

<u>No:</u>	BH2025/01807	<u>Ward:</u>	Westdene & Hove Park Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	6 Whitethorn Drive Brighton BN1 5LH		
<u>Proposal:</u>	Application to vary Condition 1 of planning permission BH2022/02727 to allow amendments to approved drawings. (Retrospective)		
<u>Officer:</u>	Charlotte Tovey,	<u>Valid Date:</u>	21.07.2025
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	15.09.2025
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	04.09.2026
<u>Agent:</u>	Wang Dao Architecture Ltd Mocatta House Trafalgar Place Brighton BN1 4DU		
<u>Applicant:</u>	Christina Kin Yan Tam 6 Whitethorn Drive Brighton BN1 5LH		

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	2206 PL1 06B		09-Oct-26
Proposed Drawing	2206 PL1 07G		09-Oct-26
Proposed Drawing	2206 PL1 08G		09-Oct-26
Location and block plan	2206 PL1 01C		09-Oct-26
Proposed Drawing	2206 PL1 02A		09-Oct-26
Proposed Drawing	2206 PL1 03A		09-Oct-26
Proposed Drawing	2206 PL1 04G		09-Oct-26
Proposed Drawing	2206 PL1 05E		09-Oct-26

2. The first floor window in the east side elevation of the development hereby permitted shall be obscure glazed and non-opening, unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such.

Reason: To safeguard the privacy of the occupiers of the adjoining property and to comply with policy DM20 of the Brighton & Hove City Plan Part Two.

3. Access to the flat roof over the ground floor rear extension hereby approved 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 DM20 and DM21 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.

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 Environment Act 2021.

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

2. SITE LOCATION

- 2.1. The application site comprises a two-storey detached dwelling on a corner plot located at no. 6 Whitethorn Drive. The site is situated just north of Dyke Road Avenue which is one of the key roads into the City, just off the A27 in the northern part of the City.
- 2.2. The street scene comprises of large detached dwellings that are set back from the street scene by front gardens. The site is not located in a Conservation Area or subject to an Article 4 Direction restricting permitted development rights.

3. RELEVANT HISTORY

- 3.1. **BH2022/02727** - Erection of two-storey side extension and single storey rear extension, rear dormer and insertion of roof lights, erection of porch, refurbishment of balcony with new deck and glass balustrade, revised fenestration, garage conversion into habitable room, new front parking hard

surface, rebuild existing front boundary wall and creation of vehicular crossover. Approved. 27.10.2022

- 3.2. **BH2022/01534** - Erection of two storey side and rear extensions, roof alterations incorporating raising of ridge height, installation of rear dormer and front rooflights and terrace, Erection of front extension, extension to existing front balcony with glass balustrade, conversion of garage to habitable space. New front parking hard surface, alterations to front boundary wall including installation of gates and vehicular crossover, new carport and side timber shelter with revised fenestration and associated works. Refused 27.07.2022

4. APPLICATION DESCRIPTION

- 4.1. The application is retrospective and seeks permission to vary the approved plans (condition 1) of BH2022/02727 under Section 73 of the Town and Country Planning Act as there have been a number of amendments to the design of the approved development principally including the following:
- Alterations to the opening method of the approved fenestration,
 - Alterations to the front door and rooflights,
 - A flat roof has been built to the ground floor rear extension instead of the proposed 'false' pitched roof,
 - Alterations to landscaping at the rear and enlargement of the existing crossover at the front of the site.
- 4.2. During the course of the application the plans have been updated to add detailing that was missed in the original submission, and the drawings have been relabelled pre- existing and existing as the works are retrospective.
- 4.3. Whilst it is preferable for planning permission to be granted prior to any works commencing, the principle of applying for these works retrospectively is permissible in law and the application remains subject to the material planning considerations listed below.

5. REPRESENTATIONS

- 5.1. Objections have been received from two (2) local residents raising the following concerns:
- The design and built form of the dwelling is not in accordance with the approved plans under BH2022/02727, it has been built higher and closer to the boundary than approved.
 - The design is out of keeping with the street scene and visually intrusive.
 - The neighbours amenity has been harmed from the build, resulting in a loss of sunlight, privacy and as built results in an overbearing form of development.
 - The security alarm and lights are disruptive to local residents
 - The alterations cause damage to the neighbours property in regards to rain water run off, resulting in damp

- The construction is non-compliant with Building Regulations and poorly finished
 - Excessive amount of hard surfacing at the front of the site
 - The development has a negative effect on house prices
- 5.2. An objection has been received from Councillor Ivan Lyons and a copy of the representation is appended to this committee report.

6. CONSULTATIONS

- 6.1. **Sustainable Drainage:** No objection
- 6.2. **Transport:** Acceptable subject to the recommended conditions.

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
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
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

DM33	Safe, sustainable and active travel
DM36	Parking and servicing
DM37	Green Infrastructure and Nature Conservation
DM43	Sustainable Drainage

Supplementary Planning Documents

SPD03	Construction & Demolition Waste
SPD11	Nature Conservation & Development
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards
SPD17	Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of the application are the whether the amendments fall outside the scope of the original planning permission, the design and appearance of the amendments and their impact upon neighbouring amenity. The impact of the development on biodiversity, highways and sustainable drainage also requires consideration.
- 9.2. The site has been visited by the Case Officer, Planning Manager and Enforcement Manager and key measurements of the building have been taken to investigate whether the development as constructed falls outside the scope of planning permission BH2022/02727. This assessment has also been informed by photographs taken throughout the construction process, including images provided by neighbouring residents, enforcement records and historic street-level imagery.
- 9.3. It is evident that a greater degree of demolition occurred than was originally proposed or anticipated. However, following investigation by the Council's Enforcement and CIL officers, it was concluded that a sufficient proportion of the original structure was retained and that the extent of demolition did not amount to a redevelopment requiring a separate full planning application.
- 9.4. Concerns have been raised by neighbouring residents that the ridge height has increased, citing the introduction of a horizontal band between the first-floor windows and eaves and the steeper pitch of the rear catslide roof are indicative that the height of the development is taller than the pre-existing height of the building.
- 9.5. An investigation as to whether this application can be dealt with by a S73 application has taken place as increasing the ridge would fall outside the scope of the approved planning permission BH2022/02727 and need to be dealt with by a new planning application. Having inspected the site and undertaken measurements of both the retained and reconstructed elements of the dwelling, officers are satisfied that the rebuilt roof reflects the scale and form of the previously existing dwelling. Whilst the rear catslide roof has been constructed at a steeper pitch, this has been accompanied by lowering the

first-floor ceiling levels internally and ground levels adjacent to the side access and front of the site have also been reduced.

- 9.6. On the basis of the information available there is no compelling evidence to demonstrate that a material increase in the ridge height has occurred. Taking all available evidence into account, the Local Planning Authority is satisfied that the development remains within the scope of planning permission BH2022/02727 and that the current application seeking retrospective amendments can therefore be determined on its planning merits through this Section 73 application.

Design and Appearance

- 9.7. During the course of this application, concerns have been raised that the design, appearance and built form of the dwelling is the same as the refused scheme BH2022/01534. On examination there are considered to be sufficient differences from the application amendments proposed here and the refused 2022 scheme. This can be demonstrated by comparing the refused elevational drawings of BH2022/01534 to the allowed elevations BH2022/02727 and now as existing under this application.
- 9.8. The approved scheme BH2022/02727 presented a relatively simple and uniform front elevation with a continuous balcony and a flatter façade treatment.
- 9.9. The development as constructed introduces additional vertical cladding elements and framing features across the elevation, adding definition between the glazing units. There are also associated changes to the positioning and detailing of some openings and external materials; however, the overall scale, form, height, massing and contemporary architectural approach remain consistent with the approved development.
- 9.10. Whilst the amendments result in a more visually segmented façade compared with the approved plans, the revised design remains coherent and well-proportioned. The use of contrasting cladding and render provides additional depth and visual interest, helping to break up the perceived bulk of the building. The alterations do not appear incongruous or overly dominant and continue to reflect the contemporary character of the approved scheme.
- 9.11. At the rear the ground floor rear extension has been constructed with a flat roof instead of a pitched roof. Whilst the original pitched roof design was more in keeping with the principal roof, due to the orientation of the works at the rear (not highly visible from the public realm), no harm is considered to be caused and the alteration is considered to be an acceptable amendment.
- 9.12. The amendments to the scheme are considered to maintain an acceptable appearance and would not result in harm to the character of the host building or the wider street scene. Therefore, the retrospective changes are considered acceptable in design terms.

- 9.13. Overall the amendments to the elevations as built when compared with the approved plans are considered to be acceptable and would accord with design policies DM18, DM21 of City Plan Part Two and CP12 and CP13 of City Plan Part One.

Impact on Amenity

- 9.14. A number of concerns have been raised from the occupiers of neighbouring properties regarding the impact of the development on residential amenity. The principal concerns relate to the height, proximity and design of the building and the resulting effects on outlook, daylight, sunlight and privacy.
- 9.15. The development has been inspected on site by officers and measurements taken of the completed building. It has been established that the separation distance between the side elevation of the application site and the boundary fence with No. 5 Whitethorn Drive is approximately 1.8m at the front and 1.2m at the rear. The approved drawings indicated that this separation would be 2m.
- 9.16. The side elevation of the development at no. 6 faces the side elevation of No. 5 Whitethorn Drive and, whilst the relationship is relatively close, the degree of separation remains sufficient to maintain an acceptable level of openness between the buildings. Having regard to the siting, scale and height of the development, officers are satisfied that the built form does not appear unduly dominant or oppressive when viewed from neighbouring habitable rooms or private amenity areas. The development continues to provide adequate spacing such that natural light can reach the side elevation windows serving neighbouring accommodation and the relationship is not considered to result in unacceptable level of overshadowing or loss of outlook.
- 9.17. In respect of privacy, the amendments to the fenestration and rooflights do not introduce any significant additional opportunities for overlooking beyond those already assessed under the approved planning permission. As such, the development would not result in a material loss of privacy to neighbouring occupiers.
- 9.18. Whilst neighbouring residents have asserted that the development has been constructed higher than approved, officers have (as above) undertaken an investigation into the scale of the building and are satisfied that there is no compelling evidence to demonstrate a material increase in the ridge height of the roof. Consequently, the assessment of daylight, sunlight, outlook and overbearing impacts remains comparable to that previously considered acceptable under planning permission BH2022/02727.
- 9.19. Overall, having regard to the relationship between the development and neighbouring properties, including No. 5 Whitethorn Drive, it is considered that the retrospective amendments would not result in a significant loss of light, outlook or privacy, nor would they create a harmfully overbearing form of development that would warrant refusal. The impact on neighbouring amenity is therefore considered acceptable in accordance with policy DM20 of City Plan Part Two.

Transport

- 9.20. The original site layout included a low level brick front boundary wall, staggered in height following the topography of Whitethorn Drive with one vehicular crossover.
- 9.21. The amendments to the front of the site approved with application BH2022/02727 added another crossover with a central footpath. The plans detailed two cars on the hard standing.
- 9.22. The Local Highway Authority were consulted on this current application and raised no objection to the amendments to the proposed site plan which further increased the existing crossover to 4m and did not consider the development would significantly impact the public highways and recommended a pre commencement condition requiring further details regarding the height and position of the boundary and any gates.
- 9.23. The existing boundary (as built) is a rendered wall constructed in the same staggered appearance as the pre-existing front boundary, however both crossovers are now constructed 4m in width and the piers at the crossover are 1.1m in height, the same as the pre-existing situation.
- 9.24. The built crossover is not in accordance with SPD14 as the SPD requires the height of the boundary treatment to be no more than 0.6m at newly constructed crossovers. However, given that a boundary wall could be built up to 1m in height under permitted development rights, it is not considered that a wall at a height of 1.1m would warrant refusal of the application. The height of the boundary wall is similar to the pre-existing boundary treatment with an additional crossover. The addition of a 4m crossover and proposed wall height is not expected to cause a safety hazard to pedestrians or cause a detrimental impact to the safe operation of the public highway that would warrant refusal of the application.

Sustainable Drainage

- 9.25. Consultation with the Sustainable Drainage Team concluded that the proposed amendments at the front of the site with permeable paving were unlikely to affect the development's flood risk or drainage characteristics significantly and no further concerns are raised in this respect.

Biodiversity

- 9.26. Adequate soft landscaping has been retained at the side and rear of the site that the amendments to the landscaping are not considered to significantly harm to the biodiversity of the site.
- 9.27. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because it is a retrospective application under s73A.

Other Matters

- 9.28. Concerns have been raised that the impact of the development has negatively affected neighbouring house prices. However, loss of value to a property is not a material planning consideration.
- 9.29. Concerns have been raised that the project has been built poorly and is unsafe. An Approved Inspector (Building Control) has inspected the works and issued a certificate confirming compliance.
- 9.30. Concerns have been raised that the water run off from the roof is causing damage and damp to the neighbouring property. The drainage fitted appears to be within the curtilage of the site and no pipework is overhanging the boundary or discharging into the neighbouring site that was seen on the case officers site visits. Whilst this is noted if there is rain/water run off towards the neighbouring property this is a civil matter in this context and outside the scope of planning considerations.
- 9.31. Concerns were raised that the boundary fence was fitted to the neighbours property without permission and has caused damage. If this is the case then this is also a private civil matter that falls outside planning considerations in this context.
- 9.32. Concerns were raised that a security alarm and light are causing a disruption to neighbouring residents. The security alarm and light would be considered to be de-minimus and not require planning permission. Whilst this is the case the alarm was intermittently sounding on the site visit and after raising this with the applicant has been allegedly fixed. Should any further disruption from the alarm or security light be experienced neighbouring residents could report the matter as a light and noise nuisance to our Environmental Health Team for further investigation.

Conclusion

- 9.33. Following site visits and investigations officers do not consider that there is compelling evidence to demonstrate that a material increase in ridge height has occurred. Taking all available evidence into account, the Local Planning Authority is satisfied that the development remains within the scope of planning permission BH2022/02727 and that the current application seeking part retrospective amendments can therefore be determined on its planning merits.
- 9.34. On balance, whilst the separation distances to neighbouring residents at the side (adj No.5 Whitethorn) have been reduced there is considered to be adequate separation remaining between no. 6 and its neighbour at no. 5's side elevation in order that the extension would not be demonstrably harmful to the neighbour's amenity to warrant refusal. The amendments to the front boundary treatment and access are not considered to cause a hazard to pedestrians or be out of keeping with other boundaries on Whitethorn Drive.
- 9.35. Visually the built form of no. 6 Whitethorn Drive is considered to have an acceptable impact on the street scene. The amendments from the previously approved plans are considered to be acceptable causing no demonstrable

harm to the character and appearance of the area. The amendments and reduction in the separation distances are not considered to cause harm to the amenity of neighbouring occupiers sufficient to warrant refusal of the application.

- 9.36. The amendments to the dwelling can therefore be considered within the scope of the original application and can therefore be considered under the submitted Section 73 and for the reasons stated above are recommended for approval.

10. EQUALITIES

- 10.1. 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.

- 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.