




Brighton & Hove  
City Council

# Planning Committee

Title:	<b>Planning Committee</b>
Date:	<b>15 May 2019</b>
Time:	<b>2.00pm</b>
Venue	<b>Portslade Town Hall</b>
Members:	<b>Councillors:</b> Cattell (Chair), Gilbey (Deputy Chair), C Theobald (Opposition Spokesperson), Mac Cafferty (Group Spokesperson), Cobb, Inkpin-Leissner, Littman, Miller, Moonan, O'Quinn, Taylor and Wares  <b>Co-opted Members:</b> Conservation Advisory Group Representative
Contact:	<b>Penny Jennings</b> Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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## AGENDA

### 140 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**

- (a) Disclosable pecuniary interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

- (d) All Members present 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.*

### 141 MINUTES PREVIOUS MEETINGS

Minutes of the meetings held on:

- (a) 6 March 2019 (copy attached);
- (b) 20 March 2019 (copy attached);

## PLANNING COMMITTEE

(c) 3 April 2019 (copy attached)

### 142 CHAIR'S COMMUNICATIONS

### 143 PUBLIC QUESTIONS

**Written Questions:** to receive any questions submitted by the due date of 12 noon on 9 May 2019.

### 144 TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

### 145 TO CONSIDER AND DETERMINE PLANNING APPLICATIONS

*Callover – Each item in turn will be called and if not called for discussion will be taken as agreed in accordance with the recommendations set out in the officer report.*

*Please note that the published order of the agenda may be changed; major applications will always be heard first; however, the order of the minor applications may be amended to allow those applications with registered speakers to be heard first.*

#### MINOR APPLICATIONS

- |          |  |                 |
|----------|--|-----------------|
| <b>A</b> | <b>BH2018/03767-11 Balsdean Road, Woodingdean, Brighton-<br/>Householder Planning Consent</b>  | <b>71 - 84</b>  |
|          | Enlargement & alterations to existing dormers including installation of cedar cladding and replacement windows (retrospective)<br><b>RECOMMENDATION – REFUSE</b><br><i>Ward Affected: Woodingdean</i>                                      |                 |
| <b>B</b> | <b>BH2018/03921 - 49A Surrenden Road, Brighton -Full Planning</b>  | <b>85 - 96</b>  |
|          | Change of use of former coach house from ancillary residential accommodation to holiday let accommodation to holiday let accommodation for a temporary 12 month period.<br><b>RECOMMENDATION – GRANT</b><br><i>Ward Affected :Withdean</i> |                 |
| <b>C</b> | <b>BH2018/02786- Hove Manor, Hove Street, Hove - Full Planning</b>   | <b>97 - 116</b> |
|          | Erection of a single storey extension at roof level to create 2no three bedroom dwellings & 1no two bedroom dwelling (C3) with external terraces.<br><b>RECOMMENDATION – GRANT</b><br><i>Ward Affected: Cental Hove</i>                    |                 |

## PLANNING COMMITTEE

- 146 TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF PLANNING APPLICATIONS**

### INFORMATION ITEMS

- 147 INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS** 117 - 120  
(copy attached).
- 148 INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES** 121 - 122  
(copy attached).
- 149 LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE** 123 - 134  
(copy attached).
- 150 APPEAL DECISIONS** 135 - 232  
(copy attached).

Members are asked to note that plans for any planning application listed on the agenda are now available on the website at: <http://www.brighton-hove.gov.uk>

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

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## PLANNING COMMITTEE

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### **FURTHER INFORMATION**

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Tuesday, 7 May 2019



**BRIGHTON & HOVE CITY COUNCIL****PLANNING COMMITTEE****2.00pm 6 MARCH 2019****COUNCIL CHAMBER, HOVE TOWN HALL****MINUTES**

**Present:** Councillor Cattell (Chair) Gilbey (Deputy Chair), C Theobald (Opposition Spokesperson), Hyde, Littman, Miller, Moonan, O'Quinn, Page and Wealls

**Co-opted Members:** Mr R Amerena, CAG

**Officers in Attendance:** Paul Vidler, Planning Manager; Chris Swain, Principal Planning Officer; Liz Arnold, Principal Planning Officer; Sonia Gillam, Senior Planning Officer; Laura Hamlyn Planning Officer; Hilary Woodward, Senior Lawyer and Penny Jennings, Democratic Services Officer

**PART ONE****107 PROCEDURAL BUSINESS****107a Declarations of substitutes**

107.1 Councillor Wealls declared that he was in attendance in substitution for Councillor Bennett and Councillor Page declared that he was in attendance in substitution for Councillor Mac Cafferty.

**107b Declarations of interests**

107.2 The Chair, Councillor Cattell, declared a prejudicial interest in applications B, BH2017/03676, land at Varndean College, Surrenden Road, Brighton and F, 2017/04102, Varndean College, Surrenden Road, Brighton stating that as the objectors were known to her that she would vacate the Chair and leave the meeting during consideration of both applications and would take no part in the decision making process. The Chair would be taken by Councillor Gilbey, the Deputy Chair during their consideration.

- 107.3 Councillor O'Quinn referred to Application A, BH2018/01738, Land to rear of Lyon Close, Hove, confirming that she had submitted a letter of objection (circulated with the Committee papers). Having spoken to her letter she would then withdraw from the meeting during consideration of the application and would take no part in the debate and decision making process.
- 107.4 Councillor Page declared a prejudicial interest in Application K, BH2018/02120, 238 Elm Grove, Brighton referring to the letter of objection which he had submitted in his capacity as a Local Ward Councillor. Councillor Hyde declared a non-prejudicial interest in Applications BH2017/03676, Land at Varndean College, Surrenden Road, Brighton and BH2017/04102, Varndean College, Surrenden Road, Brighton by virtue of the fact that her grandson was a student at the college, confirming that she remained of a neutral mind and would remain present at the meeting during consideration and determination of both applications.
- 107.5 Councillors Hyde, Miller and Moonan stated that they had been lobbied in respect of Application A, BH2018/01738, Land to the rear of Lyons Close, Hove, Application B, BH2017/03676, Land at Varndean College, Surrenden Road, Brighton; Application E, BH2018/01336, Land at Rear of 1-45 Wanderdown Road, Brighton; Application F, BH2017/04102, Varndean College, Surrenden Road, Brighton; Application G, BH218/02558, 106, 108 and 110 Downs Valley Road, Woodindean, Brighton and Application N, BH2018/01937, 15 Osmond Gardens, Hove. All confirmed that they remained of a neutral mind and would remain present during consideration and determination of those applications.

#### **107c Exclusion of the press and public**

- 107.6 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.
- 107.7 **RESOLVED** - That the public are not excluded from any item of business on the agenda.

#### **107d Use of mobile phones and tablets**

- 107.8 The Chair requested Members ensure that their mobile phones were switched off, and where Members were using tablets to access agenda papers electronically ensure that these were switched to 'airplane mode'.

#### **108 MINUTES OF THE PREVIOUS MEETING**

- 108.1 **RESOLVED** – That the Chair be authorised to sign the minutes of the meeting held on 6 February 2019 as a correct record.

#### **109 CHAIR'S COMMUNICATIONS**



109.1 There were none.

## 110 PUBLIC QUESTIONS

### Written Question, Plaques, The Drive, Hove

110.1 It was noted that the following question had been received from Mr Hawtree. The Chair invited Mr Hawtree forward to put his question: Mr Hawtree confirmed that his question related to properties located in The Drive and not Grand Avenue as set out in his question as originally submitted.

“Would Councillor Cattell please tell us what enforcement measures are in place about 20 the Drive, where a plaque bears testimony that this was the early home of Ivy Compton-Burnet – a plaque long out of sight owing to apparent building works and also what enforcement measures are about the being taken about the buildings opposite – numbers 15 and 17 – which have, similarly, being shrouded by boards with no work completed.”

110.2 The Chair, Councillor Cattell, gave the following response:

“I understand that your question relates to properties in The Drive, rather than Grand Avenue. There are no on-going enforcement investigations relating to 15, 17 and 20 The Drive. Generally, site hoardings are erected while a site is under development don't require planning permission as they are not considered permanent and are necessary for the security and safety of the public and the site and, indeed, may be permitted development. However, we will investigate the matters you have raised and will let you know the outcome in due course.”

110.3 Mr Hawtree was invited to ask one supplementary question. He did not ask a further question but explained that in the case of each of these properties, the hoardings had been in situ for in excess of 5 years. He had first raised this matter some time ago and would very much appreciate if this could be expedited.

110.4 The Chair, Councillor Cattell, confirmed that Officers would be instructed to open investigations as a matter of urgency and to advise Mr Hawtree direct on the results of their investigations.

110.5 **RESOLVED** – That the question and response given by the Chair be noted and received.

## 111 TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

111.1 **RESOLVED** – There were none.

## 112 TO CONSIDER AND DETERMINE PLANNING APPLICATIONS

### CALLOVER

- 112a The Democratic Services Officer, read out items 112A – O. It was noted that Major applications and any on which there were speakers were automatically reserved for discussion.
- 112b The Chair, Councillor Cattell explained that this measure was intended to expedite the business of Committee and to avoid the necessity of those who had an interest in applications on which there were no speakers spending hours waiting for the Committee to get to their application(s). She wished to re-assure the public however, that in any instances where an application was not called for discussion members had read the officer report and any supporting information in advance of the meeting. However, having given the officer recommendations their due consideration they had no questions nor required further clarification on any aspect of the application before moving to their decision.
- 112c The following applications were not called for discussion and it was therefore deemed that the officer recommendations were agreed including the proposed Conditions and Informatives:

Application J, BH2018/02805, 23 Maldon Road, Brighton;  
 Application K, BH2018/01120, 238 Elm Grove, Brighton;  
 Application L, BH2018/03479, 2 Belle Vue Cottages, Brighton;  
 Application O, BH2018/02532, 95 Heath Hill Avenue, Brighton

**RESOLVED** – That the position be noted.

### **BH2018/01738- LAND TO REAR OF LYON CLOSE, HOVE-FULL PLANNING**

Demolition of existing buildings (B8) to facilitate a mixed use development comprising of the erection of 4no buildings between 6 and 8 storeys to provide 152 dwellings (C3), 2 live/work units (sui generis) and 697sqm of office accommodation (B1) with associated car and cycle parking, landscaping and other related facilities.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

#### **Officer Presentation**

- (2) The Principal Planning Officer, Chris Swain, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the proposed scheme. Reference was made to additional representations received which had been referred to in the Late/Additional Representations List, this did not introduce any new issues which were not covered in the report.
- (3) It was noted that the main considerations in determining this application related to the principle of the use including the loss of employment floor space, financial viability and affordable housing provision, the impacts of the proposed development on the visual amenities of the site and surrounding area; the proposed access arrangements and related traffic implications, impacts upon amenity of neighbouring properties, standard of accommodation, housing mix and density, ecology, sustainable drainage, arboriculture and sustainability impacts. Notwithstanding that there would be a

significant change to the existing built form as this would be seen in the context of the higher density development to the south it was not therefore considered harmful to the character of the area. Although of a very different scale, form, and massing to the traditional terraced housing to the north it is considered that there is sufficient visual separation provided by the railway line and embankment to ensure that the proposal does not significantly jar with or visually overwhelm the existing properties. The staggered siting of the four blocks and the predominantly north south orientation ensure that there is a degree of permeability of light and outlook through the scheme and reduced the sense of massing from the north. The variation in heights of the blocks provided further visual interest to the scheme especially when seen in longer views. The scheme was therefore considered to be acceptable and was recommended minded to grant subject to the conditions and informatives set out and completion of a S106 Planning Obligation.

### **Public Speakers**

- (4) Mr Linn and Mr Goult spoke on behalf of neighbouring objectors setting out their objections to the proposed scheme which would in their view have a significant detrimental impact on neighbouring amenity and would be overly dominant in an area which was not designated for tall buildings. The aims of the scheme could be achieved with less impact by building to a lower height and could include more affordable units.
- (5) Councillor O'Quinn spoke in her capacity as a Local Ward Councillor re-iterating her concerns set out in her letter of objection which had been circulated with the agenda. Whilst some of the points raised during the pre-application/consultation process had been addressed, many had not. The height of the blocks would be overwhelming and an overdevelopment of the site, would result in loss of light to neighbours and would be seriously out of character with the prevailing street scene. There was a lack of parking which would exacerbate existing problems and additional pressure on the overstretched local GP surgeries. Councillor O'Quinn also referred to the Workshop Document Produced in relation to the draft policy in the City Plan Part Two. The proposed development appeared to be contrary to that. It was clarified by officers that the document referred to by Councillor O'Quinn was not actually a formal submission to the City Plan Part 2 but something which had been adapted for a training workshop.
- (6) Mr Dixon was in attendance accompanied by other members of the applicant's team who were available to answer questions. He explained that the proposed scheme was considered to represent the most effective use of this brownfield site, there had been a significant level of pre-application consultation and although a high density scheme it, it was appropriate to the site, well designed in accordance with its typography and had taken account of the emerging City Plan, Part Two.
- (7) Councillor Wealls referred to the loss of light which had been alluded to by objectors and sought clarification regarding the calculations which had been used. The Chair, Councillor Cattell, also sought clarification regarding how the assessments referred to had been made. Different calculations were used to arrive at sunlight and daylight calculations. It was also important to know the status of the policy document referred to in order to establish what weight if any should be attached to it. It was explained that this document was to be tested and consulted upon further and was to be re-submitted in the Autumn of 2019 and was not therefore current policy.

- (8) Councillor Miller stated that he had concerns regarding the height and impact of some of the blocks and asked the applicants representatives why they had not located the tallest of the proposed blocks at a greater distance from the neighbouring dwellings; also in relation to remedial measures proposed to address noise emanating from the nearby railway line. Councillor Moonan expressed the same concerns.
- (9) The applicant's representatives explained that blocks had been located throughout the site in order to take account of the changing levels across it and the adjacent railway line.
- (10) Councillor Littman referred to the significant reduction in the proposed level of affordable housing and it was explained that the current uncertain market had impacted on the viability of the scheme as originally conceived. As amended it had however sought to retain its original concept.
- (11) Councillor Miller asked regarding phasing of the scheme and how/ whether s106 funding would be released sequentially during construction of the scheme.

### **Questions of Officers**

- (12) Councillor Wealls expressed concern regarding impact of the scheme on neighbouring dwellings and sought information regarding compliance with BRE Guidelines, whether it was at the margins of acceptability or fell well within them. Also, the configuration of the blocks across the site in relation to each other and the neighbouring dwellings. It was noted that the position of windows and location of some rooms had been reconfigured to address concerns regarding neighbouring amenity.
- (13) Councillor Gilbey sought confirmation of the height of the blocks proposed along the Holland Road frontage.
- (14) Councillor C Theobald stated that one of the tallest blocks appeared to be located in close proximity to the railway line asking whether any special measures had been required to any potential damage which could occur due to noise vibration. It was confirmed that these buildings would be at a greater distance from the boundary than the commercial units and that enhanced glazing was to be provided to mitigate any potential nuisance.

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

- (15) Councillor Miller stated that he considered that the locations of Blocks C and D should be juxtaposed. He also sought confirmation that materials could be brought back to a Chair's meeting for final approval and that materials used for the balcony treatments could be conditioned. He considered that slatted balconies or those with clear glass should be avoided as they impacted detrimentally on the appearance of the blocks themselves and on neighbouring amenity. Whilst the loss of employment space was to be regretted he supported the scheme overall.
- (16) Councillor C Theobald stated that she was unhappy that the level of affordable units had reduced from 40% to 10 %, and that the scheme was of too great density too tall

and provided insufficient parking. The nearby Artisan flats by the same developer remained largely unsold and she was concerned that could be the case in respect of this development.

- (17) Councillor Moonan stated that whilst supporting the principle of development she considered that the current scheme was too high, too dense and that the loss of employment/office space/jobs was too great. The proposals would impact on the infrastructure of the area and would result in loss of amenity. On balance she could not support this scheme.
- (18) Councillor Littman noted that mitigation measures had been undertaken, but in his view that would not be enough, there would be overlooking and loss of privacy. He was in agreement with Councillor Moonan that the buildings would be too high and too dense; the external treatments were also lacking in interest. If the application was refused the applicant would have the opportunity to address the concerns expressed and to come back with a better scheme.
- (19) Councillor Page noted concerns raised relating to the perceived deficiencies of the scheme. He was of the view however, that although not perfect the scheme was acceptable noting that the applicant had indicated that 10% of the housing to be provided on site would be affordable, notwithstanding that the District Valuer had indicated that 0% would be acceptable.
- (20) The Chair, Councillor Cattell, stated that the scheme as now presented had gone through several iterations and was of a good design. The employment space provided would be flexible and provide for current needs. She considered that this was a good scheme citing that it would be necessary to build upwards in order address the city's housing needs where it was appropriate to do so.
- (21) A vote was taken and the 9 Members who were present when the vote was taken voted that Minded to Grant planning permission be given on a vote of 5 to 3 with 1 abstention.

112.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to be **MINDED TO GRANT** planning permission subject to a s106 Planning Obligation and the Conditions and Informatives as set out hereunder, **SAVE THAT** should the s106 Planning Obligation not be completed on or before the 26th June 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 9 of the report subject to the Amendments to Conditions and Informatives and the s106 Heads of Terms set out on the Additional/Late Representations List and as set out below:

Amend Condition 17:

17. Prior to first occupation of the development hereby permitted, a scheme shall have been submitted to and approved in writing by the Local Planning Authority to provide that (1) the residents of the development have no entitlement to a resident's parking permit; and (2) that the annual entitlement of each dwelling to a visitor parking permit shall be reduced to 25 permits.

**Reason:** To ensure that the development does not result in overspill parking and to comply with policies TR7 and QD 7 of the Brighton & Hove Local Plan and CP9 of the City Plan Part One.

Additional Informative:

Condition 11 requiring the approval of samples of external materials will be determined by the Head of Planning following consultation with Member's attending Planning Chair's Meeting.

**Note 1:** Having declared a prejudicial interest in respect of the above application and having spoken in her capacity as a Local Ward Councillor, Councillor O'Quinn withdrew from the meeting during consideration of the application and took no part in the discussion or voting thereon.

**Note 2:** Councillors Inkipin-Leissner and organ were not present at the meeting.

### **BH2017/03676-LAND AT VARNDEN COLLEGE, SURRENDEEN ROAD, BRIGHTON -OUTLINE APPLICATION**

Outline application with some matters reserved for erection of 10no residential units (C3), comprising 1no two bedroom, 6no three bedroom and 3no four bedroom houses, with new access from Surrenden Road, associated car and cycle parking and approval of reserved matters for access and layout.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

#### **Officer Presentation**

- (2) The Senior Planning Officer, Sonia Gillam, introduced the application and gave a detailed presentation by reference to site plans, elevation drawings and photographs detailing the proposed scheme. It was noted that matters of appearance, landscaping and scale were reserved and therefore the main considerations in determining this application related to the principle of the proposed development, access and layout in relation to constructing 10 dwellings with associated parking on the site. It was considered that the proposed housing provision on site would contribute towards the city's housing target, loss of this small part of the college campus would have little impact on the students with regard to their studies, was supported by sport England and the enhanced biodiversity measures proposed were considered to mitigate for loss of habitat on the application site. It was considered that the lower density proposed for the site was acceptable as it would fit with the general pattern and character of the area.
- (3) It was noted that since the Committee papers had been published 3 further letters of objection had been received, however they did not raise any new matters which had not been addressed in the officer report.
- (4) Overall, it was considered that the development would make a positive contribution to the City's housing needs, including policy compliant much needed affordable family housing, on a section of open space which was not used for sports, recreation or

education purposes. There would be no harm caused to the living conditions of the occupants of surrounding properties and the creation of an on-site enhanced biodiversity area would mitigate for the loss of habitat on the application site. It was acknowledged that the open nature of the site and the strategic views to the sea would be impacted by the proposal; however given the above benefits it was considered that, on balance, the loss of the under-utilised open space was acceptable and residential development on the site could be supported in principle and minded to grant approval was therefore recommended.

### Public Speakers

- (5) Ms Dibb spoke on behalf of neighbouring objectors and “ Keep Varndean Green” and was accompanied by colleagues in order to respond to any questions which they were better placed to answer. Ms Dibb stated that Members of the Committee had been provided with supporting information. On the basis of that information it was hoped the application could be either deferred or refused. The proposed scheme would ruin the uninterrupted views across the site and would be detrimental to the existing butterfly habitat which could not be moved. The existing space was an important community facility and would be lost. The ten luxury properties proposed would make a minimal contribution to the city’s housing supply but the impact on the amenity of the area would be permanent and irreparable. This scheme was flawed and represented overdevelopment and there were significant gaps in information which should be available in order for a decision to be made.
- (6) Councillor Moonan sought clarification regarding use of the space. It was explained that there was no direct public access. However the whole area provided a green lung where people could exercise, walk their dogs and also provided a valuable amenity space and community asset which was also beneficial to students at the college. It was unclear what access arrangements would be put into place were the development to proceed and whether students would have access on a timed basis.
- (7) Councillor Littman referred to the habitat which had been created by the college in 2012 and provided a haven for blue butterflies enquiring regarding arrangements to secure/move them in order to ensure that they were protected. It was explained that there was a separate wildlife corridor currently undisturbed which would be compromised.
- (8) Councillor O’Quinn sought clarification regarding the biodiversity corridor its precise location in relation to the application site. The Legal Adviser to the Committee stated that questions to public speakers were to seek clarification on matters which had been raised by them and this question should be directed more appropriately to the applicants or officers.
- (9) Councillor Taylor spoke in his capacity as a Local Ward Councillor setting out his objections to the scheme. He was in agreement with the concerns of objectors that the proposed form of development would be detrimental to the character of this open space and would have a permanent impact on it. Strategic views across the site would be lost, these were enjoyed by many people currently both in the immediate vicinity and beyond. This scheme was profit led and did not respect the open space overall.

There were also concerns about the impact on the biodiversity of the site and on butterflies and other protected wildlife.

- (10) Mr Hoskins was accompanied by the Principal of the College, Mr Harland and spoke in support of the application. It was explained that the proposed scheme was not a speculative venture but would utilise an unused part of the site to generate money which would enhance facilities available to students and improve the offer available going forward which would enable the college to avoid any prospect of a hostile takeover. The scheme sought to respect the site with the resultant dwellings set down into the slope of the site and with adequate spacing between them. Whilst views across the site would not be uninterrupted it would still be possible to look across the site from strategic points.
- (11) Councillor Miller referred to the creation of the Stem building and other state of the art facilities which had been the subject of recent applications and asked whether those developments and the improved sporting facilities would be compromised should this development not proceed. It was explained that financing was an on-going issue for the college which was looking to continue to enhance the offer available for students in a competitive market place and to seek to secure the financial future of the college.
- (12) Councillors Moonan and Page sought clarification regarding where the biodiversity was to be relocated to. Councillor Moonan also enquired regarding the specific arrangements to be put into place to ensure that the biodiversity of the site was protected during the course of any building works and in future.
- (13) Councillor O'Quinn referred to enhancement works which she was aware had been undertaken at BHASVIC and other sixth form colleges in the city asking whether it was intended that these works would result in additional numbers of students. It was explained that works proposed to the college would update and modernise its facilities rather than to increase numbers.

### **Questions of Officers**

- (14) Councillor Hyde asked to see perspectives showing the gaps which would exist and it was confirmed that some strategic views would remain.
- (15) Councillor Moonan sought information as to whether the number of dwellings proposed could change between this and a full planning application and regarding the mitigation measures to be controlled by condition should permission be granted, especially in relation to biodiversity to respect the existing butterfly bank and apropos bat activity although it was recognised that this was low. Also measures to respect woodland flowers on site and whether the existing elm hedgerow was to be retained and the potential impact of lighting/floodlighting.
- (16) The Planning Manager, Paul Vidler, confirmed that the scheme put forward was policy compliant and viable and that any changes to it would need to be considered on their merit.
- (17) Councillor Miller asked whether it was proposed that green roofs be provided and in relation to the strategic views referred to. It was confirmed that account had been taken



of the impact on the site. It was confirmed that Nature England had not commented on this application.

- (18) Councillor Littman referred to the fact that the application site had been referred to as a non-functioning space which was no longer in use by the college and the criteria used when determining this. It appeared that the space and its use were being measured under two different sets of policies.
- (19) Councillor C Theobald sought clarification as to whether the site was enclosed as on plans it appeared to be open.
- (20) Councillor Miller enquired regarding the status of the open space as it had been referred to in correspondence as an Asset of Community Value. The Legal Adviser to the Committee, Hilary Woodward, stated that such a listing did not of itself give access to the community.

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

- (21) Councillor Hyde had attended the site visit the previous day and stated that whilst understanding the concerns put forward by objectors she recognised the need to improve student facilities and noted the mitigation measures proposed and therefore felt able to support the officer recommendation.
- (22) In answer to further questions, the Planning Manager, Paul Vidler, confirmed that this application was a stand-alone and did not relate to any other applications including BH2017/04102 which would be considered elsewhere on the agenda.
- (23) Councillor C Theobald stated that she was concerned regarding detriment to the green open space which would result and could not therefore support approval of this scheme.
- (24) Councillor O'Quinn stated that whilst appreciating the needs of the college and their desire to improve the offer available to students and to replace the existing temporary classrooms she considered that building on college land in this way could set an unfortunate precedent. She was also concerned at the potential impact on biodiversity at the site and to the potential precedent which could be set.
- (25) Councillor Littman noted the mitigation measures proposed but was concerned that over time the site was being nibbled away which did impact on it as green lung which provided important views across the city.
- (26) Councillor Page stated that he could not support the development as it would impact detrimentally on the amenity provided.
- (27) Councillor Moonan stated that it whilst it was clear some disruption would result she was satisfied that the mitigation measures proposed were sufficiently robust. Although there would be some interruption to existing views, there would be gaps in the building line and a large amount of space would remain.

- (28) Councillor Gilbey stated that having listened to all of the debate on balance she did not feel able to support the application.
- (29) A vote was taken and on a vote of 5 to 4 by the 9 Members present at the meeting when the vote was taken planning permission was not approved. An alternative recommendation was then sought and Councillor Page proposed and Councillor O'Quinn seconded the proposal that the application be refused. The reasons put forward for refusal were that the proposed form of development would result in breaking up of the existing open space, loss of amenity, loss of views across the site and would have a serious impact on biodiversity, butterflies and other protected insects; it would be contrary to Plan Policies CP10 and CP16.
- (30) A recorded vote was then taken and Councillors, Gilbey, Littman, O'Quinn, Page and C Theobald voted that the application be refused. Councillors Hyde, Miller, Moonan and Wealls voted that the application be granted. Therefore on a vote of 5 to 4 planning permission was refused. It was agreed that the final wording of the grounds for refusal would be prepared by officers in consultation with the proposer and seconder and that should the refusal be appealed the Committee agreed a s106 planning obligation could be entered into on the heads of terms as set out in the report.
- 112.2 **RESOLVED** – That the Committee has taken into consideration the reasons for the recommendation set out in the report but resolves to **REFUSE** planning permission for the reasons set out above and authorises that should the refusal as subsequently agreed with be appealed that a s106 obligation be entered into on the heads of terms set out in the report.

**Note(1):** Having declared a prejudicial interest in this application, Councillor Cattell stepped down from the Chair and withdrew from the meeting during consideration of the above application and took no part in the debate or decision making process.

**Note 2:** Councillors Inkipin-Leissner and Morgan were not present at the meeting during consideration or determination of the above application.

### **BH2018/02583-WESTERMAN COMPLEX, SCHOOL ROAD, HOVE - REMOVAL OR VARIATION OF CONDITION**

Application for variation of condition 1 of BH2016/02535 (Outline application for demolition of existing mixed use buildings and erection of 104 dwellings (C3) and 572sqm of office space (B1) and approval of reserved matters for access, layout and scale) to allow amendments to the approved drawings including alterations to the car parking layout and internal layouts. Variation of condition 4 regarding the layout of the units to provide one additional one-bed unit, and one less two-bed unit and condition 6 regarding the maximum building heights to state that other than lift overruns the maximum buildings heights shall be as stated in the condition.

- (1) It was noted that items C and D would be introduced together.

#### **Officer Presentation**

- (2) The Senior Planning Officer, Eimear Murphy, introduced the application and informed the committee that the principle of development had been approved and that the

572sqm should read as 527sqm. The confirmed the number of units as 104 and alterations to the scheme had been submitted resulting from the retention of the onsite electricity sub-station, the removal of the undercroft office car parking, the closure of the access to Stoneham Road, the removal of the pathway running along the rear of the dwellings and the relocation of the bicycle store and refuse bins. The officer confirmed the total number of parking spaces to be 77; comprising of 6 disabled, 4 motorcycle bays, 14 on-street spaces and a car club space to be negotiated under S106 agreement. 40% affordable housing was also confirmed.

### **Public Speakers**

- (3) Ms Allen spoke as an objector and represented local residents. Ms Allen commented that residents were confused over what is the current application. It was also noted that residents felt that the on-street parking in the immediate vicinity was congested and that the proposed 77 car parking spaces were not enough, and the offices would add to the issue. The local school also adds to the impact at drop off and pickup times and the area could become gridlocked. Residents are interested in how the S106 will be spent. The removal of trees and the height of the proposals were considered to have an impact on neighbours from overlooking. It was also felt that the headlights of residents leaving the new dwellings would have an impact on existing neighbours.
- (4) Councillor Nemeth spoke as a Local Ward Councillor. The Member felt that the scheme was hard to follow, and this raised concerns. It was noted that residents did not want the pedestrian link to Stoneham Road or the proposed alleyway. It was felt that the parking plan was not ideal and that trees were an issue and overlooking from proposed balconies would have a negative impact. The Member asked that the materials should be conditioned.
- (5) Mr Bareham, the Applicant's Agent, spoke on behalf of the applicants in support of the proposed scheme. The agent stated that the access to Stoneham Road and alleyway had been removed from the scheme, along with the balconies to the southern elevation. Opaque glazing has been introduced to the western elevation and the rendering removed in favour of softer materials. It was also noted that the originally proposed trees along Church Street are not a viable option due to utility services.

### **Questions of Officers**

- (6) Councillor Hyde asked if balconies were still included in the scheme and would this lead to overlooking to other properties.
- (7) It was confirmed that balconies were to be attached to the North West elevation. It was noted that this was not considered unusual to have some overlooking in a dense urban area such as this location.
- (8) Councillor Miller asked if materials would come to committee for approval.
- (9) It was confirmed that this would be the case and would include materials for the balconies.
- (10) Councillor Moonan requested if there were any changes to the S106 agreement.

- (11) It was confirmed that there were no changes to the S106 agreement as set out previously.
- (12) Councillor Gilbey asked if the balconies would have any screening.
- (13) It was confirmed that materials, including those for the balconies were to be approved by condition.

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

- (14) Councillor Theobald felt disappointed at the number of parking spaces in the scheme, that the overall design was good and the inclusion of some trees into the development was a positive.
- (15) Councillor Hyde agreed with Councillor Theobald and stated support for the scheme.
- (16) The Chair, Councillor Cattell, stated support for the scheme and was pleased that materials would be agreed at Planning Committee.

**112.3 RESOLVED** - That the Committee has taken into consideration and agrees the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the conditions and informatives set out in the report.

#### **BH2018/02561-WESTERMAN COMPLEX, SCHOOL ROAD, HOVE- RESERVED MATTERS**

Erection of 3 no. residential dwellings comprising of 2 no. four bedroom dwellings and 1 no. three bedroom dwelling incorporating parking, landscaping and associated works.

#### **Officer Presentation**

- (1) The Senior Planning Officer, Eimear Murphy, introduced the application at the same time as the previous item (c). The officer confirmed that materials had been submitted and these were shown to the committee. It was confirmed that the balconies would have metal railings and the not glass panels are previously submitted. The bicycle parking has been moved away from car parking and the number of trees has been reduced with no trees to be planted on the existing street due to existing utilities. Extra landscaping has been introduced to compensate for the reduced number of trees in the scheme. The officer recommended approval subject to a S106 agreement relating to trees and landscaping.

#### **Decision Making Process**

**112.4 RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to be **MINDED TO APPROVE** the reserved matters subject to the Conditions and Informatives and a Deed of Variation to the existing S106 Agreement dated 01 August 2016 to secure the provision of:

10 off-site tree planting in the immediate area.

### **BH2018/01336, LAND AT REAR OF 1-45 WANDERDOWN ROAD, BRIGHTON -FULL PLANNING**

Erection of 3no residential dwellings comprising of 2no four bedroom dwellings and 1no three bedroom dwelling incorporating parking, landscaping and associated works.

#### **Officer Presentation**

- (1) The Head of Planning, Policy and Major Projects, Liz Hobden, explained that for the reasons set out in section 3 of the report, the Committee was being asked to review its decision, made on February 6, 2019, to refuse planning application BH2018/01336: Land rear of 1-45 Wanderdown Road (“the application) and to determine either the decision of the Committee to refuse the application be upheld or that the officer “Minded to Grant” recommendation set out in the report to that Committee be agreed.
- (2) The application was considered by Planning Committee on 6 February 2019. The officer report from that meeting had been updated to include the items on the Additional Representations list, as appended as Appendix 1 to this report. Members resolved to refuse the application contrary to the recommendation on the grounds set out and the wording of the reasons for refusal had been drafted and was awaiting final agreement. A decision had not been formally issued on the application. On the day following the committee meeting, the applicant’s agent wrote to the council setting out their concerns about the decision. Based on the conclusion of the Planning Inspector at the appeal for the previous scheme that 9 dwellings would not have a harmful ecological impact, the applicant considered the grounds of refusal were very weak and could not be substantiated at appeal. The applicant had requested that the application be taken back to the next available Planning Committee for reconsideration and that if the application was refused the decision will be appealed and an award of costs against the Council sought. Further correspondence had also been received setting out their opinion that the committee had not paid due regard to the detailed application submissions on ecological matters, the comments of the County Ecologist or the recommendations of officers in endorsing approval of this scheme and that undue weight had been given to anecdotal information on site habitat/ecological conditions and representations made by non-statutory consultees. Whilst this represented an unusual set of circumstances which had not occurred previously the county ecologist and county arboriculturist respectively were in attendance at this meeting neither having been available at the previous meeting of the Committee and would be able to answer any questions which Members might have.
- (3) In answer to questions it was explained that it had been considered appropriate for Members to consider the additional information provided and to have the opportunity to ask questions of the relevant expert officers. The Committees decision making was not fettered and having done so Members were able to re-affirm their decision that the application be refused. It was however considered important for them to be given the opportunity to do so.

- (4) For the benefit of all Members a brief presentation was given detailing the proposed scheme and setting out the rationale for the officer recommendation.
- (5) It was noted that neither Councillors Moonan nor Wealls had been present at the previous meeting of the Committee but that both had watched the webcast of the proceedings in order to familiarise themselves with the points raised and the decision taken.

### **Questions of Officers**

- (6) Councillor O'Quinn cited her concerns in relation to the impact of the proposed form of development on the wildlife corridor across the site and in particular their impact on the badger setts. The Landscape Architect confirmed that arrangements would need to be put into place by the applicants in order to address this and to meet DEFRA requirements. There were specific procedures that needed to be met and which were used routinely used when dealing specifically with successfully trans-locating badgers but also in relation to the protection of other wildlife.
- (7) Councillor Littman requested information in relation to the measures to be put into place to preserve the surrounding chalk-grassland habitat and stated that the additional information provided was helpful considering that it was unfortunate that this clarification had not been available previously.
- (8) Councillor Hyde sought reassurance that detriment would not occur to the badger setts in consequence of heavy duty vehicles accessing the site in connection with on-site building works, she was anxious that the applicants did not simply engage in a tick box exercise. It was explained that all of the preparatory works would need to be carried out and verified as having been adequately completed pre-commencement.
- (9) Councillor C Theobald referred to the protected trees on site and to measures to be undertaken to ensure that they were suitably protected, particularly those in close proximity to access road. It was confirmed that a full road safety audit of the site had taken place and that this would be controlled by condition. Any issues arising would require adequate resolution.
- (10) Councillor Wealls referred to the findings of the Inspector in relation to the previous decision and it was explained that it was a matter of planning balance that, weight did need to be given to that decision which had related to a larger scheme, also the potential for loosing at appeal. The Legal Adviser to the Committee, Hilary Woodward, stated should the applicant appeal as they had indicated that they would the considerations of the Committee and the fact that they had given further measured consideration to the issues raised and the expert advice given would be included as part of the Council's submission.
- (12) The Landscape Architect, explained in answer to further questions that whilst all protected species needed to one taken account works to trees would need to be carried out outside of the nesting season and that all of the proposed conditions set out were considered to be suitably robust.

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

- (13) Councillor Hyde stated that having heard all that had been said she was concerned that this application was being revisited in this way and was concerned that it could open the floodgates going forward of . She also remained concerned that detriment to wildlife could occur.
- (14) Councillor Theobald stated that she remained concerned regarding impact on the prevailing landscape.
- (15) Councillor Miller considered that it had been helpful to hear the additional information provided and to have the opportunity to ask further questions. Whilst it was a very difficult situation it was important that Members were aware of potential risk to the council and to make a decision having had the possibility to consider all germane factors.
- (16) Having heard all that had been said, Councillor Page stated that he was aware that robust mitigation measures would be put into place and the need to provide housing, on balance he supported the officer recommendation.
- (17) Councillor Littman stated that he remained concerned about the impact of the scheme on the scale proposed albeit that the number of units had been reduced.
- (18) Councillor O'Quinn concurred stating that the site was in her view of strategic importance she remained to be convinced that the complexities of such a diverse site could be adequately managed and as a custodian of the site she could not support this scheme.
- (19) Councillor Gilbey stated that she remained conflicted and whilst was concerned regarding the level to which the scheme could be overseen and what enforcement could be undertaken.
- (20) Councillor Cattell stated that she was of the view that it was important for Members to have had the opportunity to be updated and to have the opportunity to ask questions of the expert officers in order that a decision was a made in the light of all relevant information.
- (21) A vote was taken and it was agreed that each of the constituent recommendations be voted on separately. The 10 Members of the Committee who were present when the vote was taken voted on a vote of 3 to 5 with 2 abstentions that having reviewed their original decision to refuse the Committee were no longer minded to do so. The decision to refuse was therefore lost and the Committee then proceeded to vote on the remaining substantive recommendation that the officer recommendation set out in the report to the 6 February 2019 that the Committee be Minded to Grant planning permission was voted on. It was agreed on a vote of 5 to 3 with 2 abstentions. It was also agreed that the appropriate
- 113.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report of 6 February 2019 and resolved that it is **MINDED TO GRANT** planning permission subject to the Conditions and Informatives set out in that report, **SAVE THAT** should the s106 Planning Obligation

not be completed on or before 29 May 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 10 of the report.

### **BH2017/04102-VARNDEAN COLLEGE, SURRENDEN ROAD, BRIGHTON -FULL PLANNING**

Installation of an artificial turf pitch with 4.5 metre perimeter fencing and installation of 8no. 15 metre floodlights, alterations to existing adjacent grass playing pitch.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

#### **Officer Presentation**

- (2) The Senior Planning Officer, Sonia Gillam, introduced the application and gave a detailed presentation by reference to site plans, aerial photographs showing the changes in level across the site and drawings detailing the location of the artificial turf pitch to be installed, the perimeter fencing and proposed floodlights.
- (3) It was noted that the site was covered by a Tree Preservation Order and that the proposed changes would require the loss of a small hawthorn, plus a horse chestnut tree to the west of the site covered by the order. There would also be some changes to soil levels close to three other trees on the south boundary, this would not however be significant and those trees were not protected by the existing TPO. Overall, the impact of the scheme on the local tree scape was minimal, was supported by Sport England and it was not considered that it would have a detrimental impact. The proposed development was adjacent to the Dorothy Stringer Wildlife Area but would not encroach onto it and the county Ecologist had advised that the scheme could be supported from an ecological perspective; a recommendation to grant approval was now recommended.

#### **Public Speakers**

- (4) Mr Skinner spoke on behalf of neighbouring objectors setting out their objections to the proposed scheme. Explained that locally the proposals were very unpopular and represented an un-neighbourly form of development which would result in significant light pollution to nearby dwellings, until a late hour. The proposed screening was not considered adequate and there were also concerns regarding the impact on wildlife and biodiversity of the area. There would also be an impact on residents arising from the proposed access arrangements, overflow parking and traffic and road safety. To date there had been 7 near miss accidents in the vicinity and this scheme would exacerbate that.
- (5) Councillor Taylor spoke in his capacity as a Local Ward Councillor stating that he was in agreement that the proposals would result in loss of amenity and light pollution. There would also be loss of aspect as the current open aspect would be compromised by the screening and lights. He shared objectors concerns in respect of road safety given that access to the site would be via a single metalled trackway which ran past a nursery school. The impact of the proposals would change the character of the site irreparably.



**Questions of Officers**

- (6) Councillor Hyde had attended the site visits the previous day and sought clarification regarding the location of Mr Skinner's property and the location of the bank and fence to the rear. Also, whether the room most impacted a bedroom, would be affected significantly, as when the lights were in operation in the evening the curtains would be closed and the distance to the pitch. Mr Skinner expressed the view that the light would percolate the entire building.
- (7) Councillor Taylor spoke in his capacity as a Local Ward Councillor. An earlier application had been refused and he was in agreement that the proposed scheme would result in loss of amenity, light pollution to all neighbouring properties and would result in significant additional stress on parking which already over-spilled from the area adjacent to the pitches onto the neighbouring residential streets, especially Draxmont Way and Varndean Holt. The pitches would be accessed from a single trackway which ran past a nursery and would represent an additional hazard. The cumulative impact would change the existing character of the site.
- (8) The applicant's representative confirmed that they had nothing further to add in support of their application but were happy to answer any questions regarding their scheme.

**Questions of Officers**

- (9) In answer to questions it was confirmed that the lighting would be in use outside core college hours and it was not considered that it would generate any significant additional traffic movements and the traffic team were satisfied that this could be effectively controlled by the proposed conditions.
- (10) Councillor Miller enquired regarding whether the site would be available for community use. It was explained by the applicant's representative that significant funding had been made available to the college by the Russell Martin Football Academy in order to support local students in pursuing academic and sports studies in tandem. These facilities would replace update and enhance those currently available but would also be used by some local teams
- (11) In answer to questions by Councillor Wealls it was explained that it was not anticipated that there would be any additional traffic movements during the college day, there were 86 parking spaces available on site, which were considered sufficient to accommodate those using these facilities. The fencing proposed would block noise and light generated and the lighting would only be in use as conditioned. The pitches would be in use occasionally for workshops at weekends. It was noted that these pitches would also address an identified lack of sporting provision
- (12) Councillor Page asked whether it was considered that the floodlighting proposed would impact of butterflies and moths on site and it was confirmed that it was not anticipated that this would occur at the lighting and fencing proposed would be sited away from the biodiversity area and wildlife corridors.

- (13) Councillor O'Quinn asked questions regarding the distance from the pitches to the nearest dwelling houses. It was confirmed in answer to further questions that as a consequence of improved technology there would be a reduction in the level of light penetration, lighting would also be angled away from the neighbouring dwellings. The fencing would provide a barrier which would prevent balls from leaving the site.

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

- (14) Councillor Hyde stated that the proposed scheme was acceptable, was necessary in order to improve existing facilities and had been designed to minimise any impact on local residents and to respect the biodiversity corridor.
- (15) Councillor C Theobald recognised the concerns of residents but cited the similar facilities provided recently at Patcham School and the need to provide enhanced facilities for students.
- (16) Councillor Page concurred considering that as the neighbouring biodiversity corridor had been respected the scheme was acceptable.
- (17) Councillor O'Quinn noted the measures put into place by the college in order to mitigate any potential nuisance and therefore considered the proposed scheme was acceptable.
- (18) Councillor Moonan stated that she supported the officer recommendation referring to similar arrangements which were in operation at Brighton College which was located in a more densely built up area and had not given rise to any nuisance.
- (19) Councillor Gilbey supported the officer recommendation stating that she was familiar with the application site and did not consider that the proposed use would be detrimental to neighbouring amenity. Similar floodlighting arrangements were in place in respect of pitches located in her ward. The screening prevented balls from landing outside the site and as the lighting was angled away from residential properties located close to the site no complaints of light pollution had been received.
- (20) A vote was taken and the 9 members of the Committee who were present at the meeting voted to grant planning permission.

- 112.6 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the Conditions and Informatives set out in the report and to the Additional Informatives 9, 10 and 11 as set out in the Late/Additional Representations List.

**Note(1):** Having declared a prejudicial interest in this application, Councillor Cattell stepped down from the Chair and withdrew from the meeting during consideration of the above application and took no part in the debate or decision making process.

**Note 2:** Councillors Inkpin-Leissner and Morgan were not present at the meeting during consideration or determination of the above application.

**BH2018/02558-106, 108 & 110 DOWNS VALLEY ROAD, WOODINGDEAN,  
BRIGHTON-FULL PLANNING**

Construction of four detached family houses (C3) together with associated parking, cycle parking and landscaping.

It was noted that this application had previously formed the subject of a site visit and that the application had been deferred by the Committee at its meeting on 9 January 2019 to enable additional information to be obtained and clarified in relation to access and egress arrangements to the site.

**Officer Presentation**

- (1) The Planning Officer, Laura Hamlyn, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the scheme. Details were provided regarding the precise width of the access way to the site and the distances between the proposed scheme and the neighbouring plots and the habitable dwelling rooms in those houses. Similar neighbouring development had been referred to but it was not considered to be comparable. Notwithstanding amendments made to the scheme as originally submitted these did not adequately address the previous reasons for refusal. The current proposal, by reason of the limited plot size, width, height, form, detailing and proximity of the houses would represent a cramped overdevelopment of the site and the officer's recommendation remained that it should be refused.

**Questions of Officers**

- (2) Councillor Miller sought clarification regarding the distance between the proposed access way and the adjacent property at 110. It was confirmed that a kitchen and conservatory windows faced towards the development site. Councillor Page raised similar queries and it was confirmed that the view of officers, notwithstanding amendments that had been made, remained that harmful overlooking, noise and additional vehicular movements in close proximity to the neighbouring dwellings would result from the proposed form of development.
- (3) Councillor Hyde sought clarification regarding the distances between the front of the site and the new dwellings proposed to the rear and between them and the existing buildings to the rear and the properties located in Batemans Road.

**Debate and Decision Making Process**

- (4) Councillor C Theobald stated that she considered that the proposed form of development would represent a very poor back land development which in her view represented overdevelopment.
- (5) Councillor Miller was pleased to note that the access issues had been resolved. He considered that the proposed form of development was of a good design and would be acceptable.

- (6) Councillor Page stated that he thought the proposed scheme amounted to town cramming and that too many dwellings were proposed on the site.
  - (7) Councillor Hyde stated that she considered the garden space on which the new dwellings were proposed was a large space which could accommodate the proposed development and would retain an acceptable space between it and the neighbouring properties. At the nearest point the access would be in close proximity to a kitchen and bathroom which she considered was acceptable, in her view it would not result an unacceptable increase in vehicular movements or noise. Councillor Hyde stated that she would be voting in support of the application.
  - (8) Councillor Gilbey stated that she supported the officer recommendation that the application be refused, considering that the access way would be located too close to neighbouring dwellings.
  - (9) Councillor Moonan stated that whilst not opposed to a scheme on the site in principle she considered that three rather than 4 would be more acceptable and would provide each property with a larger garden space. Councillor O'Quinn concurred in that view.
  - (10) Councillor Cattell, the Chair, stated that the scheme sought to cram too much onto the site and represented a contrived form of overdevelopment which would result in overlooking. She was unable to support the scheme in its present form.
  - (11) A vote was taken and on a vote of 7 to 3 by the 10 Members who were present at the meeting Planning Permission was refused.
- 123.7 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **REFUSE** planning permission for the reasons also set out in the report.

#### **BH2018/03780-38A UPPER GARDNER STREET, BRIGHTON -FULL PLANNING**

Demolition of existing boundary wall and reconstruction of replacement wall.

#### **Officer Presentation**

- (1) Planning Officer, Laura Hamlyn, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the scheme. The Members were informed that part of the wall had been demolished on the advice of the Brighton & Hove City Council Building Control team for safety reasons. The applicant proposes to demolish the remainder of the boundary wall between the application site and the neighbouring properties fronting Queens Gardens, and to erect a replacement hollow brick wall along the same line and to the same height as the existing wall.
- (2) The main considerations in the determination of this application related to the principle of the proposed demolition, the impact of the proposed replacement wall on the character and appearance of the North Laine Conservation Area, and the impact on the neighbouring amenities.

**Public Speakers**

- (3) Councillor Deane spoke as Ward Member for St Peter's & North Laine. The Member highlighted that the application was in a Conservation Area and had proved divisive amongst residents. It was noted that the wall was a bungaroosh construction. The Member felt that the replacement wall should be the same or possibly flint, to be in-keeping with the area.
- (4) The agent, Ms Sheath spoke to the committee. The agent informed the committee that the wall had been partially demolished for Health & Safety reasons and the remaining wall was not stable. The new wall would be finished in painted render and would have limited views in this back land position. The impact is considered to be small with the new wall being safer than the existing.

**Questions**

- (5) Councillor Littman asked if flint was included in the existing wall.
- (6) It was confirmed that the current bungaroosh wall included flint.
- (7) Councillor Moonan asked how accessible the proposal site was.
- (8) It was noted that there are 5/7 houses backing onto the site.
- (9) Councillor Miller asked what the impact was on the neighbouring properties.
- (10) It was noted that the residents mostly felt the wall was 'sound' until this application on what is a narrow site.
- (11) Councillor Hyde who would see the replacement wall.
- (12) It was confirmed that the site was only visible to the neighbours.
- (13) Councillor Moonan asked if any flint would be involved in the construction from the old wall.
- (14) It was noted that not enough flint remained from the removed wall to include in the replacement.
- (15) Councillor Page asked if the wall was a Party Wall or shared ownership.
- (16) The Member was informed that it was a party wall.

**Decision Making Process**

- (17) The Committee voted: The 9 Members of the Committee who were present when the vote was taken voted 8 to 1 that planning permission e granted.

**112.8 RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning

permission subject to Conditions and Informatives also set out in the report and the additional information contained in the addendum including:

Delete condition no.2 – The standard time condition is removed as the application is part retrospective, description amended to include part retrospective.

### **BH2018/01172-31 RIDGESIDE AVENUE, BRIGHTON-FULL PLANNING**

Erection of 1 no. three bedroom detached house.

#### **Officer Presentation**

- (1) Senior Planning Officer, Joanne Doyle, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the scheme. The Members were informed that the application site relates to the garden of 31 Ridgeside Avenue, a detached bungalow located on the North side of Ridgeside Avenue on the corner with Old Mill Close with the plot located to the west of the existing property.
- (2) Planning permission is sought for the erection of 1no. three bedroom detached dwelling (C3). To accommodate the development the existing garage at 31 is to be demolished.
- (3) The main considerations in the determination of this application relate to the principle of development on the site, the design of the new dwelling and the impact on the character and appearance of the streetscene and wider area, the impact on the amenities of adjacent occupiers, the standard of accommodation to be provided and any traffic issues.

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

- (4) Councillor Theobald felt that the development would reduce the donor dwelling garden and affect the neighbours.
- (5) Councillor Page felt the proposal looked cramped on the site and asked if the new build was too close to the existing garage and was not harmonise with other dwellings.
- (6) The Member was informed that the bulk and position of the proposal were considered acceptable, and the area supported a variety of dwellings and the design was acceptable.

The Committee voted: For: 8, Against: 2, that planning permission be granted.

- 112.9 RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to Conditions and Informatives also set out in the report.

### **BH2018/02805-23 MALDON ROAD, BRIGHTON-FULL PLANNING**

Demolition of existing bungalow and erection of 2no. three storey four bedroom dwellings (C3).

It was noted that this application formed the subject of a site visit prior to the meeting.

- (1) This application was not called for discussion and the officer recommendation was therefore taken as having been agreed unanimously.

112.10 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** Planning Permission subject to the conditions and informatives also set out in the report.

#### **BH2018/02120-238 ELM GROVE, BRIGHTON -FULL PLANNING**

Demolition of existing garage and erection of 1no. one bedroom single storey dwelling.

- (1) This application was not called for discussion and the officer recommendation was therefore taken as having been agreed unanimously.

112.11 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** Planning Permission subject to the conditions and informatives also set out in the report.

#### **BH2018/03479-2 BELLE VUE COTTAGES, BRIGHTON- HOUSEHOLDER PLANNING CONSENT**

Erection of two storey side extension, single storey rear extension, single storey rear extension, revised fenestration, roof extension incorporating rear dormer and front and rear rooflights.

- (1) This application was not called for discussion and the officer recommendation was therefore taken as having been agreed unanimously.

112.12 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the Conditions and Informatives also set out in the report.

#### **BH2018/03198-LANTERNS, THE GREEN, ROTTINGDEAN, BRIGHTON- HOUSEHOLDER PLANNING CONSENT**

Conversion of attic with dormers to front roof slope and roof lights to rear.

- (1) The Principal Planning Officer, Liz Arnold, introduced the application and gave a detailed presentation by reference to site plans, elevational drawings and site plans detailing the proposed scheme. The site was a single dwelling which was part of a complex of converted farm buildings and was covered by an Article 4 Direction, which removed permitted development and was adjacent to Grade II listed properties and a locally listed property and was a resubmission of a previously refused scheme which had been dismissed by a Planning Inspector on appeal who had concluded that the

proposed dormers did not preserve or enhance the character and appearance of the conservation area and were contrary to policy.

- (2) It was noted that although Lanterns was not a listed building it was within the Rottingdean Conservation Area and was considered to contribute positively to its appearance and character. The uninterrupted tiled roof was considered its most significant and visible feature and the least altered feature in a much altered building. It was considered that significant alteration to its roof would harm the character of the building and the conservation area and that the main considerations in determining the application related to the impact of the proposed development on the appearance and character of the host building the wider street scene and the amenities of adjacent occupiers.
- (3) Whilst the impact on neighbouring properties was not considered such to harm their amenity or to warrant refusal, the proposed dormers although fewer in number were still considered detrimental to the character of the conservation area and would disrupt the roof form of the building and refusal was therefore recommended.

### **Public Speakers**

- (4) Councillor Mears spoke in her capacity as a Local Ward Councillor in support of the scheme. Councillor Mears referred to the fact that the Appeal Inspector when refusing the earlier application had indicated that if a new/revised application was submitted there should be a more flexible approach to dormers citing that the Council's SPD2013 also indicated that a flexible approach seeking to accommodate development including roof extensions should be used in conservation areas whilst maintaining the heritage credentials of buildings. In her view this had been done, the site was also well set back from the road, the dormers would not be visible from the road and would not therefore affect the street scene.
- (5) Ms Hall spoke one of the applicants spoke in support of the application stating that they had affected significant improvements to the property which respected its character. They had made amendments to the scheme as originally submitted in order to overcome the reasons for refusal and were desperately in need of this additional space for their grown up children. The roof was not the original and had been designed to be sympathetic to the building, similar works had been carried out to properties in the general vicinity.

### **Questions of Officers**

- (6) Councillor Page requested to see photographs of the other houses in the vicinity and information regarding whether or not the skylights on those buildings complied with planning/building control requirements.
- (7) Councillor C Theobald, asked to see elevational drawings showing the current and proposed schemes, with particular reference to the proposed treatments at roof level and also the distance of the property on site from the road and it was explained that was approximately 52m.



- (8) Councillor Miller sought clarification regarding the materials proposed and it was confirmed that these remained the same as in the earlier application.
- (9) Councillor Hyde referred to the fact that the Planning Inspector had indicated that a flexible approach was recommended seeking clarification regarding interpretation of that statement. The Principal Planning Officer, Policy, Projects and Heritage, Tim Jefferies, explained that the Inspector was of the view that a “one size fits all” approach should be used and it had not been in this instance. Although amendments had been made to the scheme they had not been sufficient to overcome the previous reasons for refusal.
- (10) Councillor Moonan sought clarification regarding any dialogue which had taken place with the applicants and it was confirmed that clear advice had been given and that pre-application advice would also have been available to them.

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

- (11) Councillor Miller, stated that he was of the view that although located in the Conservation Area the application site was not visible from the road and would therefore in his view have little impact upon it. The applicant had sought to mitigate against any potential harm and he considered that the scheme was acceptable. Councillor C Theobald also concurred in that view.
- (12) Councillor O’Quinn was in agreement that the applicants had made adjustments in order to make the scheme acceptable and was in agreement that in view of the distance from neighbouring dwellings and the roadway the scheme would not be detrimental.
- (13) Councillor Page demurred from that view considering that the integrity of the existing roof scape should be respected.
- (14) Councillor Gilbey concurred and was of the view that policy guidance was clear, as the scheme retained many of the features of the previously refused scheme she did not consider that the current scheme was acceptable.
- (15) The Chair, Councillor Cattell, stated that she was in agreement with the officer and did not consider that it was appropriate to introduce dormers into the roof of a farm building. Whilst it would have been helpful if section drawings had been provided it was clear to her that very little additional space would be created as a result, and were insufficient to justify a departure from policy.
- (16) A vote was taken and the 10 Members present when the vote was taken voted by 6 to 4 that planning permission be refused.
- 112.3 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to refuse planning permission for the reasons also set out in the report.

### **BH2018/01937- 15 OSMOND GARDENS, HOVE-FULL PLANNING**

Change of use from care home (C2) to 8no bedroom large house in multiple occupation (Sui generis)

### Officer Presentation

- (1) The Principal Planning Officer, Liz Arnold, introduced the application and gave a detailed presentation by reference to site plans, floor plans, photographs and elevational drawings. It was explained that the application site comprised a pair of three storey (including a room in a conjoined gabled front roof elevation), semi-detached properties, on the east side of Osmond Gardens and sought to convert a former care home into a Sui Generis HMO with 8 bedrooms.
- (2) It was noted that the main considerations in determining the application related to the loss of the care home (C2) and whether allowing the use of the property as a large 8 bed HMO (sui generis) would be acceptable in the context of the policy requirement to prioritise meeting identified local need. The impact of the HMO in the area and the impact on amenity and transport are also considerations. The standard of accommodation and development were no longer acceptable for use as a care home due to issues with accessibility and functionality, no alternative uses to meet specific needs relevant to C2 had been identified and the proposed use was considered acceptable although use of the existing roof terrace could not be supported as it would be detrimental to neighbouring amenity, it had therefore been agreed to secure and fix the door connecting to the balcony shut and to retain as such thereafter and approval was therefore recommended.

### Debate and Decision Making Process

- (3) Councillor O'Quinn stated that although not germane to this application specifically, she was concerned as a wider issue that there appeared to be a number of unlicensed HMO's in that area of the city and she was of the view that needed to be addressed. Conditions which would prevent the roof terrace from being used and to limit the number of residents and removal of permitted development rights were welcomed. As details had not been provided in relation to storage and waste recycling she asked if that could be made a condition of grant and that was agreed.
- (4) Councillor Page referred to the loss of the care home and asked whether consideration had been given to use of the site to provide additional/supported units for people with special needs. It was confirmed that the building would not be suitable for such use due to lack of accessibility and other deficiencies.
- (5) Members then moved directly to the vote. A vote was taken and the 9 Members who were present when the vote was taken voted unanimously that planning permission be granted.

112.14 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the Conditions and Informatives set out in the report to the additional condition set out the Late/Additional Representations List and to the further additional condition set out below:

## Additional Condition:

The development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.

**Reason:** to ensure the provision of satisfactory facilities for the storage of refuse and to comply with policy QD27 of the Brighton and Hove Local Plan, policy CP8 of the Brighton and Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.

**BH2018/02532-95 HEATH HILL AVENUE, BRIGHTON-FULL PLANNING**

Change of use from single dwelling (C3) to six bedroom small house in multiple occupation (C4).

- (1) This application was not called for discussion and the officer recommendation was therefore taken as having been agreed unanimously.

112.15 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the Conditions and Informatives also set out in the report.

**113 TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF PLANNING APPLICATIONS**

113.1 **RESOLVED** – There were none.

**114 INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS**

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

**115 LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE**

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

**116 INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES**

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

**117 APPEAL DECISIONS**

- 117.1 The Committee noted the content of the letters received from the Planning Inspectorate advising of the results of planning appeals which had been lodged as set out in the agenda.

The meeting concluded at 9.58pm

Signed

Chair

Dated this

day of

**BRIGHTON & HOVE CITY COUNCIL****PLANNING COMMITTEE****1.30pm 20 MARCH 2019****COUNCIL CHAMBER, HOVE TOWN HALL****MINUTES**

**Present:** Councillors Cattell (Chair), Gilbey (Deputy Chair), C Theobald (Opposition Spokesperson), Mac Cafferty (Group Spokesperson), Bennett, Hyde, Inkpin-Leissner, Littman, Miller, Moonan, O'Quinn and Wealls

**Co-opted Members:** Mr Roger Amerena (Conservation Advisory Group)

**Officers in attendance:** Nicola Hurley, Planning Manager, David Farnham, Traffic and Transport Engineer, Nick Eagle, Senior Planning Officer, Maria Seale, Principal Planning Officer, Sarah Collins, Principal Planning Officer, Luke Austin, Principal Planning Officer, Annie Sparks, Senior Environmental Health Officer, Laura Hamlyn, Senior Planning Officer, Hilary Woodward Senior Lawyer and Penny Jennings, Democratic Services Officer.

**PART ONE****118 PROCEDURAL BUSINESS****118a Declarations of substitutes**

118.1 Councillor Wealls declared that he was present in substitution for Councillor Cobb.

**118b Declarations of interests**

118.2 Councillors Cattell, the Chair, Gilbey, C Theobald, Miller and Moonan declared that they had received e mail and been lobbied in relation to Application A, BH2018/02126, 29-31 New Church Road, Hove and B, BH2018/02598, Longley Industrial Estate, New England Street & Elder Place, Brighton. They confirmed that they remained of a neutral mind and would remain present at the meeting and take part in the decision making process

118.3 Councillor Miller referred to Applications F BH2018/03932, Unit 1, 75-79 East Street, Brighton and G BH2018/01926, Unit 4, The Savoy Centre, 100 Pool Valley, Brighton (the applications were linked), stating that having spoken in support of his letter of objection to Application BH2018/01926, he would leave the meeting and would take no

part in the decision making process. It was also noted that he had been lobbied in respect of Applications D and E, that he remained of a neutral mind and would remain present at the meeting and take part in the decision making process.

- 118.4 Councillor Bennett stated that she had been lobbied in relation to Application A, BH2018/02126, 29-31 New Church Road, Hove by those who supported and those objecting to the scheme but that she remained of a neutral mind and would remain present and take part in the decision making process.
- 118.5 Councillor Littman referred to Application A, BH2018/02126, 29-31 New Church Road, Hove stating that he was familiar with the Synagogue site and had held his Bar Mitzvah there. He also stated that he had given general advice. He was however of a neutral mind had no pre-disposition in respect of the application and would remain present and take part in the decision making process.
- 118.6 Councillor O'Quinn referred to Applications F BH2018/03932, Unit 1, 75-79 East Street, Brighton and G BH2018/01926, Unit 4, The Savoy Centre, 100 Pool Valley, Brighton (the applications were linked), stating that she had sat on the Licensing Panel at which these applications had been determined under Licensing Legislation. It would not therefore be appropriate for her to determine the planning applications in respect of either of those sites and she would therefore leave the meeting during when they were considered and would take no part in the decision making process.

#### **118c Exclusion of the press and public**

- 118.7 In accordance with Section 100A of the Local Government Act 1972 ("the Act"), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of the Act.
- 118.8 **RESOLVED** - That the public are not excluded from any item of business on the agenda.

#### **118d Use of mobile phones and tablets**

- 118.9 The Chair requested Members ensure that their mobile phones were switched off, and where Members were using tablets to access agenda papers electronically ensure that these were switched to 'airplane mode'.

#### **119 MINUTES OF THE PREVIOUS MEETING**

- 119.1 It was noted that due to the tight timeframe of meetings spaced very closely together that the minutes of the meeting held on 6 March would be circulated to a future meeting.

#### **120 CHAIR'S COMMUNICATIONS**

- 120.1 There were none.

**121 PUBLIC QUESTIONS**

121.1 There were none.

**122 TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS**

122.1 There were none.

**123 TO CONSIDER AND DETERMINE PLANNING APPLICATIONS**

The Democratic Services Officer, read out items 101 A – H and all of the items appearing on the agenda were called for discussion with the exception of:

Application H BH2017/02857 – 2 and 2A Barnett Road, Brighton – Full Planning which was agreed without discussion.

It was noted that Major applications and any on which there were speakers were automatically reserved for discussion.

The Chair, Councillor Cattell explained that this measure intended to expedite the business of the Committee and to avoid the necessity of those who had an interest in applications on which there were no speakers spending hours waiting for the Committee to get to their application(s). She wished to reassure the public, however, that in any instances where an application was not called for discussion members had read the officer report and any supporting information in advance of the meeting. However, having given the officer recommendation(s) their due consideration they had no questions nor required further clarification on any aspect of the application before moving to their decision.

**RESOLVED** – That the position be noted.

**A BH2018/02126 -29-31 New Church Road, Hove - Full Planning**

Demolition of existing synagogue, detached buildings providing Rabbi accommodation, synagogue social hall and children’s nursery. Erection of mixed use development comprising central single storey synagogue and four, five and six storey buildings to provide replacement children’s nursery, 2no classrooms for shared use by St Christopher’s school, offices, meeting rooms and cafe, underground car park and 45no residential dwellings (C3) comprising 35no flats and terrace of 10no houses to rear.

(1) It was noted that this application had formed the subject of a site visit prior to the meeting.

**Officer Presentation**

(2) Senior Planning Officer, Nick Eagle, introduced the application and gave a detailed presentation by reference to site plans, photographs, site plans elevational drawings detailing the proposed scheme. Reference was made to additional representations

received which had been referred to in the Late/Additional Representations List, these did not introduce any new issues which were not covered in the report.

- (3) It was noted that the main considerations in determining this application relate to the principle of the development, its scale, layout and access, affordable housing and viability considerations. In addition, the impact of the development on the character and appearance of the adjoining conservation areas and the setting of the nearby locally and statutorily listed buildings, impact on the street scene and wider views, neighbouring amenity, noise and anti-social behaviour/security considerations, pedestrian permeability, sustainable transport impacts including cycle parking demand, highway safety, impact on existing trees, and contribution to other objectives of the development plan.

### **Public Speakers**

- (4) Local Residents: (x3) Mr Stairs commented that the development appeared to be a 'city' on a small site and stated that hundreds of residents disagree with the proposals. The resident felt that residents had taken second place to greed. Mr Coomber felt that the proposals were an over development of the site, resulting in loss of daylight and privacy for neighbours. Mr Coomber also felt that the affordable housing was an issue. Mr Spirou felt that the development would have an adverse effect on the neighbours and that over 700 objections had been received. The resident also felt that St Christopher's School would be overlooked, and the scheme would be overbearing and lead to a loss of privacy for neighbours. It was suggested that a smaller scheme would be more suitable for the site.
- (5) Councillor Cobb stated deep objections to the scheme with over 700 objections. It was noted that some parents at St Christopher's were concerned about the impact on pupils resulting from overlooking. The scheme is considered to be overbearing, lead to a loss of privacy and daylight for neighbours, and having an enclosed feeling for the residents. The impact on the conservation area and loss of amenities to Carmel House were a concern.
- (6) The applicant's agent, Mr Rainer, stated that the scheme was an asset to the Jewish Community and others in the area as the new synagogue will have a community café, work spaces and new housing. This will be a place of worship and more. Mr Rainer assured the committee that impact assessments had been taken place and the scheme is supported by a construction management plan.

### **Councillor Questions for Speakers**

- (7) Councillor Joe Miller was informed by Mr Coomber that the proposals were 25 metres from closest property. Councillor Miller was also informed by the Mr Rainer that the number of affordable homes was a philanthropic driven part of the scheme to benefit the local community.
- (8) Councillor Hyde asked whether the statistics for loss of daylight did not reveal is 35% of daylight was lost everyday or one particular day.



- (9) Councillor Wealls was informed by the Mr Rainer that the impact on the school had been carefully assessed with a construction management plan in place and the design of the scheme including apartment windows facing away from the school. It was also noted that two new classrooms were to be built for the school.
- (10) Councillor Littman was informed that by Mr Rainer that the design of the synagogue was to accommodate the congregation and would be big enough to house events as a multi-function space.
- (11) Councillor Theobald was informed by the Mr Rainer that the existing stain glass would be reused in the proposed synagogue and the existing boundary wall and trees along the boundary will be retained.
- (12) Councillor O'Quinn was informed by the Mr Rainer that the nursery school will be on the ground floor of a proposed apartment block and all faiths would be welcome.
- (13) Councillor Mac Cafferty was informed by the Mr Rainer that the scheme would have an impact, however the trees are to be retained to protect the amenities of the area and reduce the visual impact. It was noted that the trees on site are to be protected during construction.
- (14) Councillor Moonan was informed by Mr Riner that there would not be a significant loss of daylight to the school or privacy as the apartment windows will not face the school.
- (15) Councillor Inkpin-Leissner was informed Mr Rainer that five affordable housing units would be included in the scheme.
- (16) Councillor Cattell was informed by Mr Rainer that a daylight impact assessment scheme had found the percentage loss of daylight for existing neighbours to be acceptable.

### **Questions of Officers**

- (17) Mr Amerena, CAG, was informed that the forward building line was agreed as the best for the site.
- (18) Councillor Inkpin-Leissner was informed that the location of the supporters and objectors was data protected.
- (19) Councillor Mac Cafferty was informed that officers had considered that it was appropriate for some trees to be removed. The trees had been assessed by the arboricultural officer and they had raised an objection. Officers had carefully balanced the application and felt that the loss of some trees was outweighed by the other benefits of the scheme.
- (20) Councillor Littman was informed that the number of parking spaces was within standards, the floor space was within living standards, the trees on site had been assessed on balanced considerations, and the amenity space included the café, kitchen and classroom.

- (21) Councillor Theobald was informed that the loss of daylight to neighbours and the school was considered acceptable. It was noted that the proposed rear elevations would be 5 metres from the rear site boundary.
- (22) Councillor Moonan was informed that the vehicle access was to the underground parking only, any loss of daylight would be to the smaller toilet windows at the school and the window design in the scheme prevents overlooking from the proposed apartments.
- (23) Councillor O'Quinn was informed that Sussex Police had given advice on how to 'design out crime', and any further parking would be found within the surrounding area. The office space was available to all members of the public and the design massing was similar to other buildings in the area. It was noted that the minimal number of vehicle movements into and out of the underground car park was not considered to have a detrimental impact on the pupils attending the school.
- (24) Councillor Hyde was informed that there are other buildings of a similar height to the proposals in the area.
- (25) Councillor Gilbey was informed that there are other flats near the development.
- (26) Councillor Miller was informed that materials would be agreed by the officers following consultation with Members attending Chair's Briefing meeting as would the details of the trees to be planted.

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

- (27) Councillor Miller felt that the improvements to the scheme since pre-app were positive and the development was a good use mix. It was also considered that the development was needed in the city.
- (28) Councillor Inkipin-Leissner stated that he supported the scheme which was good for the community.
- (29) Councillor Mac Cafferty liked the design however he felt that the proposal was an overdevelopment of the site, with the removal of trees being an issue and the density to great for the area.
- (30) Councillor Hyde felt that the development could have a negative impact on Carmel House, however, offered support for the philanthropic ideals shown in the scheme and supported the scheme. It was considered that the trees were not an issue.
- (31) Councillor Littman stated there was a lot to be said for the scheme, however the bulk and massing of the development was too much.
- (32) Councillor O'Quinn welcomed the housing, however felt that the proposals were an overdevelopment of the site and objected to the removal of trees.
- (33) Councillor Moonan expressed concerns about the removal of trees on the site, however on balance the scheme was considered acceptable.

- (34) Councillor Gilbey felt that the height of the development was an issue and expressed concerns for the neighbours. The trees were not an issue and the scheme was supported.
- (35) Councillor Theobald expressed concerns regarding the height of the development, the bulk and massing, and the impact on the school and neighbours. The number of objections was noted and support for the scheme could not be given.
- (36) Councillor Bennett considered the proposals to be good in design. Concerns related to the height, the street scene appearance and the removal of trees.
- (37) A vote was taken and on a vote of 7 to 5 Members voted that minded to grant planning approval be granted.

123.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to a s106 Planning Obligation and the Conditions and Informatives as set out in the report, **SAVE THAT** should the s106 Planning Obligation not be completed on or before the 26th June 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 11.2 of the report subject to the Amendments to Conditions and Informatives set out on the Additional/Late Representations List and as set out below:

**Additional conditions recommended by Environmental Health: Soundproofing of Building**

Measures shall be implemented in strict accordance with the approved details and recommendations contained within the Planning Noise Assessment submitted by Anderson Acoustics, Dated, 8th June 2018 and referenced as Project No: 3773. These include the minimum acoustic performances required for the glazed elements of the façade, found on pages 16 and 17 of the assessment, specifically ‘Residential - Table 3.11: Minimum sound reduction performance (dB) for the glazed elements of the façade’, ‘Commercial / Offices - Table 3.12: Minimum sound reduction performance (dB) for the glazed elements of the façade’, ‘Education / Worship - Table 3.13: Minimum sound reduction performance (dB) for the glazed elements of the façade’. It also includes the ventilation recommendations found on pages 17 and 18 of the assessment, specifically ‘Residential - Table 3.14: Minimum element normalized level difference Dn,e (dB) for the trickle ventilators’ and the recommended hybrid or a mechanical ventilation system for the Education units. The ‘Design Criteria’ found on pages 22 – 27 shall also implemented. This includes internal walls and floors within residences, reverberation in common parts, separating walls between residential units and communal corridors, doors and the separating floor between basement car park and acoustically-sensitive spaces directly above.

**Reason:** To safeguard the amenities of the future occupiers of the development and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

**Plant & Machinery**

Noise associated with any plant and machinery incorporated within the development shall be controlled such that the Rating Level measured or calculated at 1 metre from

the façade of the nearest existing noise sensitive premises, shall not exceed a level of 5dB(A) below the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS 4142:2014. In addition, there should be no significant low frequency tones present.

**Reason:** To safeguard the amenities of future occupiers of the development and the occupiers of neighbouring/adjacent properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

### **Construction Environmental Management Plan (CEMP)**

The Developer must not commence development until it has submitted to Brighton & Hove City Council's Development & Regeneration Team for prior approval a Construction Environmental Management Plan (CEMP) which should provide the following information;

(i) The phases of the Proposed Development including the forecasted completion date(s);

(ii) A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to Commence Development until such consent has been obtained;

(iii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme);

(iv) A scheme of how the contractors will minimise complaints from neighbours regarding issues such as noise and dust management, vibration, site traffic and deliveries to and from the site;

(v) A plan showing construction traffic routes.

On receipt of written confirmation from the Council stating approval of the CEMP the Developer shall use its reasonable endeavours to implement the commitments set out in the CEMP during the construction period.

**Reason:** To safeguard the amenities of occupiers of adjacent and nearby properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

### **B BH2018/02598 - Longley Industrial Estate, New England Street & Elder Place, Brighton-Full Planning**

Demolition of existing buildings and redevelopment to provide: 3,270sqm of office/research/development floorspace (B1 (a)/(b) use), 308sqm of flexible commercial/retail floorspace fronting Elder Place (B1 (a)/(b) and A1-A4 use), 201 residential units (C3 use) in buildings ranging between 3 and 18 storeys plus roof plant level, together with associated car and cycle parking, further plant at lower ground level, supporting facilities and landscaping.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

### **Officer Presentation**

- (2) The Principal Planning Officer, Maria Seale, introduced the application and gave detailed presentation by reference to site plans, elevational drawings, floorplans, block plans, photographs and aerial photographs showing perspectives across the site and its typography in the context of neighbouring development in the New England Quarter and in longer views including the bottom of Ditchling Road. It was noted that 8 further letters/emails had been received in support of the scheme and objections had been received from the CAG expressing concern that the height of the proposed tower would interrupt views of the listed heritage asset, St Bartholomew's Church. Reference was also made to the proposed amendments to the s106 Heads of Terms and Conditions as set out in the Additional/Late Representations List.
- (3) The existing building on site which had a total floor area of 3000sqm was located on the east side of New England Street between New England House and Vantage Point and was the equivalent of about three domestic storeys high on New England Street (although it appeared to be two as it was set down into the site) and about four storeys high on Elder Place. There was vehicular access from Elder Place to the east and New England Street to the west.
- (4) The main considerations in determining the application related to the principle of redevelopment of the site and type and scale of uses in the proposed location, layout, mix and viability and affordable housing provision of the housing element of the scheme; design, including scale and density, impact on the character and appearance of the locality, including the setting of heritage assets; sustainable transport, parking, highway safety, sustainability, biodiversity and flood risk and accessibility of the site.
- (5) This was undoubtedly a substantial development proposal of a significant scale in its local context and reservations had been expressed regarding the proposed overall scale and height. However, on balance, for the reasons outlined in the report, the proposal was considered acceptable. The site lay within an area identified as having capacity for significant development and the proposals made effective use of an underused brownfield site. Living conditions for prospective residents were considered to be generally acceptable and internal light levels whilst not ideal were characteristic of a densely built up central location. The housing mix and servicing provision were also not ideal but were not considered to sufficient to warrant refusal and could largely be mitigated by condition. Evidence submitted with the application demonstrated that the height and massing of the proposal would not have an unduly harmful impact in wider views and would have no direct impacts on any heritage assets and limited impact to their setting. It was therefore considered that any harm caused to the setting of heritage assets would be less than substantial and could in this instance be outweighed by the public benefits which were considered to be substantial and had been given significant weight. Therefore approval was recommended subject to the proposed s106 agreement on the Heads of Terms set out in the report and to the Conditions and Informatives also set out in the report.

### **Questions of Officers**

- (6) Councillor Theobald sought clarification of the heights of the blocks across the site.
- (7) Councillor Miller asked for clarification regarding allocation of the affordable housing, he was of the view that ideally preference in allocation should be given to those who had a local Brighton and Hove connection. Also, the criteria used when allocating social housing, whether that was based on income. The Empty Property Officer, Emma Kumar, explained that the new tenure arrangements would be set up and the units would be made available to a registered social landlord and allocations would be made in accordance with their criteria. Officer's would convey the Committee's thoughts as part of their liaison with them; there were certain specified criteria which had to be met in allocating affordable housing.
- (8) Councillor Miller also enquired regarding the balcony treatments proposed. He was concerned that depending on the materials used the appearance of a building could be detrimentally impacted when occupants personal effects could be viewed from the street below. The Planning Manager, Nicola Hurley, explained that it had been indicated that a bronze coloured treated metal would be used and that it could be conditioned that details be provided for consultation at Chair's Briefing meeting.
- (9) Councillor Wealls sought clarification in relation to the sum allocated for education by the S106 agreement. He noted that no separate allocation had been made for special needs provision. It was explained that the amount provided was assessed using an agreed formula with the education department, Councillor Wealls hoped that this could form the basis of discussions in respect of future applications. Councillor Wealls also asked whether there would be a requirement for bird boxes to be provided on site and it was confirmed that this matter was dealt with by proposed Condition 35.
- (10) Mr Amerena, CAG, requested to see slides giving perspectives of the site in longer views. He remained of the view that impact of the scheme would have a detrimental impact on the listed buildings in its vicinity.
- (11) Councillor Gilbey sought clarification of the contract period in relation to the rented housing, if known and the basis on which that accommodation would be made available, noting that it was indicated that this would be available at 75% of market rent when the council's own rented accommodation for example, was available at 65% of market rent. It was explained that Government Guidance indicated that up to 80% of market rent could be charged and that the Council would have no control over that.
- (12) Councillor Moonan stated that she appreciated that this scheme represented a new initiative but hoped that it would be possible for a requirement that preference be given to those who had a local connection could be included in the wording of the Heads of Terms. The Legal Adviser to the Committee, Hilary Woodward, stated that this could not be required.

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

- (13) Councillor C Theobald stated that whilst liking some elements of the scheme she considered the proposed tower to be too high, representing a retrograde step, in her view representing a 1960's tower block. In her view it would act as a wind tunnel and

very little would grow there. She was also concerned that the percentage of affordable housing was relatively low. She would have been minded to vote in support of the application minus the tower which she considered to be too high.

- (14) Councillor Miller stated that he considered the proposed scheme to be acceptable notwithstanding its height. There were some locations in the city where it was appropriate to have high density development and in his view the application site was appropriate for that. Whilst the affordable housing element was lower than he would have liked, he considered it to be acceptable. He was anxious however that a condition be added relating to final approval of the balcony materials by Members via the Chair's Briefing Meeting, also that the hours of use of the roof terraces be conditioned to avoid the potential for late night noise nuisance.
- (15) Councillor Littman concurred in that view stating that there were a few locations in the city where tall buildings were appropriate and at this location
- (16) Councillor Gilbey stated that she considered that the proposed development would be in a location where there were already a number of tall buildings including New England House which was nearby. She was also pleased that this scheme would provide for the city's broader housing needs.
- (17) Councillor Catell, the Chair commended the scheme stating that latterly the council had been criticised for providing too much "student" accommodation, this scheme represented an exciting first by providing a mix which included rented accommodation. She was not averse to tall buildings and considered that this scheme was appropriate to its location, well designed and would contribute towards an identified housing need within the city.
- (18) A vote was taken and the 8 Members who were present when the vote was taken voted on a vote of 6 to 2 that minded to grant planning approval be granted.

123.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves that it is **MINDED TO GRANT** planning permission subject to a s106 agreement on the Heads of Terms set out in the report and as amended in the Additional/Late Representations List the Conditions and Informatives as also set out in the report and also as amended in the Additional/Late Representations List **SAVE THAT** should the s106 Planning Obligation not be completed on or before the 26<sup>th</sup> June 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 11.2 of the report and the additional Condition(s) and Informatives set out below:

**Additional Condition(s):**

**Additional Informatives:**

**Note:** Councillors Hyde, Inkpin-Leissner, Mac Cafferty and O'Quinn were not present at the meeting during consideration or determination of the above application.

**C BH2018/02699- 118-132 London Road, Brighton-Full Planning**

Demolition of existing building and the erection of a five storey building with retail (A1 use class), community hub, student accommodation reception, laundry, plant room, bin store and cycle store at ground floor level, 232 student rooms (sui generis use class) at first, second, third and fourth levels, and solar PV array on the roof.

It was noted that this application was the subject of a site visit.

### **Officer Presentation**

- (1) The Principal Planning Officer, Sarah Collins, introduced the application and gave a detailed presentation by reference to site plans, elevation drawings and photographs detailing the proposed scheme. Ms Collins informed the committee that the main considerations in determining the application relate to the impact on the development on the prime retail frontage and pedestrian environment, the design and impact on local heritage assets and street scene, the loss of the snooker hall, the proposed student accommodation and compliance with policy CP21, the amenity of future occupiers and neighbouring properties, the impact of the development on the highway and car park adjacent and the impact on the local air quality.

### **Public Speakers**

- (2) The Democratic Services Officer, Penny Jennings read out a statement on behalf of Mr Marius, setting out his objections to the scheme.
- (3) Mr Bareham spoke as the applicant's agent. Mr Bareham stated that there had been extensive negotiation with Brighton & Hove City Council (BHCC) and felt the scheme was now of a high quality which improved the pavement, shops and buildings. The frontage is set back to allow more room. A public exhibition showed support for the scheme. The student living will be supported with an action plan.

### **Councillor Questions for Speakers**

- (2) Councillor Littman was informed that  $\frac{3}{4}$  of the 28 responses at the consultation exhibition supported the scheme.
- (3) Councillor Theobald was informed that the students would be from all countries.
- (4) Councillor Mac Cafferty was informed that there would be no loss of shops and that there were no formal agreements, although Kings College was interested. It was noted that no one under 18 would be accepted into the student accommodation and the site would have personnel to deal with issues such as anti-social behaviour and noise.



- (5) Councillor Theobald was informed that the second floor of the development would be higher than the existing and that it was proposed that blank canvasses suitable for graffiti have been designed out of the scheme.

**Debate and Decision Making Process**

- (6) Councillor Miller felt the scheme was good.
- (7) Councillor Hyde agreed and considered it a public realm enhancement.
- (8) Councillors Littman, Inkpin-Leissner, O’Quinn, Moonan, Gilbey and Cattell expressed support for the scheme.
- (9) Councillor Moonan was informed that trees could not be introduced along the pavement due to existing utilities in pavement.

123.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to be **MINDED TO GRANT** planning permission subject to a S106 Planning Obligation and the conditions and informatives as set out in the report, save that should the obligation not be completed on or before 26 June 2019, the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in the final section of the report subject to the Amendments to Conditions and Informatives set out on the Additional/Late Representations List Additional informatives to be added in relation to street signage and street trees:

**D BH2018/02051 -Grove Park, The Linkway, Brighton - Full Planning**

Erection of three storey (plus basement) residential care home providing 88 bedrooms and 24 parking spaces and associated works.

- (1) A detailed presentation was given setting out the scheme by reference to photographs of the existing cleared site, drawings and elevational drawings detailing the proposed scheme.
- (2) A vote was taken and members voted unanimously that permission be granted.

123.4 **RESOLVED** – That That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

**E BH2017/01873-45 & 47 Hollingdean Road, Brighton -Full Planning**

Demolition of existing buildings and erection of a part 2,3,4 and 5 storey building including basement to form 88 student rooms (Sui Generis), communal student facilities, plant room, cycle storage, 1no disabled parking spaces, recycling and refuse facilities, vehicular access and associated works.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

**Officer Presentation**

- (2) The Senior Planning Officer, Luke Austin, introduced the application and gave a detailed presentation by reference to site plans photographs, including aerial photographs and elevational drawings detailing the proposed scheme and showing views into and across the site from various perspectives.
- (3) The application related to a triangular shaped site located to the south of Hollingdean Road which currently contained a two storey hipped roof building to the east of the site, 45 Hollingdean Road and a two storey end of terrace building to the north of the site which formed 47 Hollingdean Road. Both buildings were currently vacant and had been used previously for the sale/repair of motorcycles and parts. No 47 had an extant permission for conversion to a dwelling. It was noted that the main considerations in determining this application related to the principle of development, including the loss of the former car sales/repair unit, the student accommodation, the design, the impact on street scene and wider views, heritage assets, the standard of accommodation, the impact on neighbouring amenity, environmental health issues, transport, sustainability, landscaping, and ecology/biodiversity impacts.
- (4) The proposed development would provide 88 student studios/cluster rooms which would provide a substantial contribution towards the need for purpose built student housing in the city. The site was in a good location within the city for such developments; being in close proximity to University teaching accommodation and on the sustainable transport corridor of Lewes Road. Whilst student accommodation on this site was not objected to in principle, the current proposal was considered overly scaled and would fail to address the constraints of the site. As a result, the development would impact on local dwellings from overlooking/overshadowing; in addition there was a poor standard of accommodation for a number of the units due to restricted outlook and a failure to demonstrate that a scheme of this size would not adversely impact on the local highway network. It was acknowledged that there would be a number of benefits associated with the proposal, including the provision of purpose built student accommodation in an area allocated for such development, however the benefits were not considered to outweigh the harm associated with the proposed overdevelopment of the site. Accordingly, refusal of the application was recommended.

**Public Speakers**

- (5) Mr Birtles spoke on behalf of the applicants in support of their application and was accompanied by Mr Chan to answer any questions on which he would be better placed to respond. Mr Birtles stated that the proposed scheme would provide much needed student accommodation which would help support local universities, being in an appropriate location and would provide for the effective re-use of a brown field site.
- (6) Councillor Moonan referred to the fact that whilst considered acceptable in principle the application was recommended for refusal asking whether/what discussions had taken place with officers to ascertain whether amendments could be made to the scheme in order for it to be recommended for approval. The applicant stated that they whilst willing to work with officers there had been limited dialogue.

**Questions of Officers**

- (7) Councillor Miller sought further clarification regarding dialogue which had taken place and it was explained that several potential options/designs had been discussed and it had had been indicated that a scheme not exceeding 5 storeys could be considered acceptable depending on how it was configured within the site. Pre-application discussions had taken place and piecemeal amendments had been made but not progressed.
- (8) In answer to further questions by Councillors Miller and Moonan, the Planning Manager, Nicola Hurley, advised that notwithstanding any discussions which had taken place the applicants had put forward the scheme as presented and Members needed to determine it on that basis. The Legal Adviser to the Committee concurred in that view.
- (9) Councillor C Theobald asked whether formal discussions had taken place with the Universities and it was confirmed that no formal discussions had taken place nor was any formal agreement in place with them in respect of take-up of accommodation on site.
- (10) Councillor Littman enquired regarding access/egress arrangements in relation to the site. The Development and Transport Assessment Manager, David Farnham, stated that the site was not permeable but that given its restricted nature with tall retaining walls and adjacent properties it was not considered in practical terms that the site could be made permeable. No analysis or survey had been submitted of on-street parking, taking into account the development and other recent completed development within the vicinity. The applicant's had therefore failed to demonstrate that there would not be an unacceptable increase in over-spill parking in the area.

**Debate and Decision Making Process**

- (11) Councillor Moonan considered that the scheme as put forward was unacceptable but considered that with more work an acceptable solution could be achieved which would satisfy an identified need for student housing in a location where such provision was appropriate given its relative proximity to university campuses.
- (12) Councillor Miller stated that having attended the site visit it was clear that this brownfield site was ripe for redevelopment. His preference would be for the application to be deferred in order to enable further discussions to take place with the applicants in order to facilitate submission of an amended scheme.
- (13) Councillors Hyde and C Theobald were of the view that the scheme as presented was unacceptable. Some of the accommodation would provide a very poor standard of accommodation for those living there as it would be permanently over shadowed with views onto tall blank walls. By virtue of the height of the proposed development there would be a detrimental impact on the adjacent terraced houses which were of a more modest height.

- (14) Councillor O'Quinn stated that she supported the officer recommendation. The application sought to cram a lot into a site which had constraints, the proposed development would be overbearing on neighbouring development.
- (15) Councillor Inkpin-Leissner considered that what was proposed would result in overdevelopment of a cramped site and would result in a very poor standard of accommodation; he would be supporting the officer recommendation.
- (16) Councillor Littman stated that whilst he supported the principle of student housing being provided on the site, he was of the view that the level of accommodation proposed combined with the fact that overspill parking issues remained to be addressed represented overdevelopment. A less ambitious scheme might be acceptable.
- (17) Councillor Wealls noted the concerns expressed but considered that it would provide for student accommodation on a redundant site with close proximity to the Universities, he was therefore minded to support it.
- (18) Councillor Gilbey stated that in her view the height of the proposed blocks and their close proximity to the neighbouring smaller scale development was overbearing.
- (19) Councillor Cattell, the Chair stated that she considered that the scheme was contrived and sought to place too much onto a constrained site. She considered that the scheme should be determined as presented, the applicants were free to submit an amended scheme which sought to address the reasons for refusal. She considered that would be the most appropriate course of action. Advice was sought and the Planning Manager and Legal Adviser to the Committee confirmed that whilst Members were being asked to determine the application as it stood, it was within their gift to defer it.
- (20) Councillors Moonan and Miller were in agreement that the scheme as currently put forward was flawed but considered that their preference would be for its determination to be deferred in order to enable the applicants to address concerns regarding the scale of the scheme and other potential reasons for refusal.
- (21) A vote was taken in respect of the amendment put forward by Councillor Miller, seconded by Councillor Moonan that consideration of the application be deferred for the reasons set out above. That was defeated on a vote of 2 to 5 with 1 abstention.
- (22) A further vote was then taken on the substantive recommendation set out in the officer report, that the application be refused. The 11 Members present when the vote was taken voted 9 to 2 that planning permission be refused.

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

**Note:** Councillor Mac Cafferty was not present at the meeting during consideration of the above application.

**F BH218/03932-(Linked with BH2018/01926)Unit 1, 75 - 79 East Street, Brighton-Full Planning**

Change of use from restaurant (A3) to public house/dancing/entertainment/live music venue (Sui Generis).

- (1) Due to the linkage between them this application and that following it, Application G, BH2018/01926, Unit 4, The Savoy Centre, 100 Pool Valley, Brighton formed the subject of a joint presentation but were voted on separately. Having spoken in respect of G, Councillor Miller withdrew from the meeting and took no part in the decision making process in respect of that application.

### **Officer Presentation**

- (2) The Senior Planning Officer, Luke Austin, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the proposed scheme. It was noted that the application site related to a commercial unit, Unit 1 (known as 75-79 East Street), fronting onto the junction of East Street and 100 Pool Valley and was located in the western rear section of a substantial mixed use building, formerly the ABC Cinema and more recently Days Restaurant, currently vacant. This application was closely linked with application G on that days agenda, BH2018/01926, for conversion of Unit 4 from a live music venue to a casino. The venue proposed within this application was a proposed relocation site of the existing venue at Unit 4. The main considerations in determining this application related to the principle of development, the loss of the existing use, the impact of the proposed use on neighbouring occupiers and the sustainable transport impacts.
- (3) It was considered that the proposed development would facilitate the retention of a live music venue within the city centre whilst improving the standard of facilities and increasing the capacity available. The proposed development was acceptable in transport and s106 requirements are recommended to secure a scheme of cycle parking within the vicinity of the site. Although there was likely to be an increased level of disturbance associated with the proposed use in comparison to the existing restaurant use, when taking the closure and relocation of the existing venue in unit 4 into account the level of additional harm was considered acceptable. Overall, it was considered that the scheme would deliver substantial benefits and planning permission is recommended subject to conditions and s106 requirements.

### **Questions of Officers**

- (4) Councillor Miller sought clarification regarding imposition of the s106, he had concerns in relation to loss of the existing music venue which would be displaced pending works associated with the Casino application (should that be granted). In the event of a hiatus it was possible that the existing venue would become unviable and that a valuable live music venue could be lost. The Planning Manager, Nicola Hurley, confirmed that the current use would not cease until use of the new venue had been secured. Whilst the licensing regime was separate as a well-run venue there was no reason to suppose that a new licence would not be granted.
- (5) In answer to further questions relating to potential noise-breakout should permission be granted in consequence of this use being located in closer proximity to neighbouring dwellings in Pool Valley, it was explained that appropriate measures were included in

the s106. The Regulatory Services Manager, Environmental Protection, Annie Sparks, explained that the applicants had submitted a report in relation to sound penetration and that the need for adequate levels of sound proofing were subject to a pre-commencement condition.

### Debate and Decision Making Process

- (6) Councillor Hyde stated that the Licensing and Planning regimes were separate. This represented relocation of a well-established and well run business, the proposed s106 sought to address any potential/ concerns and she considered this application to be acceptable.
- (7) A vote was taken and the 9 Members of the Committee who were present when the vote was taken voted unanimously that planning permission be granted.

123.6 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves that it is **MINDED TO GRANT** planning permission subject to a s106 agreement on the terms set out in the report and to the Conditions and Informatives also set out in the report. Also, that the S106 be amended to ensure that the casino could not operate until the music venue had its licence as well as being fitted out.

**Note:** Having declared a prejudicial interest in the above application, Councillor O’Quinn left the meeting and took no part in the decision making process. Councillors Inkpin-Leissner and Mac Cafferty were not present during consideration of the above application.

### **G BH2018/01926-(Linked with BH2018/03932) Unit 4, The Savoy Centre, 100 Pool Valley, Brighton - Full Planning**

Change of use of ground floor and mezzanine above from nightclub (Sui Generis) to casino (Sui Generis).

- (1) Due to the linkage between them this application and, the preceding application, Application F, BH2018/03932, Unit 1, 75-79 East Street, Brighton they formed the subject of a joint presentation but were voted on separately. Having spoken in respect of G, Councillor Miller withdrew from the meeting and took no part in the decision making process in respect of that application.

### Officer Presentation

- (2) The Senior Planning Officer, Luke Austin, introduced the application and gave a detailed presentation by reference to site plans, photographs and elevational drawings detailing the proposed scheme.
- (3) The application site related to a two storey unit located within the Savoy Centre to the west of Pool Valley and the North of Grand Junction Road. The site was currently used as a night/club music venue and is located adjacent to the Grosvenor Casino. This application was seeking consent for change of use from a nightclub to a casino in order to facilitate an extension to the adjacent casino. This application seeks permission for

the conversion of Unit 4 only. It was the intension of the developer that the use operating with the site in question within this application would be relocated to Unit 1 and that this would be secured as such via a S106 agreement.

- (4) It was noted that the main considerations in determining this application related to the principal of the conversion and the associated impacts of the loss of the music venue and the associated impacts of the proposed casino on the sustainable transport network and on neighbouring amenity. Whilst loss of an established venue was regrettable however as identified above it is proposed that the existing operator is to be relocated to another unit within the building and is to be secured via a legal agreement. It is also recognized that there would be a number of benefits associated with the proposed relocation site including an improvement of the facility on offer and improved management / operation of the site. The proposed extension of the Casino was considered acceptable in terms of neighbouring amenity and the impact on the local highway network would also be less than the existing use. The proposed development was therefore recommended for approval, subject to the appropriate conditions and legal agreement set out in the report.

### **Public Speakers**

- (5) Councillor Miller spoke having Chaired the Live Music Policy Panel in the City which had resulted in the creation of the Live Music Roundtable referring to his letter of objection which had been circulated with the agenda. Dependant on the outcome of the preceding application he was objecting to the loss/potential loss of this venue in the city. Loss of the venue would be contrary to policy CP5 and in his view none of the criteria for exceptions to policy had been met. There were few venues of a comparable size and it should therefore be retained.
- (6) Mr Derry and Mr Hepher spoke on behalf of the applicants in support of their application. They confirmed that it was intended that "The Haunt" would move into its new venue once the extended Casino use was in place, any displacement would be temporary. Both uses were well established and neither had given rise to problems. It was not anticipated that extension of the existing Casino use would give rise to additional late night noise, disturbance or have a detrimental impact on neighbours as rigorous management arrangements were in place. Whilst separate applicants and agents were associated with these two linked applications they had worked together to put forward applications which supported the needs of both and respected the amenity needs of local residents.

### **Questions of Officers**

- (7) Councillor Moonan referred to the proposed intensification of the existing Casino use which would result in an extension of gambling/gaming activity and enquired whether objections or concern had been raised by the Police or other statutory consultees. It was explained that there had been none although they would not constitute a planning consideration. There were no objections on policy grounds, a statement had also been provided by the applicants detailing robust management arrangements which would be in place.

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

- (8) The Chair, Councillor Cattell, stated that she was aware that “The Haunt” was a well-managed small venue and was pleased to note that it would not be lost. The Casino had also been in situ as a well-run establishment for a number of years and she would be voting in support of the application.
- (9) A vote was taken and the 8 Members present when the vote was taken voted by 7 with 1 Abstention to grant planning permission.

123.7 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves that it is **MINDED TO GRANT** planning permission subject to a s106 agreement in the terms set out in the report and subject to the Conditions and Informatives also set out in the report. The s106 to be amended to ensure that the casino could not operate until the music venue had its licence as well as being fitted out.

**Note:** Having spoken in respect of the above application Councillor Miller then withdrew from the meeting and took no part in the discussion or decision making process. Having declared a prejudicial interest in the above application, Councillor O’Quinn left the meeting and took no part in the decision making process. Councillors Inkipin-Leissner and Mac Cafferty were not present during consideration of the above application.

**H BH2017/02857-2 and 2A Barnett Road, Brighton -Full Planning**

Demolition of existing dwelling and erection of three storey building comprising of 6no flats with associated landscaping.

- (1) It was noted that Members observed this site during the course of their site visits.

123.8 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the Conditions and Informatives also set out in the report.

**124 TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF PLANNING APPLICATIONS**

124.1 There were none.

**125 INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS**

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

**126 LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE**

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



**127 INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES**

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

**128 APPEAL DECISIONS**

128.1 The Committee noted the content of the letters received from the Planning Inspectorate advising of the results of planning appeals which had been lodged as set out in the agenda.

The meeting concluded at 8.25pm

Signed

Chair

Dated this

day of



**BRIGHTON & HOVE CITY COUNCIL**

**PLANNING COMMITTEE**

**2.00pm 3 APRIL 2019**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Cattell (Chair), Gilbey (Deputy Chair), C Theobald (Opposition Spokesperson), Mac Cafferty (Group Spokesperson), Bennett, Cobb, Hyde, Littman, Miller, Moonan and O'Quinn

**Co-opted Members:** Jim Gowans (Conservation Advisory Group)

**Officers in attendance:** Nicola Hurley, Planning Manager; Mick Anson, Principal Planning Officer; Nick Eagle, Senior Planning Officer; Eimear Murphy, Senior Planning Officer; Charlotte Bush, Senior Planning Officer; David Farnham, Development and Transport Assessment Manager; Hilary Woodward, Senior Solicitor and Penny Jennings, Democratic Services Officer

**PART ONE**

**129 PROCEDURAL BUSINESS**

**129a Declarations of substitutes**

129.1 There were none.

**129b Declarations of interests**

129.2 Councillors Miller, Gilbey Moonan and O'Quinn stated that they had been lobbied in respect of Application A, BH2018/02751, Enterprise Point and 16-18 Melbourne Street, Brighton and Application B, BH2019/00293, Former Peter Pan Playground Site, Madeira Drive, Brighton but that they remained of a neutral mind and would remain present at the meeting and would take part in the debate and decision making process.

129.3 Councillor Littman stated that he had received a letter from the MP for Brighton Kemptown in respect of Application B, BH2019/00293, Former Peter Pan Playground Site, Madeira Drive, Brighton he remained of a neutral mind and would remain present

at the meeting and would take part in the debate and decision making process. It was noted that this correspondence had been sent to all Members of the Committee and it was confirmed that all remained of a neutral mind and would remain present during the debate and decision making process.

### **129c Exclusion of the press and public**

129.4 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.

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

### **129d Use of mobile phones and tablets**

129.6 The Chair requested Members ensure that their mobile phones were switched off, and where Members were using tablets to access agenda papers electronically ensure that these were switched to ‘aeroplane mode’.

## **130 MINUTES OF THE PREVIOUS MEETING**

130.1 It was noted that due to the tight timeframe of meetings spaced very closely together that the minutes of the meeting held on 6 March and 20 March respectively would be circulated to a future meeting for approval.

## **131 CHAIR'S COMMUNICATIONS**

131.1 The Chair, Councillor Cattell, took the opportunity to thank all Members of the Committee for their hard work and commitment over the past 4 years. The Committee had given approval for a number of important developments which would have a major impact on the city going forward. Over recent meetings in particular they had considered a large number of landmark developments. The opportunity was taken to thank officers for their important contribution and advice. Outgoing Members were given all good wishes for their future lives and she hoped that a number of standing members would be back on the Committee post the forthcoming election.

## **132 PUBLIC QUESTIONS**

132.1 There were none.

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

133.1 There were none. Councillor Mac Cafferty suggested that it would be appropriate to undertake a Site Visit to Hove Library but that was defeated on a vote of 9 to 2.

**134 TO CONSIDER AND DETERMINE PLANNING APPLICATIONS**

The Democratic Services Officer, read out items 134 A – G and all of the items appearing on the agenda were called for discussion with the exception of:

Application E BH2017/0795 17 Shenfield Way, Brighton – Full Planning which was agreed without discussion.

It was noted that Major applications and any on which there were speakers were automatically reserved for discussion.

The Chair, Councillor Cattell explained that this measure intended to expedite the business of the Committee and to avoid the necessity of those who had an interest in applications on which there were no speakers spending hours waiting for the Committee to get to their application(s). She wished to reassure the public however, that in any instances where an application was not called for discussion members had read the officer report and any supporting information in advance of the meeting. However, having given the officer recommendation(s) their due consideration they had no questions nor required further clarification on any aspect of the application before moving to their decision.

**RESOLVED** – That the position be noted.

**A BH2018/02751-Enterprise Point & 16-18 Melbourne Street, Brighton -Full Planning**

Demolition of all existing buildings and electrical substation and erection of building of between 5 to 8 storeys comprising office floor space (B1), student accommodation including 330no student bedrooms (Sui Generis), 24no residential flats (C3), ancillary residents' amenity space, associated plant and electrical substation, landscaping, access, cycle spaces, parking and associated works.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

**Officer Presentation**

- (2) The Principal Planning Officer, Mick Anson, introduced the application and gave a detailed presentation by reference to site plans, floor plans, block plans, elevational drawings and photographs detailing the proposed scheme and showing it in the context of the neighbouring vicinity and in longer views. Drawings were also shown showing the profile of the existing building and those proposed on site. Samples of the materials, including cladding materials proposed were also displayed.
- (3) The application proposed the demolition of all of the existing buildings on site and the relocation of an electrical sub-station on the site and the erection of a new building of between 5 to 8 storeys comprising 1,048sqm. of business floor space (B1), 330 no. student bedrooms (Sui Generis) with a student hub space of 348 sqm., 24 residential flats (C3), residents and student amenity space, associated plant and electrical substation, landscaping access, cycle spaces, parking and associated works. The

proposals originally submitted had proposed a development of up to 9 storeys in height but had been amended during the course of consideration of the application by reducing the height of the north block by a storey from 9 to 8 storeys and the west block by a storey from 7 to 6 storeys. As a result the number of the impact student units had been reduced from 350 to 330 rooms and the number of affordable housing units proposed had been increased from 20 to 24 units. The tallest element of the site would be at the northern end backing onto Woodvale cemetery.

- (4) It was noted that the main considerations in determining this application related to the principle of the proposed development, the impact of the proposed development on the visual amenities of the site and the surrounding area, proposed access arrangements and related traffic implications, air quality, impacts upon amenity of neighbouring properties, standard of accommodation, ecology, and sustainability implications which needed to be addressed.
- (5) It was considered that the level of housing proposed would be too low and would not fulfil its housing potential. It was not considered that the applicant's case that allowing this proposal would free up other housing currently in multiple occupation enabling it to return to class C3 family housing had been evidenced which might have allowed an exception to be made. The development proposed, at a maximum 8 storeys, would be defined as a tall building as was the existing 6 storey building on site and when seen would be in the immediate context of the 7 storey Viaduct Lofts. This scheme would be built at very high density tight to the boundaries on 3 sides of the site, but had also been considered in the context of a site which was constrained by small scale terraced housing. The wider townscape impacts had been mitigated such that the scale of the scheme would not cause harm in longer views, by some height reduction and by improving the design, appearance and materials. Notwithstanding, this however, it was considered that the proposed development would have an unacceptable impact on the amenity of neighbouring residents due to its siting, overbearing nature and impact on residents' outlook and would result in unacceptable daylight losses to residents contrary to policy QD27 of the Brighton and Hove Local Plan. It was also considered that the proposal was contrary to the City Plan site allocation for mixed housing and employment use. Due to this and the proposal's impact on the amenity of and adjoining residents, including the school and lack of suitable amenity space it was considered that it should be refused. It was noted that the Officer recommendation had been amended and that the recommendation was now Minded to Refuse to allow officers to determine whether proposed reason 3 should remain in view of additional information recently received.

### **Public Speakers**

- (6) Councillor Daniel spoke in her capacity as a Local Ward Councillor setting out her objections to the proposed scheme. She stated that residents and local ward councillors were not anti-student nor opposed to housing provision on the site but considered that as currently framed it represented over-development, was far too dense, would be far too close to the pavement edge with access/egress onto a single lane road and would also give rise to potential noise and other nuisance due to the number of units proposed on-site and their very close proximity to neighbouring more modestly scaled terraced dwellings. A robust transport plan needed to be in place in order to ensure pedestrian safety.

- (7) Councillor Gibson, also spoke in his capacity as a Local Ward Councillor setting out his objections to the proposed scheme. He concurred with the points made by Councillor Daniel, also referring to the significant loss of daylight to a number of the neighbouring properties which remained to be addressed. Whilst acknowledging that there were positive elements to the scheme he considered that it would be appropriate for its consideration to be deferred to enable the outstanding issues to be addressed.
- (8) Councillor O'Quinn having noted the comments made by both ward councillors sought clarification whether it would be permissible to defer the application in order for the applicants to effect amendments to the scheme which might make it more acceptable. The Chair, Councillor, Councillor Cattell, stated that it would be appropriate for the Committee determine the application as submitted.
- (9) Councillor Moonan sought confirmation that the main objections in respect of the application related to its bulk and massing rather than the element of student housing proposed.
- (10) Mr Hoskins spoke on behalf of the applicants in support of their application and was accompanied by Mr Wallace and Ms Steele in order to respond to any questions on which they might be better placed to respond. Mr Hoskins stated that the scheme had been designed in order to respond to an identified need and had sought to provide flexible modern co-working spaces, independent daylighting/sun-lighting assessments had been undertaken. The developers were committed to effecting improvements within the area as they had committed a sum of £1.3 m towards off-site provision.
- (11) Councillor Miller referred to the SHLAA, and enquired regarding the number of units which would be provided. It was explained that just over 100 units were envisaged.
- (12) Councillor Mac Cafferty, referred to the level of off-site provision proposed seeking clarification of why it had not been possible to provide this on site as this was not policy compliant.
- (13) Councillor C Theobald noted that the level of on-site student housing was proposed in response to an identified need and asked whether/what negotiations had taken place with any of the local universities, notwithstanding the need for student accommodation, the number of units proposed within such a constrained site appeared to be very high. It was explained that discussions had taken place and had been positively received. Similar arrangements were envisaged to those which had been entered into in Southampton.
- (14) Councillor Mac Cafferty noted all that had been said and asked whether any formal agreements were in place with any of the universities and it was confirmed that at the present time there were not.

### **Questions of Officers**

- (15) In answer to questions diagrams were displayed which indicated the configuration of the proposed blocks within the site, the location of the 8 storey element, the distances between the blocks themselves and other buildings within the neighbouring street

scene. Also, the proposed location of windows where it was considered overlooking would occur. It was confirmed in answer to further questions that these faced across the car park towards Shanklin Road, the greatest concern in respect of that block related to loss of daylight to neighbouring dwellings.

- (16) Councillor Miller referred to the proposed loss of office space and the proposed housing component seeking clarification regarding the assessments made. The Principal Planning Officer, Planning Policy, Steve Tremlett stated that a number of considerations had been balanced in assessing the application and these were set out in the report. Ultimately, the provision of Purpose Build Student accommodation (PBSA) in lieu of C3 housing was not supported. Design analysis of the site had indicated that the site would support a greater number of residential units than the 24 proposed, the PBSA element proposed did not therefore make any contribution to the city's affordable housing requirements in addition to the other deficiencies which were set out. Whilst there were some positive elements they were not considered to outweigh the potential harm which had been identified in relation to such a dense scheme and it was not considered that a sufficiently compelling case for departure from policy had been made.
- (17) Councillor Moonan sought clarification regarding the assessment made in relation to road safety with particular reference to pedestrian access and the location of cross-over arrangements. The Development and Transport Assessment Manager, David Farnham stated that notwithstanding improvements which had been made, the main concern in respect of the site was the potential for competing demands between the needs of residents requiring parking bays and amenity space should demand for the former arise. It was accepted however that it would not be possible to fully meet the parking standards required by SPD14 on site.

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

- (18) Councillor Mac Cafferty referred to cycle provision proposed on site and to the proposed trees; these did not appear to have been shown clearly on the submitted plans. Whilst there were some positive elements overall the proposed scheme was not policy compliant, was too dense and would result in overdevelopment.
- (19) Councillor Gilbey also referred to the location of trees located at the perimeter boundary of the site and it was confirmed that these fell outside the boundary of the site, however measures would need to be put in place to protect them. In relation to the housing Councillor Gilbey noted that whilst mixed use developments would usually include some 3 bedroom units none were proposed here. She considered that the proposed development built right up to the boundary and so close to neighbouring development was unacceptable.
- (20) Councillor Miller stated that whilst recognising the need for mixed developments including student accommodation a balance was necessary and in this instance he did not consider that a case for departure from policy had been made. The scheme was far too big and would have a severe detrimental impact on neighbouring amenity and that of 29 Shanklin Road in particular. However a better designed and more modest scheme could be acceptable



- (21) Councillor Cobb noted the need for additional student accommodation and considered that this site could support tall buildings. It was in a good location for such accommodation and she was minded to support the proposed scheme.
- (22) Councillor Moonan considered that the balance was wrong. Whilst the site could support some student accommodation the level proposed was too great and too overbearing, the existing scheme could be improved upon.
- (23) Councillor Littman stated that what was proposed in terms of its height, bulk and mix of uses was not appropriate to this site.
- (24) Councillor C Theobald considered that the existing site was an eyesore and was in need of redevelopment but the current scheme would be an overdevelopment, was too high and had too large a footprint, a more modest development with on-site parking would be preferable.
- (25) Councillor Hyde concurred with much of what had been said, whilst there were good points to the scheme it was just too much for the site.
- (26) Councillor O’Quinn considered that the scheme placed too great an emphasis on student housing in an area where there was already significant provision, this would drastically change the character of the area, was not policy compliant and could give rise to significant overspill parking.
- (27) The Chair, Councillor Cattell, stated that she whilst in agreement that the site was ripe for the right sort of redevelopment the current scheme was not acceptable. A more modest scheme with a better residential mix which was set back from the site boundaries would be preferable in her view.
- (28) A vote was taken and on a vote of 10 to 1, the 11 Members present at the meeting voted that they were Minded to Refuse planning permission.

134.1 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves that it is **MINDED TO REFUSE** planning permission for the reasons also set out in the report subject to the Principal Planning Officer determining whether proposed reason for refusal 3 had been addressed and for the decision notice to be issued accordingly.

**B BH2019/00293 - Former Peter Pan Playground Site, Madeira Drive, Brighton -Full Planning**

Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-2 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years.

- (1) It was noted that this application had formed the subject of a drive-by site visit prior to the meeting.

**Officer Presentation**

- (2) Assistant Planning Officer, Nick Eagle, introduced the application and gave a detailed presentation by reference to site plans, photographs, site plans elevational drawings detailing the proposed scheme. The Committee were informed that additional representations had been received which had been referred to in the Late/Additional Representations List. These representations this did not introduce any new issues that had not already been referred to in the officer's report.
- (3) It was noted that the main considerations in the determination of this application related to the:
- principle of developing the open shingle beach
  - impact to ecology and biodiversity
  - principle of locating the proposed uses in this location
  - impact to local retail centres
  - impact to the setting of the special character and appearance of the East Cliff Conservation Area and nearby listed buildings
  - impact to tourism and the economy
  - contribution the development will make to sports provision in the city
  - demand for travel created by the development
  - impact to amenity

**Questions of Officers**

- (3) The Conservation Advisory Group (CAG) representative, Mr Gowans was informed that the proposals were single storey.
- (4) Councillor Theobald was informed that the materials included timber cladding for the external elevations.
- (5) Councillor Mac Cafferty was informed that S106 heads of terms covered the retention of the shingle vegetation. Although the management of the shingle is for 10 years, the five year temporary permission sought under this application will be covered. The proposed materials are to be approved by the authority and the viability statement is similar to the one previously submitted.
- (6) Councillor Littman was informed that the S106 heads of terms for ecology was for a management plan of 10 years, and the financial commitment was for the temporary period.
- (7) Councillor Miller was informed that the latest proposals were in line with the adjoining Yellowwave volleyball site and that the swimming pool, to be constructed by 01 April 2020 along with the other elements of the proposed scheme, will be removed after five years and the shingle replaced and levelled to match the existing.
- (8) Councillor Moonan was informed that the previously proposed first floor has been removed from the scheme.
- (9) Councillor Gilbey was informed that the 5 year consent would start 01 April 2020.

**Debate and Decision Making Process**

- (10) Councillor Moonan considered the proposed colours to be fitting and expressed support for the multi use and regeneration of the area and Madeira Drive.
- (11) Councillor Hyde felt the latest submission was much improved from previous proposals with good design, improved views and is beach appropriate. The CAG comments are noted.
- (12) Councillor O'Quinn felt the scheme had been improved and supported the regeneration of the area.
- (13) Councillor Theobald supported the new colours and felt the proposals were good for the sea front area.
- (14) Councillor Littman felt the development was essential good, however, he expressed concerns regarding the protection of ecology on the site and would like to see a 25 year period of ecological maintenance.
- (15) Councillor Miller felt the scheme was good for the area and supported that materials should be submitted to the Chair's Briefing for approval.
- (16) Mr Gowans, CAG commented that there are concerns regarding whether the design is in keeping, views across the beach are compromised, not all the materials are appropriate, and the public benefit was questioned as the pool is contrary to policy.
- (17) Councillor Cobb supported the scheme, however, not all the materials were considered appropriate.
- (18) Councillor Mac Cafferty expressed concerns that permission would lead to infilling developments in the future, the ecology impact would be substantial and support for the nearby arches along Madeira Drive would have been liked.
- (19) Councillor Gilbey felt that the scheme had been improved and the pool was a good idea.
- (20) Councillor Cattell supported the scheme and felt the applicants had shown 100% commitment.
- (12) A vote was taken and on a vote of 6 to 4 the 10 Members who were present voted that the and for officers to determine an appropriately revised financial contribution. A further vote was then taken in respect of the substantive recommendations and the 10 Members who were present voted unanimously that Minded to Grant planning approval be given.
- 134.2 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to be **MINDED TO GRANT** planning permission subject to a s106 agreement and the following Conditions and Informatives also set out in the report, **SAVE THAT** should the s106 Planning Obligation not be completed on or before the **24<sup>th</sup> July 2019** the Head of Planning is

hereby authorised to refuse planning permission for the reasons set out in section 10 of the report.

**Note:** Councillor Bennett was not present at the meeting during consideration of the above application.

**C BH2018/03600 -Buckley Close, Hove -Full Planning**

Demolition of existing garages (B1) and erection of 3no two storey residential blocks providing 12no flats in total (C3) with gardens. Creation of 11no car parking spaces and cycle storage, with landscaping and other associated works.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

**Officer Presentation**

- (2) The Planning Officer, Eimear Murphy, introduced the application and gave a detailed presentation by reference to site plans, floor plans, elevational drawings and photographs detailing the proposed scheme.
- (3) The application site was approximately 12 metres in depth and 137.5 metres in length, covering an area of 1279.3 sqm which includes the 48. garages, land to the north and south and part of the public highway. The site is located to the east side of Buckley Close, a cul-de-sac with 9 x 3 storey flatted buildings with pitched roofs set an angle to the road. Behind the existing garages, sitting on higher ground, is a mix of two storey flats and dwelling houses of Chichester Close. There was a gap between the row of garages and rear garden boundaries. The rear gardens were defined by a mixture of post-and-wire and/or close-boarded fence panels. Some trees were growing out of the rear boundary retaining wall, over this space. The supporting planning statement states that all the garages have been empty for many years and unlettable due to their current condition. All of the garages were now boarded up. This application sought to demolish the existing garages and to erect 3 detached two-storey buildings in order to provide 12 affordable units of accommodation for rent.
- (4) It was noted that the proposed buildings would be erected up to the edge of the concrete apron currently in existence, beyond which a new footpath of 1.1m in width would be provided for its entire length. The proposed buildings would be of a consistent plan with a recessed entrance bay leading to a communal hall and stairs, they varied however in length and in the pattern of fenestration reflecting the units, types and room designations. The main considerations in determining the application related to the principle of the development, its scale, character and appearance and relationship with the area/context; residential amenities for existing and future occupants, design, transport and parking, sustainable development, ecology/biodiversity archaeology and the setting of the national park. The scheme overall was considered to be in general accordance with relevant local and national planning policies and guidance and was considered to be acceptable; planning permission was therefore recommended subject to a s106 agreement and the conditions and informatives proposed.

**Questions of Officers**

- (5) Councillor C Theobald wanted clarification regarding where objections had come from, i.e., had they come from immediately neighbouring residents who would be directly affected by the proposed development. Councillor Theobald also asked for details of the distances between the proposed blocks and the gardens of the neighbouring properties.
- (6) Councillor Mac Cafferty asked whether consideration had been given to the Food Growing Planning Advisory Note asking if thought had been given to providing communal allotments, composting and green roofs. It was confirmed that had not been discussed during the application process. Councillor Mac Cafferty asked therefore if an informative could be added to any planning permission granted.
- (7) Councillor Miller referred to the lack of parking, the scheme itself would remove parking and asked whether a parking survey had taken place and whether it was considered that there could be a negative impact on traffic and parking. The Development and Transport Assessment Manager, David Farnham explained that any additional parking demand was not considered to be such that additional parking would be necessitated.
- (8) Councillor Hyde sought information regarding gaps between the proposed new blocks and the existing buildings behind and the details of the distances/angles between the proposed form of development and that existing. She was concerned that the new buildings could appear oppressive. It was confirmed having had regard both to the height, distance and degree of separation between the buildings it was not considered that the proposed form of development would be overbearing when viewed in the context of the existing buildings.
- (9) Councillor Moonan enquired whether there would be a sufficient safe space to enable children to cross from the site to access the bus stop nearby. The Development and Transport Assessment Manager, David Farnham explained that the proposals were considered satisfactory and that any additional improvements could be made if considered necessary.

**Debate and Decision Making Process**

- (10) Councillor C Theobald stated that whilst the additional housing was welcomed, she had some concerns that the form of development proposed was cramped and could impact on existing residents.
- (11) Councillor Hyde expressed concern regarding the impact that the last block in the row could have in view of its distance between it and the residential dwellings behind. Whilst welcoming additional housing provision she would have preferred blocks which were lower in height or bungalows.
- (12) Councillor Cobb stated that she had grave concerns regarding pedestrian safety for those attending the nearby school which would result from two-way traffic being permitted. The Development and Transport Assessment Manager, David Farnham confirmed, however that double yellow line markings would prevent opportunistic

parking, industry standards had been applied and the arrangements out into place were considered to be satisfactory.

- (13) Councillor Gilbey confirmed that she had no hesitation in supporting this scheme. Similar proposals had been effected in her ward and had provided much needed housing without compromising that already there.
- (14) Councillor Miller stated that he welcomed the proposed scheme which in his view had been sympathetically designed, considering that gaps between buildings were acceptable and that the site could have taken a fourth block.
- (15) Councillor Moonan welcomed the scheme which would provide much needed housing and had been thoughtfully designed.
- (16) Councillor Cattell, the Chair, stated that she was delighted to support this scheme hoping that more affordable units could be provided on similar sites elsewhere in city. The design was simple but effective.
- (17) A vote was taken and on a vote of 7 to2 with 1 abstention, the 10 Members who were present voted that they were Minded to Grant Planning Permission.

134.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to be **MINDED TO GRANT** planning permission subject to a s106 agreement and the following Conditions and Informatives set out in the report, a condition requiring details of the safety rail to be submitted for approval and an informative regarding consideration to be given to the Council's Food Growing Planning Advice Note **SAVE THAT** should the s106 Planning Obligation not be completed on or before the 24<sup>th</sup> July 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 11 of the report.

**Note:** Councillor Bennett was not present at the meeting during consideration and determination of the above application.

#### **D BH2018/00312 -93 Lustrells Crescent, Saltdean, Brighton - Outline Application**

Outline application with all matters reserved for the demolition and erection of existing dwelling and erection of 2 no. dwellings (C3).

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.

#### **Officer Presentation**

- (2) The Senior Planning Officer, Charlotte Bush, introduced the application and gave a detailed presentation by reference to site plans, elevation drawings and photographs detailing the proposed scheme. The committee were informed that the main considerations in determining the application relate to the principle of the development of the site and the impact of the proposed dwellings on the character and appearance of the adjoining grade II listed building, the street and the surrounding area. The

standard of accommodation, access, sustainability, impact on street trees, and impact on neighbouring amenity and transport were also material considerations.

### Questions of Officers

- (3) Councillor Hyde was informed that the impact of the proposed development on the neighbouring property would be assessed if a detailed application were submitted.
- (4) Councillor Miller was informed that the outline application was indicative, scale and building line will be negotiated if a detailed application were to be submitted. The application is for the principle of development.
- (5) Councillor Theobald was informed that should a detailed application be submitted the scale of the development would be defined with more detail.
- (6) Councillor Cattell was informed that reserved matters could be brought to the committee if submitted.
- (7) Councillor Hyde was informed that the principle of development was covered by the application and design, bulk massing and scale, would be submitted as part of any detailed application.
- (8) Councillor Moonan was informed that any detailed application submitted could include informatives and conditions relating to materials.

### Debate and Decision Making Process

- (9) Councillor Theobald considered the application difficult to decide as there was not detail.
- (10) Councillor Miller expressed concerns that two dwellings on the site would look cramped. Other concerns related to the impact on nearby trees, the listed neighbouring property and the amenities of surrounding properties.
- (11) Councillor Hyde expressed concerns regarding the lack of detail submitted with regards to access and scale.
- (12) Councillor Cattell considered the principle of development expressed in the application to acceptable.
- (13) A vote was taken and on a vote of 6 to 4 the 10 Members present at the meeting voted to grant outline planning permission.

134.4 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** planning permission subject to the Conditions and Informatives set out in the report save that condition 2 is substituted by the Council's standard reserved matters commencement condition and with an additional informative requesting the Committee determine any reserved matters applications submitted pursuant to the permission.

**E BH2017/01795 -17 Shenfield Way, Brighton -Full Planning**

Change of use from residential dwelling (C3) to three bedroom small house in multiple occupation (C4) retrospective.

- (1) It was noted that that this application had not been called for discussion. The officer recommendation was therefore deemed as agreed unanimously by the Members present at the meeting.

134.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report resolves to **GRANT** planning permission subject to the Conditions and Informatives also set out in the report.

**F BH2018/03896-Hove Central Library, 186 Church Road, Hove- Listed Building Consent**

Alterations to entrance lobby to install access control system including exit button and associated works.

**Officer Presentation**

- (1) The Principal Planning Officer, Mick Anson, introduced the application by reference to photographs showing the existing entrance lobby and the location of the proposed access control equipment including exit buttons to the interior of the library entrance. The main considerations in determining the application related to whether the proposed alterations would have a detrimental impact on the character, architectural setting and significance of the Grade II listed building and the wider Old Hove Conservation Area.
- (2) The proposal would involve the installation of a number of fixings inside the entranceway, including exit buttons and new bolt arrangement to the existing doors. The purpose of these alterations would be to allow the nursery and other out of hours users, safe emergency access from the building when the library was closed. It had been confirmed that the proposed works would not harm the historic character or appearance of the Grade II listed building or wider conservation are and approval was therefore recommended.

**Questions of Officers**

- (3) Councillor Mac Cafferty stated that local residents had expressed concern in the past regarding lack of consultation and sought confirmation as to what consultation had taken place. The Planning Manager, Nicola Hurley, explained that as this was a listed building application letters would not have been sent to residents. In answer to further questions it was explained that no additional comments had been received from the Heritage Team who had noted that possible discrete positions for the equipment had been identified and that for those reasons and with the viability of the building in mind they had not objected.



- (4) Councillor Cobb sought clarification regarding the proposed means by which the boxes would be fitted considering that if they needed to be set into the wall that could require re-plastering/making good and it was important for Members to be aware of that.
- (5) Councillor Moonan enquired whether the proposed works would increase the hours during which the library was available to the public. It was confirmed that it would not and that the purpose of these alterations was to allow the nursery and other out of hours users safe emergency access from the building once the library was closed. Councillor Moonan stated that the Library was located in her ward and that she had received positive feedback in relation to the works that had helped to facilitate its use as a community hub.
- (6) Councillor Littman sought clarification regarding the number of buttons proposed and it was confirmed that there would be two buttons and new bolt arrangement to the existing door.
- (7) Councillor Gilbey asked whether the buttons would allow two-way access and it was confirmed that they would allow users to exit from the building only.
- (8) Councillor Miller asked why the application had been brought forward to Committee bearing in mind that no objections had been received and that it was an application for minor works albeit that they related to the fabric of a listed building. It was explained that this mirrored the decision taken by the Planning Committee Member Working Group that such applications be brought forward for determination by Committee.

**Debate and Decision Making Process**

- (9) Members were in agreement that/as when similar applications came forward for determination in future it would be helpful if the rationale for the application being brought to Committee could be set out and precise detail of the works proposed given.
- (10) A vote was taken and on a vote of 9 with 1 abstention the 10 Members present when the vote was taken voted that Listed Building Consent be granted.

134.7 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in the report and resolves to **GRANT** Listed Building Consent subject to the Conditions and Informatives also set out in the report.

**Note:** Councillor Bennett was not present at the meeting when the vote was taken.

**G BH2018/01965- 99 Dyke Road, Brighton- Full Planning**

Change of use from two bedroom flat (C3) to yoga studio with therapy treatment rooms (D2) with opening hours of 10am - 6pm Monday to Friday.

**Officer Presentation**

- (1) Assistant Planning Officer, Michael Tucker, introduced the application and gave a detailed presentation by reference to site plans, elevation drawings and photographs detailing the proposed scheme.

- (2) The Committee were informed that the main considerations in determining the application relate to the principle of the proposed change of use, the impact of the proposal on neighbouring amenity and transport.

### **Public Speaker**

- (3) The applicant, Mr A Causton, addressed the committee and stated that he was a physiotherapist with a respected clinic. Due to success the clinic needed to expand. Under Policy HO8 Mr Causton felt the application was an exception with good transport links and accessibility. It was felt that customers of the clinic increased traffic for other business in the vicinity. Other conversions to commercial use from residential have been noted in the area. The proposal was supported by HW14 Economic Development and the applicant concluded that the granting of permission would show support for local small businesses.

### **Questions of Speakers**

- (4) Councillor Theobald was informed that the first floor of the building was occupied for approximately 30 years, which had been followed by a 2 year law dispute. Visitors with mobility issues are seen on the ground floor of the building.
- (5) Councillor Miller was informed that other spaces had been looked at, however, the clinic was considered to be well established at the current location. The property also benefits from two disabled bays located in the street in front of the property.

### **Questions of Officers**

- (6) Councillor Littman was informed that the Policy HO8 includes criteria for daylight in residential accommodation and these are taken from the national accommodation standards. Policy HW15 did not require evidence of marketing for a specific time.
- (7) Councillor Hyde was informed that the use on the ground floor was retail not residential. It was noted that the councillor felt that the retention of residential units was important.
- (8) Councillor Mac Cafferty was informed that the officer was not aware of other businesses of a similar nature in the area.
- (9) Councillor Moonan was informed that a change of use from residential to business would require planning permission.
- (10) Councillor Miller was informed that a personal permission would not be appropriate for this application.

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

- (11) Councillor Miller considered the business expansion to be good, however, the loss of residential was a concern.

- (12) Councillor Theobald considered the loss of business, should the committee follow officer's recommendation and refuse the application and thereby driving the applicant out of the city, would be a negative.
- (13) Councillor Cobb supported the clinic and felt that other conversions of business units to residential would even out across the city the loss incurred here.
- (14) Councillor O'Quinn expressed concerns that the thriving area was not so good for residential use and supported the application.
- (15) Councillor Hyde felt that the change of use would enhance the parade of businesses and shops in the area and expressed support for the application.
- (16) Councillor Cattell expressed concerns that expanding the current D2 use would allow a variety of business to take over the premises in the future. Considering this support was shown for the officer's recommendation to refuse the application.
- (17) Councillor Miller proposed a motion to overturn the officer's recommendation to refuse the application on the grounds of supporting small businesses and increasing employment in the city. The motion was seconded by Councillor Lynda Hyde.
- (18) The Committee voted to overturn the officer's recommendation and grant planning permission.
- (19) A vote was taken and the 11 members who were present when the vote was taken voted by 7 to 3 with 1 abstention that Planning Permission be granted. A recorded vote was then taken and Councillors Bennett, Cobb, Hyde, Mac Cafferty, Miller, O'Quinn and C Theobald voted that Planning Permission be granted. Councillors Cattell, Gilbey and Moonan voted that permission be refused and Councillor Littman abstained.

134.7 **RESOLVED** - That the Committee has taken into consideration the reasons for the recommendation set out in the report but resolves to **GRANT** planning permission subject to the conditions to be determined by the Planning Manager and for the reasons that the development would be a gain to the shopping parade and local businesses and would improve the employment space within the city and subject to conditions to be determined by the Planning Manager.

**135 TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF PLANNING APPLICATIONS**

135.1 There were none.

**136 INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS**

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

**137 LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE**

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

**138 INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES**

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

**139 APPEAL DECISIONS**

139.1 The Committee noted the content of the letters received from the Planning Inspectorate advising of the results of planning appeals which had been lodged as set out in the agenda.

The meeting concluded at 6.35pm

Signed

Chair

Dated this

day of

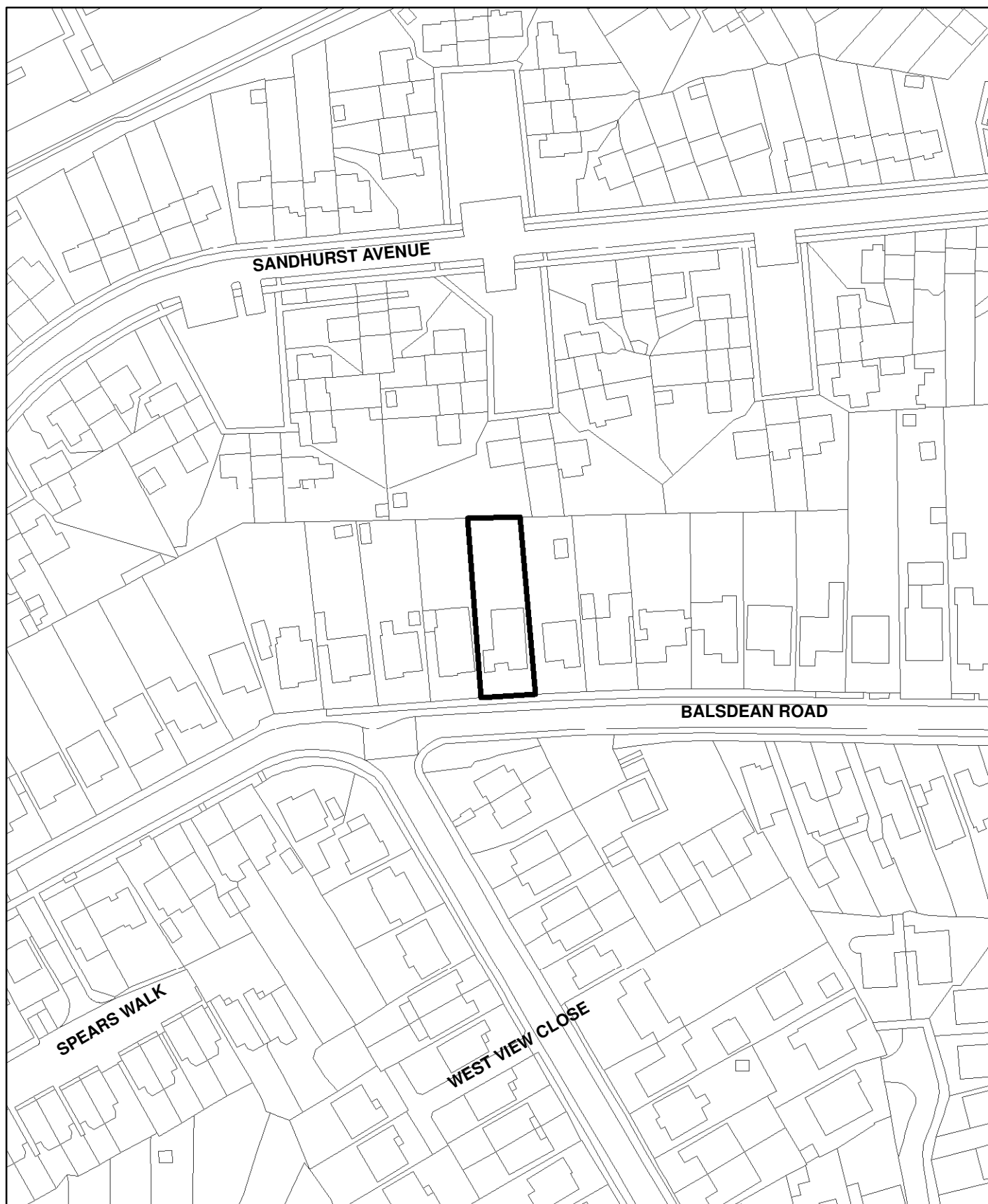
# **ITEM A**

**11 Balsdean Road  
BH2018/03767  
Householder Planning Consent**

**DATE OF COMMITTEE: 15th May 2019**



# BH2018\_03767 11 Balsdean Road



N



Scale: 1:1,250





<b>No:</b>	<b>BH2018/03767</b>	<b>Ward:</b>	<b>Woodingdean Ward</b>
<b>App Type:</b>	<b>Householder Planning Consent</b>		
<b>Address:</b>	<b>11 Balsdean Road Brighton BN2 6PG</b>		
<b>Proposal:</b>	<b>Enlargement &amp; alterations to existing dormers including installation of cedar cladding and replacement windows (retrospective).</b>		
<b>Officer:</b>	Nicola Van Wunnik, tel: 294251	<b>Valid Date:</b>	13.12.2018
<b>Con Area:</b>		<b>Expiry Date:</b>	07.02.2019
<b>Listed Building Grade:</b>		<b>EOT:</b>	
<b>Agent:</b>	Mr James Parkhurst 28 Brunswick Street West Hove BN3 1EL		
<b>Applicant:</b>	Mrs S Ashley 11 Balsdean Road Brighton BN2 6PG		

## 1. RECOMMENDATION

1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **REFUSE** planning permission for the following reasons:

1. The proposal, by reason of scale, design, siting, materials and bulk is considered an overly dominant roof extension that relates poorly to the existing roof form and detracts from the appearance and character of the building, the wider street scene and surrounding area, contrary to policy QD14 of the Brighton and Hove Local Plan.

### Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. This decision is based on the drawings received listed below:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Proposed Drawing	1306/P/01	P2	25 April 2019
Location Plan	1306/SP/01	P2	13 December 2018
Block Plan	1306/SP/02	P2	13 December 2018

## 2. APPLICATION SITE

- 2.1. The application site relates to a detached bungalow located on the north side of Balsdean Road. The street is set on a slope that rises from west to east and is comprised of bungalows with hipped tiled roofs and several side and front dormers clad in hanging tiles.

### 3. RELEVANT HISTORY

#### 3.1. Enforcement

**Enforcement Notice Served 18/10/2016** - Appeal dismissed and enforcement notice upheld 25/04/2017

The period for compliance with the requirements of the notice is 24 months i.e. 25/04/2019.

#### 3.2. Planning Applications

**BH2015/04453** - Installation of side and rear dormer to replace existing, enlargement of front dormer and installation of cedar cladding to dormers (Retrospective). Refused 29/02/2016 and Appeal Dismissed 16/08/2016.

The reason for refusal was;

- The proposal, by reason of scale, design, siting, materials and bulk is considered an overly dominant roof extension that relates poorly to the existing roof form and detracts from the appearance and character of the building and the wider surrounding area, contrary to policy QD14 of the Brighton and Hove Local Plan and the guidance within Supplementary Planning Document 12: Design Guide for Extensions and Alterations.

3.3. **BH2013/02200** - Re-cladding of existing front dormer and replacement of side and rear dormers with a wraparound dormer incorporating a rear terrace on existing flat roof with privacy screens and balustrading. Refused 03/09/2013. The reasons for refusal were;

- The proposal, by reason of scale, design, siting, materials and bulk would result in a contrived and overly dominant roof extension that relates poorly to the existing roof form and detracts from the appearance and character of the building and the wider surrounding area, contrary to policy QD14 of the Brighton and Hove Local Plan and the Supplementary Planning Document: Design Guide for Extensions and Alterations (SPD012).
- The raised terrace area, due to its elevated position, would result in real and perceived overlooking and a subsequent loss of privacy towards the gardens of the adjoining properties (No.9 and No.13 Balsdean Road) to the detriment of the residential amenity of the occupiers of these dwellings. As such, the proposal is contrary to policies QD14 and QD27 of the Brighton and Hove Local Plan and the Supplementary Planning Document: Design Guide for Extensions and Alterations (SPD012).

3.4. **BH2000/02190/FP** - Single storey rear extension. Approved 04/10/2000.

### 4. CONSULTATIONS

None

## 5. REPRESENTATIONS

- 5.1. **(10) letters** have been received supporting the proposed development on the following grounds:
- Wood cladding on the dormers is perfectly acceptable.
  - Good quality work.
  - Stands out as a beautiful looking house.
  - Makes the neighbourhood look modern and distinguished.
  - The dormers are inoffensive and fit in perfectly with the surroundings.
  - More environmentally friendly.
  - It looks fine and is not out of keeping.
  - Good design.
  - Enhances the appeal of the area.
  - Well designed, modern and attractive.
- 5.2. There are sufficient numbers of support letters from properties that are considered to be directly affected by the proposed development which has triggered the application to be decided by planning committee.
- 5.3. **Councillor Simson** supports the proposal. A copy of the support letter is attached to this report

## 6. RELEVANT POLICIES

- 6.1. The National Planning Policy Framework (NPPF)
- 6.2. Brighton & Hove City Plan Part One  
SS1 Presumption in Favour of Sustainable Development
- 6.3. Brighton & Hove Local Plan (retained policies March 2016):  
QD14 Extensions and alterations  
QD27 Protection of Amenity
- 6.4. Supplementary Planning Document:  
SPD12 Design Guide for Extensions and Alterations

## 7. CONSIDERATIONS & ASSESSMENT

- 7.1. The main considerations in the determination of this application relate to the impact of the development on the appearance and character of the building, the wider street scene and surrounding area and the amenities of adjacent occupiers.
- 7.2. The application site has a planning history in regards to roof alterations. This application follows a previous refusal (BH2015/04453) and investigation by the planning enforcement team. Application BH2015/04453 was refused on

the grounds of the scale, design, siting, materials and bulk being considered an overly dominant roof extension that related poorly to the existing roof form and detracted from the appearance and character of the building and the wider surrounding area. This earlier application was also dismissed at appeal (APP/Q1445/D/16/3150084)

- 7.3. Following the refusal of application BH2015/04453, an enforcement notice was served on the 18/10/2016. The enforcement notice was appealed (APP/Q1445/C/16/3163997) and the appeal was dismissed and the enforcement notice was upheld.
- 7.4. Both appeal decisions are considered material considerations and have significant weight in the consideration for this subsequent planning application, which will be discussed later in the report.
- 7.5. Retrospective planning permission is being sought for the enlargement and alterations to the existing dormers including a front dormer and a rear dormer window which wraps around to both side elevations. All of the dormers are clad in cedar boarding.
- 7.6. Design and Appearance  
The pre-existing property included dormers to all four roof slopes clad in hanging tiles to the cheeks with UPVC fascia boarding to the faces. The rear pre-existing dormer has been extended in order to form one substantial rear wrap around dormer with a flat roof and includes a Juliet balcony and window to the rear and high level windows to the sides. The wrap around dormer also features a parapet roof and includes solar panels installed on the roof. The dormer to the front has broadly the same dimensions as the pre-existing front dormer.
- 7.7. The dormers are highly prominent within the street scene and add significant bulk to all elevations of the property. It is noted that there are several other front and side dormers within the vicinity of the application site, however there are no examples of this scale. The prominence of the dormers is exacerbated by the cedar wood cladding finish which is particularly incongruous within this context as it is a stark contrast with the existing tiled roof. Although the introduction of new materials is not a reason for refusal in itself, given the excessive scale of the dormers, this proposal would introduce excessive amounts of cedar cladding which is uncharacteristic of the area and therefore warrants refusal in this instance. Furthermore the topography of the street is such that the roof alterations are highly visible in views from the east, along Balsdean Road.
- 7.8. The proposed extensions are therefore contrary to the Supplementary Planning Document: Design Guide for Extensions and Alterations (SPD012) which states that dormers should be kept as small as possible and clearly be a subordinate addition to the roof, set appropriately in the roof space and well off the sides, ridge and eaves of the roof. Furthermore the guidance states

that dormers should ideally not be larger than the windows on the floors below and should not contain large amounts of cladding.

- 7.9. Key concerns highlighted by the Appeal Inspector with regard to the previous scheme (BH2015/04453 ) were;
- 7.10. *"Apart from the rear roof extension I do not consider that the front and side dormers, especially when taken together, represent subordinate additions to the roof. All three are readily visible from the street and, compounded by the general incongruity resulting from the cedar cladding, the proposal fails to accord with the general principles set out in SPD12.*
- 7.11. *I have regard to the fact that dormer structures were previously present at the bungalow but the modifications made have required that the planning merits, or otherwise, of the roof extensions, be assessed and I cannot agree with the appellant that the materials used have enhanced the appearance of the property. Indeed, more appropriate cladding would likely temper the current impact. Although the appellant mentions that the dormers are contemporary in style and materials I consider that the erection of such as not, in itself, brought about a cohesive, contemporary design approach"*
- 7.12. The Inspector for the enforcement appeal (APP/Q1445/C/16/3163997) reiterated this point and noted:
- 7.13. *"I consider that the installation of cedar wood cladding on all the dormers has clearly affected the exterior of the building. Balsdean Road is situated on a steep incline and the tiled roof of the bungalow can be clearly seen from the public domain whether looking up or down the road. The steeply pitched, hipped gabled roof of the bungalow is one of the principle features of this building and the modern appearance of the cedar wood cladding is in marked contrast to not only the traditional roof tiles but also the traditional appearance of the bungalow. There has therefore been a noticeable change to the appearance of the building."*
- 7.14. Acknowledging this, the front dormer has been reduced in height, however the wrap around dormer is identical in terms of appearance to the refused planning application BH2015/0445. The concerns raised previously by two separate Appeal Inspectors carries significant weight in the consideration of this application. Given the issues raised in both appeals, there are no grounds to disregard the Appeal Inspectors comments in the current application with reference to impact on the appearance on the host dwelling and surrounding area.
- 7.15. Overall, the scale of the roof extensions is considered excessive to the host building and result in significant harm to the host building and wider street scene. The use of cedar cladding on the dormers is considered inappropriate and unduly prominent within the location, contrary to policy QD14 of the Brighton and Hove Local Plan.
- 7.16. Impact on Amenity

It is considered that the level of separation between the application and properties to the north and south would ensure no significant harm to neighbouring amenity would occur. The properties most likely to be affected by the proposal would be 9 and 13 Balsdean Road to the west and east.

- 7.17. There is sufficient distance between the application property and the adjoining properties to ensure that there would not be any significant harm in regards to overshadowing, loss of light or outlook or an overbearing impact. Whilst it is noted that the windows in the side dormers could result in overlooking, if the proposal was otherwise acceptable, a condition could be attached stipulating that these windows are obscure glazed and restricted opening, therefore the proposal is considered acceptable in this regard.
- 7.18. Other Matters  
Within the application the agent has provided a planning statement which includes reference to permitted development rights relating to the site and the fact that the pre-existing property included dormer windows to all elevations. It is noted that the property is a single dwelling and not within a conservation area meaning certain loft extensions may be classed as permitted development, providing a potential fall-back position.
- 7.19. The works however do require planning permission as they fail to meet conditions set out in paragraph B.2 (a) of Schedule 2, Part 1 of the General Permitted Development Order (GDPO) which states 'the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'. Furthermore the front dormer fails to meet the requirement of paragraph B.1 (c) which states that 'any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway'.
- 7.20. With reference to the cedar cladding, the appeal Inspector for the refused planning application (BH2015/04453) noted the following;
- 7.21. *Notwithstanding any other Class B provisos which might be of relevance I must agree with the Council's assessment in this respect. Irrespective of the design and form of the dormer structures the cedar seemed to me to have weathered poorly and appears as anomalous to the street scene in general, particularly on northern side of Balsdean Road. As such, I find that the proposal fails the legislative requirement and, in the absence of any proposal to re-clad the dormers in more sympathetic material, I must conclude that there is no fallback position currently available to the appellant."*
- 7.22. The Inspector for the enforcement appeal (APP/Q1445/C/16/3163997) reiterated this point and noted:
- 7.23. *Having regard to all of the above considerations, I conclude, as a matter of fact and degree, that significant alterations have been made to the exterior of the building and the installation of cedar wood cladding to the dormers. These alterations are visible from the public domain and amount to a material*

*change to the external appearance of the building. The alterations therefore amount to development within the meaning of s55 of the Act, for which planning permission would be required. Class B of the GPDO permits development in certain circumstances but the development in this case conflicts with the condition attached to the development give permission by Class B. The appeal on ground (c) therefore fails."*

7.24. Conclusion

Acknowledging that a fallback position is not a material consideration in this instance together with the Inspector's comments from the appeal decisions, which carry significant weight, the application has been recommended for refusal as the current works are considered to cause significant harm to the character and appearance of the host building, wider street scene and surrounding area, contrary to policy QD14 of the Brighton and Hove Local Plan.

**8. EQUALITIES**  
None identified





Cllr. Dee Simson

BH2018/03767 - 11 Balsdean Road

18/03/2019:

I am writing to support the above application for enlargement & alterations to existing dormers including installation of cedar cladding and replacement windows retrospectively.

Balsdean Road is a road of very mixed and varied residences with all manner of exterior finishes.

Many have been altered & extended over the years causing the entire streetscene to be very varied.

The cedar cladding is a modern addition that can be seen on buildings throughout the city and adds to the natural appearance.

If you are minded to refuse this application, I would ask that the final decision is made by the Planning Sub Committee following a site visit. This will allow them to see for themselves the diversity of the buildings in the vicinity.



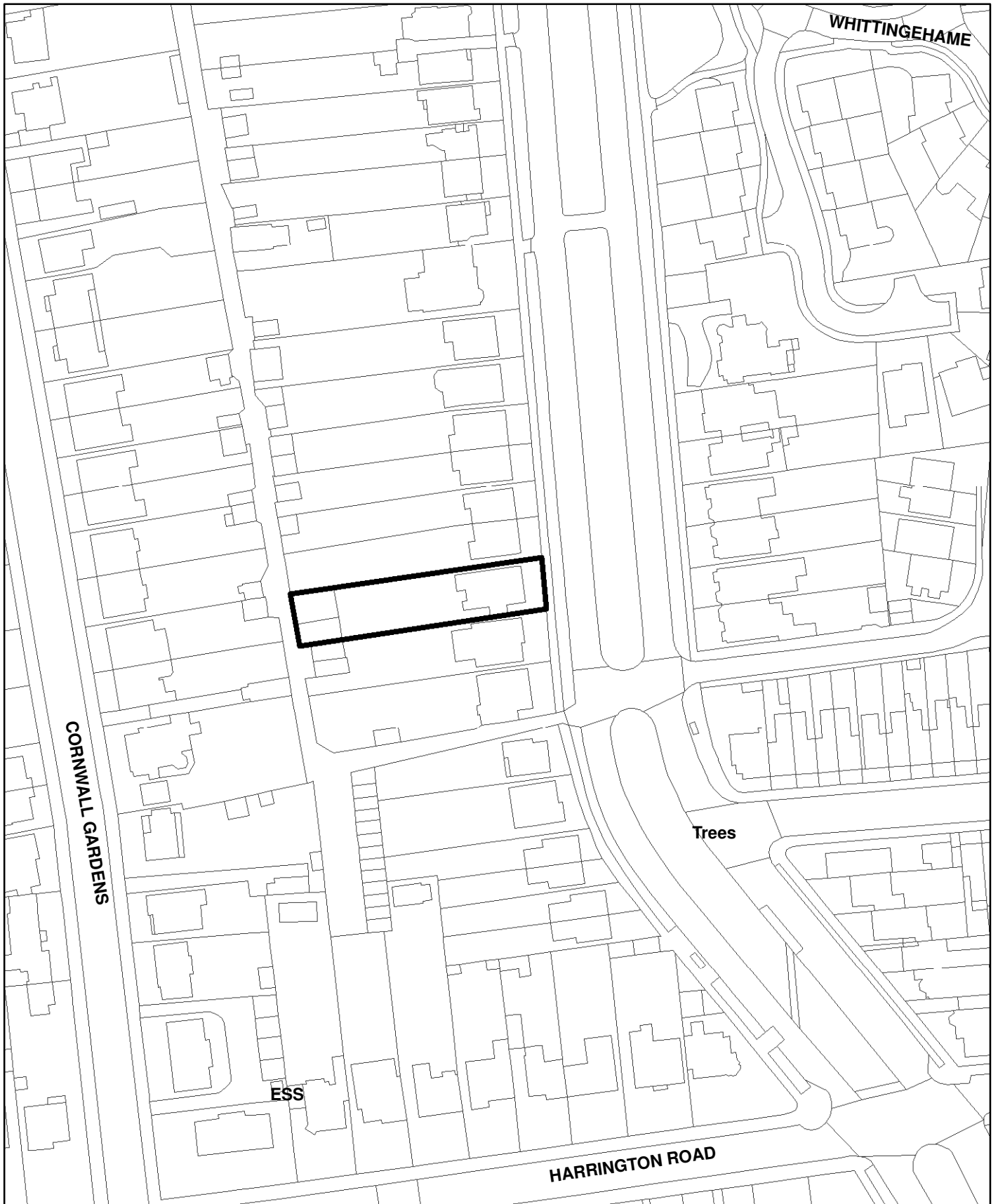
# **ITEM B**

**49A Surrenden Road  
BH2018/03921  
Full Planning**

**DATE OF COMMITTEE: 15<sup>th</sup> May 2019**



# BH2018\_03921 49A Surrenden Road



N



Scale: 1:1,250



<b>No:</b>	<b>BH2018/03921</b>	<b>Ward:</b>	<b>Withdean Ward</b>
<b>App Type:</b>	<b>Full Planning</b>		
<b>Address:</b>	<b>49A Surrenden Road Brighton BN1 6PQ</b>		
<b>Proposal:</b>	<b>Change of use of former coach house from ancillary residential accommodation to holiday let accommodation for a temporary 12 month period.</b>		
<b>Officer:</b>	Charlotte Bush, 292193	tel:	<b>Valid Date:</b> 21.12.2018
<b>Con Area:</b>		<b>Expiry Date:</b>	15.02.2019
<b>Listed Building Grade:</b>		<b>EOT:</b>	
<b>Agent:</b>	DowsettMayhew Planning Partnership 63A Ship Street Brighton BN1 1AE		
<b>Applicant:</b>	S Wigglesworth C/O DowsettMayhew Planning Partnership 63A Ship Street Brighton BN1 1AE		

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.  
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan			21 December 2018
Block Plan			21 December 2018
Proposed Drawing	1822_0301		21 December 2018
Proposed Drawing	1822_0101		21 December 2018

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.  
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
3. The use hereby approved shall cease within 12 months of day the change of use is implemented.  
Reason: To safeguard the amenity of neighbouring properties and to comply with policies QD27 and HE6 of the Brighton & Hove Local Plan.

4. No more than four (4) persons shall reside in the premises hereby approved overnight at any one time.  
Reason: To ensure a satisfactory standard of accommodation for future occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan.
5. Prior to first occupation of the development hereby permitted, cycle parking facilities for the occupants of, and visitors to, the development shall be fully implemented and made available for use and shall thereafter be retained for use at all times.  
Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan.
6. A noise management plan for the use of the premises shall be submitted to the local planning authority. The plan shall be submitted to the council and approved prior to the first commercial let. The premises shall thereafter be maintained in accordance with the approved management plan. The owner shall register the property with a licenced security company to monitor compliance with the agreed conditions.  
Reason: Reason: To safeguard the amenity of neighbouring properties and to comply with policy QD27 of the Brighton & Hove Local Plan.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The approved terms of the Management Plan shall be included in the contract to let. The plan shall cover smoking arrangements and hours of use of any outdoor facilities. The aim of the plan shall be to avoid noise nuisance to neighbours at any time of the day or night.

## **2. SITE LOCATION & APPLICATION DESCRIPTION**

- 2.1. The application relates to an existing ancillary single storey brick built building with pitched roof, located to the rear of No 49 Surrenden Road. A small courtyard, laid with stone chippings, is to one side of the building. The site is within the Preston Park Conservation Area.
- 2.2. The building is likely to have been a former garage/coach house. It is accessed via a pedestrian gate from the dwelling at No.49 and vehicle access is via a service road to the rear which serves a number of properties in Surrenden Road and Cornwall Gardens.
- 2.3. The application seeks temporary permission to change the use of the building from an ancillary building serving the main dwelling to holiday let



accommodation for a period of 12 months. No external alterations are required.

### **3. RELEVANT HISTORY**

- 3.1. BH2010/02200 - No. 49 Surrenden Road. Certificate of Lawfulness for existing use of the building as a dwelling house. Refused 06/12/2010
- 3.2. Reason for refusal: It has not been demonstrated that the building has been used as a self-contained dwellinghouse for a period of at least 4 continuous years. The existing use is not therefore lawful under Section 191 (2) of the Town and Country Planning Act (1990), as amended.

### **4. REPRESENTATIONS**

- 4.1. Eight (8) letters has been received, objecting to the proposed development for the following reasons:
- Adversely affects Conservation Area
  - Additional Traffic
  - Overdevelopment
  - Residential Amenity
  - Noise
  - Detrimental effect on property value
  - Currently people living in the Coach House
  - The application is a ploy to legitimately split the Coach house from the main house
  - The Fire Service could not get a vehicle there if needed
  - Additional traffic on an unmade lane
  - Lane is seen as a local green thoroughfare away from traffic for both adults and children
  - Use of the lane would be a safety risk for pedestrians using the lane, especially children
  - Other coach houses will be similarly developed
  - Applications have been made for this property and the coach house behind 47 Surrenden Road, all of which have failed due to their negative impact on the conservation area
  - The building has been completely and comprehensively restored
  - Concerns regarding how the property could be used
  - The parking of cars on the Coach House drive and increased traffic tears up the lane - particularly in winter
  - The North part of the lane is privately owned
  - Building work and additional traffic would affect the local ecosystem where there are a number of protected species including slow worms, small blue butterfly and crested newt

## 5. CONSULTATIONS

### 5.1. **Environmental Health:** Comment

The principle concern over holiday lets is that they can be the source of rowdy parties. It is recommended that a management plan is secured by condition if consent for the application is granted.

### 5.2. **Heritage:** No Comment

### 5.3. **Private Sector Housing:** Comment

There is a concern with the layout. The means of escape from the 1st floor bedrooms being directly through the kitchen area in the Ground floor. It is unclear if there is an alternative means of escape via the sleeping area windows.

### 5.4. **Sustainable Transport:** No comment received

## 6. MATERIAL CONSIDERATIONS

6.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report

6.2. The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);

6.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## 7. POLICIES

### 7.1. The National Planning Policy Framework (NPPF)

### 7.2. Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable economic development
CP3	Employment land
CP5	Culture and tourism
CP6	Visitor accommodation

CP7	Infrastructure and developer contributions
CP8	Sustainable buildings
CP9	Sustainable transport
CP15	Heritage

7.3. Brighton and Hove Local Plan (retained policies March 2016):

TR4	Travel plans
TR7	Safe Development
TR14	Cycle access and parking
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD27	Protection of amenity
HE6	Development within or affecting the setting of conservation areas

7.4. Supplementary Planning Documents:

SPD14	Parking Standards
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## 8. CONSIDERATIONS & ASSESSMENT

8.1. The main considerations in the determination of this application are the principle of the proposed development, impact on the character and visual amenity of the conservation area, impact on the amenities of adjoining and nearby occupiers, highways and parking and sustainability.

8.2. There are no external alterations proposed under this application.

### 8.3. Principle of Development:

Policy CP6 of the City Plan seeks to encourage the wider tourism and business conference economy including supporting the provision of a sufficient and wide ranging type of visitor accommodation. The policy doesn't specifically address holiday lets but does promote tourism and supports the use of different types of visitor accommodation.

8.4. The proposal would provide short term self-catering accommodation in an area with good transport links to the city centre and wider area and has an existing parking space with its own separate access. As such it would provide a reasonable level of short term accommodation.

8.5. Previous applications for permanent change of use to residential dwellings at No.49 and No. 47 have previously been refused. In the case of No.49, a previous application BH2010/02200 for a Lawful Development Certificate was refused as there was insufficient evidence to demonstrate that the property had been in use as residential accommodation continuously for 10 years.

8.6. No.47 applied for 'the conversion and extension of an existing garage and store to form a private dwelling house together with alterations to the existing access' under application BH2010/02425. This application was refused and dismissed at appeal in January 2012 for a number of reasons. The permanent change of use to a residential dwelling was considered to alter its

function and therefore its character due to the paraphernalia and activity that goes with a permeant residential dwelling, and increased vehicle movements which would disturb the current tranquillity of the area. The scheme also involved substantial extensions which were considered to be out of keeping with the existing character of the lane; alterations to the appearance of the building so that it appeared as a residential dwelling, as well as removal of a tree which was considered important to the visual amenity of the area. Cumulatively, the proposed scheme was deemed to have a negative impact on the conservation area.

8.7. In this instance, the proposed change of use is not to a permanent residential dwelling but to holiday let. As such, the number of comings and goings throughout the year will be arguably less than for a residential home. The building will remain ancillary to the main house as it will not be in permanent use as a residential dwelling and will be maintained and managed by No.49. There will be none of the paraphernalia that would be expected with a permanent residential dwelling, there are no proposed external alterations, extensions, loss of trees or important features which would affect the appearance of the conservation area. A management plan which outlines measures to reduce noise disturbance is recommended to be secured by condition. It is therefore considered that this application would not have the same impact on the conservation area as the permanent residential dwelling that was previously refused at No.47.

8.8. Furthermore, temporary permission for a 12 month period will enable the Local Planning Authority to fully assess the impact of the scheme on the conservation area and local community.

8.9. On this basis the proposed temporary use is considered acceptable in principle.

**8.10. Standard of Accommodation**

The accommodation would comprise a kitchen/diner measuring 20.8m<sup>2</sup> and a separate lounge measuring 16m<sup>2</sup> to the ground floor, two bedrooms, a bathroom, and a storage area to the first floor. There is emergency access directly from the smaller bedroom to the raised rear garden of No. 49 Surrenden Road. The building has its own small courtyard, which would be mainly used for parking a car.

8.11. The standard of accommodation (the size, layout, head height for the bedrooms and lack of amenity space) is likely to make the building unsuitable as a separate residential unit. However, as short term holiday accommodation the standard of accommodation proposed would be less likely to pose a significant issue for occupants as they would not be looking to spend long periods of time in the building. It is therefore considered that the accommodation is acceptable for short term holiday lets.

**8.12. Impact on Amenity:**

Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it

would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

- 8.13. The properties most likely to be affected by the proposed development are the host property at No.49 as well as Nos. 47, 51 and 51A Surrenden Road, 5 and 7 Cornwall Gardens.
- 8.14. The building is situated at the rear of the garden to No.49 and has its own separate access, although it can also be accessed from No.49 via a pedestrian gate. It is expected that there may be some additional comings and goings and activity associated with the use and this will be most noticeable at the rear of the gardens to Nos.47, 49, 51 and 51A Surrenden Road and Nos. 5 and 7 Cornwall Gardens. However, the gardens in this location are very long and therefore disturbance to neighbouring buildings or the most sensitive parts of their gardens immediately to the rear of these houses would be unlikely. It is noted that there would be a minimum separation distance between the building and the nearest dwelling of 25m.
- 8.15. The submission of a management plan which outlines measures that will be put in place to reduce noise disturbance is recommended to be secured by condition. In addition, it is noted that if noise disturbance does occur it can also be dealt with under separate legislation.
- 8.16. The Private sector Housing Team has assessed the application and has no objection other than a concern regarding emergency access. As stated above, the emergency access from the first floor of the building leads directly into the rear garden of No. 49. The area of garden that the emergency access leads onto is raised, so there is only a small step down from the door into the garden.
- 8.17. Given the restricted size of the building and its curtilage and acknowledging that it would be used for holiday accommodation it is considered appropriate to restrict the number of guests to a maximum of four. This would help to protect the amenity of neighbours and would be commensurate with the accommodation and its location.
- 8.18. There are windows to the north, west and east. The northern windows overlook the bottom of the rear garden to No 51. At ground floor level, this is obscured by a wall, trees and shrubbery located in the garden of No 51. There are some views offered by the rooflights on the northern boundary. However there is a distance of 7.m from the windows to the boundary, the views offered by these windows are obscured by the trees and shrubbery in No 51, and the views would only be of a very small part of the long garden of No. 51. The cumulative effect of these mitigating factors is that the impact of overlooking to No.51 would not to a degree that would warrant the refusal of this application.
- 8.19. The single eastern facing window looks onto the rear garden of the host property.

8.20. The gardens to No. 47, 49 and 51 are a minimum of 25m long, thereby providing sufficient space where the occupants could find a level of privacy.

8.21. Given the controls suggested above it is considered that it is not necessary for there to be a restriction on the number of weeks/weekends the holiday let can operate within the 12 month period. This will also enable the Local Planning Authority to fully assess the impact of this temporary scheme and allow a more informed decision should an application for permanent change of use for holiday accommodation be submitted in the future.

**8.22. Sustainable Transport:**

The proposed scheme will result in a small increase in pedestrian and vehicle trips but the building has an existing car parking space for one vehicle, which is considered acceptable.

8.23. Cycle storage for one bike will be secured by condition.

**9. EQUALITIES**

None identified.

# **ITEM C**

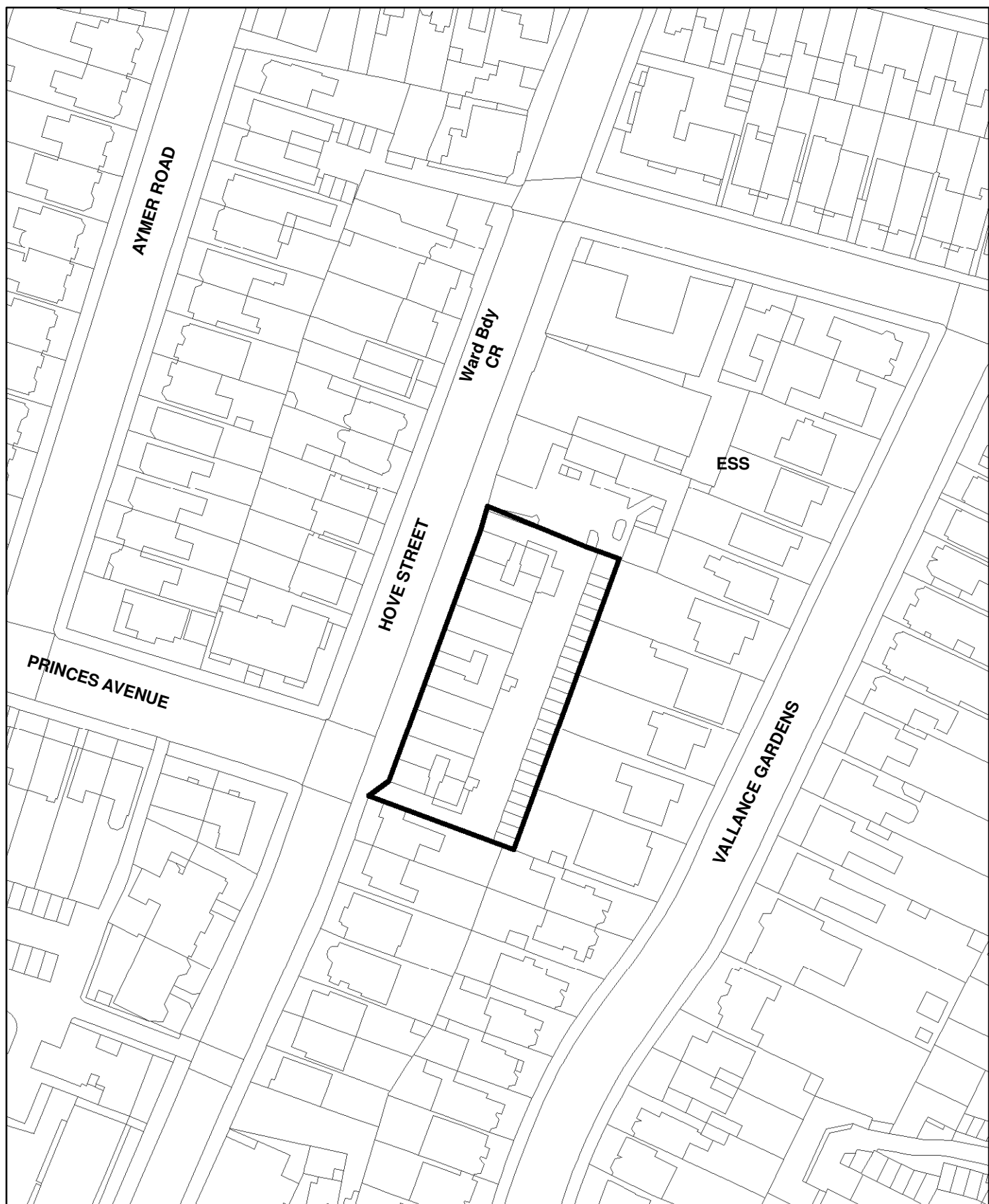
**Hove Manor, Hove Street  
BH2018/02786  
Full Planning**

**DATE OF COMMITTEE: 15<sup>th</sup> May 2019**





# BH2018\_02786 Hove Manor



N



Scale: 1:1,250



<b><u>No:</u></b>	<b>BH2018/02786</b>	<b><u>Ward:</u></b>	<b>Central Hove Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Hove Manor Hove Street Hove BN3 2DF</b>		
<b><u>Proposal:</u></b>	<b>Erection of a single storey extension at roof level to create 2no three bedroom dwellings &amp; 1no two bedroom dwelling (C3) with external terraces.</b>		
<b><u>Officer:</u></b>	Laura Hamlyn, tel: 292205	<b><u>Valid Date:</u></b>	17.10.2018
<b><u>Con Area:</u></b>		<b><u>Expiry Date:</u></b>	12.12.2018
<b><u>Listed Building Grade:</u></b>		<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	Mr Abe Mohsin 7 Hove Manor Parade Hove Street Hove BN3 2DF		
<b><u>Applicant:</u></b>	Mr Benjamin Cowen New Burlington House 1075 Finchley Road London NW11 0PU		

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

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

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location and block plan	0222-P-001		5 September 2018
Proposed Drawing	0222-P-002	A	26 November 2018
Proposed Drawing	0222-P-003		5 September 2018
Proposed Drawing	0222-P-004		5 September 2018
Proposed Drawing	0222-P-005		5 September 2018

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. The development hereby permitted shall not be commenced until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):

- a) samples of all cladding to be used on the walls, soffit and eaves, including details of their treatment to protect against weathering, and expected weathering patterns
- b) details of the proposed window, door and balcony treatments
- c) details of all other materials to be used externally

Development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development and to comply with policies HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One.

4. Access to the roof of the existing block shall be limited to those areas marked as terrace on the approved drawings. Those areas marked as 'maintenance access only' shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.  
Reason: In order to protect adjoining properties from overlooking and noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.
5. Within 6 months of commencement of the development hereby permitted or prior to occupation, whichever is the sooner, a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide that the residents of the new development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to resident's on-street parking permits.  
Reason: This condition is imposed in order to allow the Traffic Regulation Order to be amended in a timely manner prior to first occupation to ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the City Plan Part One.
6. The development hereby permitted shall not be occupied until a car park management plan has been submitted to and approved in writing by the Local Planning Authority, detailing that the residents of the new development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to on-site resident's parking permits. The car park management plan shall thereafter be fully implemented in accordance with the approved details.  
Reason: To ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the City Plan Part One.
7. The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.  
Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.
8. Prior to first occupation of the development hereby permitted, dropped kerbs and tactile paving shall have been installed to the northern and southern footways of Hove Street at the junction with Vallance Road.

Reason: To ensure that suitable footway provision is provided to and from the development (amend as necessary) and to comply with policies TR7 and TR8 of the Brighton & Hove Local Plan and SA6, CP7, CP9, CP12, CP13 and CP15 of the City Plan Part One.

9. None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).

Reason: To ensure that the development is sustainable and makes efficient use of energy to comply with policy CP8 of the Brighton & Hove City Plan Part One.

10. None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.

Reason: To ensure that the development is sustainable and makes efficient use of water to comply with policy CP8 of the Brighton & Hove City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The planning permission granted includes an obligation upon the applicant to carry out small scale footway improvements on the adopted (public) highway that is owned by the Highway Authority (in this case Brighton & Hove City Council). Previously the applicant would have been conditioned to enter into a bespoke legal agreement and pay a contribution towards these works being carried out for the benefit of the development but to amongst other reasons reduce the costs of these works for all parties concerned the council is now obligating the applicant to carry out these works. The applicant or their representative is advised to contact the Council's Streetworks team (permit.admin@brighton-hove.gov.uk 01273 290729) who will provide information and if approved, a licence (instead of a bespoke legal agreement) for what, when & where work can be done, who will be permitted to carry out the works, possible contractor contact details to place orders with, design advice, material advice and will check that the footway improvements are built satisfactorily. The emphasis where possible is on minimising what needs to be done to build a satisfactory footway improvement for the benefit of the applicant, future occupants and visitors of the site and the community as a whole, and in particular the mobility and visually impaired of those respective groups. Finally be advised that the applicant or their representative must obtain all necessary highway approval from the Highway Authority prior to any works commencing on the adopted (public) highway to satisfy the law and requirements of this condition.

3. The applicant is advised that the scheme required to be submitted by Condition 5 should include the registered address of the completed development; an invitation to the Council as Highway Authority (copied to the Council's Parking Team) to amend the Traffic Regulation Order; and details of arrangements to notify potential purchasers, purchasers and occupiers of the restrictions upon the issuing of resident on-street parking permits
4. The applicant is advised that accredited energy assessors are those licensed under accreditation schemes approved by the Secretary of State (see Gov.uk website); two bodies currently operate in England: National Energy Services Ltd; and Northgate Public Services. The production of this information is a requirement under Part L1A 2013, paragraph 2.13.
5. The water efficiency standard required is the 'optional requirement' detailed in Building Regulations Part G Approved Document (AD) Building Regulations (2015), at Appendix A paragraph A1. The applicant is advised this standard can be achieved through either: (a) using the 'fittings approach' where water fittings are installed as per the table at 2.2, page 7, with a maximum specification of 4/2.6 litre dual flush WC; 8L/min shower, 17L bath, 5L/min basin taps, 6L/min sink taps, 1.25L/plate setting dishwasher, 8.17 L/kg washing machine; or (b) using the water efficiency calculation methodology detailed in the AD Part G Appendix A.

## **2. SITE LOCATION & APPLICATION DESCRIPTION**

- 2.1. Hove Manor is a large, early 20th century, purpose built block of flats with ground floor commercial uses, on the east side of Hove Street. It is in the Old Hove Conservation Area and overlooks the Pembroke and Princes Conservation Area, both of which predominantly comprise late 19th century 2 storey housing, although other mid-rise blocks are peppered within these areas along with surviving earlier origins of this part of Hove.
- 2.2. The properties to the immediate north, Regent House and Audley House, are included on the Council's list of Local Heritage Assets, as is the flint wall forming the southern boundary to this site (remnants of the garden wall to the former Hove Manor that occupied this site), and the more distant No3, Hove Street. Slightly further away are Barford Court at 157 Kingsway and Hove Library on Church Road which are listed Grade II.
- 2.3. Due to its height and footprint this property is already a dominant element of the streetscene and can be seen in views from neighbouring streets, however the use of red brick provides an element of association with its setting.
- 2.4. The application seeks permission to erect an additional storey to create 2no three bedroom flats and 1no two bedroom flat (C3) with external terraces.

## **3. RELEVANT HISTORY**

3.1. **PRE2018/00148-** Erection of additional storey to create 5no additional flats (C3).

3.2. **BH2001/00987/FP-** Demolition of 3 redundant plant rooms on roof and proposed cladding of existing lift rooms with boarding to match existing brick structure. Approved 19/07/2001.

#### **4. REPRESENTATIONS**

4.1. **Sixty two (62)** representations have been received objecting to the proposed development for the following reasons:

- Inappropriate height of development, maximum height in Hove Manor is 6 storeys,
- Overshadowing, loss of light/sunlight,
- Loss/restriction of view,
- Loss of privacy, overlooking,
- Visual impact of development, effect of the development in the character of the neighbourhood, adverse impact on Conservation Area, harmful to significance of a locally listed building,
- Unacceptable high density in area especially with plans for King Alfred,
- Overdevelopment, overbearing development,
- Poor design, proposed modern extension/materials/fenestration will be out of character with the art deco era of existing building and character of local area.
- Proposed materials have a limited life span of only 25 years,
- Additional noise to local residents at a height, especially from proposed terraces and additional lift,
- Disruption and noise during construction as well as increased traffic problems from construction deliveries and impact on water supply,
- Will do nothing to ease housing problems in the city and will not be affordable for most people, flats will be unsuitable for younger families,
- New lift is out of keeping with the two other lifts and will only hold 3 people which is not enough for increased intensity of usage by proposal. Installation of a new lift will leave elderly/infirm residents housebound for the duration of the work on the lift shaft, which is unacceptable,
- Additional traffic, increased safety concerns if more vehicles exiting site.
- Inaccurate planning statement regarding parking, proposal will exacerbate existing parking problems on site and in area for residents, tradespeople, emergency access, deliveries etc. Increased danger for pedestrians from further illegal parking on pavement in front of shops,
- Detrimental effect on property values,
- Will set a precedent for other blocks to add additional storeys, silhouette of Viceroy Lodge on Hove Street has been scarred by an additional floor that is not in keeping with the period property,
- Additional disturbance to existing residents from increased use of communal areas,

- Use of fire escape for access is not acceptable,
  - Inaccurate documents submitted regarding impact on visual an neighbouring amenity,
  - More refuse and waste for existing overstretched recycling/refuse amenities,
  - Increased fire safety concerns. Use of cladding is not appropriate nor safe,
  - Leaseholder not made aware of proposal when purchasing property in 2017,
- 4.2. **Three (3)** representations have been received supporting the proposed development for the following reasons:
- Good design, done in a professional manner such developments are not obtrusive and add to the much needed accommodation in the area
  - Complies with government's brownfield land policy,
  - There is a big shortage of residential units in the city which will only be overcome by building on vacant land such as this roof which currently serves no useful purpose,
  - Seems reasonable use of the space to create new homes
- 4.3. **One (1) letter** has been received commenting on the proposed development:
- application is quite adequate in its proposal and would help in providing additional housing problems that the city currently lacks
- 4.4. **Councillor Andrew Wealls** objects to the proposed development. A copy of the objection is attached to this report.

## 5. CONSULTATIONS

- 5.1. **Brighton & Hove Archaeological Society:** Comment The proposed application is close to the finds spots of material from both the Late Bronze Age and Neolithic periods. It is possible that vestiges of ancient landscapes may remain. Suggest the County Archaeologist is contacted for recommendations.
- 5.2. **Heritage:** No objection The submitted scheme has gone some way to resolving the issues identified in pre-application advice. The setting back of the proposed additional storey from the front and rear elevations is considered a significant improvement, and the reduction in the bulk of the roof profile has achieved a far more elegant profile which would also have less impact on the roofscape, and these changes are welcomed.
- 5.3. The revised alignment of the windows has a stronger relationship with the host building, although it is considered that this could be developed further for the benefit of the scheme.



- 5.4. Without material samples it is not considered that the proposed cladding can be properly assessed for its potential to fit with the existing brick facades and further information will also be required on the weathered appearance of this material over time in this coastal environment, however this can be adequately dealt with by conditions if further information is not provided at this stage.
- 5.5. *Verbal update:* The overall height of the proposed development was considered in the heritage impact of the scheme.
- 5.6. **Conservation Advisory Group:** No objection.  
The Group had no objection on grounds of conservation, but added that perhaps the centre bay extension at roof level could be set back further to give better visual balance to the whole centre bay as seen from ground level.
- 5.7. **Transport:** No objection subject to inclusion of the necessary conditions, including the restriction of residents' access to parking permits, implementation of cycle parking, the installation of footway improvements.
- 5.8. **Private Sector Housing:** No Comment.

## 6. MATERIAL CONSIDERATIONS

- 6.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 6.2. The development plan is:
  - Brighton & Hove City Plan Part One (adopted March 2016)
  - Brighton & Hove Local Plan 2005 (retained policies March 2016);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
- 6.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## 7. POLICIES

- 7.1. The National Planning Policy Framework (NPPF)
- 7.2. Brighton & Hove City Plan Part One  
SS1           Presumption in Favour of Sustainable Development  
CP1           Housing delivery

CP7	Infrastructure and developer contributions
CP8	Sustainable buildings
CP9	Sustainable transport
CP12	Urban design
CP14	Housing density
CP15	Heritage
CP19	Housing mix

7.3. Brighton & Hove Local Plan (retained policies March 2016):

TR7	Safe Development
TR14	Cycle access and parking
SU10	Noise Nuisance
QD5	Design - street frontages
QD14	Extensions and alterations
QD27	Protection of amenity
HO5	Provision of private amenity space in residential development
HO13	Accessible housing and lifetime homes
SR7	Local parades
HE3	Development affecting the setting of a listed building
HE6	Development within or affecting the setting of conservation areas
HE10	Buildings of local interest

7.4. Supplementary Planning Documents:

SPD09	Architectural Features
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

7.5. Supplementary Planning Guidance:

SPG15	Tall Buildings
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## 8. CONSIDERATIONS & ASSESSMENT

8.1. The main considerations in the determination of this application relate to the principle of the proposed additional residential units, the impact on the character and appearance of the proposal on the building and the Old Hove Conservation Area and the setting of the Pembroke and Princes Conservation Area, the impact on neighbouring amenity, the standard of accommodation to be provided, sustainability and transport issues.

8.2. An amended floorplan was received during the course of the application reducing the width of the terraces to reduce overlooking of the existing balconies and side facing windows to the storeys below. Additional drawings with site sections and a Daylight & Sunlight Assessment were also received during the course of the application.

### 8.3. Principle of Development:

The City Plan Part 1 Inspector's Report was received in February 2016. The Inspector's conclusions on housing were to agree the target of 13,200 new homes for the city until 2030 as a minimum requirement. It is against this

minimum housing requirement that the City's five year housing land supply position is assessed annually.

- 8.4. The Council's most recent housing land supply position is published in the SHLAA Update 2018 (February 2019). The figures presented in the SHLAA reflect the results of the Government's 2018 Housing Delivery Test which was published in February 2019. The Housing Delivery Test shows that housing delivery in Brighton & Hove over the past three years (2015-2018) has totalled only 77% of the City Plan annualised housing target. Since housing delivery has been below 85%, the NPPF requires that a 20% buffer is applied to the five year housing supply figures. This results in a five year housing shortfall of 576 net dwellings (4.5 years supply). In this situation, when considering the planning balance in the determination of planning applications, increased weight should be given to housing delivery in line with the presumption in favour of sustainable development set out in the NPPF (paragraph 11).
- 8.5. The proposed additional storey would allow the creation of three additional units of residential accommodation, which would make more efficient use of the site. The principle of the development can be accepted, subject to other material planning considerations set out below.
- 8.6. Design and Appearance:**  
Pre-application advice was sought prior to the submission of this application, and the advice was broadly supportive of the principle of the development with recommendations on how to improve the scheme. This proposal has been amended taking the feedback into account. The additional storey is set back further from the front and rear elevations of the main block, and the roof profile has been reduced to achieve a more elegant profile.
- 8.7. SPG15 Tall Buildings sets out that tall buildings are defined as buildings of 18m or taller, and that applications relating to tall buildings should be accompanied by a Tall Building Study. This application does not specifically include a Tall Building Study. The submission does include a detailed Design and Access Statement with visual studies of the development from various vantage points in the vicinity of the site, as well as a Heritage Statement, which address some of the key points in a Tall Building Study.
- 8.8. Tall buildings as defined in SPG15 fall into various categories: 'mid-rise' or 6-8 storeys, 'tall' or 9-14 storeys, and 'very tall' or 15+ storeys. New tall buildings of over 6 storeys (18m+) should not generally be within conservation areas. However it is noted that the existing block is already classed as a tall building, and with the proposed extension the resulting building would still be categorised as 'mid-rise'. It is considered that the resulting building relates appropriately to the urban grain and its context. There are a number of buildings of a similar height in close proximity to the site, including Prince's Court opposite, Viceroy Lodge at the junction with Kingway to the south, and Dolphin Court near the junction with Church Road to the north.

- 8.9. The proposed additional storey would be set back from all of the elevations, with a large set back from the front elevation to allow for outdoor amenity space. It is considered that the proposed bulk and massing would not harm the character and appearance of the building or wider conservation area.
- 8.10. It is regrettable that the windows to the proposed additional storey have not been reconsidered to better align with the fenestration below, however it is acknowledged that the proposed additional storey would not be read on the same plane as the rest of the façade from most public views, and as such it is considered the resulting appearance of the building would not be harmed.
- 8.11. The agent confirmed by email dated 27 Feb 2019 that the proposed zinc cladding may not be appropriate, and that other material options would be investigated, including fibre cement panels or powder coated aluminium panels. A similar colour as shown in the submitted documents would be specified. Provided the colour is similar, it would tone with the brickwork of the existing block, and is likely to be acceptable. It is recommended that a sample and details of expected weathering be required by condition.
- 8.12. It is considered that the proposed additional storey would not result in harm to the character and appearance of the building overall or the wider conservation area.
- 8.13. Impact on Amenity:**  
Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
- 8.14. Amended drawings were received during the course of the application reducing the width of the proposed terraces facing Hove Street, in order to minimise overlooking of the balconies and side facing windows to the flats below. The spaces to the side and rear are annotated as being for maintenance access only. It is recommended that this be secured by condition. Given the presence of balconies to the existing flats at Hove Manor, the inclusion of outdoor amenity space for the proposed development is accepted. It is considered that the proposed terraces would not result in harmful overlooking or excessive noise disturbance to the detriment of neighbouring amenity.
- 8.15. The views from the proposed windows would be of a similar nature to the views from the existing fifth floor windows, and would not result in harmful overlooking.
- 8.16. The proposed additional storey would introduce greater bulk and massing at roof level. However this would be set away from the existing parapet. The existing block overshadows some of the neighbouring windows, especially at ground floor level. At first floor level at Vallance(or higher at Princes Court

opposite), the proposed additional storey would result in a small loss of light to neighbouring windows.

8.17. A Daylight & Sunlight Assessment was provided during the course of the application to demonstrate that the proposed additional storey would not result in harmful overshadowing. This report focused on 22 Vallance Gardens as it has the closest relationship with the rear of Hove Manor, and concluded that the proposal would have no effect of the daylight and sunlight levels. On this basis the report also concluded that other windows to Vallance Gardens would not be impacted.

8.18. Given the set back of the proposed development from the parapet of the existing block, it is considered that the proposed additional storey would not result in significant harm of a degree sufficient to warrant refusal of the application.

**8.19. Standard of Accommodation:**

The 'Nationally Described Space Standards' (NDSS) were introduced by the Department for Communities and Local Government in 2015 to establish acceptable minimum floor space for new build developments. Although these space standards have not been formally adopted into the Brighton and Hove City Plan, Draft City Plan Part 2 proposes to adopt them and indicates a direction of travel on behalf of the LPA. The NDSS provide a useful guideline on acceptable room sizes that would offer occupants useable floor space once the usual furniture has been installed. The NDSS identifies a minimum floor space that should be achieved for a single bedroom as measuring at least 7.5sqm, and a double bedroom should measure at least 11.5sqm. The minimum floor space requires a head height of above 1.5m.

8.20. The following standards are relevant:

2b 3p dwelling - 61 sqm  
2b 4p dwelling - 70 sqm  
3b 5p dwelling - 86 sqm  
3b 6p dwelling - 95 sqm

8.21. Flat 1:

Total: 138 sqm  
bedroom 1: 11.9 sqm  
bedroom 2: 10.3 sqm  
bedroom 3: 11.6 sqm

8.22. Flat 2:

Total: 80 sqm  
bedroom 1: 13.6 sqm  
bedroom 2: 10.1 sqm

8.23. Flat 3:

Total: 186 sqm  
bedroom 1: 20.8 sqm  
bedroom 2: 16.1 sqm

bedroom 3: 11.3 sqm

- 8.24. The proposed units exceed the government standards for gross internal floor area. Some of the bedrooms are shown with double beds rather than single beds despite being too small to provide two bedspaces. Given that these standards are used for reference only, this is not of significant concern to a degree to warrant refusal of the application. The inclusion of a long hallway to access the main living space from the communal areas is not an ideal layout, however all of the habitable rooms benefit from adequate circulation space, natural light and ventilation. All three flats benefit from outdoor amenity space. The proposed standard of accommodation is considered acceptable.

## **9. Sustainable Transport:**

- 9.1. No changes are proposed to the existing pedestrian and vehicular access, this is considered acceptable. It is expected that the proposed development would lead to an increase in trips to the site. In order to ensure that the development provides for this, it is recommended that improvements to pedestrian routes in the vicinity of the site be secured by condition.

- 9.2. One of the neighbour representations indicates that the existing on-site parking is controlled by the managing agents who issue Residents' Parking Permits on an unallocated basis to current leaseholders. This was confirmed by the agent during the course of the application, with a photo showing the terms and conditions of parking on the site. To achieve the aim of controlling parking demand overall in the area, it is recommended that future occupiers access to on-street residents parking permits be restricted through the car free condition, and that future occupiers access to on-site parking spaces be restricted through a car park management plan condition.

- 9.3. The Design and Access Statement sets out that Sheffield stands for 6 cycles would be provided. The position of the cycle parking is not indicated on the plans, and as such it is recommended that further details be secured by condition to ensure the spaces are convenient, covered and secure.

## **9.4. Sustainability:**

Policy CP8 requires new development to achieve 19% above Part L for energy efficiency, and to meet the optional standard for water consumption. This can be secured by condition.

- 9.5. There are communal refuse and recycling facilities on the public highway in this area, and the kitchens are of a sufficient size for limited storage of waste. Therefore it is considered that a condition securing further details is not necessary.

## **10. EQUALITIES**

- 10.1. Policy HO13 seeks access standards above normal Building Regulations. It is noted that the proposed flats would be served by the central lift which would be wheelchair accessible. As the scheme could be accepted without the installation of the central lift, and a step free access could not be achieved without the lift, it is considered that a condition requiring compliance with the M4(2) Building Regulations Standard is not necessary.





Cllr. Andrew Wealls

BH2018/02786 - Hove Manor, Hove Street

28/10/2018:

Comment Reasons:

- Adversely affects Conservation Area
- Inappropriate Height of Development
- Overdevelopment
- Overshadowing
- Residential Amenity

Comment: Please note my objection to Application 2018/02786

Hove Manor is located on the east side Hove Street in the Old Hove Conservation Area. The addition of a seventh storey will convert a notable 1930s art deco building into tall building (as described by SPG15).

There are no buildings higher than 6 storeys in Hove Street (Dolphin Court, the nearest neighbour is 6 storeys high).

SPG 15 regarding Tall Buildings policy states;

8.14.1 In refining areas of the city that are suitable for tall buildings a number of areas were identified early as being areas of exclusion, or areas that should not contain or would be adversely influenced by neighbouring tall buildings, and which are inappropriate in transport terms. These inappropriate areas broadly comprise:

Conservation areas - (but see paragraph 7.3.3).

7.3.3 Conservation

- Tall building proposals within conservation areas or affecting the setting of listed buildings or conservation areas or registered historic parks and gardens will only be approved if applicants can demonstrate, through a conservation impact assessment, that the surrounding area's character or appearance or the setting of any listed building or historic park or garden will be preserved or enhanced.

The design and materials proposed for the development are out of character for the building and the Old Hove Conservation area so it does not meet this Policy requirement. Aluminium composite panels with bronze oxide finish and full floor to ceiling height windows are incompatible with the 1930s design of Hove Manor and any of the nearby properties. This contravenes policy HE6 (the use of building materials and finishes which are sympathetic to the area)

The additional storey with terraces to the rear will increase overlooking and therefore loss of amenity to residents in Vallance Gardens. The additional storey will also reduce the daylight to properties to the rear in Vallance Gardens and to residential properties to the north of Hove Manor.



**Information on Pre-application Presentations and Requests 2019**

<b>Date</b>	<b>Address</b>	<b>Ward</b>	<b>Proposal</b>	<b>Update</b>
06/03/18	29-31 New Church Road, Hove	Westbourne	Mixed use development.	Application BH2018/02126 presented to committee subject to finalising s106.
06/03/18 & 03/04/18	Toad's Hole Valley, Hove	Hangleton & Knoll	Mixed use development comprising residential, neighbourhood centre, secondary school, B1 floorspace, SNCI enhancements, accesses from highway, landscaping and parking.	Application BH2018/03633 under consideration.
08/05/18	Longley Industrial Estate, New England Street, Brighton	St Peter's & North Laine	Mixed use scheme, 3000sqm B1 with 200-250 'build-to-rent' residential units above, 1000sqm communal space, disabled car parking, public realm improvements.	Application BH2018/02598 presented to committee subject to finalising s106.
08/05/18	119-131 London Road (Co-op and Boots), Brighton	St Peter's & North Laine	Mixed use redevelopment to re-provide retail and student accommodation above.	Application BH2018/02699 .presented to committee subject to finalising s106
08/05/18	Rear of Lyon Close, Hove	Goldsmid	Mixed use scheme 160 units (C3) and 1000sqm office (B1) floorspace.	Application BH2018/01738 presented to committee subject to finalising s106.
05/06/18	Former Peter Pan amusements, Madeira Drive, Brighton	Queen's Park and East Brighton	Mixed use leisure/commercial including outdoor pool (temporary 5yrs).	Application BH2018/01973 refused 6 December 2018. Application BH2019/00293 presented to committee subject to

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

				finalising s106.
17/07/18	Enterprise Point, Melbourne Street, Brighton	Hanover & Elm Grove	Purpose Built Student Housing (350 bedspaces), with some employment space at ground floor and affordable housing block	Application BH2018/02751 determined
14/08/18	KAP, Newtown Road, Hove	Hove Park	Mixed Use residential / B1 scheme. Approx. 150 units	Application BH2018/03353 under consideration.
14/08/18	21 – 24 Melbourne Street, Brighton	Hanover & Elm Grove	Co-living (100 units) C3 / B1	
11/09/18	Sackville Trading Estate, Sackville Road, Hove	Hove Park	Mixed residential and commercial development.	Application BH2018/03697 under consideration.
03/10/18	Urban Fringe at Coldean Lane, NW of Varley Halls, Brighton	Hollingdean & Stanmer	Residential development.	Application BH2018/03541 under consideration.
03/10/18	Urban Fringe Site at The Whitehawk Estate, Brighton	East Brighton	Residential redevelopment.	Member and officer pre-app and Design review undertaken.
09/10/18	Land at former Belgrave Nursery, Clarendon Place, Portslade	South Portslade	Residential redevelopment.	Application BH2018/02629 under consideration.
06/11/18 & 04/12/18	Outer Harbour Development, West Quay, Brighton Marina	Rottingdean Coastal	Mixed Use Residential-led development – significant changes to later phases of Outer Harbour Development	Application BH2019/00964 under consideration
	Court Farm, King George VI Avenue, Hove	Hangleton & Knoll	Development of the site for a new care facility, comprising two care homes of 68 bedrooms and 36	History: Permission was granted for a C3 residential scheme in March 2017 for 69 flats.

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

			bedrooms respectively, together with associated communal spaces, back of house and service areas, car and cycle parking, landscaping and planting (Use Class C2).	The current pre-app scheme was presented to the Design Panel on 26/02/19.
	Vantage Point and Circus Parade, New England Street/New England Road/Elder Place, Brighton	St Peter's & North Laine	Mixed use office-led redevelopment, incl residential, retail, dance studio, student flats, car park, public realm improvements.	Presented at Design Review Panel 04/7/18, amended and then re-presented on 30/10/18. LPA provided written feedback 04/10/18 and discussions on-going.

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





**Brighton & Hove  
City Council**

### INFORMATION ON HEARINGS / PUBLIC INQUIRIES

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

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Planning Application no:	ENF2017/00329
Description:	Change of Use from wholesale/retail to takeaway.
Decision:	Enforcement application
Type of Appeal	Public Inquiry against material change of use
Date:	07/08/2019
Site Location:	Unit 1 Saxon Works, 22 Olive Road, Hove, BN3 5LE





### NEW APPEALS RECEIVED

**WARD**

**APPEALAPPNUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**GOLDSMID**

BH2017/04241

111 Holland Road Hove BN3 1JP

Conversion of existing dwelling (C3) into 5no self-contained flats (C3), including conversion of garage into habitable space, revised fenestration, extension of rear balcony and rooflights to front elevation.

APPEAL IN PROGRESS

22/03/2019

Delegated

**WARD**

**APPEALAPPNUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**GOLDSMID**

BH2017/04242

111 Holland Road Hove BN3 1JP

Change of use from residential dwelling (C3) to fifteen bedroom large house in multiple occupation (Sui Generis) including conversion of garage into habitable space, revised fenestration, extension of rear balcony and rooflights to front elevation.

APPEAL IN PROGRESS

22/03/2019

Delegated

**WARD**

**APPEALAPPNUMBER**

**ADDRESS**

**DEVELOPMENT DESCRIPTION**

**APPEAL STATUS**

**APPEAL RECEIVED DATE**

**APPLICATION DECISION LEVEL**

**GOLDSMID**

BH2018/01059

72 Goldstone Villas Hove BN3 3RU

Erection of three storey rear extension to provide new office space (B1), incorporating change of use of ground floor retail unit (A1) to professional services (A2) and part change of use of ancillary store at basement level to office space (B1), with associated alterations.

APPEAL IN PROGRESS

22/03/2019

Not Assigned

**WARD**

**APPEALAPPNUMBER**

**GOLDSMID**

BH2018/01893

ADDRESS Unit 1 Ellen Street Hove BN3 3LN  
DEVELOPMENT DESCRIPTION Change of use from warehouse (B8) to office (B1 (a))  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 22/03/2019  
APPLICATION DECISION LEVEL Not Assigned

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**WARD** **GOLDSMID**  
APPEALAPPNUMBER BH2018/02475  
ADDRESS Adjacent 2 Addison Road Hove BN3 1TN  
DEVELOPMENT DESCRIPTION Demolition of existing garage (B2) and car rental centre (Sui Generis) and erection of 3no storey mixed use building (B1 and A1/D2) fronting Addison Road and 2no houses and 2no flats fronting Melville Road.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 22/03/2019  
APPLICATION DECISION LEVEL Not Assigned

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**WARD** **GOLDSMID**  
APPEALAPPNUMBER BH2018/03058  
ADDRESS 111 Holland Road Hove BN3 1JP  
DEVELOPMENT DESCRIPTION Conversion of existing dwelling (C3) to form 3no one bedroom flats & 2no two bedroom flats (C3) incorporating rear terrace, revised fenestration & associated alterations.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 22/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **GOLDSMID**  
APPEALAPPNUMBER BH2018/03715  
ADDRESS 111 Holland Road Hove BN3 1JP  
DEVELOPMENT DESCRIPTION Change of use from residential dwelling (C3) to a twelve bedroom large house in multiple occupation (Sui Generis) for up to 12 occupants including conversion of existing garage into habitable space and revised fenestration.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 22/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **HANOVER AND ELM GROVE**  
APPEALAPPNUMBER BH2018/01769  
ADDRESS 73 Franklin Road Brighton BN2 3AD

DEVELOPMENT DESCRIPTION Conversion of existing residential dwelling to form 1no one bedroom flat, 1no two bedroom flat and 1no two bedroom maisonette with associated works. (Part retrospective)

APPEAL STATUS APPEAL IN PROGRESS

APPEAL RECEIVED DATE 03/04/2019

APPLICATION DECISION LEVEL Delegated

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**WARD** **HOLLINGDEAN AND STANMER**

APPEALAPPNUMBER BH2018/02177

ADDRESS 52 Waverley Crescent Brighton BN1 7BG

DEVELOPMENT DESCRIPTION Erection of a two storey building comprising 1no one bedroom flat & 1no two bedroom maisonette (C3) on land south of existing dwelling.

APPEAL STATUS APPEAL IN PROGRESS

APPEAL RECEIVED DATE 03/04/2019

APPLICATION DECISION LEVEL Delegated

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**WARD** **HOLLINGDEAN AND STANMER**

APPEALAPPNUMBER BH2018/02940

ADDRESS 12 Rushlake Road Brighton BN1 9AD

DEVELOPMENT DESCRIPTION Change of use from six bedroom small house in multiple occupation (C4) to seven bedroom large house in multiple occupation (Sui Generis).

APPEAL STATUS APPEAL IN PROGRESS

APPEAL RECEIVED DATE 25/03/2019

APPLICATION DECISION LEVEL Delegated

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**WARD** **HOLLINGDEAN AND STANMER**

APPEALAPPNUMBER

ADDRESS 10 Southmount Brighton BN1 7BD

DEVELOPMENT DESCRIPTION Appeal against: S172 Enf Notice- Without planning permission the material change of use from dwelling house (Use Class C3) to 4 bedroom House in Multiple Occupation (C4)

APPEAL STATUS APPEAL IN PROGRESS

APPEAL RECEIVED DATE 28/03/2019

APPLICATION DECISION LEVEL Not Assigned

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**WARD** **HOVE PARK**

APPEALAPPNUMBER BH2017/04050

ADDRESS 35-39 The Drove Way Hove BN3 6LF

<u>DEVELOPMENT DESCRIPTION</u>	Change of use from former Dairy Crest depot (B8) to Mixed-use flexible commercial development of 1383sqm (Flexible between use classes B1(a), A1, A2, A3, D1) incorporating alterations including removal of northern extension and erection of a new wing with 14no residential units (C3). Erection of a new central wing to court yard, onsite car parking, cycle storage and areas for storage of waste and recycling.
<u>APPEAL STATUS</u>	APPEAL IN PROGRESS
<u>APPEAL RECEIVED DATE</u>	22/03/2019
<u>APPLICATION DECISION LEVEL</u>	Planning (Applications) Committee

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<b><u>WARD</u></b>	<b>HOVE PARK</b>
<u>APPEALAPPNUMBER</u>	BH2018/03031
<u>ADDRESS</u>	4 Radinden Manor Road Hove BN3 6NH
<u>DEVELOPMENT DESCRIPTION</u>	Remodelling and extension to existing dwelling including single storey rear extension, two storey side extension and additional storey in place of existing pitched roof.
<u>APPEAL STATUS</u>	APPEAL IN PROGRESS
<u>APPEAL RECEIVED DATE</u>	01/04/2019
<u>APPLICATION DECISION LEVEL</u>	Delegated

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<b><u>WARD</u></b>	<b>MOULSECOOMB AND BEVENDEAN</b>
<u>APPEALAPPNUMBER</u>	
<u>ADDRESS</u>	122 Hillside Brighton BN2 4TE
<u>DEVELOPMENT DESCRIPTION</u>	Appeal against
<u>APPEAL STATUS</u>	APPEAL IN PROGRESS
<u>APPEAL RECEIVED DATE</u>	22/03/2019
<u>APPLICATION DECISION LEVEL</u>	Not Assigned

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<b><u>WARD</u></b>	<b>MOULSECOOMB AND BEVENDEAN</b>
<u>APPEALAPPNUMBER</u>	
<u>ADDRESS</u>	42 Staplefield Drive Brighton BN2 4RL
<u>DEVELOPMENT DESCRIPTION</u>	Appeal against
<u>APPEAL STATUS</u>	APPEAL IN PROGRESS
<u>APPEAL RECEIVED DATE</u>	25/03/2019
<u>APPLICATION DECISION LEVEL</u>	Not Assigned

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<b><u>WARD</u></b>	<b>PATCHAM</b>
<u>APPEALAPPNUMBER</u>	BH2018/03427
<u>ADDRESS</u>	3 Braybon Avenue Brighton BN1 8EA
<u>DEVELOPMENT DESCRIPTION</u>	Erection of a first floor rear extension including side rooflight & associated alterations.
<u>APPEAL STATUS</u>	APPEAL IN PROGRESS

APPEAL RECEIVED DATE 01/04/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **PATCHAM**  
APPEALAPPNUMBER BH2018/03474  
ADDRESS 28 Dale Crescent Brighton BN1 8NU  
DEVELOPMENT DESCRIPTION Erection of single storey rear extension.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 01/04/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **PATCHAM**  
APPEALAPPNUMBER BH2019/00163  
ADDRESS 8 Brangwyn Drive Brighton BN1 8XD  
DEVELOPMENT DESCRIPTION Roof alterations incorporating hip to gable roof extension, 3 front rooflights and 4 rear dormers.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 03/04/2019  
APPLICATION DECISION LEVEL Not Assigned

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**WARD** **PRESTON PARK**  
APPEALAPPNUMBER BH2018/03450  
ADDRESS 57 Preston Road Brighton BN1 4QE  
DEVELOPMENT DESCRIPTION Application for removal of conditions 3 & 4 of application BH2018/01319 (Conversion of existing six bedroom dwelling (C3) into 2no three bedroom maisonettes (C3) with associated fenestration alterations.) which states that the residents of the development have no entitlement to resident's parking permits other than disabled blue badge holders and the basement/ground floor maisonette hereby permitted shall be used as a dwellinghouse (C3) and for no other purpose.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 20/03/2019  
APPLICATION DECISION LEVEL Not Assigned

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**WARD** **QUEEN'S PARK**  
APPEALAPPNUMBER BH2018/02903  
ADDRESS 7B Wentworth Street Brighton BN2 1TT  
DEVELOPMENT DESCRIPTION Raising of roof to facilitate second floor including re-distribution of space to allow enlargement of 7C (C3) and provision of additional space and alteration to 7B (C4).  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 26/03/2019

APPLICATION DECISION LEVEL Not Assigned

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**WARD**

**QUEEN'S PARK**

APPEALAPPNUMBER

BH2018/03121

ADDRESS

18 Stanley Street Brighton BN2 0GP

DEVELOPMENT DESCRIPTION

Erection of a two storey rear extension.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

01/04/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

**REGENCY**

APPEALAPPNUMBER

BH2018/01798

ADDRESS

Outside 56 Western Road Brighton BN1 2HA

DEVELOPMENT DESCRIPTION

Prior approval for installation of public payphone/ communication hub on highway.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

**REGENCY**

APPEALAPPNUMBER

BH2018/01800

ADDRESS

Outside 193 Western Road Brighton BN1 2BA

DEVELOPMENT DESCRIPTION

Prior approval for installation of public payphone/ communication hub on highway.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

**REGENCY**

APPEALAPPNUMBER

BH2018/01806

ADDRESS

Outside 187 Western Road Brighton BN1 2BA

DEVELOPMENT DESCRIPTION

Prior approval for installation of public payphone/ communication hub on highway.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

**REGENCY**

APPEALAPPNUMBER

BH2018/01823

ADDRESS

Outside 56 Western Road Brighton BN1 2HA

DEVELOPMENT DESCRIPTION

Display of single sided advertising panel forming integral part of communication hub.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

**REGENCY**

BH2018/01825

Outside 193 Western Road Brighton BN1 2BA

Display of single sided advertising panel forming integral part of communication hub.

APPEAL IN PROGRESS

29/03/2019

Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

**REGENCY**

BH2018/01835

Outside 187 Western Road Brighton BN1 2BA

Display of single sided advertising panel forming integral part of communication hub.

APPEAL IN PROGRESS

29/03/2019

Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

**SOUTH PORTSLADE**

BH2017/02292

79A Trafalgar Road Portslade BN41 1GU

Change of use from temple (D1) at first floor level to 3no flats (C3) at first floor and second floor level incorporating roof extension, rooflights and other associated alterations.

APPEAL IN PROGRESS

01/04/2019

Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

**SOUTH PORTSLADE**

BH2018/01998

Unit 2 22 - 25 Station Road Portslade BN41 1GB

Prior approval for change of use from retail (A1) to cafe/restaurant (A3).

APPEAL IN PROGRESS

22/03/2019

Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

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

BH2018/01792

Outside 12 - 13 North Street Quadrant Brighton BN1 3GJ

DEVELOPMENT DESCRIPTION Prior approval for installation of public payphone/  
communication hub on highway.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01797  
ADDRESS Outside Clermont House 95 Queens Road  
Brighton BN1 3XE  
DEVELOPMENT DESCRIPTION Prior approval for installation of public payphone/  
communication hub on highway.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01799  
ADDRESS Outside 129 North Street Brighton BN1 2BE  
DEVELOPMENT DESCRIPTION Prior approval for installation of public payphone/  
communication hub on highway.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01802  
ADDRESS Outside Eagle Star House 112 Queens Road  
Brighton BN1 3XG  
DEVELOPMENT DESCRIPTION Prior approval for installation of public payphone/  
communication hub on highway.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01804  
ADDRESS Outside 69 - 70 Queens Road Brighton BN1 3XD  
DEVELOPMENT DESCRIPTION Prior approval for installation of public payphone/  
communication hub on highway.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**



APPEALAPPNUMBER BH2018/01818  
ADDRESS Outside 12 - 13 North Street Quadrant Brighton  
BN1 3GJ  
DEVELOPMENT DESCRIPTION Display of single sided advertising panel forming  
integral part of communication hub.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01822  
ADDRESS Outside 95 Queens Road Brighton BN1 3XE  
DEVELOPMENT DESCRIPTION Display of single sided advertising panel forming  
integral part of communication hub.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01824  
ADDRESS Outside 129 North Street Brighton BN1 2BE  
DEVELOPMENT DESCRIPTION Display of single sided advertising panel forming  
integral part of communication hub.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01827  
ADDRESS Outside 112 - 113 Queens Road Brighton BN1  
3XG  
DEVELOPMENT DESCRIPTION Display of single sided advertising panel forming  
integral part of communication hub.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **ST. PETER'S AND NORTH LAINE**  
APPEALAPPNUMBER BH2018/01833  
ADDRESS Outside 69 Queens Road Brighton BN1 3XD  
DEVELOPMENT DESCRIPTION Display of single sided advertising panel forming  
integral part of communication hub.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 29/03/2019

APPLICATION DECISION LEVEL Delegated

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**WARD**

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

APPEALAPPNUMBER

BH2018/03733

ADDRESS

Smoke Mart 45 London Road Brighton BN1 4JD

DEVELOPMENT DESCRIPTION

Installation of new shopfront, rollershutter & refurbishment works.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

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

APPEALAPPNUMBER

BH2018/03734

ADDRESS

Smoke Mart 45 London Road Brighton BN1 4JD

DEVELOPMENT DESCRIPTION

Display of 1no internally illuminated fascia sign.

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

29/03/2019

APPLICATION DECISION LEVEL

Delegated

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**WARD**

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

APPEALAPPNUMBER

ADDRESS

41A Ditchling Road Brighton BN1 4SB

DEVELOPMENT DESCRIPTION

Appeal against S172 Notice - Without planning permission a material change of use from a 2no bedroom dwelling house (use class C3) to a 5no bedroom House in Multiple Occupation (use class C4)

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

21/03/2019

APPLICATION DECISION LEVEL

Not Assigned

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**WARD**

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

APPEALAPPNUMBER

ADDRESS

54 West Hill Street Brighton BN1 3RS

DEVELOPMENT DESCRIPTION

Appeal against Without planning permission the material change of use from dwelling house (Use Class C3) to 5 bedroom House in Multiple Occupation (C4) - required to cease the use of the property as a House in Multiple Occupation (HMO).

APPEAL STATUS

APPEAL IN PROGRESS

APPEAL RECEIVED DATE

25/03/2019

APPLICATION DECISION LEVEL

Not Assigned

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**WARD**

**WESTBOURNE**

APPEALAPPNUMBER

BH2018/01923

ADDRESS Garages Between 88 Portland Road & 91 Westbourne Street Hove BN3 5DL  
DEVELOPMENT DESCRIPTION Demolition of existing garages and erection of 1no two storey office building (B1).  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 03/04/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **WESTBOURNE**  
APPEALAPPNUMBER BH2018/03239  
ADDRESS 14 Sheridan Terrace Hove BN3 5AE  
DEVELOPMENT DESCRIPTION Prior approval for change of use from office (B1) to residential (C3) to form 2no one bedroom flats.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 22/03/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **WISH**  
APPEALAPPNUMBER  
ADDRESS Stewart House 203 Portland Road Hove BN3 5JA  
DEVELOPMENT DESCRIPTION Appeal against  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 21/03/2019  
APPLICATION DECISION LEVEL Not Assigned

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**WARD** **WITHDEAN**  
APPEALAPPNUMBER BH2018/02974  
ADDRESS 9 The Beeches Brighton BN1 5LS  
DEVELOPMENT DESCRIPTION Erection of 2no storey rear extension to outbuilding incorporating glazed connection to bungalow and associated works.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 01/04/2019  
APPLICATION DECISION LEVEL Delegated

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**WARD** **WITHDEAN**  
APPEALAPPNUMBER BH2018/03187  
ADDRESS 44 Surrenden Crescent Brighton BN1 6WF  
DEVELOPMENT DESCRIPTION Demolition of existing residential annexe and erection of a two storey, plus lower ground floor, single dwelling (C3), with landscaping and other associated works.  
APPEAL STATUS APPEAL IN PROGRESS  
APPEAL RECEIVED DATE 21/03/2019

APPLICATION DECISION LEVEL Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

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**WITHDEAN**

BH2018/03202

56 Millcroft Brighton BN1 5HD

Roof alterations incorporating hip to gable extension, rear dormer and 3no front rooflights. Creation of raised decking area to rear, replacement of existing windows with bi-fold doors.

APPEAL IN PROGRESS

01/04/2019

Delegated

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**WARD**

APPEALAPPNUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

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**WITHDEAN**

BH2018/03843

12 Colebrook Road Brighton BN1 5JH

Demolition of existing garage and erection of 1no detached two bedroom, two storey dwelling (C3) with bin/cycle store to rear of existing dwelling.

APPEAL IN PROGRESS

26/03/2019

Delegated

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**APPEAL ALLOWED** (enforcement notice quashed)

**V – 31 PARK, ROAD, BRIGHTON –  
HOLLINGDEAN & STANMER**

Enforcement Appeal. Appeal against alleged breach of planning control, material change of use from a dwelling house (C3) to a HMO (C4) and the construction of a dormer to the rear roof slope to facilitate unauthorised change of use to HMO (C4).  
**APPEAL ALLOWED** (enforcement notice quashed)

**W – 126-128 CHURCH ROAD, HOVE –  
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Application BH 2018/00552 - Appeal against refusal to grant planning permission for proposed change of use from vacant shop (A1) to restaurant/bar (A3/A4) to allow expansion of "Barcode". Replacement shop front to no 126 Church Road and extension/excavation to 126 Church Road.  
**APPEAL DISMISSED** (delegated decision)





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## Appeal Decision

Site visit made on 29 January 2019

**by Tim Crouch MSc DipUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: Wednesday, 20 March 2019**

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**Appeal Ref: APP/Q1445/W/18/3213220**

**Land Adjacent To 3 Tandridge Road, Hove, East Sussex, BN3 4LU**

- 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 T Froude against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/00730, dated 27 February 2018, was refused by notice dated 17 May 2018.
  - The development proposed is erection of one one bedroom house.
- 

### Decision

1. The appeal is allowed and planning permission is granted for erection of one one bedroom house at Land Adjacent To 3 Tandridge Road, Hove, East Sussex, BN3 4LU in accordance with the terms of the application, Ref BH2018/00730, dated 27 February 2018, and the plans submitted with it, 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: unnumbered location plan (1:1250); unnumbered block plan (1:500); and Plan No 1810/01 (Proposed Plans, Elevations and Section).
  - 3) Prior to the construction of the development hereby permitted, samples of all external facing materials, hardsurfacing materials and materials for the front boundary wall shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved sample details.
  - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions to the dwelling hereby permitted shall be carried out, nor shall any development within the curtilage to the dwelling be erected or constructed.
  - 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows above ground floor level, other than those expressly authorised by this permission, shall be constructed.

- 6) Prior to the installation of the dormer window on the southern elevation the type of obscured glazing and details of the openings to be used on the window shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with these details and the obscured glazing shall be retained thereafter.

### **Procedural Matters**

2. The application form refers to the development site as 2 Tandridge Road. The submitted plans are also titled as relating to 2 Tandridge Road. However, the appeal site is clearly shown on those plans as lying adjacent to 3 Tandridge Road. The officer's report, the Council's Decision Notice and the appellant's statement of case and the appeal form all refer to the land adjacent to No 3. This was also reflected in the previous appeal decision. I am also satisfied that that is the correct address and have used it in this decision.
3. The proposal is identical to a scheme granted permission at appeal<sup>1</sup> in 2017, with the addition of a dormer window to the south elevation. On my site visit I saw that the new allowed dwelling has been built and occupied. I have therefore considered the appeal on this basis.

### **Main Issue**

4. The main issue is the effect of the proposal on the living conditions of the occupiers of 309 Kingsway with particular regard to perceived overlooking and loss of privacy.

### **Reasons**

5. The site has permission for a new dwelling which has been constructed and occupied. This proposal differs from the permission due to the inclusion of a side facing dormer window. This would face the neighbouring property at 309 Kingsway, which is split into ground floor and first floor units. The dormer window would be adjacent to its outdoor living space.
6. The proposed dormer would mirror the size and design of the existing dormer on the north elevation, and would serve the bathroom and part of the bedroom. I saw on my site visit that whilst large, the existing dormer is proportionate within the extensive roof slope and set comfortably within it. It is a significant but not overly dominant feature. The obscure glazing limits visibility through from the occupants, with the main element also fixed closed. The replication of this to the shared boundary with No 309 would not be so dominant and unneighbourly in form, use or detail to give rise to a significant perception of overlooking.
7. The proposed dormer would serve the bathroom and a corner of the bedroom. It may introduce some light and silhouettes on this boundary, however it is likely that occupants of these private spaces would also expect to prevent this to ensure privacy. In any event, the type of obscure glazing can be controlled through condition and these are also not areas of main living spaces which would generate more frequent use. The high level element of the window would allow opening but given the height within the rooms and angle it would not afford actual or perceived overlooking to the material loss of neighbouring amenity.

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<sup>1</sup> APP/Q1445/W/16/3167802

8. Adjacent to the proposal, within the garden of No 309, is secure, longer term parking of a caravan, fenced in with concrete posts. The main outdoor living space is then further to the rear. Therefore, any perceived overlooking into the outdoor living space would also be at an angle, reducing the effects further. At first floor level is a terrace and floor to ceiling glass doors serving a bedroom. The glass doors would similarly be at an angle reducing a perceived or actual loss of privacy or overlooking. The terrace is a unique feature in the vicinity and at the same height as the proposal. It would experience some change in relationship. However, given the obscure glazing, distance and rooms served, this change is not considered to result in a material loss of amenity through perceived overlooking or loss of privacy.
9. I note that the previous Inspector allowed the previous appeal with permitted development rights removed to restrict windows on this southern elevation. This is not an acknowledgement that any windows would be harmful, but that the relationship is sensitive and any proposal for such would require detailed consideration. That is what I have carried out.
10. Therefore the proposal would have an acceptable effect on the living conditions of the occupiers of 309 Kingsway with particular regard to perceived overlooking and loss of privacy. Consequently, the proposed development would comply with Policy QD27 of the Brighton & Hove Local Plan (2016) which, amongst other matters, seeks new development to prevent material loss of amenity to neighbouring users.

### **Other Matters**

11. Third party comments have been raised regarding the size of the proposed dormer and its impact on the streetscene. The Officer's Report considered these matters and concluded that the proposal would provide the property with a more balanced appearance and would not significantly detract from the wider streetscene. Whilst I saw on my site visit that many properties have a single dormer window, there is variety of design within the street and I have no substantive evidence to cause me to come to a different conclusion in relation to this.

### **Conditions**

12. In addition to the standard time limit condition, a condition is required to ensure that development is carried out in accordance with the approved plans in the interests of certainty. To protect neighbouring living conditions, conditions are necessary to restrict side windows and permitted development. To ensure the visual appearance of the building I have imposed the condition relating to building materials as I have not been provided with confirmation that this has been discharged satisfactorily on the previous permission, and implemented in accordance with those details.
13. I have also imposed an additional condition for the details of the obscure glazing and window openings of the dormer on the southern elevation to be agreed and retained. Whilst the glazing is shown in the approved plans, the condition is necessary to ensure the level of obscure glazing is appropriate and then retained in perpetuity.

**Conclusion**

14. For the reasons given above I conclude that the appeal should be allowed.

*Tim Crouch*

INSPECTOR



## Appeal Decision

Site visit made on 4 February 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22<sup>nd</sup> March 2019

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### **Appeal Ref: APP/Q1445/W/18/3212895 77 St Aubyns, Hove BN3 2TL**

- 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 Art Stuart against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/02485, dated 20 July 2017, was refused by notice dated 6 September 2018.
  - The development proposed is the demolition of existing garages and construction of single-storey house.
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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 and appearance of the local area, including that of the Old Hove Conservation Area (OHCA) within which it would sit and the adjacent Cliftonville Conservation Area (CCA).

### **Reasons**

3. The appeal relates to a pair of utilitarian flat roof garages which sit at the rear of No. 77 St Aubyns, accessed directly from Seafield Road. The eastern side of Seafield Road is characterised by attractive and imposing period properties, which sit within the CCA. The western side of the road is characterised by the rear elevations of similarly imposing properties which include an array of balconies and fire escapes. However, at road level, this particular section is dominated by a long run of similar flat roofed garages which are set back a generous distance from a tree lined highway. Whilst the garages themselves are unremarkable in their appearance, their general uniformity and consistent positioning is a striking element of the street scene and is a key element of its character.
  4. The proposal would demolish the garages and replace them with a single storey dwelling of a contemporary design. Like the Council, I have no issue with the design and external finish of the proposed dwelling, which is attractive in its own right. Nevertheless, even accounting for the fact that the proposed
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dwelling would be set back 3 metres or so from the back edge of the highway, it would project noticeably further forward than the adjacent garages.

5. Given the consistent positioning of the garages within the row, I consider that the forward projection of the proposed dwelling would harmfully affect their overall rhythm and setting. As a result, the proposed dwelling would appear overly prominent and out of keeping.
6. A run of three storey terraced houses have been built towards the southern end of Seafield Road and a two storey detached house sits between them and the row of garages. These all sit closer to the highway. So too does the large detached house at the opposite end of this side of Seafield Road (No. 35), but this relates more closely to the adjacent buildings fronting Church Road. These examples sit at either end of the extensive row of garages, rather than in the middle of the row itself. On this basis, I consider their context, setting and visual impact to be materially different to that of the appeal proposal.
7. The visual harm arising from the proposal would be widely visible within Seafield Road. As a result, it would detract from the character and appearance of this street scene, which sits with the OHCA and overlooks the CCA on the opposite side of the road. It therefore follows that the character and the appearance of these two Conservation Areas would not be preserved. The harm to them would be '*less than substantial*' as directed by the Planning Practice Guidance, but I attach considerable importance and weight to the statutory duty imposed by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
8. The National Planning Policy Framework (the Framework) explains that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to say that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

*Other considerations*

9. In this case, the appellant asserts that the proposal amounts to the effective use of land in a sustainable location which would meet the need for homes and points to the fact that the Council cannot currently demonstrate a five year supply of deliverable housing sites. These are undoubtedly positive aspects of the scheme, but it would make only a very modest impact in such terms.
10. I also note the principle of demolishing the garages is not in dispute. In addition, I am satisfied that the proposal would not harm the living conditions of nearby residents and that the adjacent elm tree could be safeguarded with appropriate tree protection measures. But these are neutral factors in the planning balance.
11. In reaching my decision, I have considered the additional issues raised by third parties. Some degree of disturbance is to be expected during construction works. This is a short term effect and measures can be imposed to restrict it to an acceptable level. Concern has also been raised about a lack of private



parking. However, the appeal site enjoys a sustainable location where the use of alternative methods of transport other than private motor vehicles is to be encouraged.

**Overall Conclusion**

12. Despite the application generating some letters of support, I conclude that the proposal would harm the character and appearance of the immediate surroundings and it would fail to preserve or enhance the character or appearance of the OHCA and the adjacent CCA. In such terms, it conflicts with the Framework and policies CP12 and CP14 of the adopted Brighton & Hove City Plan Part One.
13. The arguments advanced by the appellant in favour of the scheme do not outweigh the harm and policy conflict therefore the appeal does not succeed.

*David Fitzsimon*

INSPECTOR





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## Appeal Decision

Site visit made on 28 February 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 22 March 2019

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**Appeal Ref : APP/Q1445/X/18/3209999**

**Land at 76 Barcombe Road, Brighton, BN1 9JR.**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC) by Brighton & Hove City Council dated 13 July 2018.
- The appeal is made by Mr Simon Timpson.
- The application ref. BH2018/01089 was dated 2 April 2018.
- The application was made under section 192 (1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is (proposed) loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights.

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### Summary of Decision: the appeal is dismissed

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#### Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

#### Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

#### Reasons

3. The appeal site is a two storey end of terrace property in a primarily residential area. The application the subject of this appeal is a proposed loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights.
4. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Class A of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) concerns the enlargement, improvement or other alteration of a dwellinghouse. Class A.1(i) provides that development is not permitted by

Class A if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3 metres. Class A.1 (d) provides that development is not permitted by Class A if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. The point in dispute between the parties is whether these limitations are met on the facts. There is no disagreement that in all other respects Class A is met and I have no reason to conclude otherwise.

5. The Council has used Land Registry plans to take measurements of the side boundary of the site. The Appellant argues that the Land Registry plans are not determinative as to the precise boundary and that in this case as he also owns the neighbouring property no 75 the boundary line is as shown on the plans submitted with the application. There is no dispute that if the Appellant's boundary line is used that Class A.1 (i) is met and if the Land Registry line is taken that Class A.1 (i) is not met.
6. The Appellant claims that the precise boundary line differs from that shown on the Land Registry plans. I agree that Land Registry plans shows general boundary lines and are not definite as to the precise position of boundaries. But the onus of proof rests firmly on the Appellant in this appeal. His assertion by referring to a line on the application plans which is different to the Land Registry plans does not enable me to conclude on a balance of probability that the boundary line is as the Appellant claims. Without supporting evidence as to the precise boundary line he has not discharged the burden of proof that rests on him in this appeal. I therefore cannot conclude on the evidence before me that Class A.1(i) is met. It follows that permitted development rights cannot be relied upon and planning permission is required.
7. Non-compliance with any aspect of Class A means that the development is not permitted by Class A. It is not therefore necessary for me to determine whether Class A.1 (d) is met and I do not see there is any useful purpose in me doing so. This is a simple matter of fact based on the submitted drawings on which the parties should be able to agree.
8. The Council also argues that as the proposed works would be part and parcel of wider development to change the use of the property to a large HMO (sui generis) that they require permission as part of an overall change of use. But there is insufficient evidence before me to conclude that the operational works the subject of the notice solely facilitate a change of use. In any event a determination on this issue would not alter my conclusion above that planning permission is needed for the development the subject of this appeal.
9. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of (proposed) loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights at 76 Barcombe Road, Brighton, BN1 9JR was well-founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

**Formal Decision**

10. The appeal is dismissed.

*S. Prail*

**Inspector**





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## Appeal Decisions

Site visit made on 24 October 2018

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

Decision date: 22 March 2019

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### Two appeals relating to land at 20 Ashurst Road, Brighton, BN2 4PH

- The appeals are made under sections 174 and 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made respectively by Mr George Birtwell against an enforcement notice issued by Brighton & Hove City Council and by Mr Oliver Dorman against a refusal to grant a certificate of lawful use or development (LDC) by that Council.
- 

#### Appeal A - Ref: APP/Q1445/C/18/3203508 – enforcement notice appeal

- The enforcement notice was issued on 18 April 2018.
  - The breach of planning control as alleged in the notice is *Without planning permission the material change of use of the property from a Dwellinghouse (C3) to a 9-bedroom House in Multiple Occupation (Sui Generis). Unauthorised construction to the roof to facilitate loft conversion, including rear dormer, hip-to-gable extension and front rooflights.*
  - The requirements of the notice are *Cease the use of the property as a House in Multiple Occupation (sui generis); Remove the dormer to the rear roofslope; Remove the hip to gable roof alteration; Remove the rooflights to the front roofslope; Reinstate the roof to its appearance prior to the unauthorised development.*
  - The period for compliance with the requirements is *Three months from the date the notice takes effect to cease the use of the property as a House in Multiple Occupation (sui generis); and Six months from the date the notice takes effect to remove the rear dormer, hip-to-gable extension and front rooflights and reinstate the roof.*
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
- 

#### Appeal B - Ref: APP/Q1445/X/18/3196654 – the LDC appeal

- The application Ref BH2017/03120, dated 14/09/2017, was refused by notice dated 25/01/2018.
  - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is *Conversion of loft space, including hip to gable side extension and dormer to rear.*
- 

### Summary of Decisions

1. Both appeals succeed as set out in the Formal Decisions.

### Preliminary Considerations

2. As there is no deemed application for planning permission respect of Appeal A, my decision is therefore confined to the matters of fact and law raised by the legal grounds of appeal (b) and (c), followed if required by grounds (f) and (g). The lawful development certificate (LDC) Appeal B must be considered on the

same basis, and irrespective of planning merit. It follows that though I have noted the representations relating to planning merit made by both parties, including the Council's view that the Appellant had been aware of implementing *a layout in breach of planning control*, these can only affect my decision where they relate to the legal grounds of appeal.

3. The enforcement notice alleges a material change of use requiring permission, and that the works to the roof required permission because they were integral to the said change of use. It is agreed by the parties that but for this alleged link the changes to the roof would have been permitted under the General Permitted Development Order (GPDO), and I concur.
4. It follows that whether there has been a material change of use is central to both aspects of the appeals. A necessary starting point is to establish what the lawful original use was. This is disputed between the parties. The Council refers to use as a Dwellinghouse (C3)<sup>1</sup>, on the basis that a 2013 planning permission for a change of use to 7 bed house in multiple occupation (HMO) was not implemented<sup>2</sup>. The Appellant considers that the premises were in lawful use as a small HMO before the 2013 permission, that this had been implemented, and that the increase to the present 9 bed HMO use did not amount to a material change of use.
5. I shall consider these and related matters below.

### **The previous use of the premises**

6. The appeal premises were built in the last century as a semi-detached dwelling part of an estate of similar buildings. In April 2013 the Council made an Article 4 Direction removing GPDO rights to changes of use from C3 dwellinghouse to C4 HMO use in this area. It follows that the Council's reference to the absence of a continuous 10 year C4 use prior to that date is not relevant. As to whether there was as claimed by the Appellant a C4 use before the Article 4 Direction took effect I consider the most direct evidence is in the grant of planning permission by the Council in December 2013 for *Change of use from small house in multiple occupation (C4) to 7 bed house in multiple occupation (Sui Generis) incorporating alterations to fenestration. (Part retrospective)*. Given that the Council had just secured an Article 4 Direction to control changes from family dwellinghouses to HMO I consider it most unlikely that they would have accepted without adequate enquiry an applicant's claim that the property was already in multiple occupation. This is particularly the case as the Council had that same year refused permission to a similar application for an 8 bed HMO without providing what the Council considered adequate communal space. I conclude on the balance of probability the property was in C4 use in 2013.
7. As to whether the 2013 permission was implemented, the permission itself states that the proposal was in part retrospective. Two conditions precedent barred occupation before cycle parking and recycling storage were provided, and they have been provided. In 2014 the Council issued an HMO licence for occupation by 8 persons. As the roof works/rooms had not been built then, this would have required using the communal living room shown on the approved plans as a bedroom. The Council considers that this increase in occupation above that approved was a breach of planning control. As the 2013 permission

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987 relates.

<sup>2</sup> The January 2018 decision on the LDC application states, however, that there had been a change from a Sui Generis HMO for 7 occupants, and a Council appeal statement provided on 17 July 2018 states at 3.5 that *....the lawful use of the property was as a seven person HMO laid out over two floors.*



included as condition No 1 that the development permitted ... *be carried out in accordance with the approved drawings listed below...* it may well be that the failure to provide the communal room was in breach thereof<sup>3</sup>. It does not, however, necessarily follow that any departure from the approved plans meant that the 2013 approval had not been implemented. This is a matter of fact and degree, to be decided on the individual circumstances of a particular case. I have taken into account that a change of use from C4 to a larger *house in multiple occupation (Sui Generis)* had taken place, that conditions precedent requirements had been met, and that the layout shown on the approved plans was in the main implemented. I have concluded that the 2013 permission was implemented. Having reached this conclusion I do not need to consider the Appellant's disputed claim that a period of 7 bed use with the living room provided preceded the 8 bed use that followed its use as a bedroom .

8. The roof alterations were made from June to November 2017. Thereafter they provided two rooms on a new attic floor. The property was then occupied by 9 persons and has an HMO licence for that number. The present arrangement of rooms includes the provision of the communal living room shown in the 2013 approved plans.

### **The appeal on legal grounds (b) and (c) against the enforcement notice**

9. From the foregoing consideration and conclusions I now turn to the two legal grounds of appeal. As to the appeal on ground (b), it is not in dispute that the dwelling is being used as a nine bedroom house in multiple occupation, and that the works to the roof have taken place. The appeal on ground (b) therefore fails. The Appellants legal case turns rather on ground (c), which seeks to establish that what has happened did not amount to a material change of use requiring planning permission, and that accordingly the works to the roof were permitted development.
10. For the reasons stated I have concluded that the lawful use of the premises is as a 7 bedroom house in multiple occupation (*Sui Generis*) as approved in 2013. It is thus the change from that state to the present one that needs to be considered. The change from 7 to 9 bedrooms is a significant proportionate increase, but I consider that it has not altered the perceived character of the use. The physical changes to the roof complied with GPDO size and form requirements and thus were within the range of changes potentially normal within the nearby similar houses. As to the wider planning effects of increased use, additional HMO accommodation at this site breaches policy objectives for the distribution of HMO accommodation, though the wording of the relevant policy<sup>4</sup> appears to focus upon preventing the formation of new HMO rather than the enlargement of an existing one. The significance of this departure from policy is, however, markedly reduced by the acceptability of larger *Sui Generis* HMO use of the premises as established by the 2013 permission<sup>5</sup>. Additionally the planning objection to an 8 bed HMO earlier that year emphasised the absence of sufficient communal space, and the 2013 7 bed approval followed upon an amended plan showing the present living room in that rather than bedroom use. There is indeed no evidence that the standard of accommodation for occupiers is inadequate. As to direct effect upon neighbours, there is no

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<sup>3</sup> I do not, however, formally determine this matter as it is not before me for decision. I note that no condition was imposed expressly seeking to retain the communal room or limiting the number of bedrooms.

<sup>4</sup> CP21 of Brighton and Hove City Plan 2016.

<sup>5</sup> In this regard I note that the officer report expressly acknowledges that the 2013 permission remains extant and is not time sensitive.

evidence of any complaint since completion of the roof works and provision of the living room<sup>6</sup>.

11. Having regard to the foregoing matters I have concluded as a matter of fact and degree that there has not been a material change of use of the premises. The appeal on ground (c) thus succeeds, and the enforcement notice will be quashed. In these circumstances the disputed question of whether the alleged change of use and the roof works were so closely associated as make the roof works liable to enforcement action is no longer relevant. Similarly the appeals on grounds (f) and (g) against the enforcement notice are no longer before me for decision.

### **The LDC appeal**

12. As the refusal of the LDC application for the roof works was founded upon the claimed material change of use of the premises, my decision to the contrary set out above leads to the further conclusion that the decision to withhold an LDC was not well advised. The appeal will therefore succeed and I will issue an LDC for the development which I consider lawful.
13. I have taken into account all the other matters raised in the representations, including numerous appeal decisions and judgements variously helpful but covering a wide variety of situations and evidential range, but do not find that they alter or are necessary to my conclusions on these appeals.

### **FORMAL DECISIONS**

#### **Appeal A - Ref: APP/Q1445/C/18/3203508 – enforcement notice appeal**

14. The appeal succeeds and the enforcement notice is quashed.

#### **Appeal B - Ref: APP/Q1445/X/18/3196654 – the LDC appeal**

15. The appeal succeeds and a Certificate is granted, and attached.

*V F Ammoun*

INSPECTOR

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<sup>6</sup> A complaint about noise disturbance was made in 2015.



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 14/09/2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would accord with the requirements of Schedule 2, Part 1, Classes B, C, and G of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

*V F Ammoun*  
Inspector

Date: 22 March 2019

Reference: **APP/Q1445/X/18/3196654**

### **First Schedule**

*Conversion of loft space, including hip to gable side extension and dormer to rear as shown on the plans accompanying application BH2017/03120.*

### **Second Schedule**

Land at 20 Ashurst Road, Brighton, BN2 4PH.

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Appeal Decision

Site visit made on 12 March 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor  
an Inspector appointed by the Secretary of State

**Decision date: 23 March 2019**

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### **Appeal Ref: APP/Q1445/C/18/3201967 39 Newmarket Road, Brighton BN2 3QG**

- The appeal is made by Pelham Property Ltd under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 2016/0244) issued by Brighton & Hove City Council on 28 March 2018.
  - The breach of planning control alleged in the notice is "a material change of use from Single Dwellinghouse (Use Class C3) to House in Multiple Occupation (Use Class C4)".
  - The requirement of the notice is "Cease the use of the property as a House in Multiple Occupation (HMO)".
  - The period for compliance with the requirement is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g).
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### **Background and clarification**

1. It is my understanding that the dwellinghouse was originally built as a dwellinghouse with two storeys and a basement. At some time during the history of the dwellinghouse, the basement became an independent unit of accommodation, separately occupied, with its own entrance from the road and with no internal connection to the remainder of the original dwellinghouse.
  2. The remainder continued in use as a dwellinghouse and exists as such to this day. The enforcement notice is directed at its change from a single dwellinghouse within Class C3 to a dwellinghouse used by not more than six residents as an HMO, which falls within the new Class C4 that came into force in April 2010. This change would normally be permitted development if it took place after October 2010, but in April 2012 the Council made an Article 4 Direction that withdrew the permitted development right to make this change in this part of Brighton with effect from 5 April 2013. The Direction is not retrospective.
  3. I am aware of the earlier appeals decision (APP/Q1445/C/17/3166639/40), where the enforcement notice was quashed because it was found to be unclear and invalid. Neither the Council nor the appellants are claiming in the current appeal that this is the case; the principal facts and the legal framework are not in dispute, apart from the date on which the change of use took place. I am satisfied from my analysis of the circumstances that both parties to the appeal are in no doubt about the meaning and import of the notice and that it is valid.
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## **Decision**

4. The appeal is allowed and the enforcement notice is quashed.

## **Reasons for the decision**

### *Ground (c)*

5. The appellants maintain that the change of use was permitted development at the time when it was instituted. They have produced a statutory declaration made by the person who was the owner of the dwellinghouse between July 2013 and February 2016, in which he states that when he viewed it as a prospective purchaser in March 2013 it was occupied as an HMO.
6. In support of the declaration, this person has produced a copy of an assured shorthold tenancy agreement dated 2 January 2013 entered into between the previous owner and three apparently unrelated individuals, which grants a tenancy of the dwellinghouse to them for a period of six months commencing on that date. The agreement is signed by all the parties, dated and witnessed. Attached to it is a signed copy of the statutory notice under the Tenancy Deposit Scheme. Copies of the assured shorthold tenancy agreements entered into from August 2013 onwards have also been supplied.
7. In response, the Council state that it cannot be concluded that the change of use occurred before 5 April 2013. They maintain in their appeal statement that Council Tax records show a single occupant, Dallas Joe Harris, between August 2012 and March 2013 and two occupants, Paul Caar [*sic*] and Amanda Harris, between March 2013 and July 2013. At my request, the Council have supplied copies of all the Council Tax records to which they have referred.
8. Dallas Joe Harris is shown as a single occupant between August 2012 and March 2013, but the entry is in respect of a "maisonette". This is the only Council Tax record that refers to a maisonette here and this could be a reference to the basement accommodation. Amanda Harris and Paul Carr are not shown as occupants at all; their contact addresses are elsewhere and they are shown as being responsible, but only as owners, for the payment of Council Tax due up to 11 July 2013, with the property being recorded as unfurnished between 29 March 2013 and 12 May 2013. The person who gave the statutory declaration is recorded as the new owner on 12 August 2013, which is the date from which the dwellinghouse is recorded as being wholly occupied by students.
9. The Council Tax records supplied to me are not necessarily inconsistent with the appellants' account of events. On the balance of probabilities, it seems most likely that the dwellinghouse became an HMO within Class C4 on 2 January 2013 and that it was in use as an HMO when it was viewed in March 2013, before becoming vacant at the end of March until its ownership changed and it was re-let as an HMO within Class C4 in August 2013. I have therefore come to the conclusion that planning permission for the change of use from Class C3 to Class C4 was granted by Article 3(1) and Schedule 2, Part 3, Class I(b) of the Town and Country Planning (General Permitted Development) Order 1995 as substituted by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010. The gap in occupation in 2013 was a normal occurrence at times of changes in owners and

tenants; it did not affect this permission. The dwellinghouse has been occupied continuously as a Class C4 HMO since then.

10. The appeal has therefore succeeded on ground (c).

*Ground (g)*

11. As a result of the success of the appeal on ground (c), the enforcement notice has been quashed. Ground (g) no longer falls to be considered.

*D.A.Hainsworth*

INSPECTOR







## Appeal Decision

Site visit made on 4 February 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22<sup>nd</sup> March 2019

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### **Appeal Ref: APP/Q1445/W/18/3209645**

### **Beacon Mill, Nevill Road, Rottingdean, Brighton BN2 7HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Ms Helen Byrne against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/00114 is dated 13 January 2018.
  - The development proposed is the 'demolition of the existing house and construction of a new 4-Bedroom two storey dwelling with existing extended basement'.
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### **Decision**

1. The appeal is dismissed and planning permission is refused.

### **Procedural Matter**

2. The Council failed to determine the application within the appropriate timescale. The Council has confirmed, however, that had it been in a position to do so, the application would have been refused for reasons of scale and massing and consequent impact on the Sheep Walk and Nevill Road streetscenes and the wider area, particularly the setting of the Rottingdean Conservation Area, the setting of the Beacon Listed Windmill and the setting of the South Downs National Park.

### **Main Issue**

3. In light of the above, I consider the main issue in this case to be the effect of the proposal on the character and appearance of the surrounding area, including the South Downs National Park (NP), the setting of the Grade II Listed Rottingdean Windmill and the setting of the nearby Rottingdean Conservation Area (CA).

### **Reasons**

4. The appeal relates to a detached bungalow which sits behind No. 50 Nevill Road. It is a simple dwelling and it is noticeably smaller than the two storey houses on Nevill Road.
  5. Although of limited height, the bungalow is quite prominent in the landscape due to its position at the top of a hill and it is visible from the adjacent NP. It is
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also readily visible within Sheep Walk, which provides public access to the NP. Sheep Walk separates the appeal property from the CA which, within the vicinity of the appeal site, is very open and consists of allotments and the rear gardens of properties.

6. The bungalow occupies a large proportion of the plot but it is of limited height. Although the proposed replacement dwelling would include dormer windows, it would be noticeably taller with a much greater roof mass and it would sit further forward on the plot. As a result, the replacement dwelling would be much bulkier and far more prominent, particularly when viewed from the south on Sheep Walk looking towards the NP and also from within the NP itself. This would be harmful to the setting of the NP and the National Planning Policy Framework (the Framework) directs that great weight should be given to conserving landscape and scenic beauty in National Parks.
7. The Council has suggested that the proposed dwelling would affect the setting of the Grade II Listed Rottingdean Windmill. It would, however, sit a considerable distance from this listed building and I consider that the proposed replacement dwelling would have no greater impact on its setting than the several large dwellings nearby.
8. Although the existing dwelling is noticeable from the CA, it does not dominate the view due to its modest size. The materially greater scale and bulk of the replacement dwelling would be much more visible and overly prominent when viewed across the open allotments and gardens in this part of the CA. It would also appear overly prominent when viewed from the north end of Sheep Walk, where the views open out to the CA to the east. This harm would be '*less than substantial*' as directed by the Planning Practice Guidance, but I attach considerable importance and weight to the statutory duty imposed by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
9. The National Planning Policy Framework explains that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to say that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The appellant has not suggested there are any in this case.
10. In reaching my decision, I am mindful that planning permission has been granted to alter the existing bungalow, which includes an increase in its ridge height (Ref. BH/2015/03600). It is my understanding, however, that the approved scheme would have a hipped roof and low eaves and would retain the appearance of a traditional dormer bungalow. Whilst the scheme before me would have a similar ridge height, its overall scale and massing would be much greater than the approved scheme. As a consequence, its impact on the surrounding area would be much more harmful.
11. I am also mindful of the presence of some large properties along Nevill Road, including the dwelling currently being built at No. 48. I do not know the precise planning circumstances behind these dwellings, but in any event, they relate

more closely to Nevill Road itself and they are set further away from the more open area to the north adjacent to the NP than the appeal property.

*Other considerations*

12. In reaching my decision, I have considered the additional concerns raised by third parties which centre around the effect of the proposal upon their living conditions. The dwelling would be set a comfortable distance from No. 52 and its roof would rise away from the shared boundary. For these reasons, I am satisfied that it would not appear overbearing or cast undue shadow over the rear garden of this property. The use of rooflights would restrict overlooking and although a set of first floor French doors would sit towards the northern end of the dwelling, they would overlook only the very bottom of this garden. As a result, I am satisfied that the level of overlooking would not exceed that which should be reasonably expected within a residential area.
13. The proposed dwelling would be set off the boundary shared with the rear garden of No. 50 Nevill Road with its hipped roof rising away. I am satisfied that this arrangement would safeguard a reasonable outlook for the occupier(s) of this property and would ensure the levels of natural light available to it remained adequate. The first floor window on the side elevation of the proposed dwelling which would face No. 50 would serve a walk-in wardrobe and could be fitted with obscure glazing to prevent overlooking.
14. The appellant asserts that the bungalow has fallen into a condition beyond economic repair. However, no evidence has been advanced to support this claim and in any case, I see no reason why a more appropriately scaled dwelling could not replace it. I am also mindful that the proposed dwelling would incorporate energy efficient technology, it would be built to Lifetime Homes standards and it would provide a guest suite for the appellant's elderly father. Likewise, nothing I have seen or read would suggest that these positive elements could not be achieved via a dwelling that responds more positively to its surroundings.

**Overall Conclusion**

15. Although I am satisfied that the proposal would not unduly impact on the living conditions of the occupiers of nearby dwellings or the setting of the Rottingdean Windmill, it would harm the character and appearance of the local area, including the NP and CA. As such, the proposal conflicts with the Framework, policies CP12, CP15 and SA5 of the adopted Brighton & Hove City Plan Part One and policy HE6 of the Brighton & Hove Local Plan, which all promote a high standard of design that responds positively to its surroundings, including the setting of protected landscapes and Conservation Areas.
16. The arguments advanced by the appellant in favour of the scheme do not outweigh this harm and policy conflict therefore the appeal does not succeed.

*David Fitzsimon*

INSPECTOR





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## Appeal Decision

Site visit made on 14 December 2018

by **G Ellis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **21<sup>st</sup> March 2019**

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**Appeal Ref: APP/Q1445/W/18/3203553**

**67 Dyke Road, Brighton, BN1 3JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Jo Weeks against the decision of Brighton and Hove City Council.
  - The application Ref BH2017/03879, dated 23 November 2017, was refused by notice dated 1 May 2018.
  - Extension above existing single storey shop to create 1 No maisonette. Rearrangement of and alterations to shopfront.
- 

### Decision

1. The appeal is dismissed.

### Preliminarily Matters

2. The description of the proposal is taken from the application form, however it is noted that during the course of the application a revised description of 'The erection of two-bedroom maisonette (C3) above existing shop (A1) with associated alterations' was agreed.

### Main Issues

3. The main issues are the impact of the development on: -
  - i) the character and appearance of the Montpelier and Clifton Hill Conservation Area and the setting of nearby listed buildings, and
  - ii) the living conditions of the adjoining properties 14 Clifton Road and 79 Dyke Road with regards to overshadowing, light and outlook, and the occupiers of proposed development with regards to light and outlook.

### Reasons

#### *Character and Appearance*

4. The site is located on the edge of The Montpelier and Clifton Hill Conservation Area which covers a wide area and contains mainly residential properties interspaced with groups of shops. Part of its character is from the hilly terrain and long rows of terrace/villa houses. Opposite the site is a large modern block of flats which extends up to 5 storeys on the corner.

5. The existing property is a single storey flat roofed retail unit located at the corner of Dyke Road and Clifton Road. It is at an intersection between the large residential properties along Clifton Road and the retail area on Dyke Road leading down to Seven Dials. Whilst the building in itself is not of any merit the site together with the adjoining single storey garage and retail unit provide a visual break in the street scene. The low-level buildings also enable views of the oak tree and the rear of the listed buildings in Montpelier Crescent over the existing building. It therefore plays a part in contributing towards the character and appearance of this part of the Conservation Area.
6. The proposed development would add two storeys to the building with the upper floor located within a mansard roof with dormer windows to the front and both sides. The proposal has been well designed to maximise the narrow slightly cranked triangular plot and incorporates traditional materials and features reflective of the area. Notwithstanding this, in my view the scale of the development, in particular the roof, would be bulky in the context of its plot and dominant in the street scene. Being a narrow building and detached from others of a similar height the scale and depth of the structure would be viewed from each side. While the windows and recess panels would provide details and rhythm to the expansive side elevations these would not sufficiently alleviate the harmful impact of the proposal on the setting of the neighbouring properties and street scene.
7. The design seeks to align the property with Clifton Road, however in my view the width and form of the building in this transitional location would not preserve the appearance of this part of the Conservation Area. The level of harm would be less than substantial, however the public benefits of providing additional housing to help meet the City's needs would not outweigh the identified harm.
8. The site backs onto the rear gardens of the Grade II\* listed buildings on Montpelier Crescent. The proposal would be some distance away from the less-important rear facades of the listed buildings and would share a similar relationship between the listed buildings and other three storey dwellings in Clifton Road. Thus, the proposal would have no material impact on the buildings' setting and I find no conflict with Brighton and Hove Local Plan (LP) policy HE3 in this regard.
9. I therefore conclude that the proposal would conflict with LP policy QD14 which requires extensions to take account of the relationship with the adjoining properties and character of the surrounding area. In addition, the proposal would conflict with LP saved policy HE6 and the general provisions of Brighton and Hove City Plan Part One, March 2016, policy CP15 which seek to preserve and enhance Conservation Areas.

#### *Living Conditions*

10. Due to the height and scale of the development introduced into an existing gap it would undoubtedly change the relationship with the neighbouring properties. 14 Clifton Road benefits from side windows at all levels which face the appeal site. The layout is such that windows on the side facing 14 Clifton Road serve either bathrooms or are secondary windows which could be obscurely glazed and therefore would not result in direct overlooking. However, given the proximity and depth of the building it would in my view have an overbearing impact and result in a loss of outlook for the occupiers of 14 Clifton Road.

11. To the north, 79 Dyke Road, is angled towards the site. There is a small garden with an oak tree which is located close to that building. The additional storeys would in my view further enclose and overshadow this area having an adverse impact on the living conditions of the occupiers of the basement apartment. Windows serving a bedroom and kitchen would also overlook the garden at 79 Dyke Road. Obscure glazing could be conditioned to mitigate any potential overlooking; however, this would result in a bedroom with no outlook to the detriment of the living conditions within the new dwelling. I therefore conclude that the proposal would conflict with LP policy QD27, which seeks to protect amenity, and policy QD14 which amongst other things requires extensions not to result in a loss of privacy, outlook daylight/sunlight or amenity to neighbouring properties.

#### *Other Matters*

12. The appellant has referred to other appeal decisions including a previous appeal on this site dated October 2006<sup>1</sup>. Whilst I agree that the proposed design is more traditional and in keeping, I find that it would still be bulky and visually dominant. Although the previous Inspector found no harm to privacy, the proposal in that case did not involve windows to a bedroom and kitchen facing 79 Dyke Road, as is the case here. In respect of the harm to character and appearance and the effect on outlook, the previous Inspector's concerns have not been overcome.
13. With reference to 26a West Hill<sup>2</sup> I have had regard to the Inspector's assessment in relation to the impact on the conservation area, however, the proposals are different, and I have considered this scheme on its own merits and specific site context.

#### **Conclusion**

14. Having regard to the matters set out above, and with due regard to all other matters, I conclude that the proposal conflicts with the development plan as a whole, and that the appeal should be dismissed

*G Ellis*

INSPECTOR

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<sup>1</sup> APP/Q1445/A/06/2014342

<sup>2</sup> APP/Q1445/A/13/2206383





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## Appeal Decision

Site visit made on 4 February 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22<sup>nd</sup> March 2019

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**Appeal Ref: APP/Q1445/D/18/3218411**  
**23 Robert Street, Brighton BN1 4AH**

- 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 Jared Gunn against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/02828, dated 10 September 2018, was refused by notice dated 20 November 2018.
  - The development proposed is a 'roof extension to convert existing butterfly roof to a set back mansard roof to comprise 1 no. en-suite bedroom'.
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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 and appearance of the host dwelling and the North Laine Conservation Area, along with its effect on the living conditions of the occupiers of nearby properties with particular regard to privacy and noise and disturbance.

### Reasons

#### *Character and appearance*

3. The appeal relates to dwelling within a row of similar traditional terraced properties. Their general uniformity and consistent unbroken roof form makes a positive contribution to the character and appearance of Robert Street, which is located within the North Laine Conservation Area (CA).
  4. The proposal seeks to effectively replace the existing traditional butterfly roof with an asymmetrical structure which would have a box like finish to the rear and a mansard style appearance to the front elevation. It would be recessed from both main elevations, allowing balconies to be introduced to the roof.
  5. Given that the proposed addition would be recessed and would sit behind the existing parapet wall to the front elevation, only glimpses of it would be achievable from Robert Street. Nevertheless, it would be a bulky structure and even accounting for the presence of chimneys and TV aerials which break up the skyline, it would completely disrupt the traditional roof form of the appeal
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dwelling and the row within which it sits. Further, the rear section would be visible from the neighbouring courtyards.

6. This design approach would be in direct conflict with the Council's adopted Supplementary Planning Document 09 titled '*Architectural Features*' (SPD) which explains that in the case of historic buildings in Conservation Areas, consideration must be given to the impact of any changes to the roof form not only on the appearance of the building itself but also on the common roofscape of the street or group of buildings of which it forms a part, and where there is a uniformity of roof form that uniformity must be retained.
7. For this reason, I consider that the proposal would amount to an unsympathetic addition which would harm the character and appearance of the host dwelling and the row within which it sits. As a result, it would harm the character and appearance of the CA. This harm would be '*less than substantial*' as directed by the Planning Practice Guidance, but I attach considerable importance and weight to the statutory duty imposed by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. As such, it conflicts with policies QD14 and HE6 of the adopted Brighton & Hove Local Plan, policy CP15 of the adopted City Plan Part One and the SPD which collectively promote high quality design that respects and responds well to heritage assets.
8. The National Planning Policy Framework explains that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to say that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, the appellant has not suggested that the proposal would bring about any public benefits.

#### *Living conditions*

9. As explained, the proposal would have small roof terraces to the front and rear. Given the recessed nature of the proposed addition, I am satisfied that it would not appear overbearing or cast undue shadow over nearby properties. I am also satisfied that overlooking from the front roof terrace would be limited, whilst any noise and disturbance would be no greater than residents would normally expect to experience in a busy street which is close to a vibrant night time economy.
10. To the rear, I consider that the roof terrace would be more harmful. I am satisfied that if used considerately, it would not generate undue noise and disturbance. Nevertheless, the terrace would directly overlook the small rear courtyards of the other properties within the row. The effect would be unduly invasive for residents when attempting to enjoy these outside spaces. Whilst I note the appellant's reference to a second floor Juliet balcony at No. 24 Robert Street, this does not amount to an elevated space where people might spend prolonged periods of time like the rear terrace before me.
11. For these reasons, although I am satisfied that the proposal would not lead to undue noise and disturbance, it would be unduly invasive for nearby residents.

In such terms, it conflicts with policies QD14 and QD27 of the LP, which seek to safeguard appropriate living conditions for existing residents.

*Other considerations*

12. The appellant refers to other roof-related developments within the locality. However, I do not know the precise planning circumstances behind the examples highlighted. Further, none appear directly comparable to the scheme before me which I have considered on its individual merits and against the specific context within which it would sit in any event.
13. In reaching my decision, I appreciate that the proposal would improve thermal efficiency of the property without impacting on floor to ceiling heights, but this positive aspect of the scheme does not outweigh its failings.

**Overall Conclusion**

14. I conclude that the proposal would harm the character and appearance of the host dwelling, the row within which it sits and the CA, and it would also be invasive for the occupiers of nearby dwellings, contrary to the development plan policies outlined above. The arguments advanced by the appellant in favour of the scheme do not outweigh these failings and policy conflict therefore the appeal does not succeed.

*David Fitzsimon*

INSPECTOR



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## Appeal Decision

Site visit made on 28 February 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 March 2019**

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**Appeal Ref : APP/Q1445/C/18/3199386**

**Land at 9 Isfield Road, Brighton, BN1 7FE**

- 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 Damien Zasikowski against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 26 February 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the property from a single dwellinghouse (C3) to a small House in Multiple Occupation (C4).
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.**

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### Application for costs

1. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.

### Preliminary matter

2. The Appellant disagrees with the reasons for issue of the notice and argues that the Council made a mistake in terms of the number of bedrooms in the property. He says that he is prepared to accept conditions including restricting the number of occupants. But there is no ground (a) appeal and deemed planning application before me. It is not within my remit in this appeal to consider the future permitted use of the property nor the planning merits of the unauthorised use.

### Ground (b) appeal

3. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests upon the Appellant and the test of evidence is the balance of probabilities.
4. An Article 4 Direction applies to the appeal site removing permitted development rights from development consisting of a change of use from Class C3 to Class C4.

5. The Appellant argues that the change of use from Class C3 to Class C4 alleged in the notice has not occurred as a matter of fact. He says that the appeal site is in use as a single dwellinghouse within the meaning of Class C3(c) and is not a house in multiple occupation within the meaning of Class C4.
6. Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) comprises use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). For the purposes of Class C3 (a) single household is to be construed in accordance with section 258 of the Housing Act 2004. Use Class C4 comprises use of a dwellinghouse by not more than six residents as a house in multiple occupation. Section 254 of the Housing Act defines a house in multiple occupation (HMO).
7. There is no dispute that the property is occupied by five students who moved in together as friends. The fact that they are unrelated is not conclusive as to whether they live together as a single household. In determining whether a Class C4 HMO use has occurred as a matter of fact I have taken into account relevant factors, including those identified in the Barnes<sup>1</sup> case. On balance I am not satisfied that the evidence shows that a Class C4 use as alleged in the notice has not occurred as a matter of fact. Whilst the Appellant's evidence does not need to be independently corroborated in order to be relied upon in this case it does not cover relevant matters in sufficient detail to enable me to draw a conclusion that the occupiers are living together as a single household within the meaning of Class C3(c). For example, there is no evidence before me as to where responsibility rests to recruit occupiers in the event that one of the occupiers leaves, nor the method of room allocation, nor the stability of the group composition. I have taken into account that the occupiers comprise a pre-formed group of friends who have a joint tenancy agreement with the Appellant but on balance in this case the sharing of basic facilities by five unrelated individuals suggests use of the dwellinghouse as a house in multiple occupation within the meaning of Class C4.
8. I conclude on the evidence before me that the Appellant has not discharged the burden of proof that rests upon him to show on the balance of probabilities that a Class C4 use has not occurred as a matter of fact. Consequently, the ground (b) appeal fails.

### **Ground (c) appeal**

9. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The Appellant argues that the manner in which the dwellinghouse is used is so similar to a Class C3(c) use that it is not a material change of use.
10. It is not the purpose of a ground (c) appeal to run planning arguments as to the merits of the development more relevant to a ground (a) appeal. The change from Class C3 to C4 is not de minimus. It has the potential to change

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<sup>1</sup> Barnes v Sheffield CC (1995) 27 HLR 719

the character of the land and the Council has a policy objective aimed at preventing the incremental impact of such changes affecting the balance of housing in the area.

11. On the evidence before me I conclude that the matters alleged constitute a breach of planning control and require planning permission. Consequently, the ground (c ) appeal fails.

**Formal Decision**

12. The appeal is dismissed and the enforcement notice is upheld.

*S. Prail*

**Inspector**





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## Appeal Decision

Site visit made on 28 February 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 March 2019**

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**Appeal Ref : APP/Q1445/C/18/3198449**

**Land at 55 Hartington Road, Brighton, BN2 3LJ.**

- 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 Andrew Marchant against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 5 February 2018.
- The breach of planning control as alleged in the notice is without planning permission erected a single storey rear extension, rear dormer and 2no front rooflights to facilitate unauthorised change of use from HMO (C4) to HMO (Sui Generis).
- The requirements of the notice are to remove the single storey extension from the rear outrigger, remove the rear dormer, remove the 2no front rooflights.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c ), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is allowed and the enforcement notice is quashed.**

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### Ground (b) appeal

1. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The burden of proof rests upon the Appellant and the test of evidence is the balance of probabilities.
2. The Appellant says that there have never been 2 rooflights on the front elevation. He says that there has always been one single rooflight within the front roofslope. The Council makes no comment on this ground of appeal.
3. The Appellant's evidence does not need to be independently corroborated in order to be relied on and in this case there is no contradictory evidence before me to cast doubt upon it. It is also consistent with the site as I observed it at my site visit.
4. I conclude as a matter of fact that the alleged breach of planning control comprising 2 no front rooflights has not occurred as a matter of fact and to this extent this ground of appeal succeeds.
5. It is open to me to correct the notice if doing so would not cause injustice to either party. I am satisfied that no injustice would be caused and therefore I shall exercise my power of correction and consider the deemed planning application in the ground (a) appeal which will now relate to the corrected allegation, if appropriate.

## Ground (c) appeal

6. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission. The meaning of development in section 55 of the 1990 Act is the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land. In this case the notice alleges specific operational works to facilitate an unauthorised change of use from HMO(C4) to HMO (sui generis) and its requirements concern removal of the operational works.
7. The onus rests upon the Appellant to show that on the date of issue of the notice either there was a planning permission in place for the development the subject of the notice or that it benefits from permitted development rights. He argues that the property is in its lawful C4 use and that therefore the works do not facilitate an unlawful change of use, that the works benefit from planning permission by virtue of previous underenforcement and that the rear dormer and rooflight benefit from permitted development rights.

### Change of use

8. The Council argue that the development sequence in this case indicates that the physical works cited in the notice were necessary to facilitate a change of use to a large HMO. It follows they argue that as the physical works were part and parcel of a change of use permitted development rights within the GPDO do not apply and planning permission is required for the development as a whole. They draw to my attention a body of case law including *Murfitt*<sup>1</sup>, *Somak Travel*<sup>2</sup>, *Bowring*<sup>3</sup> and *Kestrel Hydro*<sup>4</sup>. But these cases concern the power to remedy a breach of planning control and do not support an argument that permitted development rights do not apply in this case. They also draw attention to a number of appeal decisions but I do not know the particular circumstances of these sites and none appears to be on all fours with the facts in the appeal.
9. I have considered the evidence before me as to the sequence of events. It shows that the use of the site as a large HMO has ceased. The works are therefore not currently facilitating an HMO sui generis use and I am not satisfied that the works were part of parcel of the previous HMO use. I note that Building Control records indicate that works involving the dormer, rear extension and internal works were undertaken together but I do not have the detail before me and this is not conclusive as to whether the works were integral to a large HMO use. On the evidence before me I cannot be certain that the operational works were carried out solely to facilitate a change of use to a large HMO.

### Rear extension and roof alterations

10. An enforcement notice was issued in 2017 (the 2017 Notice) requiring the use of the appeal site as a sui generis large HMO to cease. It did not require the removal of any operational works including the works the subject of this notice.

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<sup>1</sup> *Murfitt v Secretary of State and East Cambridgeshire DC* (1980)

<sup>2</sup> *Somak Travel Ltd v SoS* (1988)

<sup>3</sup> *Bowring v SoS* (2016)

<sup>4</sup> *Kestrel Hydro v SoS* (2016)

11. Section 173(11) of the 1990 Act provides that where an enforcement notice in respect of any breach of planning control could have required any works to be removed but does not do so and all the requirements of the notice have been complied with then so far as the notice did not so require planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities. In this case the 2017 Notice did not require the removal of the rear extension which was in place at that time and there is no dispute that the 2017 notice has been complied with. It therefore follows that planning permission shall be treated as having been granted for the works the subject of the under enforcement. The Council puts no counter argument before me on this point.

#### Rear dormer and rooflight

12. The Appellant argues that the rear dormer and rooflight benefit from permitted development rights by virtue of Schedule 2 Part 1 Class B and Class C respectively of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended )(the GPDO). There is no evidence before me from the Council to suggest that the conditions and limitations of Class B and C are not met and I have no reason to conclude otherwise. I conclude that the rear dormer and rooflight benefit from permitted development rights and therefore do not comprise a breach of planning control.
13. For the reasons given I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed and there is no need for me to correct it in accordance with my conclusions on appeal (b) before doing so. In these circumstances the appeal under grounds (a), (f) and (g) including the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

#### **Formal Decision**

14. The appeal is allowed and the enforcement notice is quashed.

*S.Praill*

**Inspector**





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# Appeal Decision

Site visit made on 22 January 2019

**by Philip Willmer BSc Dip Arch RIBA**

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

**Decision date: 27<sup>th</sup> March 2019**

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## **Appeal Ref: APP/Q1445/W/18/3208498**

### **9 The Upper Drive, Hove, East Sussex, BN3 6GR.**

- 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 Copsemill Properties Ltd against the decision of Brighton and Hove City Council.
  - The application Ref BH2017/04139, dated 14 December 2017, was refused by notice dated 15 May 2018.
  - The development proposed is described as *extension and alterations to provide enlarged 2 bed flat at first floor level, and 2 no additional flats at second and third floor level, and associated parking.*
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## **Decision**

1. The appeal is allowed and planning permission is granted for extension and alterations to provide enlarged 2 bed flat at first floor level, and 2 no additional flats at second and third floor level, and associated parking at 9 The Upper Drive, Hove, East Sussex, BN3 6GR in accordance with the terms of the application, Ref BH2017/04139, dated 14 December 2017, and the plans submitted with it, subject to the conditions set out at the end of this decision letter.

## **Procedural Matters**

2. Following the submission of this appeal, planning permission was granted, Ref: BHW20189/03117, on the 17 January 2019 for the extension and alterations to the appeal property to provide an enlarged two bed flat at first floor level, and two number additional flats at second floor level, and associated parking.
3. The first floor of the approved scheme is identical to the appeal proposal. However, at second floor level, apartment 26 is larger than that approved, with the inclusion of a master bedroom and en-suite located at the north-eastern corner of the building. Apartment 27 is also larger, due to the inclusion of an additional bedroom and associated en-suite, again at the north-eastern corner.

## **Main Issues**

4. I consider the main issues to be:
  - the effect of the proposed development on the character and appearance of the surrounding area; and,
  - the effect of the proposal on the living conditions of the occupiers at number 13 The Upper Drive having particular regard to visual impact and privacy.

## **Reasons**

5. The appeal relates to Block D, a part two-storey, part three-storey block of four two-bedroom flats and one, one-bedroom flat on the northern side of The Upper Drive.
6. Block D is one of five similar blocks, comprising some 41 flats in total, that vary between three and four storeys in height. It is located at the eastern end of the development and was built to be lower in height than the neighbouring blocks to the west.
7. As I saw, the area has been much developed such that the prevailing character of the north side of the road comprises generally flatted development, with only a few remaining traditional dwelling houses.

### *Character and appearance*

8. The appellant proposes the vertical extension of the block to provide an enlarged two-bedroom flat at first floor level (apartment 23), one, two-bedroom flat at second floor level (apartment 26), and one, three-bedroom flat and terrace at third floor level (apartment 27), with off-street car and cycle parking.
9. The proposed extension would result in Block D being almost identical in height to the neighbouring blocks to the west. Nevertheless, the design does allow for a step down in height adjacent to the boundary to 13 The Upper Drive, a large detached house. The proposed extension would follow the design approach of the original development and would represent only a limited increase in built form over the previously approved scheme. Accordingly, I consider that the increase in height would not, in this case, be out of character in its context.
10. The design proposes external materials to match the existing. In my judgement this would be the correct approach in this context complying with Saved Policy QD14 of the Brighton and Hove Local Plan 2005 (Adopted July 2005) (LP) which requires materials to be sympathetic to the present building. Additional tree planting and landscaping has been suggested by third parties. However, given that all of the additions proposed are at the upper floor levels, I am not persuaded that this would reduce the visual impact of what in any case would be a well mannered complementary design in terms of its massing and design detailing.
11. I therefore conclude, in respect of the first main issue, that the proposed development would not cause harm to the architectural integrity of Block D or the existing development as a whole and thus there would be no harm to the prevailing character and appearance of the area.
12. It would therefore accord with saved Policy QD14 of the Brighton and Hove Local Plan 2005 (Adopted July 2005) (LP) and Policy CP12 of the Brighton and Hove City Council's Development Plan - *Brighton and Hove City Plan Part One* (Adopted March 2016) (CP) which together and among other things seek to secure high quality development that respects the diverse character of the urban grain.

### *Living conditions*

13. There would be a small encroachment of development, over what has been approved, towards the eastern flank of the building. However, in my judgement I consider, given the relationship of the neighbouring properties one to another and the existing screen planting, that this would not, necessarily, result in the

development appearing so overbearing as to cause harm to the neighbouring occupiers' amenity at number 13 The Upper Drive.

14. Furthermore, the eastern flank wall of the third floor addition would be set back away from the eastern flank wall of Block D. Accordingly, given the height of the block as developed and this set back, the increase in development at this level over what has previously been approved would result in an un-neighbourly and overbearing form of development.
15. The boundary between Block D and number 13 The Upper Drive is well screened. Nevertheless, the proposed additional windows at first and second floor level in the eastern elevation, and the roof terrace at third floor level of the proposed development could, in my judgement, result in a perception of overlooking leading to a perceived loss of privacy for those using the private garden and the conservatory to the rear of number 13.
16. However, none of these windows in the eastern flank wall of the development serve habitable rooms and therefore they could be obscure glazed and non-opening below 1.7 metres above the floor level of the room or space they serve. This is a matter that, if I were minded to allow the appeal, could be addressed by condition thereby overcoming this concern.
17. A third floor roof terrace is proposed in connection with apartment 27. The same arrangement was consented as part of the recently approved alterations to the building. Officers confirmed in that case that the provision of a 1.7 metre high etched glass screen around the main portion of the terrace, which is located towards the front of the building, would be sufficient to prevent overlooking and potential loss of privacy for the occupiers of No 13 The Upper Drive. A condition restricted access to the rear part of the flat roof area for maintenance purposes only.
18. The arrangement referred to is clearly annotated on the submitted plans. I have no reason to take a different view from the Council and am satisfied that the measures proposed, which could be secured by condition were the appeal to succeed, are sufficient to ensure that there would be no material harm in terms of privacy for the adjoining occupier in terms of actual, or any perception of overlooking. In coming to that view, I also have regard to the rights of adjacent occupiers under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, in relation to respect for private and family life.
19. Accordingly, I am of the view that the proposed development would not result in any material harm to the living conditions of the occupiers of number 13 in terms of overlooking or loss of privacy.
20. I therefore conclude in respect of the second main issue that, subject to the imposition of conditions, the proposal would not cause material harm to the living conditions of the residential occupiers of number 13 The Upper Drive. It would therefore accord with saved LP Policy QD 27 which seeks to protect residential living conditions.

### **Other matters**

21. I appreciate and I am sympathetic to the concerns of neighbours about the possible disruption and disturbance during the course of the development. However, building works are a temporary operation and any noise and disturbance would be short lived. I have no reason to suppose, in this regard, that any developer would

not seek to complete the building works other than expeditiously, minimising any disruption or disturbance.

22. I am aware of local concerns about highway safety and parking. However, there is no substantiated evidence before me to demonstrate that the traffic movements and parking provision would be likely to result in material harm in this regard. In coming to that view, I am mindful that no objection is raised by the local planning authority on this matter.

### **Conditions**

23. The conditions follow from those suggested by the Council. I have considered the proposed conditions provided by the Council according to paragraph 55 of the National Planning Policy Framework and have modified the wording in the interests of precision.

24. In the interest of visual amenity, a condition is necessary to ensure that materials match those on the existing building.

25. To ensure the private amenity of neighbouring occupiers, I shall require the proposed new windows in the eastern elevation to be obscure glazed and non-openable below 1.7 metres. In addition I will require access to the flat roof area to the rear of the third floor roof terrace to be restricted. Further, in order to protect the privacy of adjoining occupiers I shall condition the erection and retention of the privacy screen shown to apartment 27 at third floor level.

26. Refuse and recycling storage facilities are to be made available and retained to protect the amenity of the development and the neighbouring area.

27. The vehicular parking spaces shown on the approved plans need to be provided and retained in the interests of highway safety. The cycle parking shown also needs to be provided and retained in order to encourage the use of sustainable travel modes.

28. To ensure the efficient use of water I will require each of the new units to be built to achieve a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption as required by CP Policy CP8. Further, to ensure that the development is sustainable and makes efficient use of energy, I shall require each residential unit to achieve an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulation standards.

29. The Council has suggested a condition to secure improvements to the pedestrian crossing at the junction of Caisters Close with The Upper Drive. I understand this was proposed in the interests of ensuring that the development is accessible to all, having regard to the potential for increase in pedestrian movements, some of who may be visually impaired, as a consequence of the development. However, in my judgement, given the limited scale of the development and lack of any substantive evidence to justify the need for this work, I do not consider it a necessary, relevant and reasonable condition in this case and therefore I have not attached it.

30. Finally, in the interests of certainty, I shall impose a condition requiring the development to be undertaken in accordance with the approved plans.

### **Conclusions**

31. For the reasons given above and having regard to all other matters raised, I conclude that the proposal is in accordance with the development plan, when read as a whole, and that the appeal should be allowed.



*Philip Willmer*

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 the following approved plans, drawings: 9151-01 to 09 inclusive and 11 to 23 inclusive along with another drawing numbered 09 but labelled *Site Plan as Existing* and dated Nov 2017.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) The extension hereby permitted shall not be occupied until the new windows in its eastern elevation of the development have been fitted with obscured glazing, and no part of those window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before any window is installed and once installed the obscured glazing shall be retained thereafter.
- 5) Access to that part of the flat roof area to the rear of the gated third floor roof terrace hereby permitted shall be for maintenance purposes only, as shown on plan No 9151-15, and shall not be used as a roof garden, terrace, patio or similar amenity area at any time.
- 6) The development hereby permitted shall not be occupied until the car and motorcycles parking spaces shown on the approved plans have been provided and made available for use. These facilities shall thereafter be retained for the use by the occupants of and visitors to the development at all times.
- 7) The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for the use by the occupants of and visitors to the development at all times.
- 8) The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been made available for use. These facilities shall thereafter be retained for use at all times.
- 9) The development hereby permitted shall not be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per day per day maximum indoor water consumption.
- 10) The development hereby permitted shall not be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 11) Apartment No 27 as shown on the approved plans shall not be occupied unless and until the 1.7 metre high etched glass screening, shown on drawing number 9151-15, has been erected in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once

installed, the glass screening shall be retained thereafter in accordance with the approved details.



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## Appeal Decision

Site visit made on 18 December 2018

**by J Davis BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 March 2019**

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**Appeal Ref: Q1445/W/18/3205935**  
**50 Heath Hill Avenue, Brighton, BN2 4FH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by John Talbot, Heath Hill Student Developments Limited against Brighton and Hove City Council.
  - The application Ref BH2017/03820, is dated 17 November 2017.
  - The development proposed was originally described as 'Erection of three storey building to provide for student halls of residence (35 units)'.
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### Decision

1. The appeal is dismissed and planning permission for the erection of three storey building to provide student halls of residence of 33 units is refused.

### Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises the erection of a three storey building to provide student halls of residence of 33 units. The Council dealt with the application on this basis and so shall I.
3. The Council have set out their objections to the proposal in their statement of case. I have had regard to this statement in framing the main issues below.

### Main Issues

4. The main issues in relation to the appeal are as follows:
  - i) Whether the loss of a community facility is justified having regard to planning policies concerning community facilities;
  - ii) The effect of the proposal on the character and appearance of the surrounding area;
  - iii) The effect of the proposal on the living conditions of the occupiers of neighbouring dwellings;
  - iv) Whether the proposal provides an adequate standard of accommodation for future occupants of the development; and

- v) Whether financial contributions towards improved sustainable transport provision and the improvement and expansion of open space and recreation in the vicinity of the site are necessary.

## **Reasons**

### *Background*

5. The planning history of the site is of relevant to the current appeal. The site previously comprised of a doctor's surgery, now demolished. An appeal decision dated 19 November 2013 (Ref. APP/Q1445/A/13/2200971) granted planning permission for the redevelopment of the site to provide for replacement surgery and student halls of residence (19 rooms). A further application under Section 73 of the Town and Country Planning Act 1990 to 'vary' the approved plans condition was subsequently refused by the Council but allowed on appeal (Ref. APP/Q1445/W/14/3001891). These changes involved alterations to the internal arrangements and fenestration to provide 24 student units of accommodation.
6. The development which is the subject of this appeal comprises a three storey building to provide 33 student rooms with on-site office and disabled parking only and does not make provision for a replacement doctor's surgery.

### *Community facility*

7. Policy HO20 of the Brighton & Hove Local Plan 2005 seeks to retain community facilities, including surgeries and clinics. The policy sets out a number of exceptions including under (b) where the community use is relocated to a location which improves its accessibility to its users; and under (d) where it can be demonstrated that the site is not needed, not only for its existing use but also for other types of community use. Although this policy predates the National Planning Policy Framework (NPPF) it aligns with paragraph 92 which states that in order to provide social, recreational and cultural facilities and services the community needs, planning policies and decisions should (among other things) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. I therefore afford the policy full weight.
8. The appellant does not dispute that the proposal would lead to the loss of a community facility but advises that former patients of the surgery were relocated to other surgeries and that a number of surgeries in the area are accepting new patients. Some evidence to this effect has been provided in the form of information from NHS UK website, albeit undated. However, this evidence does not demonstrate that the requirements of Policy HO20 (b) have been met in terms of the relocation of the community use to a location which improves accessibility to its users.
9. Furthermore, a Marketing Letter from Rand & Co, dated May 2017, states that the site had at that time been marketed for over 12 months without success in finding a tenant. However, it does not provide precise details of the marketing of the site and it is not clear from this letter whether the site was solely marketed as a surgery site or for wider community facilities. As such, the information contained within this letter does not enable me to conclude with certainty that the site is not needed for an alternative community use.

10. The proposal would result in the unjustified loss of a community facility and so would be contrary to Policy HO20 of the Brighton & Hove Local Plan 2005 which seeks to ensure that residential neighbourhoods have adequate community facilities to meet local needs and with advice contained within the NPPF, which has similar aims.

#### *Character and Appearance*

11. The proposed building is part two storey, part three storey with a flat roof design. The proposed development would have a frontage onto both Heath Hill Avenue and Auckland Drive. The adjacent properties along Heath Hill Avenue are semi-detached bungalows, some of which have accommodation within their roofspace. These bungalows have a relatively low ridge line. The adjacent properties along Auckland Drive are two storey semi-detached, with side gables. Beyond these semi-detached houses is a three storey property with pitched roof. Land levels vary significantly with the properties in Auckland Drive being located at a higher level than the dwellings along this part of Heath Hill Avenue. The appeal site itself also rises steeply away from Heath Hill Avenue.
12. The design and form of the proposed development would contrast sharply with the existing character of the area. The three storey elements, particularly where full height and unrelieved by any form of set back, would appear highly dominant in the street scene and would appear incongruous and out of character with the surrounding area. The scale of the development as a whole would visually overwhelm the adjacent bungalows. The design includes large expanses of brickwork which are largely unrelieved by fenestration or other detailing resulting in a rather stark appearance, out of character and jarring with the more traditional style of properties in the area. I take into account that the previous approved scheme<sup>1</sup> comprised a large 2 storey building on the site with accommodation in the roof. However, the bulk and mass of this proposal would be significantly less intrusive than the scheme before me.
13. Consequently, the proposal would harm the character and appearance of the area and would be contrary to Policy CP12 of the Brighton & Hove City Plan Part One (2016) which seeks to raise the standard of design in the city, and with the guidance in the Framework, which has similar aims.

#### *The effect of the proposal on the living conditions of the occupiers of neighbouring properties*

14. The scheme provides for 33 students. It is reasonable to assume that this number of students would give rise to comings and goings on site and that this could be late at night. This would change the character of the use from the previous medical centre where late night activity was limited. There would also be intensive periods of activity when students move in and out of the accommodation at the start and end of the academic year. Taking into account the quiet residential character of the area it is likely that harm to the living conditions of nearby occupiers would be likely to occur. I note that the previous appeal schemes were accompanied by a unilateral undertaking that required a management plan to be entered into with one of the nearby Universities. This would ensure that unacceptable behaviour and disturbance could be addressed, helping to protect the living conditions of neighbouring properties. Whilst a draft management plan has been provided, this does not appear to have been

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<sup>1</sup> Appeal ref: APP/Q1445/A/13/2200971 and APP/Q1445/W/14/3001891

formally entered into with either University and I have not been provided with a planning obligation to secure this. In these circumstances I cannot be assured that adequate steps to address potential disturbance arising from the use would be implemented in this case.

15. Furthermore, the proposal would result in 8 windows at first and second floor level on the rear projecting wing on the west elevation which would face towards adjoining residential property. Whilst the windows would be set back from the boundary and the views provided would be oblique, the number of full height windows on the west elevation of the building would nonetheless harm the living conditions of the adjacent dwelling through both actual and perceived overlooking of its garden area.
16. As a result on the third matter I conclude that the proposal would be contrary to Policy QD27 of the Brighton & Hove Local Plan 2005 and Policy CP21 and of Brighton & Hove City Plan Part One which seeks to protect the amenity of existing residents.

*Standard of accommodation for future occupants.*

17. The Council's main concern in relation to this issue is the size of the communal area, which they consider is inadequate for the number of students proposed. The Council do not appear to have any specific policy or guidance which sets out the amount of communal space which would be required. The proposed studio flats would provide students with their own cooking facilities such that no communal space would be required for this purpose. The accommodation would also benefit from reasonable levels of light and outlook such that some students may be content to socialise within their rooms rather than in the communal common room for some of the time. A large area of outdoor amenity space is also proposed which could provide an alternative area for socialising, in addition to the common room. Whilst the common room is relatively small, it would be sufficient for the number of students proposed in this particular case.
18. On the fourth matter I therefore conclude that the proposal is therefore considered acceptable in this respect and would comply with Policy QD27 of the Brighton & Hove Local Plan 2005 which seeks to protect the amenity of proposed residents.

*Whether financial contributions are required towards improved sustainable transport provision and the improvement and expansion of open space and recreation in the vicinity of the site.*

19. Core Strategy Policy CP7 relates to Infrastructure and Developer Contributions and states that inadequacies in infrastructure arising from proposal developments will be mitigated through S106 Planning Obligations and sought where they meet the statutory tests. Policy CP9 relates more specifically to sustainable transport and Policies CP16 and CP17 set out the Council's requirements for new development to contribute to the provision of public open space and sports provision.
20. The Council's statement confirms the requirement for a Travel Plan in addition to a sustainable transport contribution of £18,300 to be secured via a legal agreement in order to mitigate the impact of the development. The Highway Authority's consultation response explains how this figure has been derived at having regard to the Brighton & Hove City Council Developer Contributions

Technical Guidance. It also confirms the local projects to be funded by the contribution. In the absence of any evidence to the contrary, in these circumstances I consider that such a contribution together with the requirement for a Travel Plan, would be fairly and reasonably related to the development proposed and that it passes the statutory tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the National Planning Policy Framework. The proposal would fail to secure the provision of a Travel Plan and an appropriate sustainable transport contribution and so would be in conflict with Core Strategy Policies CP7 and CP9.

21. The Council's statement also confirms that a scheme of this scale and type requires an open space and indoor sport contribution of £39,719.69. However I have not been provided with any detailed evidence as to how the above contributions have been derived at, or the effect the proposal might have on transport or on open space and recreation facilities in the local area. Nor has any detailed information been provided to show how and where the contributions would be spent. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation for open space and indoor sport contributions does not weigh against the development.

#### *Other matters*

The proposed development involves the removal of a Willow tree which is protected by a Tree Preservation Order. However, the principle of removing this tree has already been established by the previous approval. A replacement tree is shown in a similar location on the submitted drawings. Moreover, I also note that the footprint of the proposed building is very similar to that of the approved scheme which has previously been found to be acceptable on arboricultural grounds. In the light of this, matters relating to tree retention, protection and replacement could be adequately dealt with by condition in the event that I was minded to allow the appeal. This matter does not therefore add to my concerns.

#### **Conclusion**

22. For the reasons set out above I conclude that the proposal would result in the unacceptable loss of a community use. It would also be harmful to the character and appearance of the area and would result in material harm to the living conditions of the occupiers of adjoining properties. The benefits arising from the provision of student housing, some of which would be suitable for those with reduced mobility, would not outweigh the harm identified in these respects. The proposal therefore conflicts with the development plan and there are no material considerations that should indicate a decision otherwise.

23. Accordingly, the appeal is dismissed and planning permission for the erection of three storey building to provide student halls of residence of 33 units is refused.

*J Davis*

INSPECTOR





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## Appeal Decision

Site visit made on 2 January 2019

by **Tim Crouch MSc DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> March 2019

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### Appeal Ref: **APP/Q1445/W/18/3213051**

### **114 Stanmer Villas, Brighton, BN1 7HN**

- 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 David Symons against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/00523, dated 16 February 2018, was refused by notice dated 14 September 2018.
  - The development proposed is change of use from residential dwelling (C3) to six bedroom single dwelling (C3) or six bedroom small house in multiple occupation (C4).
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from residential dwelling (C3) to six bedroom single dwelling (C3) or six bedroom small house in multiple occupation (C4) at 114 Stanmer Villas, Brighton, BN1 7HN in accordance with the terms of the application, Ref BH2018/00523, dated 16 February 2018, and the plans described as Location Plan 01, Block Plan 02 and Floor plans/elevations/sect proposed 02B, subject to the following conditions:
  - 1) The kitchen/lounge/dining room as detailed on plan '1807 02B' received on the 16 April 2018 shall be retained as communal space at all times and shall not be used as bedrooms.
  - 2) The development hereby approved shall only be occupied by a maximum of six (6) persons.
  - 3) Within 3 months of the date of this decision, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use within 6 months of the date of the approval and shall thereafter be retained for use at all times.

### Procedural Matters

#### *Plans*

2. Proposed plan 1807 02 was submitted with the application, setting out proposed floorplans. This included a W.C. on the ground floor. This was updated during the course of the application to 1807 02A, with a revised location of the W.C. (16 April 2018). A further version, 1807 02B was sent to the Council (27 April 2018) which removed the W.C. altogether.

3. The Council has confirmed it accepted the first amendment (1807 02A); however, it did not appear in the formal decision notice. 02B has been presented by the appellant as part of the appeal and the Council has had an opportunity to comment on it. During my site visit, I saw that the development had already substantially occurred and occupied as per plan 02B. I do not consider any interests to be prejudiced by considering 02B in this appeal. It therefore forms part of my decision.

#### *Description*

4. During the course of the application the description of development changed from "Change of use from a C3 residential dwelling to a C4 small HMO for up to 6 people" to "Change of use from residential dwelling (C3) to six bedroom single dwelling (C3) or six bedroom small house in multiple occupation (C4)". I have used this updated version in my decision.

#### **Main Issue**

5. The main issue is the effect of the proposal on the living conditions of existing occupants, with particular regard to the size of the communal space and its proximity to the rear ground floor bedroom.

#### **Reason**

6. The communal space sits to the rear of the house and comprises a kitchen across the rear elevation, opening into a dining and sitting area. There is a dining table plus 2 sofas. The kitchen opens into a small area of patio and retaining wall as the garden slopes up steeply to the rear.
7. The building has not only already been converted and occupied, but it has also been licenced for such an HMO. The Council notes this but states that the licencing regime seeks to achieve minimum standards of accommodation rather than good quality as required by planning policy QD27 of the Brighton and Hove Local Plan (BHLP). The Council has no adopted standards but refers to the 'Nationally Described Space Standards' introduced by the Department for Communities and Local Government in 2015 as useful guidelines. It does not appear, however, to include a standard for communal space.
8. I saw on my site visit that the open plan communal kitchen and living space is light and open, with internal access from the corner. There is sufficient space to circulate and for occupants to find some personal space. The layout of furniture in the plans provided is not fixed and the room dimensions give flexibility for these to be most suitably arranged by the occupants. The kitchen would allow multiple users to prepare food at the same time. Whilst there will need to be some coordination and interaction between users of the spaces, including the kitchen and accessing the rear in certain scenarios, this is an expected relationship in shared living spaces.
9. The Council has provided details of a dismissed appeal<sup>1</sup> which found the proposed communal space in that case, including its function as walkway to the garden, unacceptable. That layout was different and included a large window with doorways positioned fairly centrally. That created an uncomfortable relationship between usable floorspace and circulation. That differs from the circumstances in this appeal, which I have found to be acceptable in this case.

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<sup>1</sup> Appeal reference APP/Q1445/W/17/3180711

10. The rear ground floor bedroom is adjacent to the living space and shares a wall with the kitchen to the rear. The bedroom opens into the hallway, orientated away from the end of the communal area, which is accessed through a further, separate door. Whilst alongside the communal space, this relationship appeared acceptable and private. This is not unusual of a ground floor bedroom and, whilst under separate powers, the building has been licenced by the Council as suitable. I have no reason to consider otherwise.
11. I have been provided details by the Council of a dismissed appeal<sup>2</sup> to support its position in relation to a bedroom next to communal space. I see in that proposed layout that the bedroom was to open directly into the kitchen area. I consider that to be a materially different relationship to that before me.
12. Consequently the proposal would provide satisfactory living conditions for future residents. In this respect the proposal would comply with Policy QD27 of the BHLF, which seeks to protect the living conditions of existing and future occupiers of development.

### **Other Matters**

13. Local residents have raised concerns about a number of other matters including the loss of family housing, loss of privacy, increased noise and disturbance, additional pressure on parking and services. The officer's report considered issues of balanced communities, nuisance and amenity as well as parking. It found that the proposal would not give rise to material harm that could justify withholding planning permission. Whilst I appreciate the concerns of local people, I have no substantive evidence to cause me to come to different conclusions in relation to any of these matters.

### **Conditions**

14. The Council has suggested a number of conditions in the event that the appeal was allowed. I have considered these in the light of the tests set out in paragraph 206 of the National Planning Policy Framework and that development is substantially complete and occupied.
15. In the interests of clarity and ensuring the standard of accommodation, conditions are necessary to restrict the maximum occupancy and ensure the retention of the kitchen/living space. A condition relating to cycle storage is also necessary to encourage travel by means other than the private motor car.
16. The Council has proposed the withdrawal of permitted development rights. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The site is an end of terrace, with existing front dormer window and rear extension. The rear neighbour is set higher with its side elevation. It is not clear what exceptional circumstances exist and therefore I do not find it necessary.

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<sup>2</sup> Appeal reference APP/Q1445/W/17/3167023

**Conclusion**

17. For the reasons given above, I conclude that the appeal should be allowed, subject to conditions.

*Tim Crouch*

INSPECTOR

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## Appeal Decision

Site visit made on 4 February 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> March 2019

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**Appeal Ref: APP/Q1445/W/18/3212075**  
**10 Shirley Drive, Hove BN3 6UD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr & Mrs B Packham and A Rizzoni against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/02869, dated 24 August 2017, was refused by notice dated 25 July 2018.
  - The development proposed is the demolition of existing house and construction of a new 10 no. unit apartment block with associated car parking.
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### Application for Costs

1. An application for costs was made by the appellants against the Council which is the subject of a separate decision.

### Decision

2. The appeal is allowed and outline planning permission is granted for the demolition of existing house and construction of a new 10 no. unit apartment block with associated car parking at 10 Shirley Drive, Hove, BN3 6UD in accordance with the terms of the application, Ref BH2017/02869, dated 24 August 2017, subject to the conditions contained within the attached Schedule.

### Procedural Matter

3. The application was made in outline with the matters of appearance and landscaping reserved for subsequent consideration.

### Main Issues

4. The main issues in this case are the effect of the proposal on the character and appearance of the surrounding area, along with its effect on the living conditions of the occupiers of No. 12 Shirley Drive with particular regard to noise and disturbance.

### Reasons

#### *Character and appearance*

5. The site is a generous plot which sits on the corner of Shirley Drive and The Drove Way. It currently accommodates a large, imposing single dwelling, with
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a lower ground addition accommodating a swimming pool, gym, spa and home cinema which occupies a large proportion of the rear garden.

6. The proposal seeks to demolish the dwelling and erect an apartment building which would include 10 individual units. The Council asserts that the proposed apartment building would result in an overdevelopment of the site as it would have a greater footprint, scale and bulk than the existing dwelling and therefore it would be out of character with the prevailing form of development within the local area.
7. The submitted plans show an apartment block with a main body that would not be as tall as the current dwelling which occupies the site. In addition, the plans show an apartment block that would be only marginally wider and deeper. Accounting for the existing lower ground floor addition, the appellants assert that the scheme would actually reduce the footprint of built development on the site by almost 30%. In addition, the appellants argue that the volume of built development would increase by less than 10%. These figures are not disputed by the Council.
8. To my mind, the scale of the proposed apartment building shown on the submitted plans would not be substantially larger than the dwelling to be replaced. The apartment block would be read as a large building in a row of other large buildings. Whilst the indicative plans show a design that is more contemporary than the existing dwelling, which is of a more traditional design, the actual design and detailing of the proposed apartment block is reserved for future consideration.
9. Built form is not the only factor which can affect character and appearance and I am mindful of concerns about an increase in the intensity of residential use at the appeal site. Whilst the existing dwelling is large, it seems logical to me that the apartment building would be likely to accommodate more people and generate more comings and goings. Nevertheless, the appeal site enjoys a sustainable location close to local services and transport nodes and the scheme makes adequate provision for private car parking. In addition, secure cycle storage would be provided. I am also satisfied that the scheme could provide adequate amenity space for future occupiers.
10. For the above reasons, I find that subject to appropriate design detailing, a 10 unit apartment block of the size proposed could be introduced to the site without harming the character and appearance of the surrounding area. In such terms, the proposal complies with policies CP12 and CP14 of the adopted Brighton & Hove City Plan Part 1 which promote high quality design that respects its surroundings.

*Living conditions*

11. The car parking area would be sited at the rear of the site and at the bottom end of the rear garden of the neighbouring dwelling, No. 12 Shirley Drive.
12. A tall retaining wall defines this part of the boundary shared with No. 12 Shirley Drive. This would separate the car parking area from the rear garden of No. 12 and additional landscaping could act as a further buffer, which could be considered at the reserved matters stage. As I have explained, the apartment development would be likely to lead to increased activity and vehicle

movements. However, the level of activity would be limited and it would be screened from No. 12. Further, a Noise Assessment has been commissioned by the appellants which concludes that the predicted noise levels likely to be generated by motor vehicles accessing and egressing the car parking area would be significantly below existing day time and night time noise levels. In addition, I note the Council's Environmental Health Officer does not share concerns that vehicle movements associated with the apartment development would be unduly disruptive.

13. On this basis, I am satisfied that the proposal would not cause undue noise and disturbance for the occupiers of No. 12 Shirley Drive. In this respect, I find no conflict with policy QD27 of the adopted Brighton & Hove Local Plan which seeks to ensure that development does not result in a loss of amenity for existing residents.

*Other considerations*

14. In reaching my decision, I have considered the additional issues raised by third parties.
15. As the proposed building would not be materially larger, deeper or wider than the main body of the existing dwelling, I am satisfied that it would not have a significantly greater impact on the outlook from, and levels of natural light available to, the neighbouring properties. I am also satisfied that the apartment block could be designed in a manner which would ensure that any overlooking of existing properties fell within acceptable parameters for such a suburban location.
16. Concern has been raised that the development would cause undue noise and disruption during the construction phase. However, a degree of disturbance is somewhat inevitable during building works. This is a short term inconvenience which can be limited to a reasonable degree by adherence to a Construction Management Plan. It has also been suggested that occupiers of the flats would generate increased noise, but planning decisions must be based on an assumption that future residents will live in a considerate manner. Legislation is in place to deal with those who do not.
17. Questions have been raised about the capacity of existing infrastructure to accommodate the proposed development, but no technical evidence has been advanced to support such concerns. Moreover, I note these concerns are not shared by either the Council's Drainage Engineer or Highway Engineer. It has been pointed out that the scheme does not include any 'affordable housing' provision. However, the proposal was supported by a Viability Appraisal which concluded that the provision of affordable housing is not viable. This position has been accepted by the Council and I have no reason to disagree.
18. I am mindful of a suggestion that approval of the scheme would set an undesirable precedent for similar developments within the locality. However, one of the fundamental principles underpinning the planning system is that each planning application should be considered individually and on its merits, as I have done in this case. Concerns have also been raised about property values and restrictive covenants, but these are not matters for me to consider.

19. Finally, the Council has requested a contribution of £8,100 towards sustainable transport infrastructure improvements such as dropped kerbs and tactile paving on routes between the development site and local amenities and also nearby bus stop improvements on Shirley Drive. However, the Council has not explained how this request complies with the tests outlined within the Planning Practice Guidance relating to such contributions. On this basis, I cannot be satisfied that it does.

### **Overall Conclusions**

20. I conclude that a 10 unit apartment block could be introduced to the appeal site without harming the character and appearance of the local area and without unduly compromising the living conditions of the occupiers of No. 12 Shirley Drive. As such, the proposal complies with the development plan policies outlined above.

### *Conditions*

21. In addition to the standard conditions relating to the grant of outline planning permission, the Council has suggested a range of conditions in the event that the appeal succeeds. I agree that conditions to secure precise ground level details and details of boundary treatment are required to ensure a visually acceptable development. Details of secure cycle storage and refuse and recycling storage are necessary because such facilities are required and their details have not been provided. A scheme to protect existing trees is required for reasons that are obvious, whilst drainage details are required to ensure that the method of disposal is appropriate.
22. Details of the surfacing material of the car park are required in order to ensure that it is appropriately drained. Details of the new crossover and access and also details for the stopping up of the existing access are required in order to ensure the safety of highway users. Details of external lighting are required in the interests of visual amenity and to safeguard appropriate living conditions for neighbours. A Construction Management Plan is needed to control the impacts of the demolition and build phase, whilst details of measures to minimise CO2 emissions and water usage are required to ensure resource efficiency.
23. I am satisfied, however, that matters relating to soundproofing and access for people with disabilities are more appropriately dealt with by the Building Regulations. Meanwhile, as the elevation plans are for indicative purposes only, matters relating to balconies and roof terraces can be addressed at the 'reserved matters' stage if necessary.
24. In allowing the appeal, I will impose conditions accordingly, avoiding repetition where necessary.

*David Fitzsimon*

INSPECTOR



### **SCHEDULE OF CONDITIONS**

- 1) Details of appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans in so far as they relate to access, layout and scale:  

2017/02/01 Rev A, 2017/02/012, 2017/02/013, 2017/02/014 Rev C, 2017/02/015 Rev C, 2017/02/016, 2017/02/017, 2017/02/18, 2017/02/19 Rev B, 2017/02/20, 2017/02/21, 2017/02/22
- 5) The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site along with the finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall take place in accordance with the approved details.
- 6) The development hereby permitted shall not be occupied until a scheme of boundary treatment has been implemented in accordance with details first submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be retained thereafter.
- 7) The development hereby permitted shall not commence until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The drainage system shall be implemented in accordance with the approved details before the development is first occupied.
- 8) The development hereby permitted shall not commence (including demolition and all preparatory work), until a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan and an arboricultural method statement has been submitted to and approved in writing by the Local Planning Authority. The development shall take place in accordance with the approved details.
- 9) The development hereby permitted shall not be occupied until secure cycle parking facilities have been provided in accordance with details first submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be retained and shall be available for use at all times thereafter.
- 10) The development hereby permitted shall not be occupied until facilities for the storage of refuse and recycling have been provided in accordance with

details first submitted to and approved in writing by the Local Planning Authority. The facilities shall be retained at shall be available for use at all times thereafter.

- 11) The development hereby permitted shall not be occupied until the car parking area has been finished in a porous material in accordance with details first submitted and approved in writing by the Local Planning Authority. The car parking area shall be retained in accordance with the approved details and shall be used only for the parking of private motor vehicles.
- 12) The development hereby permitted shall not be occupied until the new vehicular crossover and access has been constructed in accordance with details first submitted to and approved in writing by the local planning authority.
- 13) The development hereby permitted shall not be occupied until the redundant vehicle crossovers on Shirley Drive and The Drove Way have been reinstated back to a footway/ grass verge in accordance with details first submitted to and approved in writing by the local planning authority.
- 14) No external lighting shall be installed at the development hereby permitted until its details (including levels of luminance, predictions of both horizontal illuminance across the site and vertical illuminance affecting immediately adjacent receptors, hours of operation and details of maintenance) have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed, operated and maintained in accordance with the approved details.
- 15) The development hereby permitted shall not be occupied until each individual residential unit within the building has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline) and written confirmation has been issued by the local planning authority.
- 16) The development hereby permitted shall not be occupied until each individual residential unit has achieved, as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption and written confirmation has been issued by the local planning authority.
- 17) No development, including demolition works, shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development, including demolition works, shall be carried out in accordance with the approved CEMP.



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## Appeal Decision

Site visit made on 14 December 2018

by **G Ellis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> March 2019

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**Appeal Ref: APP/Q1445/W/18/3203295**

**Beau House, 30 Bath Street, Brighton, BN1 3TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
  - The appeal is made by Homejoin Ltd against the decision of Brighton and Hove City Council.
  - The application Ref BH2017/04154, dated 14 December 2017, was refused by notice dated 21 March 2018.
  - The development proposed is the development of existing flat roof to provide 1no. 2 bedroom flat with front balcony amenity space.
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### Decision

1. The appeal is allowed and planning permission is granted for development of existing flat roof to provide 1no. 2 bedroom flat with front balcony amenity space at Beau House, 30 Bath Street, Brighton BN1 3TA in accordance with the terms of the application, Ref BH2017/04154, dated 14 December 2017, and the plans submitted with it and as subsequently revised, subject to the conditions set out in the attached Schedule.

### Procedural Matters

2. The appeal was accompanied by floorplan 1261.7 Rev A which is different to that on which the Council determined the application. While the appeal process is not for revising a scheme, the only change relates to the internal layout of the flat with the introduction of a door to the living space from the landing. The amendment has been undertaken to address concerns raised by the Private Sector Housing consultee response and I note that the case officer's report refers to such requirements. I am therefore of the view that there would be no prejudice caused to interested parties by substituting the floor plan, particularly as it makes no changes to the scheme in relation to the planning considerations.

### Main Issue

3. The main issue is the effect of the development on the character and appearance of the area having regard to the location of the site within the West Hill Conservation Area.

## Reasons

4. The existing property comprises a three-storey flat roofed building. It has a central entrance, and the windows and bands of render on the front elevation give it a horizontal emphasis. To the right side of the building is the access drive leading to the rear of the property, before a modern development of retail units with accommodation above. Adjoining the other side is the red brick terrace of Buckingham Close which runs to the end of the road and around the corner where it extends to five storeys.
5. The site is located within West Hill Conservation Area which is primarily a residential area comprising a mixture of house types, including large villas converted to flats and terraced properties. Most of the properties are rendered and painted white or pastel colours, although adjoining the site is a large red brick property. The Council consider that the existing building contributes negatively to the Conservation Area due to its non-traditional architectural style, poor state of repair, stark façade and mixed fenestration to the front elevation. I would agree that currently the building does not positively contribute to the Conservation Area, however the section of Bath Street in which it is located is very mixed and includes open car parking and the backs of properties. As such the street does not exhibit the same qualities as others in the Conservation Area and the development of the site needs to be considered in this context.
6. The proposals would introduce an additional floor which is designed to be set back from the edge of the building but with a balcony running along the edge. The front façade would be mainly glazing with a fibre cement central feature. While the materials do not match the existing building, I agree with the appellant that penthouses are often designed to be different to the building below and that does not necessarily make it unsympathetic. The design maintains the horizontal emphasis and, contrary to the Council's view, I consider that the use of glazing would provide a lightweight structure which would not result in a top-heavy appearance to the building. The central element with the circular window with a re-constituted stone frame is not a typical feature, however I do not find this element so objectionable to render the design unacceptable.
7. The view along Bath Street from Buckingham Place is dominated by the red brick Buckingham Close building which makes a significant contribution to the street scene. It has several vertical projections which in views along Bath Street from Buckingham Place would partially screen the proposed roof structure. While the resultant building would be higher than its immediate neighbours, the structure is set back, and it would not be taller than the corner element of Buckingham Close. In addition, the modern buildings to the right are set further forward and would limit views of the upper floor of Beau House from that direction. The proposal would not therefore appear prominent within the street scene nor diminish the prevailing character.
8. To the north is a terrace of stucco properties which are Grade II listed (5-19 (odds) Buckingham Place), however the relationship is such that any views of the development would be oblique, across the road and behind Buckingham Close. As such it is considered that there would be no harm to their setting.
9. The roof addition due to its design and siting would, in my view, not draw attention, but may help to enhance the building. I therefore conclude that the

proposed additional storey would not be harmful to the street scene and would satisfy the test of preserving the character and appearance of the Conservation Area. As such I find no conflict with the part of Policy CP12 of the Brighton and Hove City Plan Part One (Local Plan) which requires new development to conserve or enhance the built heritage, or with Policy C15 of Local Plan and saved Policy HE6 of the Brighton and Hove Local Plan which similarly seek to ensure that the city's historic environment is conserved and enhanced.

### **Other Matters**

10. The Council in considering the application found no material harm to the amenities of the neighbouring properties with regards to outlook, loss of light, overshadowing, and noise and disturbance. Given the existing relationships and that the proposal would not be any closer to the neighbouring properties I concur with that assessment.
11. The property is located close to facilities and is designed to be car free. To facilitate travel by non-car modes, and in line with the Council's standards, cycle storage should be provided. Bath Street is part of a one-way system and is double yellow lined; as such there are already restrictions in place to control parking.
12. In relation to the disruption to existing occupiers of the building during construction, and the impact of construction traffic on the area this would be an unavoidable but temporary impact and is not a reason to withhold planning permission.

### **Conditions**

13. Conditions are necessary in the interests of compliance with statutory requirements relating to the commencement of development [1] and certainty [2]. Given the materials are different to the existing property and in the interests of visual amenity details and samples of the external materials should be approved before work commences. As of 1 October 2018, any planning permission granted on or after that day with pre-commencement conditions imposed must have written agreement of the applicant/appellant to the wording of those conditions. The appellant has confirmed their agreement to the proposed pre-commencement condition [3].
14. A condition is also necessary to ensure appropriate provision for cycle storage to help facilitate sustainable modes of transport [4]. Conditions [5 and 6] are necessary to secure energy efficiency and water efficiency within the development.
15. The Council suggest a condition that would prevent future occupants from applying for resident's parking permits. However, it has not provided any supporting evidence that any additional parking demand arising from the development would lead to material harm to highway safety or would otherwise conflict with other development plan policies. On the evidence before me, such a condition would not meet the tests of reasonableness and necessity.

### **Conclusion**

16. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be allowed, and planning permission granted.

*G Ellis*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1261.7A, 1261.8, 1261.9, 1261.10 and 1261.11
- 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development, including the windows and balcony details, hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) The development hereby permitted shall not be occupied until details of cycle parking facilities have been submitted to and approved in writing by the local planning authority. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.
- 5) The residential unit shall not be occupied until it has achieved an energy efficiency standard of a minimum of 19% CO<sub>2</sub> improvement over building regulation requirements Part L 2013.
- 6) The residential unit shall not be occupied until it has achieved as a minimum, a water efficiency standard of not more than 100 litres per person per day maximum indoor water consumption.



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## Appeal Decision

Site visit made on 18 December 2018

**by J Davis BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 April 2019**

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### **Appeal Ref: APP/Q1445/W/18/3204279**

### **57 Richmond Street, Brighton, BN2 9PD**

- 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 S Scott, Co-Living Spaces, against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/03937, dated 28 November 2017, was refused by notice dated 8 February 2018.
  - The development proposed is described as 'Change of use from a C3 dwelling to a C4 HMO for up to 6 people'.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use from a C3 dwelling to a C4 HMO for up to 6 people at 57 Richmond Street, Brighton, BN2 9PD in accordance with the terms of the application, Ref BH2017/03937, dated 28 November 2017, subject to the following condition:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1731 01 – Existing & Proposed plans and elevations.

### **Procedural Matters**

2. The external alterations to the roof including the rear dormer did not form part of the description of development. However, the Council consider, based on their evidence, that the physical works were carried out in order to facilitate alterations to the layout to increase the occupancy of the property to five bedrooms. As such, they consider that the physical works are part and parcel of the change of use and therefore require planning permission. According to the timeline of works set out in the Council's statement, a building control application for the proposed loft conversion including dormer to rear and 3no. rooflights to front was submitted on 21 July 2017. The Building Control Notice of Passing Building Plans was issued on 3 August 2017. The Council confirm that on 28 November 2017 building control records show the above works start and also, on the same date, the planning application was received to change the use of the dwelling to an HMO. The appellant has not disputed the above timeline of events.
3. On my site visit I observed that the external alterations including the dormer window and rooflights had already taken place however the loft room and stairs leading up to it had not been decorated and did not have the appearance of ever being occupied. The other internal alterations to facilitate the change of use to a small HMO were also on-going. Having regard to the limited evidence

above I am inclined to agree with the Council's stance that the roof alterations, including the dormer, were constructed with the appeal scheme in mind and hence are part and parcel of it. In this I am in agreement with the principal approach taken in the previous appeal decisions the Council brought to my attention.

4. It is not for me, as part of this section 78 appeal, to form a view as to whether or not these works required specific planning permission from the local planning authority. I shall therefore proceed on the basis that they did. Given the submissions, notably the appellant's arguments regarding the character of the area, to do so would prejudice neither party, but clearly, in these circumstances, my approach has no bearing on any formal determination that may be subsequently sought.

### **Main Issue**

5. Consequently, I consider that the main issue is the effect of the proposal on the character and appearance of the area.

### **Reasons**

6. The appeal site comprises an end of terrace property, located on the northern side of Richmond Street. It is within an area characterised by similar, fairly standard, terraced housing.
7. No 57 Richmond Street forms part of a terrace which is characterised by rear dormer additions and other associated roof alterations. Of this terrace, it appears that six consecutive properties immediately to the west of the site have been altered at roof level. These roof additions vary in terms of their size, scale, design and use of materials. The majority of these extend across the full width of the property concerned, with little or no set back from the ridge line. As such, there is very little left of the original roof form of this part of the terrace. The rear elevation of the adjacent terrace to the east of the site is also seen in the same context as the appeal site and this terrace has also been altered significantly at roof level in a similar manner.
8. The roof dormer extends across the full width of the rear of the property and is level with the ridge line. It is flush with the neighbouring dormer and is set in marginally from the end flank elevation of the terrace.
9. Policy QD14 of the Brighton and Hove Local Plan (2005) states that planning permission for extensions or alterations to existing buildings including new formations of rooms in the roof, will only be granted if the proposed development 'is well designed, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area' (among other criteria). The rear dormer is in keeping with adjoining properties which have been extended at roof level in a similar manner and given this context, it would not result in harm to the character of the surrounding area. Whilst relatively large, the dormer is of an appropriate appearance given its context and the dormer does not result in harm to the character and appearance of the existing property.
10. The Council also refer to the guidance contained with Supplementary Planning Document 12 (SPD). Whilst not forming part of the statutory development plan, the SPD gives guidance in respect of extensions and alterations. In general terms, this guidance states that box dormers are inappropriate design



solutions and that supporting structures for dormer windows should be kept to a minimum as far as possible to avoid a 'heavy' appearance and there should be no large areas of cladding either side of the window or below. Whilst the dormer at No 57 would not strictly comply with this guidance, the SPD also recognises that where a terrace or group was originally designed without dormers, but over the years a majority of the buildings now have them, new dormers may be acceptable provided their scale, design and positioning is sympathetic to the continuity of the terrace/group. Having regard to the context of the appeal site, the dormer would be in keeping and sympathetic to the remainder of the terrace and is acceptable in this regard.

11. Overall, I conclude that the dormer does not have a harmful effect on the character and appearance of the surrounding area and as such there is no conflict with Policy QD14 of the Brighton and Hove Local Plan (2005).

*Other matters*

12. The Council comment within their appeal statement that the appellant has not provided evidence as to whether the works to adjacent properties have the relevant consents or when they were carried out. Whilst I acknowledge this, the remainder of the terrace and the adjacent terrace to the east clearly form part of the context of the appeal site. I observed on my site visit that the majority of these roof alterations have the appearance of being reasonably long established.
13. With regard to interested parties' comments regarding the principle of the use and the suitability of the site for student housing / multiple occupation, I note from the Officer's report that the proposal complies with the Council's relevant policy in this respect, which seeks to support mixed and balanced communities. Moreover, I have not been presented with any substantive evidence regarding pressure on local services and therefore place little weight on this matter.
14. With regard to the comments concerning privacy, I do not consider that the dormer window would result in any material overlooking of nearby properties, particularly given the intervening distances. The issue in respect of overlooking from the existing first floor terrace is not a matter which falls under the remit of this appeal.
15. Some local residents have raised concern regarding potential noise and disturbance from both within and outside of the building. Although the change of use to a HMO would be likely to intensify the occupancy and use of the building, with up to six occupiers this would not be of a level which would be over and above that expected within a residential area. I do not consider that the proposal would result in significant harm in this respect. Moreover, the proposed room sizes and communal facilities are adequate in relation to the intended use.
16. With regard to the issues raised relating to parking, the Council have not raised any concerns in terms of parking provision or parking pressures and in the absence of any substantive evidence, I conclude that the proposal is acceptable in this respect.
17. It is likely that there would be no change to existing arrangements in terms of refuse and recycling and the proposal is acceptable in this respect.

18. Finally, the fact that the development has already begun has had no bearing on my decision.

*Conditions*

19. I have had regard to the Council's suggested conditions. As the roof alterations including the roof dormer have already been constructed it is not relevant to impose the standard implementation condition. I have imposed an approved plans condition for clarity. Whilst the Council recommend a condition to remove permitted development rights in respect of Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) I am mindful of the advice within the National Planning Policy Framework (2019) which states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. I do not consider that there is clear justification in this particular case.

**Conclusion**

20. For the reasons given above I conclude that the appeal should be allowed.

*J Davis*

INSPECTOR



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## Appeal Decisions

Site visit made on 12 March 2019

by **Paul Freer BA (Hons) LL.M PhD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 April 2019

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### **Appeal Refs: APP/Q1445/C/18/3199550 & APP/Q1445/C/18/3200674 Land at 8 Roedean Terrace, Brighton BN2 5RN**

- The appeals are 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 and Mrs Laura and Jonathan Dubiner against an enforcement notice issued by Brighton & Hove City Council.
  - The enforcement notice was issued on 5 March 2018.
  - The breach of planning control as alleged in the notice is, without planning permission, the change of use of an outbuilding in the front garden from use ancillary to the dwelling to use as self-contained residential house (C3).
  - The requirements of the notice are:
    - cease use of the outbuilding as a self-contained residential (C3) use
    - reinstate a garage door to the southern elevation of the outbuilding in accordance with drawing 103(G), dated 7<sup>th</sup> September 2016, of planning consent BH2016/05524.
  - The period for compliance with the requirements is three (3) months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Summary Decisions: the appeals are dismissed and the enforcement notice is upheld with corrections and a variation**

#### **Procedural Matters**

1. The breach of planning control alleged in the notice is, without planning permission, the change of use of an outbuilding in the front garden from use ancillary to the dwelling to use as self-contained residential house (C3). However, Section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act) defines development as including the making of any *material* change in the use of any buildings or other land (my emphasis). It follows that a simple change of use, as described in the notice, would not constitute development and accordingly would not require planning permission.
2. It is, nevertheless, evident that the Council intended to allege a material change of use of the outbuilding to use as a self-contained residential house. It is also apparent that the appellants have understood this to be the case and have sought to test that through appeals under ground (b) and ground (c) under section 174(2) of the 1990 Act. I am therefore satisfied that I can correct the notice to refer to a material change of use without causing injustice.
3. In addition to various internal works, the conversion of the outbuilding includes an alteration to the outbuilding comprising the construction of a largely glazed front elevation. It is a matter for the local planning authority to determine whether the construction of the glazed front elevation constitutes development

for the purposes of Section 55(1) of the 1990 Act but I note that the notice confines itself to alleging that a (material) change of use has occurred. There is no reference in the allegation at paragraph 3 of the notice to any operational development as defined in Section 55(1) of the 1990 Act.

4. The reasons for issuing the notice set out in paragraph 4 of the notice include, at paragraph 4(3), the effect of the glazed frontage on the character of the outbuilding and its effect on the street scene. However, the reasons for issuing the notice can only relate to the breach of planning control that is alleged. Consequently, because the notice does not allege any operational development, the reason at paragraph 4(3) of the notice is neither appropriate nor necessary. The notice is therefore invalid in that respect.
5. Deleting the reason at paragraph 4(3) would completely correct that defect in the notice. It is settled case law that development which facilitates the unauthorised use of a building can be removed through an enforcement notice even if those works are not specifically referred to in the alleged breach of planning control and do not in themselves constitute development for the purposes of section 55(1) of the 1990 Act. This would not be affected by deleting paragraph 4(3) and the Council would therefore not be caused injustice. Clearly, insofar as it would remove one of the obstacles to securing planning permission under ground (a), deleting paragraph 4(3) would not cause the appellant injustice. I am therefore satisfied that I can correct the notice by deleting the reason for issuing the notice set out in paragraph 4(3).

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

6. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. It may be noted that this ground of appeal is worded in the past tense: that is to say, an appeal on this ground cannot succeed if the breach of planning control alleged had occurred before the notice was issued, even if that breach of planning control was not continuing at the time the notice was issued or has ceased subsequently.
7. The appellants explain that the property is currently let out to students, and provides a copy of the Assured Shorthold Tenancy Agreement (AST). The AST is explicit in stating that the outbuilding is to be treated and occupied by the tenants as accommodation ancillary to the main house and not as a separate unit of accommodation. The AST goes on to state in terms that assigning or subletting the outbuilding is expressly forbidden by that agreement. The intentions of the appellant are therefore abundantly clear, and the AST confirms that the outbuilding is intended to remain ancillary to the main dwelling.
8. The terms of the current AST do not, however, necessarily mean that the outbuilding has not been used as a self-contained residential house at some point in the past. In that context, I noted at my site visit that the outbuilding provides a fully equipped kitchen and bathroom that comprises a shower and a toilet (shower room). There is also a living space in which the occupiers can relax, with seating and a television. At the time of my site visit, there was no bed in the outbuilding but the room at the rear contained a wardrobe. It therefore appeared to me that this room was set up for use as a bedroom, and I cannot discount the possibility that it had been so used at some point in the past.

9. I have been provided with a copy of the Planning Officer's report which recommended that enforcement action be initiated. The report records that the accommodation within the outbuilding included a bedroom at the rear. The date on which the officer visited the premises is recorded as being 2 October 2017. It would appear, therefore, that the facilities within the accommodation at the time of the officer's site visit were different to those at the time of my site visit, and did include a bedroom. The corollary is that, in October 2017, the outbuilding did provide all the facilities require for day-to-day living.
10. The Planning Officer's report also reveals that the Council received a total of seven complaints about the alleged use. That number of complaints, which I note were from separate complainants, is a strong indication that there was some force behind the allegation made therein that the outbuilding was being used as a self-contained residential house.
11. Furthermore, I note that the appellants supplied an AST to the Council at the time of its investigation but that the AST supplied at that time appears to be a different agreement to that provided with the appellant's evidence for this appeal. The latter is dated 14 July 2018, and therefore post-dates the issuing of the enforcement notice. That AST lists four tenants individually by name.
12. Although I have not been provided with a copy of it, the AST provided to the Council at the time of the investigation of the complaints is recorded in the Planning Officer's report as showing a total of five occupiers, only two of which are identified by name. The agreement provided to the Council is therefore more consistent with the outbuilding potentially being occupied as a separate residential unit by the fifth occupier listed on the AST. Moreover, whilst I cannot be certain that the AST provided to the Council during its investigation was that in force at the time the enforcement was issued, I can be certain that the AST provided with the appellant's evidence was not. This reduces the reliance that I can place on the current AST and the wording of it.
13. Finally, the Planning Officer's report indicates that the outbuilding has been listed separately from the main house for Council Tax purposes since September 2017, this under the address of 'Annexe at 8 Roedean Terrace, Brighton BN2 5RN'. Although not in itself determinative, the separate listing for Council Tax is a further indication of separate residential use. I am also mindful that the date of the Council Tax listing is consistent with the receipt of the first complaint in August 2017.
14. Whilst not substantiated with evidence, the commentary in the Planning Officer's report is sufficient to cast doubt on the version of events put forward by the appellants. An appeal is ground (b) is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred. When read against the details set out in the Planning Officer's report, I am not persuaded that the appellants have discharged that burden.
15. Accordingly, the appeal on ground (b) fails.

**The appeal on ground (c)**

16. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. This is another of the 'legal' grounds of

appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

17. In considering whether a material change of use has occurred in this case, it is necessary to consider whether a new planning unit has been created. The leading authority in this respect is *Burdle v SSE* [1992] 1 WLR 1207. The test established in *Burdle* may be expressed as being whether, physically and functionally, separate areas have been created which amount to a separate planning unit. In order to ascertain whether a separate planning unit has been created in this case, I must apply the tests in *Burdle* to the facts.
18. The appellant points out that planning permission was granted in November 2016 for the conversion of the existing garage into ancillary accommodation with external alterations and rear extension (Council Ref: BH2016/05224). The approved plans show an internal configuration comprising two rooms: the larger room is annotated as being a study, with the smaller room at the rear of the building described as being a garden store. The front elevation is shown as a conventional garage door. In the event, the development as constructed substituted a glazed frontage for the garage door.
19. Section 55(2) (a)(i) of the 1990 Act provides that the maintenance, improvement or other alteration of any building which affect only affect the interior of the building shall not be taken to involve development of the land. However, in this case, the internal works carried out to the outbuilding divide the space into separate rooms which in turn facilitate the use of those rooms for sleeping, living and bathing. In other words, without those works, the use alleged in the notice and which I have found to have occurred as a matter of fact could not have occurred.
20. I have already found then that, on the balance of probability, the use of the outbuilding as self-contained residential house has occurred. Although there is no physical boundary separating the outbuilding from the main dwelling, the outbuilding is physically self-contained. It provides, or has provided, all the facilities necessary for day-to-day living within its four walls. It can be accessed from Roedean Terrace without having to gain access to the main dwelling, and I have been provided with no evidence that the occupiers of the outbuilding are or would be in any way dependent upon the main dwelling.
21. Applying the tests in *Burdle* to these facts, I consider that the outbuilding is both physically and functionally separate from the main dwelling. I therefore conclude, as a matter of fact and degree, that a new planning unit has been created.
22. I note that the Council has granted planning permission for an outbuilding at a property known as 'The Outlook' and the layout proposed included a kitchen and a toilet (Council Ref: BH2010/01264). The floor plans for that permission with which I have been provided show the remaining space as being a hobby room and a play/party room and not, as the appellant contends, a separate bedroom and combined lounge/dining room. Moreover, the permission was subject to a condition that the accommodation shall only be used as ancillary accommodation in connection with the main property as a single private dwellinghouse.

23. The salient point, however, is that unlike the appeal property, there is no indication that the outbuilding at 'The Outlook' has been used for anything other than ancillary accommodation to the main dwelling. It follows that there is no reason for me to believe, and the Council does not assert, that a separate planning unit has been created in that case. Consequently, although there are similarities in terms of the accommodation provided, the situation in relation to 'The Outlook' can be distinguished from the outbuilding in this case on the basis of the use to which that accommodation has been put.
24. Similarly, the judgement in *Uttlesford District Council v Secretary of State for the Environment and another* [1992] JPL 171 can be distinguished on its facts from the situation in this case. In *Uttlesford*, although the accommodation in question included a bedroom, a bathroom and a kitchen, it was found as a matter of fact and degree that the accommodation was being used for purposes incidental to the main dwelling. As a consequence, it was found, again as a matter of fact and degree, that the accommodation in question and the main dwelling formed a single planning unit.
25. I have also been referred to an appeal decision relating to a property in Chichester, West Sussex, in which the Inspector quashed an enforcement notice alleging the change of use of a building to a single dwellinghouse (APP/L3815/C/16/3159037 & 3161113). In that case, the Inspector found as a matter of fact that a physically and functionally separate dwellinghouse had not been created. This led the Inspector to the conclusion that the alleged change of use to a single dwellinghouse had not occurred, and the appeal succeeded on ground (b). Again, the Inspector's decision in that case can be distinguished from the situation in this case on its facts.
26. I conclude that the use of the outbuilding alleged in the notice has resulted in the creation a separate planning unit which is physically and functionally separate from the main dwelling, and as such requires planning permission. The use does not constitute development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, and express planning permission has not been granted for that use. I therefore conclude that the breach of planning control stated in the notice does constitute a breach of planning control.
27. Accordingly, the appeal on ground (c) fails.

### **The appeal on ground (a) and the deemed planning application**

28. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. There is one remaining substantive reason for issuing the enforcement notice from which the main issue raised is whether the outbuilding provides an adequate standard of living accommodation for the occupiers.
29. The Council does not operate its own minimum space standards but instead relies upon the Technical Housing Standards – National Described Space Standards (NDST) published by the Department for Communities and Local Government in March 2015. The minimum floorspace for a one bedroom, one person dwelling is 37m<sup>2</sup> where, as in this case, the dwelling has a shower room instead of a bathroom. The Council calculates that the outbuilding as converted has a floor area of 27m<sup>2</sup>, and therefore some 10m<sup>2</sup> below the minimum for a dwelling set out in the NDST. The appellant does not dispute

that figure. I consider that this significant shortfall against the minimum standard set out in the NDST results in cramped accommodation for the occupiers, particularly in the bedroom and the shower room.

30. The glazed frontage has the benefit of providing good levels of natural daylight to the main living space within the outbuilding, as well as providing a good outlook from that space. The difficulty is that, when the blinds to the glazed frontage are open, views into the living space may be obtained from public land and by occupiers of main dwelling when gaining access to that property, such that the space has little privacy. Conversely, when the blinds are drawn closed, the natural light into outbuilding is significantly eroded and the outlook from that main space is lost. As a consequence, whether the blinds are open or closed, the quality of the living accommodation in terms of light, outlook and privacy is unacceptably compromised.
31. In addition to providing only limited space, the bedroom to the rear is not well served in terms of light or outlook. This compounds the poor quality of the living space at the front of the outbuilding.
32. The outbuilding faces onto Roedean Terrace and, beyond the road surface, onto an area used for car parking. To the side of the outbuilding is the path leading to the main dwelling. The outbuilding is therefore in a position in which it is affected by the activity generated by the surrounding residential properties, including movements by vehicles visiting and delivering to those properties. In view of the proximity of that activity, I consider that the living conditions of the occupiers of the outbuilding suffer from an unacceptable level of noise disturbance.
33. I conclude that the material change of use of the outbuilding to use as self-contained residential house results in an unacceptable standard of living accommodation for the occupiers in terms of living space, light, privacy and outlook. I therefore conclude that the breach of planning control is contrary to Policies HO5, QD27 and SU10 of the Brighton and Hove Local Plan. These policies indicate, amongst other things, that planning permission will not be granted for a change of use where it would cause material nuisance and loss of amenity to the proposed occupiers, or where the occupiers would be adversely affected by noise from existing uses.

*Other considerations*

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that use of the outbuilding as a self-contained residential house fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
35. As the appellants point out, there is an acceptance within Policy CP1 of the Brighton & Hove City Plan Part One (City Plan) the city's housing delivery target does not match the objectively assessed housing requirement. Furthermore, there is an acknowledgment in the City Plan that there are very significant constraints on the capacity of the city to physically accommodate the quantum



of development required to meet the city's objectively assessed housing need. Part of the strategy for addressing the city's housing need envisages maximising development opportunities on previously developed land.

36. One of the objectives set out in the National Planning Policy Framework (Framework) is to significantly boost the supply of homes. In order to achieve that objective, the Framework promotes the effective use of land and indicates that substantial weight should be given to the value of sustainable brownfield land. In these respects, the Framework is therefore a material consideration that weighs in favour of the development.
37. However, I must balance that support for the development against other indicators of sustainable development set out in the Framework. These include that development should create places with a high standard of amenity for existing and future users. In that context, I have already found that the outbuilding provides an unacceptable standard of living accommodation for the occupiers.
38. Balancing these considerations, I consider that the poor quality of the accommodation provided by the outbuilding offsets the benefit in terms of providing a single additional residential unit towards meeting city's objectively assessed housing need. Consequently, I attach only limited weight to the benefit arising from the development in that respect.

*Conclusion on the ground (a) appeal and the deemed planning application*

39. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
40. Accordingly, I conclude that planning permission ought not be granted.

**The appeal on ground (g)**

41. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
42. The appellant points out that the current AST expires in August 2019 and requests that the period of compliance be extended to that date to allow for appropriate notice and rehousing of tenants. However, the AST is explicit in stating that the outbuilding is to be treated and occupied by the tenants as accommodation ancillary to the main house and not as a separate unit of accommodation. It follows that the reasons for extending the period for compliance put forward by the appellant do not apply, or at least should not apply if the terms of the AST are being adhered to.
43. Nevertheless, I can see some administrative merit in extending the period for compliance to correlate with the expiring of the current AST. I shall therefore vary the notice to specify a date for compliance of no later than 31 August 2019.
44. Accordingly, the appeal on ground (g) succeeds to that extent.

### **Conclusion**

For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation, and refuse to grant planning permission on the deemed applications.

### **Formal Decision**

45. It is directed that the enforcement notice be corrected by:
- inserting the word 'material' between the words 'Without planning permission the' and 'change of use' in paragraph 3 of the notice.
  - deleting the reason for issuing the notice at paragraph 4(3) of the notice in its entirety.
46. It is directed that the enforcement notice be varied by:
- deleting the words 'Three (3) months after this notice takes effect' and substituting the words 'No later than 31 August 2019'.
47. Subject to those corrections and variation, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the material change of use of an outbuilding in the front garden from use ancillary to the dwelling to use as self-contained residential house (C3) at Land at 8 Roedean Terrace, Brighton BN2 5RN.

*Paul Freer*  
INSPECTOR



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## Appeal Decision

Site visit made on 28 January 2019

**by Rebecca Thomas MRICS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 April 2019**

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### **Appeal Ref: APP/Q1445/W/18/3209659**

### **85 St James's Street, Brighton BN2 1TP**

- 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 Warren Knight against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/01147, dated 12 April 2018, was refused by notice dated 22 June 2018.
  - The development proposed is removal of existing roof and addition of new third floor inside a mansard roof as extension to the existing property.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for removal of existing roof and addition of new third floor inside a mansard roof as extension to the existing property at 85 St James's Street, Brighton BN2 1TP in accordance with the terms of the application BH2018/01147, dated 12 April 2018 subject to the conditions set out in the attached schedule.

### **Procedural Matters**

2. The description of development in the heading above has been taken from the planning application form, omitting the typographical errors. However, in Part E of the appeal form it is stated that the description of development has not changed, but, nevertheless, a slightly different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. Notwithstanding the above, there is some discussion between the parties about the description of the roof extension as 'mansard' or 'mansard style'. I am of the opinion that the description of the roof is not material. I have the plans and evidence before me and it is on this basis that I have made my own views, and I shall not refer to this matter again.
4. Revised plans (3671.EX.02 Rev.A and 3671.EX.03 Rev.A) were submitted as part of the appeal documents. These serve to correct the parapet height on the existing elevation and section details. This matter is not disputed between the parties and the details shown are of a confirmative nature rather than evolving the scheme in any way. No party will therefore be prejudiced by my acceptance of the plans. I have proceeded on this basis.

## **Main Issue**

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

## **Reasons**

6. The application site is part of a short terrace of properties in the East Cliff Conservation Area (CA) of Brighton. The CA, in its entirety, is a designated heritage asset. The statutory duty within Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, which requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas, applies.
7. The appeal building is three storeys which includes a lower ground floor. The first and second floors are all in residential use and the ground floor is a retail unit. The building is painted render with bay windows to the front elevation. This building is a variance of a similar theme throughout the CA. The wider area is characterised by tall buildings. St James's Street is wide, with narrow and predominantly residential streets leading off it. Rooflines vary in overall height as well as their design and age.
8. The appeal building immediately fronts the street, although the actual extension is at roof height. This is a bustling area of Brighton, with many shops and services at ground level with accommodation above. St. James's Street forms an important road for all the local services and facilities. The area has a character of being a local shopping centre and community area distinct from the city centre.
9. Policy HE6 of the Brighton & Hove City Plan ('the City Plan') requires new development be of a high quality design that should respect or enhance the character or appearance of the conservation area. This includes design detailing that reflects the scale, character or appearance of the area, and the retention of original features which individually or cumulatively contribute to the character of the area. Whilst it is regrettable that the chimney stack will be lost, I note that the adjoining chimney stack will remain in place. I do not think that this would, in itself, create a significant change which demonstrates to me that there is harm to the character or appearance of the area and the CA.
10. Policy HE6 of the City Plan is broadly consistent with the National Planning Policy Framework ('the Framework'), which states that when considering the impact of a development on the significance of a designated heritage asset great weight should be given to the conservation of the heritage asset. The Framework states that new development should respond to local character and history, add to the overall quality of the area and be visually attractive as a result of good architecture and landscaping.
11. The appeal site is one of four properties fronting St James's Street, with the two corner properties being taller with an additional storey each. Bay windows remain a strong feature. The property immediately adjacent the appeal site has a set back top floor with a window aligned with the bay windows below.
12. The proposed development will incorporate an extension to the building at roof height. I note that the roof will slope away from the front elevation of the existing building and the design includes the retention of the existing parapet

- balustrading. As is the case with the adjoining property, the new window in the roof extension will be aligned with the bay windows below. The highest point of the roof will be only marginally higher than this neighbouring building, but no higher than the overall heights of the other buildings in this terrace.
13. The area is one of densely developed plots, with tall buildings. The main characteristic features of the building within the CA will be retained and the new extension will be set back from the front elevation. The roof will not be easily visible from the street due to its height. Other views of the roof will be severely limited – if any – due to the building’s location within the middle of the terrace, the dense plot around it and heights and bulk of other buildings. As glimpsed from the front elevation I consider that the step back will ensure that the inherent character of the building within the CA will not be harmed. The addition of the extension within a roof design is not unusual in the area.
  14. I have had regard to the specific wording within the Supplementary Planning Documents and the City Plan policies, in particular the treatment of roofs and their extensions. Policy QD14 of the Local Plan accepts the formation of rooms in the roof so long as extensions show compliance with four specific criteria which includes design and materials. I have considered the treatment of roofs and extensions in the local area, both to traditional properties as well as newer properties, including those discussed by the appellant and do not find that the proposals would be dramatically different to the point that the overall character and appearance of the CA will be harmed. I find that the development would have a neutral effect on the defining characteristics of the CA.
  15. With the above in mind, the characteristics of the CA would be preserved. Therefore I find that the proposal would be in accordance with the policies of the City Plan as mentioned above as well as CP12 and CP15 which both seek to ensure a high standard of design, respect of the diverse character and urban grain of the neighbourhoods and conserve or enhance local heritage assets, historic environment and their settings. .
  16. I find no conflict with the policies found in the Framework, which seek to secure developments which are sympathetic to local character and history, including the surrounding built environment and landscape setting, whilst not preventing or discouraging appropriate innovation or change.

### **Other Matters**

17. I have had regard to all other matters raised including access to the basement flat, loss of light and loss of privacy. Some of these matters such as a private right of access remain beyond the remit of planning considerations. There are already residential uses at first, second, and in some places, third floors, and there is no change in the proximity of the appeal site to any other neighbouring residential uses. I see no particular reason why the proposed development should significantly exacerbate any existing overlooking or loss of light that may or may not currently exist.
18. Concerns have also been raised with regard to the potential harm to the café business on the ground floor during construction. There is no substantive evidence on the loss of business and I consider that any disturbance will be temporary only during construction.

## Conditions

19. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result I have amended and rationalised some of them for consistency and clarity. I have also limited the number of pre commencement clauses to where this is essential for the condition to achieve its purpose.
20. As well as the time limit condition, I have specified the approved plans for certainty. In the interests of the character and appearance of the CA, I have imposed a condition requiring the agreement of external facing materials. Given what is required by this condition goes to the heart of the planning permission, the details need to be agreed prior to the commencement of development.

## Conclusion

21. For the reasons set out above and subject to the conditions attached, I allow the appeal.

*Rebecca Thomas*

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 the following approved plans:  
3671.PL.01                      Proposed plans, sections and elevation
3. Notwithstanding the approved plans as set out in Condition 2, no development shall take place until details of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
  - a) details of all brick, render and tiling (including details of the colour of render/paintwork to be used)
  - b) details of all cladding to be used, including details of their treatment to protect against weathering;
  - c) details of the proposed window, door and balcony treatment and;
  - d) details of all other materials to be used externally.

The development shall be carried out in accordance with the approved details and shall be retained thereafter.



## Appeal Decision

Site visit made on 12 March 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor  
an Inspector appointed by the Secretary of State

**Decision date: 15 April 2019**

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### **Appeal Ref: APP/Q1445/C/18/3199392 84 Brading Road, Brighton BN2 3PD**

- The appeal is made by Mark Shields under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF2016/05105) issued by Brighton & Hove City Council on 13 February 2018.
  - The breach of planning control alleged in the notice is the material change of use of the property "from a dwellinghouse (C3) to a 7 bedroom House in Multiple Occupation (HMO) (Sui Generis)".
  - The requirement of the notice is "Cease the use of the property as a House in Multiple Occupation (HMO)".
  - The period for compliance with this requirement is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g). Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made by section 177(5).
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### **Background**

1. The appellant states that he bought the property in 2008 and changed its use to a seven-bedroom HMO later in that year. This statement is supported by Council Tax entries, which record him as the owner on 28 April 2008 and the property being occupied by seven students with effect from 1 September 2008.
  2. An HMO licence for seven persons was applied for on 8 October 2008 and granted on 1 April 2009. The property has continued in use as a licensed seven-bedroom HMO since then, but planning permission for this use has never been obtained.
  3. The appellant contends that when he bought the property it was already in use as an authorised HMO by virtue of the provisions of the Class C3 then in force which, in addition to family use, specified that the use of a dwellinghouse "by not more than six residents living together as a single household" did not involve development requiring planning permission. (The Class C3 currently in force specifically excludes HMO uses. The present Class C4 provides for the use of a dwellinghouse by not more than six residents as an HMO, as defined in the Housing Act 2004.)
  4. The Council do not dispute the appellant's contention. Council Tax records indicate that the property was vacant between August 2007 and April 2008, but that it was occupied by four apparently unrelated persons between September 2006 and August 2007. Earlier Council Tax records going back to
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1997 suggest a similar manner of occupation throughout the period leading up to 2006.

5. Details of the households' living arrangements at these times are not available, but on the balance of probabilities it seems to me that the use of the property before its change of use to a seven-bedroom HMO was as single-household accommodation with unrelated residents sharing the domestic facilities. It was within Class C3 as it then existed, as well as constituting an HMO as defined in the Housing Act 2004. If that same use were instituted today it would be classed as C4.
6. The notice is therefore correct when it states that there has been a change of use from Class C3, but it should be appreciated that this is a reference to Class C3 as it existed at the time of the change in 2008. The use taking place within Class C3 before this change is a consideration to be taken into account when the planning merits of the appeal are assessed. There is a right under section 57(4) to revert to the previous lawful use without obtaining a further planning permission when an enforcement notice has been issued.

### **Decision**

7. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the change of use of 84 Brading Road, Brighton BN2 3PD to a seven-bedroom dwellinghouse in multiple occupation.

### **Reasons for the decision**

#### *Ground (a)*

8. The main issues in deciding whether planning permission should be granted for the change of use concern the community impact, the standard of the accommodation and the effect on neighbours' amenities.

#### Introduction

9. The Council's appeal representations contain a considerable amount of information about problems associated with HMOs and their residents, all of which I have taken into account. The information provided appears to be somewhat selective and outdated. In particular: -
  - (1) There is no mention of retained Policy HO14 of the Brighton & Hove Local Plan 2005, which deals specifically with HMOs.
  - (2) The introduction by the Council of new HMO licensing schemes and standards in 2018 is not referred to. These aim to improve the quality and control of HMO accommodation.
  - (3) The passages extracted from the appeal decision supplied by the Council in support of their policy interpretation are not representative of the decision as a whole or of other appeal decisions that do not support the Council's approach.
  - (4) The Government report of 2008 referred to (now archived) is the report of a study that was commissioned. The Council have not given it its full title,



which starts with the words "Evidence Gathering -". Its findings and recommendations are those of its authors, ECOTEC Research & Consulting Limited, and do not necessarily represent the views of the then Government (see the preface to the report at page 2). The extract listing what the Council state are identified by the report as the potential harmful impacts of HMOs on surrounding neighbourhoods is only a summary of the views put forward in lobbying and correspondence that prompted the commissioning of the study (see paragraph 1.2 of the report).

The development plan and other considerations

10. The decision on ground (a) must be made in accordance with the development plan, unless material considerations indicate otherwise. The key development plan policies, and my observations on their application to this appeal, are as follows: -

- Policy HO14 "Houses in multiple occupation (HMOs)" of the Brighton & Hove Local Plan 2005 seeks to prevent the loss of HMOs that meet Housing Act standards. The supporting text (paragraph 4.69) states that HMOs "play an important role in providing housing for young people and people who are socially or economically disadvantaged. They are often the only choice of housing for people who would otherwise be homeless. Given the overriding level of housing need in Brighton & Hove, it remains important to ensure that an adequate supply of HMO accommodation is retained".

The HMO in this appeal meets these standards and the requirement in the enforcement notice to cease its use as an HMO altogether would, if it were enforced, result in the loss of the 'small' HMO that previously existed.

- The Brighton & Hove City Plan Part One, adopted in 2016, is a strategic plan. Policy CP21 deals with "Student Accommodation and Houses in Multiple Occupation". It states: "To meet increasing accommodation demands from students and to create mixed, healthy and inclusive communities, the Council will support the provision of additional purpose built accommodation and actively manage the location of new Houses in Multiple Occupation". Section ii) deals with HMOs and states: "In order to support mixed and balanced communities and to ensure that a range of housing needs continue to be accommodated throughout the city, applications for new build HMO, and applications for the change of use to a Class C4 (Houses in multiple occupation) use, a mixed C3/C4 use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where:• More than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use".

The deemed planning application in this appeal is for the change of use of the dwellinghouse from a 'small' HMO to a seven-bedroom HMO. The percentage is stated in the Council's appeal statement to be 26.9%, but this may be an error since it was previously reported by the Council to be 40.26%. Paragraph 4.237 of the text supporting Policy CP21 indicates

that the percentage threshold will be applied in assessing planning applications for “new” HMOs.

- Policy QD27 of the Brighton & Hove Local Plan 2005 indicates that planning permission for a change of use of any kind will not be granted where it would cause “material nuisance and loss of amenity” to its users or neighbours. Paragraph 3.118 sets out the matters that could have this effect; they include disturbance from noise. The enforcement notice also refers to Policy SU10 of the Plan but I do not regard this policy as being significant to the appeal, since its focus is on inherently noisy uses.

In assessing whether material nuisance and loss of amenity would arise in this instance the Council’s HMO Licensing Standards should be taken into account.

11. There are no development plan policies that relate specifically to the standard of HMO accommodation. The Council have relied in this appeal on the Government publication “Technical housing standards - nationally described space standard” (March 2015) when assessing the bedrooms and internal areas in the HMO, but this publication makes it clear that the standards in these respects are only relevant to “new dwellings and have no other statutory meaning or use” (paragraph 2). The Government also indicated in March 2015 that these standards were not intended to be applied in the absence of an adopted planning policy. In this appeal, the Council’s HMO Licensing Standards should be taken into account.
12. The Council operate a Citywide national licensing scheme that applies to larger HMOs and a Citywide additional licensing scheme for smaller HMOs, which were introduced on 1 March 2018. All licensed HMOs are generally expected to meet the Council’s HMO Licensing Standards. The planning report I have received in connection with this appeal asserts that the licensing system is of limited application and seeks the “bare minimum”, and that the planning regime should therefore apply a “higher” standard, but the HMO Licensing Standards introduced by the Council since that report deal in detail with a wide range of matters, including the number of occupants, room sizes, bathroom and kitchen facilities, external tidiness, anti-social behaviour, waste and recycling and the overall management of the HMO. There are penalties for non-compliance with an HMO licence.

Main issue - community impact

13. The provisions and objectives of Policy CP21 are set out above. The way in which Section ii) of the policy has been drafted calls for the refusal of all HMO applications where the percentage has been exceeded even where, as in this appeal, the change is from one type of HMO to another. However, paragraph 4.237 suggests that Section ii) is only intended to be applied to new HMOs and Policy HO14 of the 2005 Local Plan seeks to prevent the loss of existing HMOs.

The authorised use of this dwellinghouse appears to be the ‘small’ HMO that existed from 1997 to 2007, which would permit occupation by a maximum of six residents. Authorising its change to the seven-bedroom HMO that has existed from 2008 to the present day would have no impact on the number of HMOs in the area or on the range of house types available; and the minor increase in activity that could occur as a result of the small addition to the

number of residents would not have a noticeable impact on the community. In these circumstances, I do not consider that I could reasonably conclude that the change was in conflict with the objectives of Policy CP21.

Main issue - the standard of the accommodation

14. The Council's planning objection is to the two bedrooms in the loft space. The floorspace in the front bedroom is less than the nationally described space standard referred to in paragraph 11 above, but this is not a relevant standard. The use of the floorspace in the back bedroom is limited by its configuration and the amount of headroom.
15. The HMO has been licensed by the Council since 2009 and the licence was renewed in April 2019. The licence restricts occupation of the HMO to a maximum of seven households and seven occupants. The HMO complies with the Council's HMO Licensing Standards, which include bedsit room sizes and take into account the shape and the floor-to-ceiling height of the bedsit rooms when useable living space is assessed.
16. Nothing I have seen or read about this HMO demonstrates that there is sufficient justification for applying different standards for planning purposes.

Main issue - the effect on neighbours' amenities

17. The Council state that the change of use would result in "material nuisance and loss of amenity" contrary to Policy QD27, because "Each additional resident in an HMO property occupied by a group of unconnected adults increases the level of activity, especially compared to a typical family with a similar number of members, such as more frequent comings and goings, different patterns of behaviour and the consequential disturbance". This statement gives the impression of appearing to consider certain members of the community to be, by definition, a problem because of the type of accommodation they live in.
18. The appellant points out that this house has not been used as a family home for at least twenty years and that the increase in the number of occupants is low. It is mentioned in a Council report that the Environmental Health department received nine complaints about noise between 1996 and 2015, but no details have been provided and their relevance to the appeal cannot therefore be assessed. No details of any of the alleged complaints about rubbish have been provided by the Council.
19. As well as general provisions relating to the management of the HMO, the HMO Standards and the conditions attached to the licence contain specific provisions dealing in detail with anti-social behaviour causing nuisance or annoyance to neighbours or the community and with refuse disposal and tidiness. The Council also have powers under environmental health legislation to deal with such matters.
20. In the circumstances described above, I do not consider that I could reasonably conclude that the change of use would result in material nuisance or loss of amenity contrary to Policy QD27.

Overall conclusions on ground (a)

21. For the above reasons, I have concluded that there are insufficient reasons for withholding planning permission for the change of use of the house to a seven-bedroom HMO. In this event, the Council have suggested that three planning conditions should be imposed. The first would restrict occupation to a maximum of seven persons; the second would require secure cycle-parking facilities to be provided; the third would require the communal areas to be retained as shown on a layout previously submitted for planning purposes.
22. I have not imposed these conditions because they are unnecessary. The first and the third since they would duplicate the adequate controls over these matters that are already in place through the HMO Licensing Standards and the HMO licensing system. The second since the only external location where cycles would in practice be parked is the rear garden, which is already secure.

*Ground (g)*

23. As a result of the success of the appeal on ground (a), the enforcement notice has been quashed. Ground (g) no longer falls to be considered.

*D.A.Hainsworth*

INSPECTOR



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## Appeal Decision

Site visit made on 11 March 2019

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 April 2019**

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**Appeal Ref: APP/Q1445/W/18/3214934**

**31A Davigdor Road, Hove BN3 1QB**

- 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 Dr Hong Lu against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/01005, dated 29 March 2018, was refused by notice dated 28 August 2018.
  - The development proposed is replacement of dormer windows and formation of new roof lights.
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### Decision

1. The appeal is allowed and planning permission is granted for replacement of dormer windows and formation of new roof lights at 31A Davigdor Road, Hove BN3 1QB in accordance with the terms of the application, Ref BH2018/01005, dated 29 March 2018, subject to the following condition:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: As Built Roof Plan & North and South Elevations As Built (0501.AB.001); As Built West Elevation (0501.AB.002); As Built Window Detail/Elevations and Plans As Built (0501.AB.003); As Built Roof Light Detail/Elevations and Plans As Built (0501.AB.004).

### Main Issue

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

### Reasons

3. The appeal site relates to a two-storey end of terrace building with accommodation in the roof. It is located on a corner plot on the junction with Davigdor and Osmond Roads. The appeal scheme relates to three replacement dormer windows as well as three additional roof lights. I could see from my site visit that the works had been completed externally.
4. The appeal building is reasonably prominent because of its design and siting on a corner plot. It is set in an area with a mixed and varied character. Some properties in the area have dormer windows and roof lights so they already form an established part of the streetscape of both roads, while other properties have strong front gables that mean plain roof-slopes are not a common feature in the area.

5. The replacement dormer windows are larger and do not feature the decorative arched detailing of their predecessors. The dormers also have relatively large areas of blank tile hanging on their front given the respective size of the windows. The front dormer window is however narrower in width than the bay window below it and significantly smaller than the ground floor fenestration. The side dormer is specified in the Appellant's Statement as being approximately 1m wider than its predecessor but sited so it is more central. That figure is not contested by the Council. The rear dormer is largely obscured by the remainder of the appeal building when viewed from Osmond Road and is otherwise unobtrusive. In my view therefore, the dormer windows appear as subservient additions and are neither heavy nor dominant in appearance.
6. Whilst the front and side dormer windows are plainly visible from the respective roads, given their size and use of appropriate matching materials in my view they are not conspicuous additions to the host property. They do not result in particularly large areas of cladding, on their front or at the side, and do not introduce significant bulk. They are therefore well designed and not overly large and so do not have an adverse impact on the host property or within the varied established character of the street-scene.
7. The three roof lights are small in-scale and sited alongside the front and side dormer windows. They are positioned at a consistent height which provides a sense of order. They therefore relate well to the scale and proportion of the elevations below. Whilst the roof light on the front elevation is not aligned above a window, given its small size and close relationship with the dormer window alongside, in my view it does not give rise to a roof slope of cluttered appearance.
8. I therefore conclude the development is not harmful to the character and appearance of the host property and area. This accords with saved Policy QD14 of the Brighton and Hove Local Plan, as retained in March 2016. This requires, amongst other things, that alterations to existing buildings should be well designed in relation to the host property and surrounding area. This is also consistent with the good design aims of the National Planning Policy Framework. For the same reasons the development also accords with the Council's Design Guide for Extensions and Alterations Supplementary Planning Document, adopted June 2013.

### **Conclusion**

9. The Council have suggested one planning condition requiring that the development be carried out in accordance with the approved drawings. I agree this is necessary in the interests of future certainty.
10. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal should be allowed.

*Paul T Hocking*

INSPECTOR