

<u>No:</u>	BH2024/02584	<u>Ward:</u>	Central Hove Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	6 St Aubyns Gardens Hove BN3 2TA		
<u>Proposal:</u>	Roof conversion to form first and second floor maisonette (C3) with revised fenestration. (Part retrospective)		
<u>Officer:</u>	Steven Dover	<u>Valid Date:</u>	11.11.2024
<u>Con Area:</u>		<u>Expiry Date:</u>	06.01.2025
<u>Listed Building Grade:</u>		<u>EOT:</u>	12.02.2025
Agent:	ADC Ltd Citibase Brighton 95 Ditchling Road Brighton BN1 4ST		
Applicant:	Bellimo Ltd Brighton Kingsway Hotel 2 St Aubyns Hove BN3 2TB		

This application was deferred from being heard at the Planning Committee meeting on 5 February 2025 due to a delay in notifying speakers of Committee arrangements.

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 and block plan	ADC1345/LP		18 October 2024
Proposed Drawing	ADC1345/13	A	18 October 2024
Proposed Drawing	ADC1345/14	A	18 October 2024

2. The windows hereby approved shall not be installed until full details of the proposed windows have been submitted to and approved by the Local Planning Authority in writing. This should include sections and elevations at a minimum scale of 1:10 and a cross-section showing window reveals and proposed glazing bars at a scale of 1:1. The works shall be carried out and completed fully in accordance with the approved details and shall be retained as such thereafter.

Reason: To ensure a satisfactory appearance to the development and to comply with policy CP15 Brighton & Hove City Plan Part One. and DM26 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.

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 is located on the northern side of St Aubyns Gardens, which is effectively part of the west-to-east section of the dual carriageway known as Kingsway (A259), and opposite the King Alfred Leisure Centre. It is a mid-terrace building, towards the western end of a row of 15 similar Classical style, mid-Victorian properties with two lower, four storey buildings adjoined to its western flank wall.
- 2.2. The property the subject of this application was originally four storeys plus basement and roofspace. It has subsequently been converted via roof extensions either side of the original Dutch gables to the front elevation. To the rear it has a two-storey outrigger that is set away from the rear elevation.
- 2.3. This application relates to accommodation in the outrigger at the rear of the property. According to Council Tax records, the building comprises six flats, numbers 1-4, as well as 6A and 6B. Existing plans indicate that the second floor of the outrigger is laid out as a studio flat. There is no history for this studio flat, and it is considered to be unauthorised. This unauthorised unit is subject to an Enforcement Notice.
- 2.4. The application site is within the Old Hove Conservation Area, an Archaeological Notification Area and Controlled Parking Zone (CPZ) N. The property is not a listed building or located within the setting of any listed buildings.

3. RELEVANT HISTORY

- 3.1. **ENF2020/00618** Notice with effect 15th November 2024
The Enforcement notice requires the following:
1. *“Cease the use of the second/top floor of the outrigger as a separate residential planning unit.*
 2. *Remove the 4x windows from the rear elevation of the Property and revert to the number, size and location of windows to that prior to the unauthorised development. All profiles and detailing to match the previous windows and render to match existing.”*
- 3.2. **BH2024/00845** Roof conversion to form first and second floor maisonette (C3). (Part Retrospective) Refused 01.10.2024 for the following reasons.
1. *“The proposed second bedroom of the maisonette, due to its narrow width, would fall below the National Described Space Standards and provide a poor standard of accommodation for future occupiers. The development would therefore conflict with objectives of policy DM1 of the City Plan Part Two which seeks to deliver quality homes for the city.*
 2. *The windows on the rear elevation, by reason of their horizontal proportions, casement openings, and upvc material, appear bulky and inappropriate on the rear of a historic property. They also give the rear elevation of the outrigger an overdeveloped appearance which fails to relate well to the wider character of the rear elevation of the main property. The works harm the historic character of the host building and wider Old Hove Conservation Area, contrary to policies CP15 of the City Plan Part One and DM26 of the City Plan Part 2.”*
- 3.3. **BH2021/00897**: Retention of flat roof to replace existing pitched roof to rear outrigger. Approved 25/5/2021
- 3.4. **BH2021/01599**: Retention of a single storey annex building for use as an office. Withdrawn

4. APPLICATION DESCRIPTION

- 4.1. The application seeks consent for a roof conversion to form a first and second floor maisonette (C3) with revised fenestration. The application is part-retrospective as the stairs and floor within the internal envelope of the proposed maisonette already exists, the proposal would change the room layout internally to form the two-bed unit, and the works would also make changes to the existing windows.
- 4.2. Amended plans were requested during the course of the application process to accurately show the existing window arrangement, and these have been supplied. A site visit has been carried out.
- 4.3. The application was originally due to be heard at the Planning Committee meeting on the 5th February 2025. However it was deferred as sufficient notice had not been given all parties who had commented that they may wish to exercise their right to speak to the Committee. The requisite notice has now been given to those who suggested they may wish to speak.

5. REPRESENTATIONS

- 5.1. **Five (5)** representations were received objecting to the application for the following reasons:
- Works harm historic character of the building and the conservation area
 - Windows are not appropriate for the building
 - Works are retrospective and there should have been enforcement action years ago.
 - Correct planning process and consultation process has not been followed
 - Application should refer to the conservation area and the listed buildings
 - Loss of privacy, loss of light and overshadowing
 - Loss of property value
 - Unauthorised works to the basement of the property and people living in the rear office building of the site
 - Property overdeveloped and overcrowded
- 5.2. **Eight (8)** representations were received supporting the application for the following reasons:
- Good design
 - In character with the rest of the building
 - Do not cause overlooking or a loss of privacy
 - There are no problems with the development
- 5.3. Full details of representations received can be found online on the planning register

6. CONSULTATIONS

- 6.1. **Heritage:** No objection subject to the imposition of a condition for joinery details.
- 6.2. **Transport:** (Verbal): No objection
- 6.3. **Private Sector Housing:** No comment

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, updated October 2024);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Joint Area Action Plan (October 2019)

8. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP1	Housing delivery
CP8	Sustainable buildings
CP9	Sustainable transport
CP10	Biodiversity
CP12	Urban design
CP14	Housing density
CP15	Heritage
CP19	Housing mix

Brighton & Hove City Plan Part 2:

DM1	Housing Quality, Choice and Mix
DM2	Retaining Housing and residential accommodation (C3)
DM3	Residential conversions and the retention of smaller dwellings
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM26	Conservation Areas
DM33	Safe, Sustainable and Active Travel
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents

SPD09	Architectural Features
SPD11	Nature Conservation and Development
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards
SPD17	Urban Design Framework

Other Documents

Old Hove Conservation Area Character Statement

9. CONSIDERATIONS & ASSESSMENT

Background

- 9.1. A complaint was received in November 2020 alleging unauthorised works to the existing outrigger of the property. The works comprised the change of the roof form from a pitched roof to a flat roof. The owner subsequently applied

retrospectively for the works undertaken at the site. The planning application ref BH2021/00897 was approved in June 2021. This approval solely created a larger loft area to the building under the altered roof. A separate residential unit was not approved.

- 9.2. After the roof works were completed, the Council received further information that the works did not accord with the approved plans. A site visit was carried out on 5th April 2023 where it was determined that the second floor of the outrigger was being used as a separate residential unit and the owner had installed two windows at second floor level which were not part of the original permission. The windows had been installed to enable the use of the space as residential accommodation. Both the new windows, and the studio flat are therefore in breach of planning control.
- 9.3. In 2024 a planning application was submitted in an attempt to regularise the windows which had been installed and to remove the second-floor studio by incorporating the second-floor accommodation into a first and second floor maisonette (ref. BH2024/00845). This was refused due to the small size of the second bedroom of the maisonette, which fell below Nationally Described Space Standard (NDSS) requirements, and due to the design and appearance of the windows and the impact on the heritage assets in the Conservation Area. Following this refusal, an enforcement notice was issued.
- 9.4. Should this current application be approved and fully implemented, it would address the issues that the extant enforcement notice raises. The applicant has not appealed the enforcement notice, and has until July 2025 to comply with it.
- 9.5. The main considerations in the determination of this application relate to standard of accommodation proposed, design and heritage considerations, as well as the impacts on neighbouring amenity.

Standard of accommodation:

- 9.6. The application seeks to regularise the second floor of the outrigger which appears to have been used as self-contained studio but is unauthorised as such. The works would bring the second floor into use with the existing first floor studio (numbered 6B) creating a maisonette over the two floors (thereby removing the current unauthorised studio).
- 9.7. In regard to the conversion of two studios into one maisonette, the second-floor studio is unauthorised, so policy DM2 Retaining Housing and residential accommodation, which seeks to resist the loss of residential units, is not considered to apply in this case. Furthermore, the existing studio does not provide a good standard of accommodation (for the reasons set out in the earlier refusal), and therefore the opportunity to provide a larger unit of accommodation would not be resisted in principle.
- 9.8. Policy DM1 (Housing Quality, Choice and Mix) outlines the Council's objective to deliver a wide choice of high-quality homes which will contribute to the creation of mixed, balanced, inclusive and sustainable communities.

Specifically, all proposals "incorporate a range of dwelling types, tenures and sizes that reflect and respond to the city's identified housing needs".

- 9.9. Policy DM1 adopts the Nationally Described Space Standard (NDSS) for assessment to the standard of accommodation.
- 9.10. At approximately 72sqm the floor area of the maisonette would meet the requirements for a 3-person 2-bedroom unit, over 2 floors. The second bedroom, a single bed space, measuring 8.9sqm, would now meet the requirements of the NDSS. This bedroom would have a width of 2.2m which exceeds the 2.15m required in the NDSS. This overcomes the concern over the standard of accommodation which formed a reason for refusal in the previous application.
- 9.11. The submitted section shows the head height of the development at 2.3m and the rooms would have adequate natural light and ventilation from new windows in the rear of the outrigger. An assessment of the acceptability of these windows in regard to design and heritage implications is made below.
- 9.12. With the submitted layout now able to provide accommodation which would meet the NDSS, the proposed maisonette would provide an adequate standard of accommodation and would meet the requirements of DM1 of CPP2.

Design and Heritage considerations

- 9.13. When considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
- 9.14. Case law has held that the desirability of preserving or enhancing the character or appearance of a conservation area must be given "considerable importance and weight".
- 9.15. The works to form the flat roof to the outrigger were approved in 2021 (see planning history) and do not form part of this application. The only external alterations in this application relate to the windows.
- 9.16. The windows which have been installed are unauthorised and are not acceptable from a design and heritage perspective. The pre-existing windows at first floor level of the outrigger appear to have been sliding sash with traditional vertical proportions. This type of fenestration is characteristic of Victorian properties within the Old Hove Conservation Area. The openings also provided a solid-to-void ratio on the rear elevation which would be expected for this outrigger.
- 9.17. The unauthorised works have replaced the first-floor windows on the rear with UPVC casement windows of reduced height to allow for an additional window course above. The first-floor windows now have squat proportions with less vertical emphasis. In addition, the new second floor UPVC windows have further horizontal emphasis. The proportions of these windows jar with the other

windows on the rear elevation of the main building. This formed a reason for refusal in the last application.

- 9.18. In response, this application now proposes the replacement of the unauthorised windows. No detailed sections of the replacement windows have been provided. However, in principle the replacement of the four windows with UPVC sash windows, with more vertical proportions, is acceptable, given that the rear elevation is not readily visible from surrounding streets.
- 9.19. The proposed windows seek to replicate the verticality of the existing fenestration on the rear of the properties within St Aubyns Gardens which does vary in style. The preferred proportions would have been to replicate that of the pre-existing windows, however it is accepted that, since the roof works to the outrigger, there is a desire for an additional windows course, and the proportion of the top floor windows are constrained by the floor to ceiling height.
- 9.20. The proposed windows would bring back alignment through the rear elevation of the outrigger and the glazing pattern and glazing bars also give stronger verticality compared to the design of the existing windows. This is a welcome change and responds adequately to the reason for refusal for the previous application. Whilst the second-floor window course, combined with the approved roof works, still gives the outrigger added prominence when viewed with the main elevations of the building, the proposed changes would not cause significant harm to the appearance or character of building. The Heritage Team have agreed that, on balance, the proposals meet the test of the desirability of preserving the character and appearance of the conservation area. Full joinery details for the windows would require further approval and this can be secured by a planning condition.

Impact on Neighbouring Amenity

- 9.21. Paragraph 127 of the NPPF outlines that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.
- 9.22. Policy DM20 of City Plan Part 2 seeks to ensure development protects the amenity of future occupiers and neighbouring occupiers to the site. DM40 seeks to protect the wider environment in terms of pollution and nuisance, and for the purposes of this development, noise and disturbance.
- 9.23. Representations of objection received raise issues of loss of light and overshadowing, however this application does not extend the building with additional massing and therefore loss of light and overshadowing are not considered to be an issue in this instance.
- 9.24. The formalisation of living accommodation at second-floor level of the outrigger is not considered to cause a significant change in the levels of activity associated with the site. The works would not create an additional residential unit, instead additional accommodation for an existing residential unit would be provided. The comings and goings associated with an additional bed space would not harm the residential character of the immediately vicinity. The works are not

considered to cause the building or wider site to be overcrowded or overdeveloped.

- 9.25. In regard to overlooking and loss of privacy, the additional windows at second floor level, provide opportunity for overlooking to the rear. However, there were already first floor windows in the rear elevation of the outrigger. The new windows at second floor level of the outrigger do not cause any significant increase in overlooking compared to the pre-existing situation. Any additional overlooking to the rear would likely be over garden spaces already impacted by numerous neighbouring windows, and a typical situation with flatted development within a tight urban grain. Therefore, whilst the comments from neighbours are noted, a reason for refusal relating to loss of privacy from the new windows is not considered justifiable in this instance.

Highways and Transport Considerations

- 9.26. The proposed development would not result in a significant increase in trip generation and any impact on the highway would be considered to be minimal. The Transport Team have not raised objections to the development. This development would not result in an additional residential unit, just additional bed space for an existing unit of accommodation.
- 9.27. The site is located within a Controlled Parking Zone (CPZ), where uptake of parking permits is high and therefore the number of vehicles able to be parked in the area is already limited and controlled through the CPZ.

Biodiversity Net Gain

- 9.28. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because it does not impact a priority habitat or habitat of more than 25sqm or 5m of linear habitat.

Other Matters

- 9.29. Matters regarding property values, are not valid planning considerations and therefore have not been taken into account in the determination of this application.
- 9.30. It has been stated that this application has not followed the proper planning process. It is noted that this site has been the subject of numerous planning applications and enforcement investigations, and that the current application is part-retrospective. Notwithstanding this, the application must be assessed on its own merits and without prejudice. It is considered that due process has been followed in the determination of this application, including proper consultation. The application must be considered based on what is being applied for. Should approval be granted, the current enforcement investigation would ensure compliance.
- 9.31. The Heritage Statement submitted with the application is considered substandard, but, together with input from the Heritage Team, the proposal has been adequately assessed in accordance with the National Planning Policy Framework and local policies which require due weight to be given to preserving and enhancing heritage assets.

- 9.32. Representation of objection have been made regarding unauthorised works elsewhere in the property including the occupation of a garden building/room as residential use, and basement occupation. The Planning Investigation Team are aware of these alleged breaches of planning control, they have been investigated fully. These alleged breaches are separate in their location, and in their nature, to the works covered in this application. They are therefore not relevant to the determination of this application. Seeking planning permission retrospectively is not encouraged but the retrospective nature of an application cannot be given weight.

Conclusion and Planning Balance

- 9.33. The proposed development would result in the creation of a maisonette which provides an enlarged and improved unit of accommodation. The altered accommodation would comply with the requirements of the NDSS. The new fenestration is considered acceptable in principle and would result in an improved appearance to the elevations of the outrigger. The full details of the replacement windows are required to be submitted for further approval. The recommendation is to approve the application which would improve the standard of an existing flat, whilst preserving the historic character of the site and wider conservation area.

10. EQUALITIES

- 10.1. Access from the street level would remain as existing and the accessibility of the units are constrained by the existing building and previous conversion works.

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.
- 10.2. 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