

<u>No:</u>	BH2025/02297	<u>Ward:</u>	Wish Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	The Pinnacle (formerly Rayford House) 8 School Road Hove BN3 5EU		
<u>Proposal:</u>	Application to vary conditions 1 and 11 of BH2023/00009 (allowed on appeal) to allow for the provision of one controlled access gate in eastern boundary for use by all residents in The Pinnacle only and removal of second access.		
<u>Officer:</u>	Sonia Gillam, tel: 292265	<u>Valid Date:</u>	13.10.2025
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	08.12.2025
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	11.02.2026
<u>Agent:</u>			
<u>Applicant:</u>	The Pinnacle Freehold Ltd 42 Roman Road Hove BN3 4LA		

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
Block Plan	Proposed		13-Oct-25
Proposed Drawing	Parking Site Plan		13-Oct-25
Location Plan	6778-2P01		30-Mar-20
Proposed Drawing	6778-2P03	C	12-Jun-20
Proposed Drawing	1:200 Site Plan		16-Sep-25
Proposed Drawing	Gate Elevation/ Detail		16-Sep-25

2. The landscaping scheme approved under BH2022/00241 shall be maintained hereafter. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to provide ecological and sustainability benefits, to comply with policies DM22 and DM37 of Brighton & Hove City Plan Part 2, and CP8, CP10, CP12 and CP13 of the Brighton & Hove City Plan Part One

3. Two bee bricks shall be retained within the external wall of the development.
Reason: To enhance the biodiversity of the site and to comply with Policy DM37 of Brighton & Hove City Plan Part 2, Policy CP10 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.
4. The type, number, location and timescale for implementation of the compensatory bird and bat boxes shall be carried out in strict accordance with the details approved under BH2021/01156 and thereafter retained.
Reason: To safeguard these species from the impact of the development and ensure appropriate integration of new nature conservation and enhancement features in accordance with Policy DM37 of Brighton & Hove City Plan Part 2, Policy CP10 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.
5. The sedum roof shall be retained in accordance with details approved under application reference BH2021/01156.
Reason: To ensure that the development contributes to ecological enhancement and sustainability on the site and in accordance with Policy DM37 of Brighton & Hove City Plan Part 2, Policies CP8 and CP10 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.
6. Any hard surfacing at the site shall be retained as either porous materials or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with policies CP8 & CP11 of the Brighton & Hove City Plan Part One and DM42 and DM43 of the Brighton & Hove City Plan Part Two and SPD16: Sustainable Drainage
7. Four car parking spaces (two for residents and two for visitors) allocated within the car parking area pertaining to The Pinnacle shall be retained for use by the the occupants of, and visitors to, the four dwellings hereby approved.
Reason: To ensure that adequate parking provision is retained and to comply with policy CP9 of the Brighton & Hove City Plan Part One, policy DM33 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards.
8. The vehicle parking spaces shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.
Reason: To ensure that adequate parking provision is retained and to comply with policy CP9 of the Brighton & Hove City Plan Part One, policy DM33 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards.
9. The cycle parking facilities hereby permitted shall be retained as shown on the approved plans for use by the occupants of, and visitors to, the development 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 DM33 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards

10. The priority road signs approved under BH2021/01156 shall not be internally illuminated, endanger persons using the car park or obscure the ready interpretation of any traffic sign, and shall be retained as approved thereafter.

Reason: In the interests of highway safety and to comply with policies DM33 of Brighton & Hove City Plan Part 2, CP9 of the Brighton & Hove City Plan Part One.

11. The controlled pedestrian access gate to the eastern boundary of the site for the development hereby approved, shall be retained in accordance with the approved plans, for use by occupiers of The Pinnacle dwellings.

Reason: To encourage safe, active and sustainable forms of travel, other than private motor vehicles, to and from the development, and to ensure that this is retained in compliance with policies DM33 of Brighton & Hove City Plan Part 2, and CP9 of the Brighton & Hove City Plan Part One.

12. Ventilation provided to each flat within the development shall be maintained in accordance with the details approved under BH2021/01156 and be retained as such thereafter.

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

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. SITE LOCATION

- 2.1. The application relates to a four-storey extension to the eastern elevation of The Pinnacle, a five-storey residential block comprising 57 dwellings. The extension was constructed following permission granted in 2020. It is now occupied.
- 2.2. The Pinnacle was converted from offices (Class E) in recent years and has been extended to the front, sides and upwards. The building is set centrally within the site and there is off-road car parking around it, with vehicle access from the School Road/ Kingsthorpe Road junction to the west. Two pedestrian access points are provided at the eastern boundary, providing access from the site to Payne Road to the east.

- 2.3. The property is not listed, nor within a conservation area. The railway line and Hove Cemetery lie to the north of the site. The site is within a Controlled Parking Zone (CPZ).

3. RELEVANT HISTORY

- 3.1. There is an extensive planning history for the site. The following applications are most relevant:
- 3.2. **BH2023/00009** Application to vary Condition 1 and remove Condition 13 of planning permission BH2020/00955, which required provision of two points of pedestrian access to the eastern boundary and retention thereafter with no means of preventing access installed. Refused 09.02.2023 for the following reason:
1. *The proposed removal of Condition 13 and consequential variation of Condition 1 would result in the loss of the two pedestrian access points approved, which would fail to facilitate the council's aims of encouraging and enabling walking (including wheelchair access) and cycling, and would therefore be contrary to Policies CP9 of the Brighton & Hove City Plan Part One and DM33 of the Brighton & Hove City Plan Part Two.*
- 3.3. Appeal Allowed 28/7/23: The Planning Inspectorate (PINS) stated that condition 13 should be removed and substituted for [New Condition) 11 which reads:
- The two points of pedestrian access hereby approved, as shown on plan reference 6778-2PO2 Rev C to the eastern boundary of the site, shall be retained in accordance with the approved plan for use by occupiers of the four dwellings hereby approved.
- 3.4. **BH2022/00241** Approval of Details reserved by Conditions 3 (Landscaping) and 15 (Contamination) of application BH2020/00955. Approved 01.03.2023.
- 3.5. **BH2021/01156** Approval of Details reserved by Conditions 5 (Bird and Bat Boxes), 6 (Sedum Roof), 12 (Priority Road Signs) and 14 (Ventilation) of application BH2020/00955. Approved 25.05.2021.
- 3.6. **BH2020/00955** Erection of four storey extension to east side to form 4no additional 2-bedroom dwellings and associated works. Approved 22.06.2020.
- 3.7. **BH2016/02282** Prior approval for change of use from office (B1) to residential (C3) to create 32no residential units. Approved 11.08.2016.
- 3.8. **BH2015/04606** Erection of side extension and creation of additional floor to create 9no. residential units with associated parking and re-cladding. Approved 23.03.2016.

4. APPLICATION DESCRIPTION

- 4.1. Planning permission (BH2020/00955) was secured in June 2020 for the erection of a four-storey extension to the existing building to provide 4 flats. The permission was granted subject to condition 13 which stated:

The two points of pedestrian access hereby approved to the eastern boundary of the site shall be provided prior to the first occupation of the flats hereby approved, and shall retained thereafter with no means of preventing access installed.

Reason: To encourage safe, active and sustainable forms of travel other than private motor vehicles to and from the development, and to ensure that this is retained in compliance with Policies TR7 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.

- 4.2. A subsequent s73 application (BH2023/00009) to remove / amend the conditions which ensured the provision of the pedestrian access to the eastern boundary, was refused by the Local Planning Authority (LPA). However, the appeal was allowed on appeal. The Planning Inspectorate (PINs) amended the condition to state that the pedestrian access should be retained for use only by occupiers of the approved four dwellings.
- 4.3. Planning permission is sought here under Section 73a of The Town and Country Planning Act to vary conditions 1 (plans) and 11 (access) of BH2023/00009 to allow for the provision of one controlled access gate in eastern boundary for use by all residents in The Pinnacle only and blocking of the second access point. The proposed steel gate is to be 900mm in width and 2080mm in height. The steel infill panel would be 900mm in width and 1950mm in height.
- 4.4. The application states that the reason for the proposal is to minimise the likelihood of anti-social behaviour and accidents. The application is retrospective insofar as the extension has already been constructed and is occupied, and the access points are in place.

5. REPRESENTATIONS

- 5.1. One hundred and twelve (112) representations have been received objecting to the proposal on the following grounds:
- Loss of established public amenity
 - Lengthen journeys
 - Increase in traffic
 - Increase in noise
 - Environmental/ pollution impact
 - Provides safe access to public transport and schools
 - Impact on local businesses
 - Impact on local cohesion/ community
 - Benefit few at expense of many
 - No evidence of anti-social behaviour
 - Improved lighting/ cameras could deter antisocial behaviour
 - Natural surveillance provided

- Impact on health/ wellbeing
- Equalities issues
- Goes against original consent/ design
- Contrary to planning policy
- Legal precedent for access over private land

5.2. **Thirty (30)** representations have been received supporting the proposal for the following reasons:

- Private land/ no public right of way
- Trespassing
- Safety hazard
- Liability for accidents
- Anti-social behaviour/ security issues
- Privacy issues
- Noise pollution/ disturbance
- Multiple other routes
- Flats sold on basis of secure private parking and controlled access
- Original condition did not reference 'public' access.

5.3. **Ward Councillors Bella Sankey and Paul Nann** object to the proposal. Their representations are attached to the report.

5.4. Objections relating to detrimental impact on property values are noted, however are not material planning considerations.

6. CONSULTATIONS

Internal

6.1. **Environmental Health:** No objection.

The proposed variation is a proportionate and necessary response to ongoing safety and security issues. It preserves the benefits of pedestrian access for residents while addressing significant risks.

6.2. **Local Highway Authority:** Comment.

Recognise that this is private land and there is no public right of way in place. Encourage a 'permissive path agreement' that would allow local residents the same rights to movement in the area as the occupants of this development.

6.3. **Private Sector Housing:** Assessed however no comments offered.

External

6.4. **East Sussex Fire and Rescue Service:** Comment will be made in due course during formal consultation with Building Control in accordance with procedural guidance and Building Regulations.

6.5. **Sussex Police Community Safety:** No objection.

The implementation of gates and a steel insert will be an effective crime prevention measure in reducing the incidents of crime to the area.

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)
- Hove Station Neighbourhood Plan (adopted February 2024)
- Rottingdean Neighbourhood Plan (adopted February 2024)
- Shoreham Harbour Joint Area Action Plan (adopted October 2019)

8. 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

CP13 Public Streets and Spaces

CP14 Housing density

CP19 Housing mix

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

DM36 Parking and servicing

DM37 Green Infrastructure and Nature Conservation

DM40 Protection of the Environment and Health - Pollution and Nuisance

DM44 Energy Efficiency and Renewables

Supplementary Planning Documents:
SPD03 Construction & Demolition Waste
SPD06 Trees and Development Sites
SPD11 Nature Conservation and Development
SPD12 Design Guide for Extensions and Alterations
SPD14 Parking Standards
SPD16 Sustainable Drainage
SPD17 Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The merits of the scheme as a whole have been considered as part of the preceding permissions. The principle of the extension was justified and accepted. The approved development has been constructed, and the design, siting and scale are not proposed to be altered.
- 9.2. The assessment of this application will therefore relate to that aspect of the current scheme that differs from the previous application, namely the variation of conditions 1 (plans) and 11 (access) of BH2023/00009 to allow for the provision of one controlled access gate in the eastern boundary for use by all residents in The Pinnacle only, and with the other existing access point infilled by way of a steel insert panel.

Principle of Development

- 9.3. Planning permission was granted in 2020 (BH2020/00955) for the erection of a four-storey extension to the east side of the existing building, to form 4 additional dwellings. The plans included 2 proposed pedestrian access points to the eastern boundary of the site, and a condition was applied as such:

The two points of pedestrian access hereby approved to the eastern boundary of the site shall be provided prior to the first occupation of the flats hereby approved, and shall be retained thereafter with no means of preventing access installed.

Reason: *To encourage safe, active and sustainable forms of travel other than private motor vehicles to and from the development, and to ensure that this is retained in compliance with Policies TR7 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.*

- 9.4. In 2023 a S73 planning application (BH2023/00009) to vary / remove the conditions regarding retention of the two pedestrian access points, to prevent public access, was allowed on appeal, however with PINS applying the following amended condition:

The two points of pedestrian access hereby approved, as shown on plan reference 6778-2PO2 Rev C to the eastern boundary of the site, shall be retained in accordance with the approved plan for use by occupiers of the four dwellings hereby approved.

- 9.5. Prior to the construction of the development, there were no access points to the eastern boundary of the site and therefore no public access through the site.
- 9.6. The Appeal Decision relating to application BH2023/00009 to remove both access points is a material planning consideration. The Inspector stated that: *“There is no substantive evidence before me to indicate that the development approved under the original permission, comprising an extension to provide four flats, has worsened access to sustainable transport or local services and facilities for local residents. As such, it is neither the role nor responsibility of this development to facilitate or improve access for existing local residents (other than those occupying the approved flats) to services and facilities in the area (including the nearest train station).*
- 9.7. The NPPF requires that planning conditions are ‘relevant to planning and to the development to be permitted’. The Inspector advised that the original condition did not meet this test for the reasons set out above; the requirement for public access through the site is not directly related to the development and is therefore unreasonable. The Inspector amended the condition to relate to ensure access for just the four flats of the approved development.
- 9.8. In reality, the condition as imposed by the Planning Inspectorate cannot be enforced as it is not possible to control who does access the site and use the access.
- 9.9. Given the above, the proposal to allow for provision of one controlled access gate for residents in The Pinnacle, and the removal of the other access point, is considered acceptable in principle, as it takes account of and does not frustrate the intentions of the appeal decision.
- 9.10. Furthermore, it must be noted that the current proposal would retain the access for all of the occupiers of the Pinnacle development, not just the 4 dwellings approved under the original application and this is considered a significant benefit over and above the most recent planning permission at the site (BH2023/00009) which was allowed on appeal.

Design and Appearance

- 9.11. There is no objection in design terms to the proposed steel gate and infill panel which would not harm the character and appearance of the site or surrounding area.

Impact on Amenity

- 9.12. Policy DM20 of City Plan Part 2 states that planning permission for any development or change of use will not be granted where it would cause unacceptable loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
- 9.13. The development approved under the original permission, comprising an extension to provide four flats, was not considered to cause significant harm to neighbouring amenity. There were no existing access points in the eastern elevation of the site prior to the development of the extension. Given this, PINS

stated that the development did not worsen access to sustainable transport or local services and facilities for local residents, over the previous situation.

- 9.14. The application states that the proposal to restrict public access through the site, seeks to minimise the likelihood of anti-social behaviour occurring. However, as PINs noted, there is no substantive evidence of there being any particular problem with crime occurring locally. In fact, natural surveillance can significantly reduce the risk of crime.
- 9.15. However, notwithstanding this, it is noted that Sussex Police has advised that the implementation of gates and a steel insert would be an effective measure in reducing the incidents of crime in the area. The Council's Environmental Health officer has advised that the proposal is a proportionate response to ongoing safety and security issues.
- 9.16. Given the above, the proposal is deemed acceptable in terms of the impact on residential amenity.

Sustainable Transport

- 9.17. The Local Highway Authority (LHA) has acknowledged that the land is private and there is no public right of way in place. Furthermore, given the Appeal Decision, the LHA recognises that it would not be appropriate to seek to secure public access through the site via the planning system in this instance. Instead, the applicant is encouraged to explore a 'permissive path agreement' that would allow local residents the same rights to movement in the area as the occupants of the development.
- 9.18. 9.18 The scheme would comply with City Plan policy DM33 in that it would provide good access to sustainable transport as well as safe, comfortable and convenient access to and from the proposed development for residents of The Pinnacle.

Other issues

- 9.19. It is noted that many objectors believe that the original permission for the extension lawfully provided for public access through the site, and/or that the wider residential development of the building was always intended to provide the through access in 'compensation' for disruption caused. The applicant maintains that the access points were not meant to facilitate public development and were proposed for the use of residents of The Pinnacle only.
- 9.20. It may be that discussions have taken place previously between the developer, local residents and local ward councillors; and certain assurances given. However, as PINS noted, e-mail correspondence during the course of the original application, between the Council and the applicant's architect, indicated that it was made clear to the Council that the applicant could not legally accept the access through the site, as a public thoroughfare, due to liability issues. This correspondence occurred when the LPA sought to confirm the acceptability of proposed planning conditions with the applicant. It resulted in the LPA removing any reference to 'public access' from the original condition.

Biodiversity Net Gain

- 9.21. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because the original application was submitted before the 2 April 2024, when BNG became mandatory for non-major developments.

Conditions and Obligations

- 9.22. Relevant planning conditions, applied by PINs as per the previous permission, should be re-applied to the new decision notice with a slight amendment to condition 11.

10. CONCLUSION

- 10.1. The strength of feeling within the community regarding the benefits of the access through the site is acknowledged. However, the land is privately owned and there is no public right of way in place. The original development was for an extension to provide 4 flats, and the Planning Inspectorate clearly stated that it is neither the role nor responsibility of this development to facilitate or improve access for existing local residents, other than those occupying the approved flats. It must be recognised that prior to the above development, there was no access in place to the east of the site.

The current proposal to allow for the provision of one controlled access gate and the blocking up of the second access point would comply with City Plan policy DM33 in that it would provide good access to sustainable transport as well as safe, comfortable and convenient access to and from the proposed development for residents of The Pinnacle. Given the appeal decision, the Local Highway Authority has acknowledged that it would not be appropriate to seek to secure public access through the site via the planning system in this instance and therefore raises no substantive objection to the application.

- 10.2. The application is therefore recommended for approval.

11. EQUALITIES

- 11.1. 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.
- 11.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that, for the reasons given above, the development would not give

rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.