

<u>No:</u>	BH2024/01873	<u>Ward:</u>	Hangleton & Knoll Ward
<u>App Type:</u>	Householder Planning Consent		
<u>Address:</u>	Studio Workshop at Rear 49 Elm Drive Hove BN3 7JA		
<u>Proposal:</u>	Alterations to approved scheme BH2023/01017, incorporating the deletion of north facing windows, and the reduction in height of the east end of the dormer, and other associated alterations. (Retrospective)		
<u>Officer:</u>	James Ing, tel: 290485	<u>Valid Date:</u>	06.09.2024
<u>Con Area:</u>	None	<u>Expiry Date:</u>	01.11.2024
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>			
<u>Applicant:</u>	Paul Heath 7 Montpelier Villas Brighton BN1 3DH		

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
Proposed Drawing	PLAN 1A		3 December 2024
Location Plan	SITE LOCATION PLAN		6 September 2024
Proposed Drawing	PLAN 1		30 July 2024

2. Noise associated with the air source heat pump, hereby approved, 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 the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS4142:2014-A1:2019 (or the relevant updated Standard). In addition, there should be no significant low frequency tones present.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

3. No extension, enlargement, alteration of the dwellinghouse or provision of buildings etc. incidental to the enjoyment of the dwellinghouse within the curtilage of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development)

(England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies CP12 of the Brighton & Hove City Plan Part One, and DM18, DM20 and DM21 of the Brighton & Hove City Plan Part Two.

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 applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.

Biodiversity Net Gain

Based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply. These can be found in the legislation.

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that, unless an exception or a transitional arrangement applies, the planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan in respect of this permission would be Brighton & Hove City Council.

2. SITE LOCATION

- 2.1. The application site comprises a single storey detached dwelling to the rear (north) of the plot of no.49 Elm Drive in Hangleton. It backs on to the rear of dwellings on Wayfield Avenue.
- 2.2. The property was originally built as an incidental outbuilding servicing the main dwellinghouse. However, it has been in use as a separate dwellinghouse since at least 2016 so in planning terms the use as a separate dwellinghouse is now

considered lawful, as has been confirmed through a Lawful Development Certificate (ref. BH2020/02147).

- 2.3. Planning permission was granted in 2023 for alterations to the building, namely the addition of a new roof along with other works (see below ref. BH2023/01017). These works have now been undertaken, with a new roof erected, incorporating a dormer, and alterations to fenestration. However, the works differ to those approved, hence the present application.
- 2.4. A site visit has not been undertaken in this instance; however, the impacts of the proposal can be clearly assessed from the site photos and plans and provided by the applicant, from recently taken aerial imagery of the site, and from recent site photos and site visits conducted by the Planning Enforcement Team

3. RELEVANT HISTORY

- 3.1. **BH2024/01035** - 'Non-Material Amendment to application BH2023/01017 to omit 2no windows to North and 2no windows to West elevations, installation of slope to dormer roof with tiling up to underside of dormer window, 4no photovoltaic panels to South facing roof, rendered walls painted chalk white and internal alterations to layout.' - Refused on 30 May2024, because:
"The proposed revisions to the approved scheme (BH2023/01017) would be outside the scope of the original planning permission and therefore constitute a material amendment to the original planning permission."
- 3.2. **BH2023/01017** - 'Erection of a new roof, incorporating a dormer and rooflights. Incorporates fenestration alterations, and the removal of existing summerhouse with additional landscape planting.' - Approved by the Planning Committee on 08/08/2023
- 3.3. **ENF2023/00534** - Enforcement case which is ongoing
- 3.4. **BH2023/00026** - 'Demolition of existing studio and erection of 2no bedroom dwelling (C3).' - Withdrawn
- 3.5. **BH2021/00573** - 'Prior approval for the erection of an additional storey to form a first floor extension.' Prior Approval Refused for three reasons (below); Appeal Dismissed, with the Inspector upholding only reason for refusal no.3:
 1. *The proposed development includes slate roof tiles which are dissimilar in appearance to the existing corrugated roofing material. The development would not therefore represent permitted development as it would breach the restrictions of Schedule II, Part One, Class AA.2(2a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).*
 2. *The proposed additional storey would include windows that would be highly visible from the private gardens and rear windows of properties including no.44 Wayfield Avenue and nos. 49 and 51 Elm Drive; this would result in significant perceived loss of privacy for occupants of these properties which would be detrimental to their amenities.*

3. *By virtue of the building's position, size and materials, the design and architectural features of the principal elevation of the dwellinghouse as a result of the proposed development would result in a bulky building form which would be out of character with the area and harmful to the wider streetscene."*
- 3.6. **BH2020/03788** - 'Prior approval for the erection of an additional storey to form a first floor extension.' - Prior Approval Refused
 - “1. *The proposed additional storey would include windows that would provide unobstructed views into the private gardens and rear windows of properties including no.44 Wayfield Avenue and nos. 49 and 51 Elm Drive; this would result in overlooking that would cause a significant perceived and actual loss of privacy for occupants of these properties which would be detrimental to their amenities.*
 2. *By virtue of the building's position, size and materials, the design and architectural features of the principal elevation of the dwellinghouse as a result of the proposed development would result in a bulky and utilitarian building which would be out of character with the area and harmful to the wider streetscene."*
- 3.7. **BH2020/02147** - 'Certificate of lawfulness for existing use as 3no self-contained dwellings (C3).' - Approved
- 3.8. **BH2003/00656/CL** - 'Certificate of Lawfulness for proposed development of a block-built garage under a tiled roof.' - Approved

4. APPLICATION DESCRIPTION

- 4.1. Retrospective planning permission is sought to regularise alterations to the property that do not align with what was approved in application ref. BH2023/01017 . These alterations comprise: the infilling of 2no. pre-existing windows on the west elevation and the omission of 2no. approved windows from the northern gable elevation; the installation of a downwards slope to dormer roof where the approved is flat, with tiling up to the underside of the dormer window; the installation of 4no. photovoltaic (solar) panels on the south facing roof; the installation of an Air Source Heat Pump (ASHP) to the front of the property; the installation of white painted render to the exterior walls; minor alterations to the front elevation fenestration; and the installation of grey weatherboarding to the gable end of the roof.
- 4.2. It is noted that a pergola has also been installed on the front elevation. This has not been included in the plans submitted as part of this application because the applicant has stated that they intend to remove it.

5. REPRESENTATIONS

- 5.1. In response to publicity, responses were received from **7 (seven)** individuals, objecting to the application for the following reasons:

- Inappropriate height of development
- Noise pollution
- Overdevelopment/excessive building density in local area
- Overshadowing/light loss
- Loss of outlook
- Overlooking/loss of privacy
- Would create additional traffic/parking stress
- Too close to boundary
- Sets undesirable precedent
- Potential for being converted into an HMO
- Concerns over the development differing to what was approved
- Concerns relating to the depth of the foundations

5.2. **Councillor John Hewitt** objected to the application raising concerns that the dormer is larger than what was agreed and is of an inappropriate height. A copy of the representation is attached to this report.

5.3. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

None.

7. MATERIAL CONSIDERATIONS

7.1. 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.

7.2. The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove City Plan Part Two (adopted October 2022)
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013; revised October 2024);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour JAAP (adopted October 2019).

8. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP1	Housing Delivery
CP9	Sustainable Transport

CP10	Biodiversity
CP8	Sustainable Buildings
CP12	Urban Design
CP13	Public Streets and Spaces

Brighton & Hove City Plan Part Two

DM1	Housing Quality, Choice and Mix
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM22	Landscape Design and Trees
DM33	Safe, Sustainable and Active Travel
DM35	Travel Plans and Transport Assessments
DM36	Parking and Servicing
DM37	Green Infrastructure and Nature Conservation
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

SPD06	Trees and Development Sites
SPD11	Nature Conservation and Development
SPD12	Design Guide for Extensions and Alterations
SPD17	Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the impact of the development on the appearance and character of the host building and the wider area, and the amenities of adjacent occupiers and future occupiers of the application site.
- 9.2. In considering the application, the extent of the approved works must be taken into account as these have already been deemed acceptable. Given these have been approved, it is only the impact of the amended works that can be considered.

Design and Appearance:

- 9.3. The application site is on backland, set well back from Elm Drive so has little impact on the streetscene, though it is visible along the driveways between 49 and 51 Elm Drive.
- 9.4. The built dormer differs to the approved dormer (under application BH2023/01017) by having a downwards sloping roof rather than a level roof, and a smaller window, with roof tiles leading up to the window, in between the dormer cheeks. The built dormer continues to adhere to SPD12's design guidance, being largely finished with hanging tiles to match the main roof, and clearly being a subordinate, appropriately proportioned addition to the host dwelling.
- 9.5. The fenestration alterations are acceptable, with the infilled/omitted windows having no bearing on the design of the application site, and the alterations to the

approved front elevation representing an aesthetic enhancement to the site, by improving the symmetry of the front elevation. Similarly, the installed white painted render is an improvement on the previously approved white painted breeze blocks, and is therefore acceptable. There is precedent for dwellings finished with white painted render in the local area, helping the application site look less incongruous in its setting.

- 9.6. The installed grey weatherboarding marks a departure from the colours seen in the rest of the application site, and therefore appears as somewhat incongruous, however, the harm is not severe enough to warrant refusal.
- 9.7. The installed PV panels and ASHP are unattractive alterations that harm the appearance of the application site, however, this harm has to be balanced against the public benefit of improving the site's sustainability. Considering the guidance of City Plan Part One policy CP8 (Sustainable Buildings), the PV panels and ASHP are considered to not be harmful enough to warrant refusal.
- 9.8. Further to the aforementioned points, the LPA's decision is informed by the fact that the PV panels and ASHP could be installed under Permitted Development rights, and therefore benefit from a 'PD fallback'.
- 9.9. Additionally, although application ref. BH2023/01017 removed PD rights relating to general alterations to dwellings (Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015), it is noted that had these rights not been removed and notwithstanding the black framed fenestration, the fenestration alterations, dormer and rendering could have been achieved under PD rights, and therefore represent forms of development that are generally uncontentious.
- 9.10. The alterations are considered to be suitable additions to the application site that would not harm its appearance or that of the wider area, in accordance with policy DM18 and DM21 of City Plan Part 2 and SPD12 guidance.

Impact on Amenities:

- 9.11. Policy DM20 of City Plan Part 2 states that planning permission for any development 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.
- 9.12. The fenestration alterations have been appropriately sited, resulting in minimal harm from overlooking or loss of privacy. The afforded views as a result of the front elevation alterations would be similar to those afforded by the approved fenestration arrangement. The omitted north elevation windows were set to be fitted with an obscure glazing, and the infilled west elevation windows were situated at a high level, their infilling/omission has therefore resulted in a largely neutral impact to neighbouring privacy. As approved, the built dormer features glazing that is heavily recessed within the dormer's cheeks, as evidenced by the Planning Enforcement Team's site photos, the dormer only affords oblique views of neighbouring properties. The fact that the sloping roof further obscures views from the dormer means neighbouring privacy is further improved.

- 9.13. Furthermore, the sloping roof makes the development marginally less overbearing and would allow further natural light to pass the application site's roof - though it's noted that the dormer would largely only cast shadow onto a double garage in any case.
- 9.14. The installed PV panels and ASHP may result in harm to amenity by, respectively, solar glare and additional noise. However, as outlined above, these elements of the development benefit from a PD fallback and are therefore not considered harmful enough to warrant refusal. A condition regarding noise levels is recommended and an informative has been attached to remind the applicant that planning permission for the ASHP does not preclude the property from noise complaint investigations from the Environmental Health Team.
- 9.15. The impact on the adjacent properties has been fully considered in terms of daylight, sunlight, outlook and privacy and no significant harm has been identified.
- 9.16. The omission of several approved windows has reduced the amount of natural light reaching the interior of the property, potentially affecting the amenity of future residents. However, provided fenestration and rooflights ensure enough light to habitable rooms to comply with City Plan Part Two policy DM1.

Other Matters:

- 9.17. It is noted that many of the letters of objection received relate to the principle of the application site existing as a legitimate self-contained dwelling, rather than as an annexe but this has already been approved under permission ref. BH2020/02147). Objections also relate to the roof alterations that were already approved at Committee under application ref. BH2023/01017. These issues cannot be taken into account. Therefore, for the reasons set out in this report, assertions that the alterations for which retrospective planning permission is sought are harmful to amenity are rejected, the alterations have largely resulted in a neutral or positive impact on amenity.
- 9.18. The applicant would not be able to convert the application site into a House in Multiple Occupation (HMO) without planning permission.
- 9.19. Concerns relating to the depth of the foundations are not a material planning consideration.
- 9.20. It is regrettable that the applicant has not discharged condition no. 4 of application ref. BH2023/01017, which required protection of the street tree during demolition/construction. However, it is noted that no harm to trees in the immediate area has been reported or witnessed by the Planning Enforcement Team. It is further noted that the ecological outcomes of the application site have been improved via the installation of a south facing bee brick, and a bat box.
- 9.21. Please note that this scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because it is a householder application.

Conclusion:

- 9.22. The development is considered to be acceptable in terms of appearance and the impacts it would have on the amenities of neighbours, particularly noting the extent of works already approved as acceptable through the previous permission. The application is therefore considered to be in accordance with policies CP8 and CP12 of the Brighton and Hove City Plan Part One, and DM18, DM20 and DM21 of the City Plan Part Two, along with SPD12 guidance.

10. COMMUNITY INFRASTRUCTURE LEVY

- 10.1. Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. The exact amount of money owed, if any, will be confirmed in the CIL liability notice which will be issued as soon as it practicable after the issuing of planning permission.

11. EQUALITIES

Section 149(1) of the Equality Act 2010 provides:

- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 11.1. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

