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## Appeal Decision

Site visit made on 14 November 2017

**by Richard Aston BSc (Hons) DipTP MRTPI**

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

**Decision date: 6<sup>th</sup> December 2017**

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### **Appeal Ref: APP/Q1445/W/17/3179086 77 Holland Road, Hove BN3 1JN**

- 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 Mr Bacon (c/o Perth Securities) against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/00664 is dated 24 February 2017.
  - The development proposed is demolition of existing Choice Vehicle Rental workshop and erection of new basement and ground level offices and 9 apartments over with associated car parking and landscaping.
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### **Decision**

1. The appeal is dismissed and planning permission is refused for demolition of existing Choice Vehicle Rental workshop and erection of new basement and ground level offices and 9 apartments over with associated car parking and landscaping at 77 Holland Road, Hove BN3 1JN.

### **Application for costs**

2. An application for costs was made by Mr Bacon (c/o Perth Securities) against Brighton & Hove City Council. This application is the subject of a separate Decision.

### **Procedural Matter**

3. The appeal results from the Council's failure to determine the planning application within the statutory period. The Council's statement sets out whilst they do not object to the principle of development had they been in a position to determine the application they would have refused it on the grounds of the effect on the setting of Palmeira Yard, a Grade II listed building and on the character and appearance of the Brunswick Town Conservation Area ('BTCA'). Furthermore, that the proposal fails to make provision for affordable housing or an appropriate financial contribution.

### **Main Issues**

4. Given the above, the main issues are:
  - The effect of the proposal on the character and appearance of the BTCA and the setting of Palmeira Yard, a Grade II listed building.

- Affordable housing provision.

## Reasons

### *The appeal site and surroundings*

5. The appeal site is situated on the east side of Holland Road and comprises a single storey rendered building with corrugated metal roof set at the back of the site, with the front taken up with parking for vehicles. It sits between a Grade II listed building known as Palmeira Yard and Hove Hebrew Congregational Synagogue to the north and close to the junction with Landsdowne Road. The synagogue is a 2 to 2 ½ storey structure of a distinct and unusual appearance stepping down to single storey adjacent to the boundary with the appeal site.
6. Palmeira Yard is a large and imposing 3-4 storey red brick building in residential use and built abutting its boundaries with steeply pitched slate mansard roofs with wrought iron parapets and terracotta dressings on the brickwork. The immediate area is of mixed residential and commercial character with some retail uses further down Holland Road. There are large institutional and government buildings to the north, although they are of a much lesser height and are outside the BTCA.

### *Heritage assets*

7. Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is given to the desirability of preserving or enhancing the character or appearance of the BTCA and Section 66(1) requires special regard is given to the desirability of preserving a listed building or its setting. Paragraph 132 of the National Planning Policy Framework ('the Framework') makes it clear 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.
8. The significance of the BTCA appears to lie in it being a fine example of Regency and early Victorian planning and architecture, with spacious elegant houses and terraces, typically painted of a uniform colour. It is a planned 19<sup>th</sup> century estate with distinctly classical architecture and the original street pattern and terracing remains intact. Residential terraces are typically 3-4 storeys, with some including an additional basement level and/or roof level accommodation. Whilst some dilution from retail and commercial uses has occurred this is confined to mews streets and the principal streets have a very strong sense of scale and rhythm with consistent roof heights.
9. The proposal would be constructed from a mix of large areas of render with white render quoins and banding to the front of each side elevation. The roof would be a grey zinc cladding with glass and aluminium balustrades and guarding round the parapet. Despite changes made to the design, the combination of the materials proposed and the amount of built form across the majority of the width of the appeal site and for a considerable depth would create an overly horizontal emphasis.
10. The parapet would also sit above the eaves of Palmeira Yard and because of the topography of this part of the town the proposal would be clearly conspicuous in wider views, in particular from around the junction of Holland

Road and Lansdowne Road and to the north. In combination with its scale, mass and height it would result in the eye being unacceptably drawn to it. To my mind, it would sit in stark contrast to the prevailing form, roofscape and appearance of this part of the BTCA, appearing as an alien and incongruous addition that would be detrimental to the visual interests of its surroundings.

11. I acknowledge that the existing building is of no architectural merit and in design terms it is not always essential for such a proposal to replicate the traditional design or appearance of a building or area. Furthermore, that contemporary design can develop a further layer of townscape which complements, rather than competes with the past. However, the proposal would result in an inappropriate and confused mix of contemporary architecture that at such a scale and height and in such a context would not represent a high quality of design and would fail to preserve the character and appearance of the BTCA. Furthermore, I do not consider that it would represent such an innovative or high quality design that it should be considered to be an enhancement.
12. Turning to the setting of Palmeira Yard, the Framework states that the setting of a heritage asset is the surroundings in which it is experienced and that this can be more extensive than its curtilage. Heritage assets are clearly influenced by the comprehension of external factors and development within their setting, the extent of which is not fixed and can evolve over time.
13. In this case, the setting of that building is influenced predominantly by classical Regency and Victorian architecture, in addition to the synagogue. Although there is some variety in the wider area in terms of building styles, designs and sizes, the surroundings in which it is experienced do not include modern buildings located further down Holland Road, such as No. 63 Holland Road. Nevertheless, its side elevation and roof is a dominant and imposing feature, in particular when approaching from the north and the views of the building across the appeal site make a substantial and important contribution to the setting of the heritage asset.
14. The proposal would comprise four full storeys over a basement, plus a penthouse level set in from the main building lines within a mansard roof. The combination of height and what would be a rather confused side elevation, in configuration and appearance of the upper storeys would visually jar with the roof of the listed building, obscuring views of it when travelling down Holland Road. It would substantially and harmfully diminish the perception and attractiveness of Palmeira Yard and the significance of it as a designated heritage asset, in terms of its setting.
15. For these reasons, the proposal would fail to preserve or enhance the character and appearance of the BTCA and would harm the significance of Palmeira Yard, a Grade II listed building, in terms of its setting. The proposal would therefore conflict with Policies CP12 and CP15 of the Brighton and Hove City Plan Part One ('CP') which, seek to conserve and enhance the city's historic environment in accordance with its identified significance, giving the greatest weight to designated heritage assets and their setting and be of a high quality design.

#### *Affordable housing*

16. Policy CP20 of the CP requires the provision of affordable housing on all sites of 5 or more dwellings. For a development of 9 residential flats 20% affordable

housing as an equivalent financial contribution would be required. On the basis of the information before me, I have no reason to consider that such a requirement would fail to meet the tests of necessity, relevance and fairness as set out in section 122 of the Community Infrastructure Levy Regulations 2010 (as amended) or Paragraph 204 of the Framework.

17. However, no legal agreement is before me although the appellant has suggested that such provision could be secured by condition. I have carefully considered this but the Planning Practice Guidance states that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation.
18. Furthermore, that only in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. This does not appear to be the case here and no such condition has been put before me by the parties. Having regard to the advice in the PPG I do not consider that this particular case this matter could be resolved by condition.
19. Whilst I have some sympathy with the appellant's position, the Planning Inspectorate's Procedural Guide Planning Appeals – England 2016 is clear that a certified copy of the executed obligation should be received no later than seven weeks from the appeal start date and I have had no indication that the appellant intended to submit one. Furthermore, there is nothing before me to suggest that the contribution would be a disproportionate burden or that there are viability issues which warrant a different approach.
20. For these reasons, in the absence of the necessary obligation or means of securing any contribution the proposal fails to make adequate provision for affordable housing. It would therefore conflict with Policy CP20 of the CP, which seeks to ensure that new development delivers an appropriate contribution to affordable housing, unless otherwise justified.

### **Other Matters**

21. I acknowledge the lack of objection from consultees and that the Council raises no other objections to the proposal. Furthermore, that the scheme is a resubmission following the refusal of earlier schemes. However, these matters do not outweigh the considerable importance and weight I give to the failure to preserve or enhance the character and appearance of the BTCA and harm to the significance of a designated heritage asset, in terms of its setting.
22. I have been referred to an approval by the Council in 2010 at 63 Holland Road<sup>1</sup>. However, this building has a lesser effect than the appeal proposal before me would have and sits in a subtle but materially different context to the appeal site. Furthermore, I have not been provided with the full details and I cannot therefore be certain that the considerations and judgements are directly comparable to the proposal before me. Consequently, it does not alter my findings in relation to the main issues and in any event, each case must be determined on its own merits.

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<sup>1</sup> BH2010/00814.

*Planning balance and overall conclusion*

23. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The starting point therefore is that the proposal would conflict with Policies CP12, CP15 and CP20 of the CP. There would be compliance with some aspects of the plan but the conflict I have identified is such that it should be regarded as being in conflict with the development plan, when read as a whole. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted, notwithstanding this conflict.
24. The Framework is a significant material consideration and because less than substantial harm has been identified to the significance of a designated heritage asset, before considering whether Paragraph 14 and the presumption in favour of sustainable development applies this harm should be weighed against the public benefits of the proposal.
25. The PPG states that public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in Paragraph 7 of the Framework. Public benefits should flow from the proposed development and should be of a nature or scale to benefit the public at large and should not just be a private benefit.
26. The proposal would provide 9 additional smaller units in an area of high housing demand. It would also be on previously developed land and in an accessible location close to services. Construction would result in short term employment opportunities, and local spending, both during construction and thereafter by occupiers which would contribute to the local economy. There would also be some additional economic benefits from the provision of new office space, although this is tempered by the loss of an existing employment use.
27. The appellant also contends that vehicle movements would be reduced and the proposal would improve the appearance of the site and area. However, I did not observe that on street parking was solely as a result of the use or that it is causing any highway safety issues. There is also nothing before me to suggest that public health is at risk or that this could not be mitigated by conditions. For reasons already given above, I disagree that this would represent an enhancement to the BTCA. Furthermore, there is nothing to suggest that the operation of the adjoining synagogue and its continued use are under threat from the existing building.
28. Taking everything together, the public benefits would not outweigh the considerable importance and weight that I give to the desirability of preserving or enhancing the character and appearance of the BTCA, the harm to the significance of Palmeira Yard, in terms of its setting and the conflict with the development plan policies that I have identified.
29. Whilst I note the appellant's reference to the presumption in favour of sustainable development the principle of housing is not at issue in this appeal. Moreover, the appellant does not dispute that the Council can demonstrate a 5 year supply of housing land and I have not found the development plan to be absent, silent or relevant policies are out of date. In any event, in accordance with the requirements of Paragraph 14 and footnote 9 of the Framework, I have found that specific policies in the Framework indicate that development

should be restricted<sup>2</sup>. As such, the presumption in favour of sustainable development does not apply.

30. For the reasons given above, the proposal would conflict with the development plan, when read as a whole. Material considerations do not indicate that a decision should be made other than in accordance with it. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR

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<sup>2</sup> Designated heritage assets.