing would take place. The timing of deliveries could be controlled by condition and would not take place between 2300 and 0700 hours which is defined as night time by Planning Policy Guidance Note 24: *Planning and Noise*. According to the technical guidance there would therefore be no sleep disturbance. However, deliveries would take place every day of the week so there would be no respite from them. In particular, they would occur in close proximity to the rear facing rooms of 1 Cumberland Road.
28. The DNA presented a typical and worse case scenario. Based on the hour by hour BS4142:1997 *Rating Industrial Noise Affecting Mixed Residential and Industrial Areas* methodology typical case noise rating levels from HGV deliveries are predicted to be at or below background noise levels. However, they would be exceeded at 1 Cumberland Road in the worst case in the early morning and late evening on weekdays and Saturdays and for much of Sunday. Similarly with windows open and in the worst case internal noise levels at No 1 would exceed the BS8233: 1999 *Sound Insulation and Noise Reduction for Buildings – Code of Practice* 'good' target' of 30 dB LAeq and the World Health Organisation recommendation of 45 dB LMax. However, this would not arise in the typical case.
29. The distinction between the worst and typical case is explained by the operator undertaking more stringent management measures to minimise noise. These are set out in the Service Yard Management Plan. However, some of the steps to be taken are somewhat vague with references made, for instance, to engaging gears quietly. At the hearing more specific actions were mentioned such as turning off chiller units in advance and the use of rubber mats that might have a greater impact on mitigating both continuous and sudden sounds.
30. The situation is, therefore, that deliveries have the potential to cause disturbance to the occupiers of No 1. In particular, the sharp noise associated with roll cages or other types of banging or crashing have the scope to cause most annoyance. The Council was concerned that deliveries would be likely to coincide with busy times on Preston Road but this would tend to mask any noise connected with the proposal. The relevant targets would only be exceeded in certain circumstances and provided that more detailed measures were included in a Management Plan this could be avoided. The Council's experience of other sites supports the notion that clarity is important.

31. Therefore, subject to the provision of a revised Management Plan, the proposal would not harm the living conditions of adjoining residential occupiers in Cumberland Road and Lauriston Road. As such, there would be no conflict with Policies QD27 and SU10 of the Local Plan which seek to protect amenity and to minimise the impact of noise. The appellants also suggested that a further condition could be imposed specifying a noise level on the boundary with No 1 and that regular reporting could be required. However, given the number of deliveries anticipated and the times they would take place this is not necessary to alleviate the consequences of noise.

### ***Character and appearance***

32. The appeal site is within Preston Park Conservation Area. In defining its special character the Character Statement refers to the largely residential use. There are 3 separate areas dating from 1860 onwards distinguished by their age and pattern of development. However, there is no specific mention of the existing premises. As a modern and functional building with open parking the site makes no positive contribution to the significance of the heritage asset. This is the type of situation anticipated by Policy HE9.5 of Planning Policy Statement (PPS) 5: *Planning for the Historic Environment*.

33. The Character Statement does draw a distinction between a reasonably tranquil, domestic character and the very heavy traffic that passes continuously along Preston Road. However, for the reasons given earlier, traffic from the development would be unlikely to enter the network of quiet streets to the west. Even if it did the increase would be marginal so any consequences would not be disruptive.

34. The existing building would be retained in situ and the external works proposed would be minimal so that there would be little physical change to the street scene. The shopfront facing Preston Road could be clear glazed to provide visual interest and there is scope for planting to soften the car park from this direction. It is intended to keep the horse chestnut tree in the footway which adjoins the widened entrance. Although damaged by lightning and of limited arboricultural worth it is valued by residents and is "lovely" when it flowers. Should it prove impossible to keep it 3 new street trees would be planted.

35. The Council maintains that the proposal would change a small scale village neighbourhood into a commercial retail centre as the stores would be larger than the existing units in the parade. However, the site has been used for commercial purposes for many years and historically the petrol filling station on the site was more extensive. Given this and the other factors mentioned above the effect on the character of the area would be insignificant.

36. It is also argued that the proposal represents a "missed opportunity" to re-develop the site in a way that responds more positively to the urban grain. PPS5 refers to this as "place-shaping". However, whatever the development economics the site is not identified in the Character Statement or the development plan as one where change should take place in order to better reveal the significance of the conservation area. As such, no express long-term planning objectives would be thwarted. Furthermore, as the existing building would be re-used the appearance of the locality would be largely unchanged.

37. As such, the proposal would not detract from but would preserve the character and appearance of the Preston Park Conservation Area. Because of the nature

of the development it would also be in accordance with the design aspirations for neighbourhoods of Local Plan Policy QD2.

### ***Vitality and viability***

38. The overarching objective set out in PPS4: *Planning for Sustainable Economic Growth* is sustainable economic growth. Amongst other things, the Ministerial Statement on 'Planning for Growth' of March 2011 underlined that this is the Government's top priority. Moreover, significant weight should be given to the need to secure economic growth and employment.
39. The appellants have made an assessment of capacity within a 1km catchment area around the appeal site using population and expenditure data from Experian MM3. Despite the absence of specific local surveys this is a reputable information service competent at providing small area statistics. The qualitative impact of the proposal has also been considered and a sequential assessment of alternative available sites undertaken.
40. The short commercial parade nearby is not designated as a local shopping centre in the Local Plan and most of the premises are not in retail use. PPS4 confirms that small parades of shops of purely neighbourhood significance are not regarded as centres for its purposes. However, an off-license and newsagents are close to the proposed stores and slightly further away is a delicatessen. The Council is mainly concerned about these nearby retail units.
41. Policy SR2 of the Local Plan stipulates that new retail development beyond the edge of existing established shopping centres will only be permitted in certain circumstances. This broadly coincides with the approach set out in Policy EC17 of PPS4. Criterion (c) refers to providing an outlying neighbourhood with a local retail outlet for which a need can be identified. Whilst referring to the surrounding area of Preston as "outlying" might be stretching it in geographical terms there is significant expenditure surplus for top-up shopping within the catchment. Given also that PPS4 removed the requirement to demonstrate need there is not a fatal policy objection in this respect.
42. There is also an expectation that the tests within Policy SR1 are met. This indicates that there should not be detriment to the vitality or viability of existing parades. The wording of this is ambiguous since parades are not a type of defined shopping centre in the Local Plan. Nevertheless, by significantly increasing the retail floorspace and footfall near to existing businesses it seems likely that the proposal would generally bolster and boost their fortunes rather than diminish them.
43. However, the misgivings about the specific consequences for the off-license and newsagents are understandable. The appellants predict that the trade draw from each would be no more than a little over 2%. The explanation for this low figure is not convincing given the similarity between the goods sold and those that would be on offer at a Sainsbury's Local. It was accepted that there is no scientific way to calculate this impact. The PPS4 *Practice guidance on need, impact and the sequential approach* observes that the best evidence is likely to be of similar developments in similar circumstances elsewhere.
44. The officer report refers to a Tesco store in Hove, 2 Co-op stores at Seven Dials and a Waitrose in Western Road where smaller newsagents and food stores operate in close proximity. A Sainsbury's Local was highlighted in Portland Road, Hove. Since it opened in spring 2010 2 independent stores within 0.5km

- have shut and 3 others are said to be seriously impacted. However, Portland Road is a much larger centre and whether the closures can be laid solely at the door of the Sainsbury's Local is uncertain. Furthermore, there are still 12 convenience stores within a 0.5km radius including some directly adjacent to it. However, the newsagents in the parade opposite Tesco Express at Dyke Road is empty and this situation is a closer parallel to that in Preston Road.
45. Therefore the possibility of the nearby off-license and newsagents being forced to close down cannot be discounted. In planning terms the importance to be given to this eventuality is limited as the parade is not a designated local centre. In addition, it is not the purpose of the planning system to protect individual traders. Indeed, PPS4 explains that the Government wants competition and enhanced consumer choice and does not distinguish between small, locally-run businesses and national companies. As far as provision is concerned the proposal would be a ready replacement thereby at least maintaining the range of services to the community.
  46. The evidence is therefore that it is by no means certain that existing Class A1 uses would close if the proposal went ahead. However, even if this did happen, the impact on the vitality and viability of the parade as a whole would be insignificant. Hence there would be no conflict with criterion a) of Policy SR1.
  47. The policy also indicates that development should be appropriate in scale with the centre which it is intended to serve. Strictly speaking, this provision does not apply since this is not a local centre. However, the concern is that the proposal would effectively operate as a self-contained out-of-centre store. Whilst the new stores would be larger than the existing units in the parade they would nonetheless be small in terms of general retail impact given the 'cut off' of 2,500 sq m in PPS4.
  48. That said, the proposal would become the focal point of the locality as only around 20% of store turnover would be drawn from pass-by trade by those from outside the catchment. This is not the same as the assumption that 50% of trips to the site would be undertaken by people living locally but already on the road network. Therefore the proposal would be unlikely to become a separate 'destination' for those residing beyond the immediate area.
  49. Criterion c) of Policy SR1 expects development to be genuinely accessible by a choice of means of transport. It is predicted that about 50% of customers would arrive on foot so that non-car use would be high. Because of the steep valley sides to Preston Road residents near to the site may well currently drive to the nearest top-up stores at Dyke Road, Droveaway or Preston Drove. As a result there might be a modal shift from car to walking as custom is diverted. Moreover, the proposal would make it easier for the less mobile to access convenience shopping. Overall there would be benefits in terms of accessibility and in meeting the needs of the entire community in line with PPS4.
  50. As there would also be no conflict with criterion d) in relation to highway danger, unacceptable traffic congestion and environmental disturbance the proposal would accord with Local Plan Policy SR1 and, in turn, Policy SR2.
  51. In terms of PPS4 there are currently no appropriate vacant sites within the 1km catchment area. As such the sequential approach has been complied with and neither is there clear evidence that the proposal would lead to significant adverse impacts in terms of any of those set out in Policies EC10.2 or EC16.

There is nothing to suggest that the proposal would contribute towards a greater cumulative effect and so it would comply with Policy EC17. Indeed, it would create 25-30 local jobs.

52. PPS1: *Delivering Sustainable Development* stresses that community involvement is vitally important to planning. The enactment of the Localism Act on 15 November 2011 has brought the requirement for developers to consult local communities before submitting applications of specified descriptions of development a step closer. If that process had been undertaken it would have been unlikely to alter the strong but divergent opinions expressed. There are those who simply do not want the proposal near to them but also those who take a different view. The thoughts of most people within the catchment area are unknown. The lack of engagement in this case is therefore unfortunate but not decisive in the determination of the appeal.
53. The main objections are directed towards the proposed Sainsbury's Local but I have considered the proposal for 2 new stores holistically. Having done so, it would not adversely affect the vitality and viability of the nearby parade and would accord with the development plan and Government policy aims in PPS4.

### **Other matters**

54. With regard to air quality the significance of the effects of the proposed development with respect to nitrogen dioxide exposure would be in the range 'slight adverse' to 'negligible'. As such, it would not be contrary to relevant planning policies.
55. There is no compelling evidence to link local convenience stores with crime or vandalism and alcohol sales already take place from the nearby parade. Consequently little weight should be given to these fears.
56. The highway works covered in the undertaking involve various changes in Cumberland Road and Lauriston Road to reflect the revised access arrangements. These include amendments to signage and road markings and works to footways. In addition, a bollard would be sited on the northern corner of Cumberland Road and Preston Road. All of these, together with the contingency sum for tree planting, are directly related to the development and are necessary to make it acceptable.
57. A further contribution of £17,000 would be paid towards a real-time information board for the bus stop immediately outside the appeal site and for REACT boxes for both the northbound and southbound stops in Preston Road. Nobody at the hearing was able to explain the purpose of the latter. Preston Road may well be a key bus route but the proportion of those expected to visit the stores by bus is miniscule. There is no evidence to show how the development would give rise to a need for extra facilities to be provided. As there would be no unacceptable impact on transport there would be no conflict with Local Plan Policy TR1. Consequently this part of the obligation is unnecessary and should not be taken into account.

### **Conditions**

58. In considering the suggested conditions I have had regard to Circular 11/95 *The Use of Conditions in Planning Permissions* and have modified the wording where necessary in the interests of clarity and brevity.



59. Some, but not all, details of external materials and finishes of the proposed alterations are shown on the drawings. Given the location of the site within a conservation area further information about them and of hard surfacing should be secured. For similar reasons details of landscaping should be given and the works around the entrance properly monitored by an arboriculturalist to give the horse chestnut the best chance of survival. As mentioned earlier, the glazing along Preston Road should be kept clear. To facilitate minor material amendments a condition listing the approved plans should be imposed.
60. In order to safeguard the vitality and viability of the parade and to reflect what has been applied for limitations should be imposed on the proposed retail units. To protect the living conditions of those nearby it is necessary to control delivery times, to update the Service Yard Management Plan, to restrict noise from plant and machinery and to preclude customer access to Unit 2 from Lauriston Road. Any contamination identified unexpectedly should be dealt with to protect public health. The parking spaces and cycle stands should be provided to ensure that the proposed arrangements function as they should.
61. The Council sought to impose a condition closing the units to customers by 2200 hours but there is no evidence to support this. The proposal has been based around a closure of 2300 hours. It may be that the pet store would not be open for all of this time but that is not a reason to restrict it. However, it is not expected to open until 0900 hours and such a limitation should be included as it would potentially relieve parking pressure at a time when deliveries to Unit 1 are most likely to occur.
62. Given the other conditions a separate restriction on open storage is not necessary. Similarly the implementation of the proposed parking layout would prevent vehicular access from the A23 so a further condition in this respect is superfluous. There is ample scope within the units for refuse and recycling facilities so that a condition requiring such details is not justified.

### **Conclusions**

63. The proposal would not harm highway safety, the living conditions of adjoining residential occupiers or the vitality and viability of the nearby parade and would preserve the character and appearance of the conservation area. It would accord with the development plan and there are no other considerations, including the representations against the scheme from local people, which outweigh these findings. Therefore, for the reasons given, the proposed development is acceptable and the appeal should succeed.

*David Smith*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos SSLBRIGHTON(LOCAL).1/14D, 905\_457/301C and 305M.
- 3) No development shall take place until details of the external materials and finishes to be used in the alterations hereby permitted and of any hard surfacing of the car park 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) Unit 1 hereby permitted shall not be open to customers except between 0700 and 2300 hours. Unit 2 hereby permitted shall not be open to customers except between 0900 and 2300 hours. No other activity shall take place at the site between 2330 and 0630 hours.
- 5) No deliveries shall be taken at the site except between 0700 and 2100 hours on Mondays to Saturdays and between 0900 to 1700 hours on Sundays and Public Holidays. All deliveries for Unit 1 shall be carried out within the car park shown on drawing no SSLBRIGHTON(LOCAL).1/14D.
- 6) No development shall take place until a revised Service Yard Management Plan including measures to minimise noise during deliveries has been submitted to and approved in writing by the local planning authority. All deliveries shall be carried out in accordance with the approved Plan.
- 7) If, during the course of development, any contamination is found which has not previously been identified then measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures.
- 8) Noise from plant and machinery shall be controlled such that the rating level measured or calculated at 1m from the façade of the nearest existing noise sensitive premises shall not exceed a level 5dB below the existing LA90 background noise level.
- 9) The retail units hereby permitted shall operate as two independent units at all times and shall not be sub-divided. The sales floor area shall not exceed 280 sq m for Unit 1 and 261 sq m for Unit 2 and no mezzanine floorspace shall be created.
- 10) Unit 2 hereby permitted shall only be used for the sale of comparison goods and ancillary storage and for no other purpose including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Comparison goods are defined as books, clothing and footwear, furniture, audio-visual equipment, household appliances and other electrical goods, hardware and DIY supplies, chemist's goods, jewellery, watches and clocks, non-durable household goods, pet and garden supplies and recreational goods.

- 11) The service doors on the southern and western elevations of Unit 2 hereby permitted shall be used solely for service and delivery access.
- 12) No development shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority, which shall include details of any existing trees and hedgerows to be retained and of any boundary treatments. All approved planting and other works shall be carried out in accordance with a timetable previously agreed in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 13) No works to widen the site entrance from Cumberland Road shall commence until an independent arboricultural consultant has been employed and details forwarded to the local planning authority. This person shall be present throughout all works to the site entrance to supervise the protection of the adjacent horse chestnut tree.
- 14) The development hereby permitted shall not be open to customers until the parking spaces, vehicle circulation area, vehicular access/egress onto Cumberland Road and cycle hoops have been provided in accordance with drawing no SSLBRIGHTON(LOCAL).1/14D. Thereafter the spaces, circulation area and hoops shall be retained and kept available at all times for their intended purposes.
- 15) The windows on the Preston Road frontage shall be fitted with clear glazing which thereafter shall be retained and kept unobstructed at all times.



## **APPEARANCES**

### FOR THE APPELLANTS:

Mr S Birrell	Associate Director, WYG Planning & Design
Mr K Malkin	Senior Planner, WYG Planning & Design
Mr A Brown BA CMILT MIHT	Mayer Brown Limited
Mr N Mann MIOA	WYG Environment

### FOR BRIGHTON & HOVE CITY COUNCIL:

Cllr I Davey	Deputy Leader and Cabinet Member for Transport and Public Realm
Cllr A Kennedy	Deputy Leader and Cabinet Member for Planning and Regeneration
Mr A Smith	Planning Officer
Ms N Hurley BA (Hons) MTP MRTPI	Area Planning Manager

### LOCAL RESIDENTS:

Mrs B Weatherstone

Mr J Goodman

Ms J Longhurst

Mr R Gotham

Mr G Thompson

Mr T Malone

Mr S Clark

Ms M Kelly  
LLB Hons Barrister-at-Law

Ms S Hope

Mr H Khalil

Ms I Lindsten

Mr J Clemas

Mr G Smith

## **DOCUMENTS**

- 1 Unilateral undertaking dated 7 November 2011
- 2 WYG Environment Air Quality Assessment October 2011
- 3 Local authority transport statistics
- 4 Photographs of accident on 6 August 2011 submitted by Mr Gotham
- 5 Catchment diagram submitted by Mr Gotham
- 6 1000m walk isochrome submitted by the appellants
- 7 Local store provision plan submitted by the appellants
- 8 Historic photographs of the appeal site submitted by the appellants
- 9 Proposed internal layout submitted by the appellants
- 10 Note on Traffic Numbers dated 14 November 2011
- 11 Council's response to Air Quality Assessment
- 12 Extract from the Local Plan Proposals Map showing local shopping centres
- 13 Brighton and Hove store provision plan submitted by the appellants
- 14 Commentary on stores at Carden Avenue, Portland Road and Western Road
- 15 Letter of 17 November 2011 confirming application for costs



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# Appeal Decision

Site visit made on 3 January 2012

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

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

**Decision date: 10 January 2012**

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## **Appeal Ref: APP/Q1445/D/11/2165107**

### **3 Hazeldene Meads, Brighton BN1 5LR**

- 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 Vaughan against the decision of Brighton & Hove City Council.
  - The application ref BH2011/02120 dated 12 July 2011, was refused by notice dated 31 August 2011.
  - The development proposed is two-storey side and front extensions and single-storey rear extension.
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### **Decision**

1. The appeal is dismissed.

### **Main issue**

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

### **Reasons**

3. The property is a two-storey detached house on the edge of a small estate of properties developed in the 1960s and 1970s. The design and style of the buildings vary, but they have a fairly uniform palette of materials, mainly red/brown brick frontages and concrete roof tiles, and with elements of tile hanging and render. The layout is spacious, with open plan frontages and grass verges, and a number of mature trees. Of particular note is the large open grassed area at the side of no.3, which contains a mature beech tree.
  4. The proposal involves a complete remodelling of the house, involving a two-storey extension over the site of the present garage, to the right hand side when viewed from the front, and the use of strikingly different materials. The Council does not object to the rear extension, but considers that the width of the side extension would be excessive and that the front extension would result in a complex side roof profile that would give the front a disjointed appearance.
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5. In my opinion, the proposed side extension would be seen as balancing the existing 'wing' on the left hand side. It would not extend as far as the garage and would not materially reduce the open aspect of the site. Nor would it impinge significantly on the outlook of no.5, which is set behind no.3. I find the size and proportions of the extension to be acceptable and that the open character of the surrounding area would be maintained. The front extension would be an enlargement of the present gabled section of the frontage. The left hand side would be partially set back to give a modern appearance, but the extension would not add unduly to the bulk of the building.
6. However, the problem arises from the attempt to produce a wholly remodelled 'contemporary' building through the use of painted render, black 'Eternit' cladding, stained timber boarding, dark grey aluminium windows, and an artificial slate roof.
7. Policy QD14 of the Brighton & Hove Local Plan states that extensions and alterations to existing buildings should be well designed, sited and detailed in relation to the property to be extended, adjoining properties and the surrounding area. The remodelled house would stand out as totally different from its neighbours. The chosen materials would accentuate the size of the building and the result would be wholly incongruous when seen in relation to the other houses on the estate.
8. Additionally, the design of the building lacks any architectural coherence, particularly on the front elevation, with a mish-mash of facing materials and an odd combination of windows of different sizes and styles, with both vertical and horizontal emphasis. I see no reason why the building should not be enlarged, but there would need to be far more consistency and articulation in the design, together with the use of materials that would enable the building to blend in with its surroundings.
9. I am aware that contemporary designs have been successfully introduced in a number of other roads in the vicinity, but I have considered this case on its own merits and in the context of its immediate surroundings.
10. In my view, through poor design and the use of inappropriate materials, the proposed remodelling would unacceptably detract from the character and appearance of the existing building and the surrounding area, contrary to Local Plan Policy QD14. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*J Mansell Jagger*

INSPECTOR



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# Appeal Decision

Site visit made on 6 December 2011

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 3 January 2012**

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## **Appeal Ref: APP/Q1445/A/11/2160445**

### **Courtyard at rear of 218 to 234 Portland Road, Hove, BN3 5QT**

- 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 Tony Gravenor (Portland Glass Ltd) against the decision of Brighton and Hove City Council.
  - The application Ref BH2010/02682, dated 23 August 2010, was refused by notice dated 4 August 2011.
  - The development proposed is the demolition of existing workshop and store building and erection of two 2 bed 2 storey live/work units including cycle spaces, bin storage areas and 2 car parking spaces. Revised version of previous application BH2009/01982.
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. The main issues in this case are:
  - The effect of the proposed site layout on the living conditions of future and existing adjoining occupiers;
  - The effect of the proposal on the outlook of existing occupiers to the south of the site;
  - The effect of the proposal of character and appearance of the area.

### **Reasons**

#### *Living Conditions*

3. The appeal site comprises a courtyard behind and to the south of a two plus attic storey terrace on Portland Road. The ground floor of this terrace is in commercial use with two storeys of flats above. Numerous windows in the rear elevation of the terrace face south toward the appeal site.
  4. The appeal proposal would create a pair of two storey live/work units with principal elevations facing north towards the rear of the Portland Road terrace. Extensions project from the rear of the Portland Road terrace meaning that the appeal site is not a uniform width. However, at their closest, the principal elevations of the appeal units would be some 6m from the rear of the Portland Road terrace. At other points the distance between the existing and proposed
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- buildings would be greater and efforts have been made to offset the proposed window positions to avoid direct overlooking.
5. Nevertheless the gap between the buildings would not be wide enough to provide an external space of acceptable quality for future residents. The surrounding buildings, in particular the Portland Road terrace, would have an overbearing effect on such a confined area. The fact that the proposed principal elevations face north and that, together with the proposed fencing between the two units and the recently constructed double garage, there would be a continuous line of built structure along the southern edge of the space, all serve to reinforce this conclusion.
  6. I accept that the courtyard is no longer required to provide delivery access to the Portland Road commercial units, but note from the application drawings that it would still provide them with bin storage and fire escape access. It would also serve as the only means of pedestrian and vehicular access for the proposed units and, given the very limited amount of private external space, would also provide their main outlook. I do not consider that the space available is sufficiently large to satisfactorily meet all of these requirements. As such it would be detrimental to the living conditions of occupiers of the proposed units.
  7. The appeal site also contributes to the outlook for the residents of the Portland Road flats. The roofs of the proposed buildings would, to some degree, infringe upon the outlook from the first floor flats, although views over and around the roofs would still be available. The outlook from the second floor flats would not be materially affected. I therefore do not consider that the proposal would have an unacceptable effect on the living conditions of the Portland Road flats.
  8. Therefore I conclude that, by virtue of its constrained layout, the proposal would have a detrimental effect of the living conditions of future occupiers contrary to policy QD27 of the Brighton and Hove Local Plan (LP). This policy seeks to protect the amenity of occupiers. Nor would it comply with LP policy QD1 which requires proposals to achieve a high standard of design and make a positive contribution to the visual environment. The first reason for refusal also refers to LP policy QD2 on key principles for neighbourhoods. However this adds little to my consideration of this issue.

*Outlook of Occupiers to the South of the Site*

9. The proposed units would be located close to the southern boundary with 49 Hogarth Road and 34 Reynolds Road. I had the opportunity to view the situation from the garden of 49 Hogarth Road and saw that the gardens have a generally open outlook. There would be a significant distance between the rear of number 49 and the nearest proposed unit. If anything the distance to 34 Reynolds Road would be greater and, in both cases, the units would affect a relatively short length of the respective boundaries.
10. The single storey elements would be within 0.5m of the boundary and rise above the existing fence by approximately one metre. The two storey elements would be set back from the boundary and take the form of sloping roofs. This would reduce their visual impact on views from the adjoining properties and they would not therefore appear incongruous or unacceptably increase the sense of enclosure. As such the proposal would not have a

detrimental effect on views from the south of the site and would comply with LP policies QD1 and QD2.

### *Character and Appearance*

11. The site is visible from a limited range of public viewpoints. The proposed units would be seen in the context of the Hogarth and Reynolds Roads houses and the rear of the Portland Road terrace. The relationship between the front of the proposed units and the rear of the Portland Road terrace would be very apparent from Hogarth Road. Given the scale of the opposing buildings, the gap would appear uncomfortably narrow and not typical of the location - which is essentially suburban in character.
12. The units would be smaller in scale than the adjoining buildings and therefore in keeping with their subservient location. However their built form incorporates a lowered eaves level which, although it contributes to this reduced scale, is not characteristic of the area. The proposed fenestration and detailing does not reflect that of surrounding buildings. I therefore consider that the massing and appearance of the proposal does not respect the local character of the area. As such it does not comply with LP policy QD2 which requires proposals to enhance the positive qualities of local neighbourhoods. Nor does the proposal live up to the aims of LP policy QD1 which requires a high standard of design including the creation of areas of distinction in locations of 'drab and uninteresting character.'
13. I have taken into account the planning permission for a two storey house adjoining 49 Hogarth Road which, if constructed, would further restrict views to the site. However this does not lead me to a different conclusion on this issue.

### *Other Matters*

14. The proposal would create some 42 sq m of workshop floorspace in place of the existing 48 sq m of Use Class B1/B8 space which would be lost through demolition. Whilst I recognise that the existing floorspace is constrained and that the Council's Economic Development section supports the proposal, the benefit is not sufficient to outweigh my conclusions on the main issues.
15. The appellant has referred to the requirements of Planning Policy Statements (PPS) 1<sup>1</sup>, 3<sup>2</sup> and 4<sup>3</sup> which together favour mixed use schemes, the efficient use of previously developed land and sustainable economic development. Equally the PPS's require proposals to achieve a high standard of design, make places better for people and respond to local characteristics. In my view the balance of national planning policy does not support the proposal. The publication of the draft National Planning Policy Framework does not alter this conclusion.
16. The appellant refers to three nearby schemes where the outcomes are said to support the appeal proposal. Two of the cited cases concern character and appearance issues. These matters are specific to each site and proposal and the conclusions reached on the other schemes are not transferable in this case. The third concerns the mix of residential and other uses. However the mix of uses is not a cause for concern in the appeal proposal.

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<sup>1</sup> Planning Policy Statement 1: Delivering Sustainable Development

<sup>2</sup> Planning Policy Statement 3: Housing

<sup>3</sup> Planning Policy Statement 4: Planning for Sustainable Economic Growth

17. Certain local residents support the proposal on the basis that it would improve the appearance and security of the area. Whilst I have sympathy with these views, the improvements sought could be achieved by other, less harmful, means.

*Conclusion*

18. For the reasons outlined above the appeal does not succeed.

*Simon Warder*

*INSPECTOR*





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# Appeal Decision

Site visit made on 20 December 2011

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 22 December 2011**

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**Appeal Ref: APP/Q1445/D/11/2164405**  
**8 Hove Park Way, Hove, BN3 6PS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs A Brookes against the decision of Brighton & Hove City Council.
  - The application Ref: BH2011/01970, dated 16 June 2011, was refused by notice dated 7 September 2011.
  - The development proposed is a side extension above a garage to form a bedroom at first floor and additional roof space accommodation at the second floor.
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## Decision

1. I allow the appeal and grant planning permission for a side extension above a garage to form a bedroom at first floor and additional roof space accommodation at the second floor at 8 Hove Park Way, Hove, BN3 6PS, in accordance with the terms of the application, Ref: BH2011/01970, dated 16 June 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin 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 drawings: 1:1250 Site Location Plan; 1:500 Site Block Plan; 1135/02/Rev A Existing and Proposed Plans, Elevations and Sections.
  - 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.

## Main Issue

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

## Reasons

3. The new roof of the proposed first floor extension above the existing garage would be set back from the main front roof slope and stepped down below the height of the existing ridgeline. In these circumstances, although the new roof would be relatively large, it would not over dominate the appearance of the original house when viewed from the road or have an unacceptable massing effect. The side of the new roof would be hipped back away from the next door house no. 10, such that between the roofs of the two houses there would be a

wide open space. It is noted that the appeal house and no. 10 are quite close together. However, there are several other houses in the road which have side elevations close to each other. The relationship between nos. 8 and 10 would not therefore look out of place. Against this background the proposed extension would not create a cramped and overbearing appearance.

4. Having regard to all other matters raised, the appeal proposal would not be visually detrimental to the street scene. The scheme would comply with the design aims of policy QD14 from the Brighton and Hove Local Plan. The Council has supplied a copy of its Supplementary Planning Guidance Note 1 Roof Alterations & Extensions (SPG). Although the Council did not identify any specific conflict with the SPG, in view of my findings I consider that this particular scheme is also not contrary to the design aims of the SPG.
5. Condition 2 is needed in the interests of proper planning and for the avoidance of doubt. Condition 3 is necessary in order to safeguard the character and appearance of the area.

*Gareth Symons*

INSPECTOR



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# Appeal Decision

Site visit made on 7 December 2011

**by Jane Miles BA (Hons) DipTP MRTPI**

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

**Decision date: 11 January 2012**

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**Appeal Ref: APP/Q1445/A/11/2159547**  
**9 Ridgeside Avenue, Brighton BN1 8WD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr R Counsell against the decision of Brighton & Hove City Council.
  - The application ref: BH2011/01189, dated 20 April 2011, was refused by notice dated 26 July 2011.
  - The development proposed is erection of a detached single dwelling to replace existing garage.
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## Decision

1. The appeal is dismissed.

## Reasons

2. The appeal site, which has been the subject of several previous applications including two dismissed on appeal (in 2009 and 2010), is in an accessible and sustainable location where there is no policy objection in principle to new dwellings. This is so notwithstanding the removal of residential garden land from the definition of previously developed land<sup>1</sup> in 2010. The **main issues** in this appeal are: the effect of the proposal on the character and appearance of the surrounding area; the adequacy of provision for private amenity space; whether or not the development would achieve an adequate level of sustainability.

### *Character and Appearance*

3. The existing house is at the northernmost end of an elevated row along the east side of the street and its large plot extends across the end of a cul-de-sac section of Ridgeside Avenue. On the opposite side are two bungalows at a lower level. The new dwelling would sit at this lower level, forwards of no. 9 and directly off the head of the cul-de-sac. This part of Ridgeside Avenue and the wider area around it consists mainly of detached houses and bungalows on generous plots, set in streets with areas of grass verge and established trees, which all helps to create a spacious, verdant and attractive character.
4. In terms of its total size, the proposed plot would not be markedly dissimilar from some others in the vicinity, but it would be an unusual and irregular shape. The dwelling and attached garage would be sited close to the northern and western plot boundaries, with a private garden area extending upwards in

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<sup>1</sup> In Planning Policy Statement 3 (PPS3) Housing

a steeply sloping strip to the (eastern) side, rather than to the rear of the dwelling, and another area of amenity space at the front between the dwelling and the highway. Space around the western and northern sides of the dwelling would be extremely limited. The site plan indicates that the kitchen door in the west elevation would open onto a space roughly 0.6m deep. The area along the north (rear) elevation (with patio doors) would vary in depth from about 1.6m to just over 2m to the boundary, with much of this area already being taken up by a tall conifer hedge.

5. Thus, notwithstanding the space to one side and to the front of the dwelling, the built form would appear shoe-horned into the site's north-west corner. Cutting the building into the slope on the eastern side would further emphasise this very cramped arrangement, which would be at odds with the generally more spacious pattern in the wider area. Thus, irrespective of the building's design and appearance, the development would detract from the street scene rather than contribute positively to it: it would neither repair nor complete the street scene. It is because of these factors, rather than the shape of the plot per se, that the proposal would in my judgement seriously detract from the locality's established character and appearance.
6. Simply in terms of its scale and design, the dwelling would be an appropriate response to the context of the surrounding buildings, but that is not sufficient to overcome the harmful effect described above. I conclude therefore that the proposal would cause unacceptable harm to the character and appearance of the surrounding area. It would conflict with Policies QD1 and QD2 of the Brighton and Hove Local Plan 2005 (LP) relating to design.

#### *Private amenity space*

7. LP Policy HO5 does not set out specific standards but requires the provision of "private useable amenity space in new residential development where appropriate to the scale and character of the development". In this context the development's scale and character is that of a one-bedroom retirement dwelling for the appellant and his wife (albeit it could be occupied differently in future). I can find nothing in this policy which requires the private garden of a new house to be of similar size and shape to those around it. Moreover a dwelling with a smaller garden could offer variety and choice in an area where larger gardens predominate.
8. Where external amenity space is appropriate, as here, it is however important that it includes sufficient which is 'private' and 'useable'. Thus the limited space to the north and west of the proposed dwelling would be of little value. Even if terraced, the value of the area of garden land to the eastern side would be limited by its slope, its narrowness (in places), and the probable need for significant enclosure to provide privacy. Similarly, although the south-facing area in front of the dwelling could be a pleasant sitting-out space, it too would need some form of enclosure for privacy, and this could further emphasise the cramped nature of the built development in the street scene.
9. Thus, whilst the total amount of space would be sufficient in quantitative terms, I am not convinced of the adequacy of its layout and practicability. On balance, I conclude that the proposal would conflict with Policy HO5, which is another matter that weighs against it.

### *Sustainability*

10. The aim of LP Policy SU2 is to ensure that new development achieves a high standard of efficiency in the use of energy, water and materials, and this is consistent with current and emerging national policy. The proposal is designed to meet Level 3 of the Code for Sustainable Homes (CSH), which is the standard expected in the Council's SPD08<sup>2</sup> for small-scale development of one or two residential units. The SPD also expects new housing on 'greenfield' sites to achieve CSH Level 5 and, following the changed definition referred to in paragraph 2 above, the status of the appeal site is now that of greenfield rather than previously developed land.
11. However, national policy guidance<sup>3</sup> establishes that local requirements for sustainable buildings should be set out in a development plan document rather than an SPD, so as to ensure independent examination. Thus local requirements for particular CSH levels should be included in development plan policies. There is no such requirement, nor any other specific standard, in Policy SU2 and, whilst the SPD is a material consideration, it does not have the weight of a development plan policy. In addition I note the statement in the appellant's grounds of appeal that a rating above CSH Level 3 could be achieved in some respects. In these circumstances I am satisfied that the development could achieve an adequate level of sustainability and that it would not conflict with the objectives of LP Policy SU2.

### *Other matters and overall conclusion*

12. I note local residents concerns about various other matters, most notably the impacts of the additional dwelling on parking and congestion in the cul-de-sac and on local wildlife. I have taken account of the appellant's references to other appeal decisions, and of letters in support of the proposal as well as those objecting to it. Points raised about property boundaries are not material planning considerations but are private matters to be resolved between the parties involved.
13. I appreciate that the appellant has sought to overcome concerns raised in relation to previous schemes, on a site where plot shape and topography pose challenging constraints. In providing a smaller dwelling, the proposal would be beneficial in adding to the variety and choice of accommodation in the area. However neither these points, my conclusion in relation to sustainability nor any other matters raised are sufficient to outweigh my conclusions on the first two main issues. Taken together, these indicate that the appeal must fail.

*Jane Miles*

INSPECTOR

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<sup>2</sup> An adopted supplementary planning document (SPD) entitled 'Sustainable Building Design'

<sup>3</sup> In the PPS: Planning and Climate Change document, which is a supplement to PPS1: Delivering Sustainable Development





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# Appeal Decision

Site visit made on 6 December 2011

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 20 December 2011**

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**Appeal Ref: APP/Q1445/A/11/2160060**  
**62 Roundhill Crescent, Brighton, BN2 3FR**

- 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 Ahmed Khalil against the decision of Brighton and Hove City Council.
  - The application Ref BH2011/00475, dated 21 March 2011, was refused by notice dated 13 June 2011.
  - The development proposed is a new window to first floor elevation.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue in this case is the effect of the proposal on the character or appearance of the Round Hill Conservation Area.

## Reasons

3. The appeal property is typical of the buildings which contribute to the character of the Round Hill Conservation Area. These characteristics are described in the Character Statement produced for the Area. Part of a curving terrace, its front elevation includes a canted bay with timber sliding sash windows in what appears to be the original design. The window which is the subject of this appeal has already been installed and is the only other window in the front elevation.
  4. Constructed in uPVC, the appeal window is top hung with a single central transom. The material, dimensions and detailing of the frame quite obviously do not match the other windows in the elevation. The window sits within a recess in the elevation and whilst its top and sides align with the recess, the bottom does not. As a result, the depth of the window does not match the first floor bay window and the central transoms do not align with each other. This has an unbalancing effect on the elevation as a whole.
  5. The Council has adopted Supplementary Planning Document (SPD) called Architectural Features which deals with alterations to buildings in Conservation Areas. It states that new windows in recessed masonry should not disrupt the rhythm and proportions of the overall architectural design (policy on page 30)
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and that uPVC windows are unlikely to be permitted in elevations facing the street (page 32). The appeal window does not meet either of these requirements.

6. I therefore conclude that the material, design, detailing and size of the appeal window do not preserve the appearance of the Conservation Area. As such it is contrary to the requirements of the statutory test and the presumption in favour of the conservation of designated heritage assets set out in policy HE9 of Planning Policy Statement 5: Planning for the Historic Environment (PPS5). Nor does it comply with policy HE6 of the Brighton and Hove Local Plan which, amongst other things, requires proposals in Conservation Areas to have a high standard of design and detailing and use materials sympathetic to the area. Policy QD14 of the Local Plan is mentioned in the decision notice, but adds little to my consideration of the main issue.
7. The appellant contends that uPVC windows have been installed in the front elevations of other nearby properties and that they are now part of the established character of the area. Whilst I accept that there are other uPVC windows in the area, their effect is not sufficient to undermine its original character and an Article 4 Direction is in place to control further similar proposals.
8. The appellant argues that the principle of a new window in the recess would not be out of character with the area. However this appeal decision must be based on the particular characteristics of the window proposed and I have found them to be unacceptable.
9. I have taken into account the appellant's argument that the proposal would improve the living conditions of occupiers, but there is no evidence that living conditions were unacceptable before the window was installed or that they could not be improved by other, less damaging, means. In terms of the assessment required by policy HE9.4 of PPS5 therefore, whilst the harm caused to the Conservation Area would be less than substantial, I consider that the claimed benefit is not sufficient to outweigh it.
10. I have had regard to the representations of local residents in support and opposition to the proposal. However none of these points lead me to change my conclusion on the main issue.
11. For the reasons set out above the appeal should not succeed.

*Simon Warder*

INSPECTOR





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# Appeal Decision

Site visit made on 6 December 2011

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 20 December 2011**

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**Appeal Ref: APP/Q1445/A/11/2161067**  
**54A Upper Lewes Road, Brighton BN2 3FH**

- 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 Phil Collins against the decision of Brighton and Hove City Council.
  - The application Ref , BH2011/01031 dated 2 April 2011, was refused by notice dated 25 July 2011.
  - The development proposed is an extension at second floor level to form additional flat.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues in this case are the effects of the proposal on:
  - the character and appearance of the area;
  - the living conditions of neighbouring occupiers.

## Reasons

### *Character and Appearance*

3. The appeal proposal would add an additional storey onto an existing annex at the rear of number 54 Upper Lewes Road. Changes in the ground level mean that this annex, numbered 54A, currently has two storeys on the south east elevation facing number 54 and a single storey on the north west elevation facing the garden area. Part of a residential terrace, number 54 has three storeys, whilst the properties on either side of it have two storeys.
4. The annex extends almost the full width of the garden and most of its length. It is the only building of its type in the immediate vicinity and is visible from a range of viewpoints in the gardens and from the rear of the houses in Upper Lewis Road and the adjoining Roundhill Crescent. The proposed second floor extension would significantly increase its prominence from these viewpoints. At present the annex has a part pitched and part flat roof which offers a degree of articulation and visual interest. Both sides of the proposed extension would have flat topped parapet walls with no articulation or relief. I therefore consider that the increase in its height and scale together with its rather blocky

massing would be visually intrusive and have a detrimental impact on the character and appearance of the area.

5. Together policies QD1, QD2 and QD14 of the Brighton and Hove Local Plan (LP) require proposals, including extensions, to have a high standard of design, take into account their relationship with existing buildings and to enhance the positive qualities of local neighbourhoods. The proposed extension would not comply with these aims.
6. The second reason for refusal refers to the height of the extension relative to number 54 and its potential effect on the Upper Lewis Road street scene. Given that the extension will be behind a continuous terrace including number 54, and that any reasonable viewpoint along Upper Lewis Road would be well below the ridgeline of that terrace, I am satisfied that the extension would not be seen from Upper Lewis Road irrespective of its exact height relative to number 54 or indeed the houses either side.

#### *Living Conditions*

7. The proposed flat would have a balcony running most of the width of the annex facing the rear garden of number 54A. The ground floor flat below has exclusive use of this garden as private amenity space. In view of the size of the balcony and the confined nature of the space it would overlook, I consider that it would lead to a loss of privacy sufficient to adversely affect the living conditions of the ground floor flat. The screening effect of the flat roof below the balcony would not adequately mitigate this impact.
8. The balcony would also offer views over the boundary fence towards the gardens and rear elevations of the Roundhill Crescent houses. Whilst this would result in some loss of privacy, of itself this would not be enough to justify dismissing the appeal.
9. The annex sits on the north-eastern boundary of the site and the extension would significantly increase its height. It would therefore reduce the amount of daylight received by the house and a substantial part of the garden of number 55. It would also reduce the amount of sunlight received during the latter part of the day.
10. The annex is close to the property boundaries on both sides and in both cases the adjoining gardens are relatively narrow. The increased height of the extension would not be mitigated by any set backs or other features. As such I consider that the additional bulk of the extension, in close proximity to these constricted spaces, would have an unacceptably overbearing effect on both adjoining properties.
11. By virtue of the loss of privacy, daylight, sunlight and its overbearing presence the proposal would be detrimental to the living conditions of neighbouring occupiers. It would therefore be contrary to LP policy QD27 which seeks to protect the amenity of adjoining residents.

#### *Conclusion*

12. I have taken into account the appellant's contention that the proposal would improve the appearance of the area, create a new dwelling and lead to a more intensive use of previously developed land in accordance with Government

advice and the Local Plan. However none of these points lead me to change my conclusion on the main issues.

13. I have also taken into account the objections of neighbouring occupiers regarding loss of privacy, noise and disturbance, waste control, maintenance issues and the potential presence of slow worms. However, none of these matters change my overall conclusion.

14. For the reasons outlined above the appeal should not succeed.

*Simon Warder*

INSPECTOR





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# Appeal Decision

Site visit made on 6 December 2011

by **Ray Wright** BA(Hons) DipTP MRTPI

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

Decision date: 16 January 2012

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## Appeal Ref: APP/Q1445/A/11/2161337

### 22 Queens Road, Brighton BN1 3XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Stephen Rodger (First People Recruitment) against the decision of Brighton and Hove City Council.
  - The application Ref BH2011/00767, dated 7 February 2011, was refused by notice dated 12 May 2011.
  - The development proposed is 'conversion and change of use of lower ground floor stores to form 1 No. 1 bed flat.'
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not the proposal would provide satisfactory living conditions for prospective occupiers of the flat.

### Reasons

3. No. 22 Queens Road has three storeys over a basement and is part of a terrace on the west side of Queens Road. The ground floor is used as a recruitment agency. The appeal proposal relates to the basement area which is currently used for file storage.
  4. The site visit revealed that the basement area currently has poor natural lighting. Artificial lighting was required even at midday (albeit in winter) to clearly view the current internal arrangements. Following an earlier refusal of permission due to concerns about lack of daylight and poor outlook this proposal is supported by a daylight assessment to enable a more objective judgement to be made. The assessment confirms that the front part of the basement receives adequate daylight for use as a bedroom and, with a glazed door, a living room: albeit both with supplementary electric lighting. Conversely, the existing window arrangement does not permit enough daylight to enter for the rear of the basement to meet the recommendations for a residential room. Two houses have recently been erected on land to the rear, but these appear to have only marginally worsened the original position.
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5. The daylight assessment suggests appropriate measures required for the whole basement to be used as a residential flat. Crucially, it recommends a largely open-plan layout to allow the rear to benefit from light from the front window and the glazed front door. This requirement severely inhibits the amount of subdivision that can be carried out in order to reach the recommended standard.
6. The appeal plans do not follow the conclusions of the daylight assessment. The proposal shows a central shower and toilet area sub-dividing the basement and, an enclosed hallway at the main entrance. In my view this layout would negate the other measures that are proposed to be taken in accordance with the report to improve the daylighting to this unit. With no borrowed light from the front, the living room would be relatively dark and uninviting. As such, for the flat to function properly with the proposed arrangement, future occupiers would rely very heavily on artificial lighting. I consider this unsatisfactory.
7. This situation would be compounded by the fact that the flat, with views of only the entrance steps to the front and the very small, enclosed yard to the rear, would also have a poor and limited outlook. There would also be no associated, practical or useable outdoor space associated with the flat, with anything placed in the rear yard area liable to further restrict the light received by adjoining rooms. The new houses to the rear exacerbate the situation, though not to any significant extent.

#### **Other Matter**

8. The site is located in the West Hill Conservation Area. There would be no significant external alterations to the property. Nor would the proposal introduce an inappropriate use into the area. Thus, the character and appearance of the Conservation Area would be preserved.

#### **Conclusion**

9. For the above reasons, and having regard to all other matters, I conclude that the proposal would not provide satisfactory living conditions for its intended occupants, contrary to Policy QD27 of the Brighton and Hove Local Plan, and that the appeal should be dismissed.

*Ray Wright*

INSPECTOR



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# Appeal Decision

Site visit made on 20 December 2011

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 22 December 2011**

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**Appeal Ref: APP/Q1445/D/11/2164678**

**51 Upper Abbey Road, Brighton, East Sussex, BN2 0AD**

- 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 Nathan Eames against the decision of Brighton & Hove City Council.
  - The application Ref: BH2011/02267, dated 7 August 2011, was refused by notice dated 6 October 2011.
  - The development proposed is a wood based roof terrace to sit on top of existing flat roof of 51 Upper Abbey Road and accessed via the existing dormer loft conversion.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are the effects of the development on the living conditions of neighbours, with particular regard to privacy, noise, disturbance and outlook, and on the character and appearance of the area. The terrace and a balustrade are already in place. I shall consider the appeal accordingly.

## Reasons

### *Living Conditions*

3. From the front edge of the terrace there are clear views down into the rear windows of the houses most immediately at the back of the appeal site in Belle Vue Gardens. There are also views into the rear outdoor amenity spaces of those houses and back towards the rear windows of the houses either side of the appeal property. In my opinion, such views have caused a serious invasion of privacy to these neighbours.
4. It is accepted that sitting down on the terrace would restrict the views out towards the houses in Belle Vue Gardens in particular. However, persons walking out onto the terrace would at least initially be standing and there would be a natural tendency to go to the edges of the terrace to look around. At social gatherings, for example on pleasant outdoor evenings, it would not be unusual for persons on the terrace to remain standing thus prolonging views towards neighbouring houses. It would not be practicable to enforce the use of the terrace to seating only. While the appellants may not want to use the terrace for entertaining it would also not be possible to prevent this and any future occupiers may wish to use the area differently anyway. Placing a trough along the front edge of the terrace with some planting in would only provide

very marginal screening and not alleviate sufficiently the ability to look into other people's houses and rear amenity spaces.

5. It is acknowledged that there are already some high level views from the windows in the existing rear dormer of the appeal house towards the backs of the houses in Belle Vue Gardens. However, those views are different and less harmful to the neighbours at the back because they are from further away and not so directly downwards. Also from these windows it is not possible to see back into the rear windows of the houses either side. In addition the affected neighbours in Belle Vue Gardens would be very conscious of the ability for persons on the roof terrace to look down on them and see what they were doing. That possibility means that these neighbours in particular would feel that the private enjoyment of their outdoor spaces would be much diminished.
6. At my site visit I looked out of the existing first (middle) floor rear windows where it is possible to see towards the Belle Vue properties. However, the size and position of these windows mean that views from them are more restricted than those from the roof terrace. I also looked from the existing patio area of the appeal house towards the back of the Belle Vue houses and saw the difference in levels between the two sets of properties. I recognise that from here some views are possible into rear facing windows and gardens. It is accepted that in areas such as there will usually be some existing mutual overlooking. However, such tight knit situations make it even more important to ensure that existing amenity levels are safeguarded.
7. It is noted that from the existing dormer extension access can already be gained onto the flat roof. It is also claimed that the flat roof has been used as a terrace for the last 3 ½ years. However, given the high level position of the terrace, the installation of the balustrade will allow a much safer use of this area. This will lead to an increased propensity to be on the roof for outdoor amenity purposes. The flat roof at no 53 does not have a rail around it. Although that roof may sometimes be used for sitting out on, I consider that its use would not be frequent for the very obvious safety reasons. This limitation means that views from the roof of no 53 are less invasive to privacy.
8. Despite a roof terrace at no 49 which does have a safety rail and some other roof terraces further away, the more regular use of the appeal roof, most probably when neighbours would also want to be outside, adds to my strong concerns about the very neighbour unfriendly nature of the development.
9. There is no evidence from the Council to support the assertion that users of the roof terrace would be so noisy that they would unacceptably disturb neighbours. In my opinion noise from residents legitimately using their back gardens/amenity areas would be little different. The Council also has other powers to abate any noise nuisance if it did occur. I also find little to back up the view that the terrace is overbearing and therefore impacts adversely on the outlook from neighbours' houses. Nevertheless, these findings do not persuade me from my previous conclusions about significant harm to neighbours privacy. As such the appeal scheme conflicts with the amenity aims of policies QD14 and QD27 from the Brighton and Hove Local Plan (LP).

#### *Character and Appearance*

10. The terrace is formed from timber decking and the balustrade comprises a wooden handrail and uprights which have horizontal thin steel cables between



them. Roof terraces also often have tables and chairs on them like those shown in the photographs submitted of the adjoining terrace. In my opinion the terrace has a suburban back garden design that, along with its high level position, looks out of place in this urban terrace setting. Domestic paraphernalia would also create a cluttered appearance at odds with the plain and simple character of the rear facades of these traditional character properties. Although the houses have been altered in varying ways, the roof terrace is inconsistent with the architectural style and period of the buildings.

11. Most of the other houses in the two rows of terraces do not have roof terraces. The few that do exist are therefore in the minority. I am also not convinced that the other terraces set a good design precedent for this one to follow, whether or not they have had planning permission. Views of the roof terrace are relatively limited from adjoining roads but it is nonetheless very visible from numerous nearby windows. The roof terrace has harmed the character and appearance of the area in this context. The development does not accord with the design aims of LP policy QD14.

### **Other Matters**

12. The appellant has stated that the appeal scheme accords with another LP policy which is QD3 and suggested that it also complies with the Council's Supplementary Planning Guidance BH1 *Roof Alterations and Extensions*. However, the Council did not identify any conflict with either of these and even if the appeal scheme did accord with them, that does not outweigh my findings about conflicts with the other two policies referred to from the LP.
13. The Portsmouth appeal decision (APP/Z1775/D/11/2151095) was in relation to a flat roof which was small and access out onto it was through a bedroom window which was not direct or easy. In this context the Inspector found that use of the roof would be restricted and it would not be a viewing platform in general use. However, in the case now before me the appeal roof is of such a size and with easy access that it is likely to encourage regular use and lead to the harm to privacy identified above. The two developments appear to be materially different and so I attach little weight to the Portsmouth case.
14. In terms of the other appeal decision in Brighton (APP/Q1445/D/10/2124207), that involved a terrace at a semi-detached property. The decision turned on whether oblique views from the terrace back towards the adjoining property (the other semi-detached house) caused a privacy problem bearing in mind an intervening screen along the edge of the terrace. The case did not seem to involve overlooking towards properties at the rear or high level peering down into back gardens/patios. On this basis the Brighton appeal decision also has significant differences from the case I am now considering. It therefore has little bearing on this appeal. In any event, each planning appeal should be considered on the basis of its individual circumstances and merits.
15. I have considered all other matters raised. None outweigh my earlier findings.

### **Conclusion**

16. I conclude that the appeal should not succeed.

*Gareth Symons*

INSPECTOR





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# Appeal Decision

Site visit made on 6 December 2011

**by Ray Wright BA(Hons) DipTP MRTPI**

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

**Decision date: 3 January 2012**

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**Appeal Ref: APP/Q1445/D/11/2164323**  
**14 Desmond Way, Brighton BN2 5PN**

- 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 Mrs Julie Page against the decision of Brighton and Hove City Council.
  - The application Ref BH2011/02219, dated 25 July 2011, was refused by notice dated 9 September 2011.
  - The development proposed is a 'single storey rear/ side extension and roof conversion with front dormer.'
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## Decision

1. The appeal is dismissed insofar as it relates to the dormer window and rooflights on the front roofslope. The appeal is allowed insofar as it relates to the remainder of the application and planning permission is granted for a single storey rear/ side extension at 14 Desmond Way, Brighton BN2 5PN in accordance with the terms of the application, Ref BH2011/02219, dated 25 July 2011 and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
  - 1) With the exception of the dormer window and rooflights on the front roof slope shown on the plans the development hereby permitted shall be carried out in accordance with the following approved plan: 433/01.
  - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing dwelling.

## Main Issue

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

## Reasons

3. The appeal property is a semi-detached bungalow with a projecting gable feature. Adjoining its side boundary is a shared driveway, which leads to garages to the rear of the property. This form and layout is a characteristic feature of a number of other properties in the road. Although a conservatory was added at some time to the rear of the kitchen, the bungalow appears otherwise unaltered from its original form.
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4. The introduction of a dormer window on the front elevation as proposed would dominate the front roof slope and detract from the simple original design of the dwelling. It would also disrupt the simple symmetry and balance displayed by this pair of semi-detached properties.
5. The proposed front dormer, although set well within the roof slope, would overall be wider than the bedroom window below. This together with the tiled upstand below its glazing would make it appear top-heavy and add to an overbearing appearance. It would therefore not accord with the Council's Supplementary Planning Guidance 'Roof Alterations and Extensions' (SPGBH1). The associated rooflights as proposed on the front roof slope, due to their size, spacing and position, would poorly relate to the dormer and further adversely affect the overall appearance of the property.
6. In support of the appeal the appellant refers to other front dormer windows in the road. Whilst rear dormer additions appear relatively common there are only a limited number of front dormer window extensions. There is no clear information about each of these cases, although the Council indicates that only one has planning permission and that was granted to balance one already existing in the pair of bungalows. These other front dormers serve to illustrate the concerns expressed above, regarding the effect such development has on the character and appearance of the area.
7. In addition, whilst every application should be considered on its merits, the remaining unaltered semi-detached pairs of bungalows are a material consideration. If the appeal were to succeed in relation to the front dormer as proposed, it could set a precedent for other similar developments. While it is recognised that there may be no current intention for others to develop in this manner, any future application could be difficult to resist, compounding the harm that I have found. Overall I conclude the proposed front dormer would be harmful to the appearance of the existing dwelling and wider character of the area contrary to Policy QD14 of the Brighton and Hove Local Plan and SPGBH1.
8. The Council take no issue with the side/ rear extension which in part replaces the former conservatory addition, and I note that work on this element of the proposal has already commenced. It is set within the rising ground level at the rear and represents a low key development that would be largely unseen from the road frontage. It would also be similar to an extension constructed at number 12 on the opposite side of the shared driveway. In these circumstances it would acceptably relate to the host property and cause no harm to the character of the area.

### **Other Matters**

9. Adjoining residents raised concerns regarding overlooking, loss of privacy and increased activity and traffic, resulting from the development, at the application stage. I note the Council did not consider the harm such as to merit refusal of the proposal on this basis, and I agree with this assessment.

### **Conclusion**

10. For the reasons set out above, I conclude that the appeal should fail in relation to the dormer window and rooflights proposed on the road frontage. In relation to the rear extension however, I conclude the appeal should succeed. As work

on the extension has commenced the standard condition relating to commencement of development is unnecessary. However, a condition specifying the plans to which the permission relates, (so far as they are relevant to that part of the development permitted), is required together, in the interests of visual amenity, a condition to ensure that external materials match those of the existing property.

*Ray Wright*

INSPECTOR





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# Appeal Decision

Site visit made on 20 December 2011

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 9 January 2012**

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**Appeal Ref: APP/Q1445/C/11/2158450**

**44 Crescent Drive South, Brighton, BN2 6RB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lee Phillips against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2010/0428.
- The notice was issued on 7 July 2011.
- The breach of planning control as alleged in the notice is without planning permission the installation of a glass panelled safety rail ("Safety Rail") on the rear elevation at first floor level to the property.
- The requirement of the notice is: Remove the safety rail on the rear elevation of the property at first floor level.
- The period for compliance with the requirement is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.**

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## The appeal on ground (c)

1. An appeal on this ground is that there has not been a breach of planning control. The onus to do that rests with the appellant.
2. The main argument by the appellant is that the glass safety balustrade has been fitted in the position that it was always intended to be. To support that assertion a planning permission (Ref: BH2005/06204) for various alterations and extensions at the appeal property has been referred to. The approved plans and some subsequent minor amendments, which were also endorsed by the Council, show railings in front of the doors to the first floor rear facing dormer window. However, those railings would appear to be flush with the outside of the doors. Had it been the intention to enclose the flat roof area in front of the dormer, and that is what had been applied for, the proposed side elevations would have depicted the handrail and any railings extending out from the dormer window to the edge of the roof. They do not.
3. Furthermore, the safety rail shown on the approved drawings is clearly in the form of railings and not a handrail with only glazing below. Even if permission had been given to put a rail around the flat area in front of the dormer, its style was not how the current balustrade looks. The proposed and existing arrangements are materially different. Planning permission BH2005/06204 did not allow the alleged breach of planning control

4. It is noted that the appellant considers that he was granted planning permission for the balcony area and has referred to condition 5 of the aforementioned planning permission. However, the roof, with the glass balustrade in place, can be used as an amenity area which condition 5 specifically prevents. The condition also specifies that the flat roof shall only be used for maintenance or emergency purposes only. In my opinion the existing access arrangements onto the roof mean that its use is beyond the limited rights intended and restricted by condition 5.
5. I agree with the appellant that the other appeal decisions referred to by the Council are not in any way comparable to this appeal. In my view the way that the balustrade juts out from roof means that it has materially affected the external appearance of the building and the shape of the roof. No other reasons have been advanced to show why the glass panelled safety rail does not constitute a breach of planning control. The ground (c) appeal fails.

### **The appeal on ground (a)**

6. There are two main issues. The first is the effect of the development on the living conditions of neighbours with regard to privacy. The second is the effect that the safety rail has on the character and appearance of the area. I shall refer to an appeal decision Ref: APP/Q1445/D/11/2156290 dated 7 September 2011. This was in relation to a refusal of planning permission to retain the same safety rail that is subject of the enforcement notice and which is now before me. The similarities between the two appeals in terms of not only the development but also the issues involved mean that I shall attach significant weight to the other appeal decision which was dismissed.

#### *Living Conditions*

7. I have read the previous Inspector's decision. I agree with his findings about how persons who stand on the roof/balcony and use it as an external amenity space can look down into the patio areas immediately to the rear of the adjacent dwellings. This causes particularly intrusive overlooking. It is also possible to see into the rear of no 46 itself. It is noted that the side facing windows to no 46 are in an extension to the property, and if that extension and its windows were not there, then there may not be a privacy problem. Nevertheless, the extension is there and the impact of the appeal development must be assessed on the basis of the current circumstances.
8. I have considered all other matters raised in the previous appeal and those raised in this appeal. They include the involvement of a local councillor and a suggested compromise arrangement of fitting rails outside the patio doors which I consider in more detail below. It is also noted that the previous Inspector considered the matter of restricting access onto the flat roof. However, none of these matters outweigh the harm to the living conditions of neighbours. The development conflicts with the amenity aims of policy QD27 from the Brighton and Hove Local Plan (LP).

#### *Character and Appearance*

9. I agree with the previous Inspector about how the safety rail has not harmed the character and appearance of the area. As such the appeal development complies with the design aims of LP policies QD1 and QD2.



*Ground (a) conclusion*

10. The harm to the living conditions of neighbours is the prevailing consideration. Consequently planning permission should not be granted for the alleged breach of planning control. The ground (a) appeal does not succeed.

**The appeal on ground (f)**

11. Under S173(4) of the 1990 Act an enforcement notice may be issued for certain purposes. They are (a) remedying the breach of planning control by making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing the use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
12. In this case the alleged breach of planning control is the installation of a safety rail and the enforcement notice's only requirement is to have that rail removed. Consequently the purpose of the notice must fall into S173(4)(a) of the 1990 Act because it seeks to remedy the breach of planning control by restoring the land to its condition before the breach took place. No lesser steps would achieve the purpose of the notice.
13. If the existing safety rail was to remain and another one was put immediately in front of first floor doors, this would restrict access onto the roof. However, it seems that the new rail would be along the lines of that which was granted planning permission as referred to above. Persons could potentially step over that and therefore still be on the roof looking towards their neighbours. It seems to me that it is the existing rail which has allowed the roof to be used and it is that use which causes the amenity problem. To achieve the purpose of the notice the existing safety rail needs to be removed. The requirement of the notice is not excessive. The ground (f) appeal fails.

**The appeal on ground (g)**

14. In my opinion it would take longer than 1 month to arrange for the safety rail to be removed and for the work and any subsequent repairs to be carried out. A period of 3 months is what should be reasonably allowed. On this basis the appeal on ground (g) succeeds and I shall vary the notice accordingly.

**Conclusion**

15. Having regard to all other matters raised, the appeal does not succeed.

**Formal Decision**

16. I direct that the words under section 6 of the notice should be deleted and replaced with "3 months after the notice takes effect". Subject to this variation I dismiss the appeal and uphold the enforcement notice.

*Gareth Symons*

INSPECTOR





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# Appeal Decision

Site visit made on 3 January 2012

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

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

**Decision date: 6 January 2012**

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**Appeal Ref: APP/Q1445/D/11/2164891**  
**32 The Cliff, Brighton BN2 5RE**

- 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 Al-Kad against the decision of Brighton & Hove City Council.
  - The application ref BH/2011/02122, dated 15 July 2011, was refused by notice dated 14 October 2011.
  - The development proposed is installation of new dormer window to front-facing roof slope.
- 

## Decision

1. The appeal is allowed and planning permission is granted for the installation of new dormer window to front-facing roof slope at 32 The Cliff, Brighton BN2 5RE in accordance with the terms of the application, ref BH/2011/02122, dated 15 July 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 1121-01A and 1121-02B.

## Main Issue

2. The issue is the effect of the proposed dormer window on the character and appearance of the dwelling and the surrounding area.

## Reasons

3. The property comprises a substantial modern detached chalet style residence occupying a large plot on the south side of The Cliff. The local area is mostly characterised by large individually designed properties, several of which have first or second floor dormer windows.
4. Policy QD14 of the Brighton & Hove Local Plan states that extensions and alterations should be well designed, sited and detailed in relation to the existing property, adjoining properties and the surrounding area, whilst the Council's Supplementary Planning Guidance on Roof Alterations and Extensions

(SPGBH1) contains more detailed guidance, including for the construction of dormer windows.

5. Although SPGBH1 states that dormers should generally be kept as small as possible, ideally no larger than the windows below, and have minimal cladding, in my view each proposal should be judged on its own merits. In this case, the dormer would match the general design, proportions and materials of the existing front dormer. It would be set well below the existing ridge height, set in from the half-hipped gable and be above eaves level. It would appear subservient in respect of the size and scale of the existing roof and produce a balanced effect with the existing dormer.
6. In my opinion, the proposed dormer would blend satisfactorily with the overall design of the dwelling and have a neutral effect on adjacent buildings and the street scene. It would therefore not have a detrimental effect on the character or appearance of the dwelling or the surrounding area and would not conflict with the Council's adopted policies or Supplementary Planning Guidance.
7. For the avoidance of doubt, I have added a condition requiring the development to be carried out in accordance with the approved plans. Subject to that condition, I see no reason why the appeal should not be allowed.

*J Mansell Jagger*

INSPECTOR



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# Appeal Decision

Site visit made on 20 December 2011

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 9 January 2012**

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**Appeal Ref: APP/Q1445/C/11/2160535**

**Land at 7 Greenways Corner, Greenways, Ovingdean, BN2 7BQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss CL Bosker against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2011/0017.
- The notice was issued on 1 September 2011.
- The breach of planning control alleged in the notice is: On 19 March 2010 planning permission BH2009/02424 was granted for a two storey extension at rear of property subject to conditions. One of those conditions was that "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". It appears to the Council that that condition has not been complied with because the materials used for the roof tiles and hung tiles on the two storey side extension do not match those on the existing building.
- The requirements of the notice are: Remove the roof tiles and hung tiles on the two storey side extension and replace them with tiles that match those on the original house.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) 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 does not fall to be considered.

**Summary of Decision: The ground (b) appeal succeeds and the enforcement notice is quashed as set out below in the Formal Decision.**

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## Procedural Matter

1. The principle of building the two storey extension, including matters such as effects on residential amenity, was previously considered when planning permission was granted for the extension in March 2010. The particular grounds of appeal now made do not allow me to consider or revisit the general planning merits of the scheme. Therefore, many of the concerns raised by the adjoining neighbour cannot be taken into account. Also, even if the appeal had failed, the enforcement notice does not require the extension to be demolished and I could not have made the requirements any more onerous anyway.

## The appeal on ground (b)

2. An appeal on this ground is based on the claim that, as a matter of fact, the breach of planning control alleged in the notice has not occurred.

3. The Council has suggested that the clays used to produce the old and the new tiles may be different. As such the new tiles have a shinier and smoother finish. It is therefore unlikely that the new ones will weather down to match the old tiles. Admittedly it is possible, at the moment, to distinguish between the old and new tiles. However, the appeal building probably dates from the early part of the last century. Over this time the surfaces of the original tiles will have degraded due to significant weathering. As such the old tiles have lost much of their original finish. Given that the new tiles have been in place for no more than about 18 months it is not surprising, irrespective of any clay differences, if this is the case, that the new and old tiles are distinguishable.
4. Nevertheless, in all other regards the new tiles used match the shape, size and profile of the original tiles. They also have a brindle hue. This not only tones down the natural orangey redness of a brand new clay tile, but also reflects the patchy and mottled appearance of the old tiles no doubt caused by varying degrees of exposure to the elements on different parts of the building.
5. It seems to me that the new tiles do match the old tiles and, over a longer period than just 18 months, the newness of the tiles will dull and blend with the appearance of the much older external appearance of the building. As such, the purpose behind a matching materials condition, which is to safeguard the character and appearance of an area, will have been met.
6. Having regard to all other matters raised, I find that as a matter of fact the alleged breach of planning control has not occurred. The appeal on ground (b) therefore succeeds and I intend to quash the enforcement notice. Consequently there is no need for me to consider the ground (f) appeal.

**Formal Decision**

7. I direct that the enforcement notice be quashed.

*Gareth Symons*

INSPECTOR



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# Appeal Decision

Site visit made on 3 January 2012

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

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

**Decision date: 10 January 2012**

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## **Appeal Ref: APP/Q1445/D/11/2165055**

### **63 Coombe Vale, Saltdean, Brighton BN2 8HN**

- 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 Pete Coker against the decision of Brighton & Hove City Council.
  - The application ref BH2011/02463, dated 18 August 2011, was refused by notice dated 18 October 2011.
  - The development proposed is erection of single-storey rear extension, loft conversion, raised ridge height, side roof lights, Juliet balcony to rear, and front window.
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## **Decision**

1. The appeal is allowed and planning permission is granted for erection of single-storey rear extension, loft conversion, raised ridge height, side roof lights, Juliet balcony to rear, and front window at 63 Coombe Vale, Saltdean, Brighton BN2 8HN in accordance with the terms of the application, ref BH2011/02463, dated 18 August 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 684/1, 684/2, 684/3, 684/4, 684/5 and 684/6.

## **Main Issue**

2. The issue is the effect of the proposal on the amenities of the occupiers of adjoining dwellings.

## **Reasons**

3. The property comprises a detached 1960s bungalow occupying an elevated position on the north side of Coombe Vale on the edge of the residential area of Saltdean. The proposal is to construct a steeper pitched roof over the main part of the bungalow, to incorporate new accommodation at first floor level, and to extend over a new rear addition, effectively making this a chalet bungalow.
-

4. The Council does not object to the architectural design of the proposal, but believes that the rear extension would have an overbearing impact on the adjoining dwellings, resulting in overlooking and a loss of light and privacy.
5. This part of Coombe Vale rises quite steeply from west to east. On the west side, no.61, which has also been heightened to form a chalet-style bungalow, is at a lower level. However, the proposed extension would be set back sufficiently from the common boundary, with its roof plane sloping away to the east, to ensure that it would not be overbearing or intrusive on the outlook of the occupiers of that property.
6. Given the orientation of nos.61, 62 and 63, and the sloping topography, there would be no significant overshadowing or loss of sunlight or daylight to affect either of the adjoining properties. In the case of no.65, the high wall and boundary fence would further limit any material impact. There would be no direct overlooking from the high-level roof lights and, whilst there might be oblique views of their rear gardens from the window with the Juliet balcony, any impact would be confined to the rearmost end of their gardens. Such oblique views are not unusual in urban residential areas and any effect on privacy would not be sufficient to refuse the application.
7. For these reasons, I conclude that the proposed development would not materially harm the amenities of the occupiers of adjoining dwellings and would therefore not conflict with Policy QD27 of the Brighton & Hove Local Plan. For the avoidance of doubt I will add a condition requiring the development to be carried out in accordance with the approved plans. Subject to that condition, I allow the appeal.

*J Mansell Jagger*

INSPECTOR



**NEW APPEALS RECEIVED**

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**SOUTH PORTSLADE**

BH2011/02496  
56A Trafalgar Road, Portslade  
Alterations to existing 2 bed dwelling to form 1  
bed dwelling. Demolition of existing storage  
and creation of 1no part one/two storey 2 bed  
dwelling to rear.

APPEAL LODGED  
15/12/2011  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**GOLDSMID**

BH2011/02123  
Beresford Court, Somerhill Road, Hove  
Conversion of basement garage/store room into  
2no bedroom flat incorporating associated  
revised entrances and insertion of windows.

APPEAL LODGED  
03/01/2012  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**HOVE PARK**

BH2011/01431  
34 Hove Park Road, Hove  
Demolition of existing dwelling and erection of  
new 3 storey four bed dwelling house with flat  
roof.

APPEAL LODGED  
29/12/2011  
Planning Committee

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**  
**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**  
**APPEAL RECEIVED DATE**  
**APPLICATION DECISION LEVEL**

**PRESTON PARK**

BH2011/02609  
31 Florence Road, Brighton  
Widening existing pillared entrance to boundary  
wall (Retrospective).

APPEAL LODGED  
04/01/2012  
Delegated

**WARD**

**APPLICATION NUMBER**  
**ADDRESS**

**GOLDSMID**

BH2011/01983  
19 Osmond Gardens, Osmond Road, Hove

**NEW APPEALS RECEIVED**

DEVELOPMENT DESCRIPTION Erection of conservatory to rear incorporating steps to garden. (Part retrospective)  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 05/01/2012  
APPLICATION DECISION LEVEL Delegated

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**WARD** **QUEEN'S PARK**  
APPLICATION NUMBER BH2011/00542  
ADDRESS 61 Queens Park Rise, Brighton  
DEVELOPMENT DESCRIPTION Change of use from mixed use retail (A1) and residential (C3) to residential (C3).  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 28/12/2011  
APPLICATION DECISION LEVEL Delegated

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**WARD** **HOVE PARK**  
APPLICATION NUMBER BH2011/01675  
ADDRESS 45 The Droveaway, Hove  
DEVELOPMENT DESCRIPTION Demolition of existing double garage and erection of 1no two bedroom two storey dwelling.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 03/01/2012  
APPLICATION DECISION LEVEL Delegated

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**WARD** **PRESTON PARK**  
APPLICATION NUMBER BH2011/02409  
ADDRESS 18 Sandgate Road, Brighton  
DEVELOPMENT DESCRIPTION Erection of single storey rear extension and installation of 3no roof lights to rear roof slope.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 11/01/2012  
APPLICATION DECISION LEVEL Delegated

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**WARD** **PRESTON PARK**  
APPLICATION NUMBER BH2011/02521  
ADDRESS 33 Florence Road, Brighton  
DEVELOPMENT DESCRIPTION Widening of existing hardstanding and relocation of brick pillar.  
APPEAL STATUS APPEAL LODGED  
APPEAL RECEIVED DATE 11/01/2012  
APPLICATION DECISION LEVEL Delegated

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**NEW APPEALS RECEIVED**

**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**ROTTINGDEAN COASTAL**

BH2011/02757

54 Lenham Avenue, Saltdean

Erection of a two storey side extension.

APPEAL LODGED

10/01/2012

Delegated

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**WARD**

**APPLICATION NUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**PRESTON PARK**

BH2011/02560

27 Florence Road, Brighton

Demolition of part of front boundary wall and gatepost and rebuilding to widen driveway. (Retrospective).

APPEAL LODGED

10/01/2012

Delegated

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