

<u>No:</u>	BH2025/00389	<u>Ward:</u>	West Hill & North Laine Ward
<u>App Type:</u>	Householder Planning Consent		
<u>Address:</u>	46 North Gardens Brighton BN1 3LB		
<u>Proposal:</u>	Proposed new door to rear garden wall (Retrospective).		
<u>Officer:</u>	James Ing,	<u>Valid Date:</u>	13.02.2025
<u>Con Area:</u>	West Hill	<u>Expiry Date:</u>	10.04.2025
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	20.06.2025
Agent:			
Applicant:	Peppy Conrad 46 North Gardens Brighton BN1 3LB		

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 Plan	SU001		13.02.2025
Proposed Drawing	PL002		13.02.2025

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 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 relates to the rear garden of No. 46 North Gardens, a three-storey terraced dwelling located in the West Hill and North Laine ward, on the eastern side of North Gardens. The application sites rear garden abuts an alleyway running behind the properties of North Gardens and Queens Road. The alleyway is accessed via North Road.
- 2.2. The application site is located within the West Hill Conservation Area and there is an associated Article 4 Direction relating to the requirement for planning permission for alterations and extensions on house frontages that face a highway or public open space including front boundary alterations.
- 2.3. The western wall of the alleyway (the wall that is the subject of this application) is constructed with bungaroosh – this is a historic material, though it is noted that the wall is not listed.
- 2.4. The application is assessed further to a site visit undertaken on 04/04/2025 to the alleyway and in conjunction with the submitted site photos, plans and online aerial/street-level photography.

3. RELEVANT HISTORY

- 3.1. **ENF2024/00588** - 'Breach of Conditions' – Current Enforcement Investigation
- 3.2. **BH2024/01964** - 'Installation of door to rear garden wall.' - Approved on 07/10/2024

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought retrospectively for the creation of a new door way into an external boundary wall to provide access to a rear alleyway.
- 4.2. Planning permission was previously sought and approved via application ref. BH2024/01964 for the proposed installation of a timber door to the rear garden wall to allow access to the rear alleyway (accessed from North Road).

- 4.3. An Enforcement Investigation has established that the works undertaken on site are not in accordance with the plans approved in 2024. These changes are:
- As constructed the door is set within the northern half of the wall rather than centrally as approved.
 - The approved door did not show disturbance to the surrounding existing flint wall, whilst there is infilling of brickwork around the door surround.
 - The design of the approved door differs to that which has been installed, and
 - The proposed floor plan did not show that a residential unit is situated behind the application site within the alleyway, instead showing an alleyway wall.
- 4.4. Retrospective planning permission is now sought to regularise the unauthorised alterations undertaken.

5. REPRESENTATIONS

- 5.1. In response to publicity, responses were received from **five (5)** individuals, objecting to the application for the following reasons:
- Adversely affects Conservation Area,
 - Poor design - The brick jars with the historic bungaroosh, and the door style is inappropriate,
 - Loss of privacy,
 - Potential for additional noise,
 - Concern relating to access rights to the alleyway,
 - Door is a health and safety risk due to its height from the ground level of the alleyway, and
 - Compromises security - the application site is an HMO and the tenants change frequently
- 5.2. Public re-consultation of the application was undertaken in September as the application had not originally been advertised as being within a Conservation Area.
- 5.3. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

None required.

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
CP12	Urban Design
CP15	Heritage

Brighton & Hove City Plan Part Two

DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM26	Conservation Areas
DM29	The Setting of Heritage Assets
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD17	Urban Design Framework

Conservation Area Character Statement:

West Hill Conservation Area Character Statement

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, including the surrounding Conservation Area, and the amenities of adjacent occupiers and future occupiers of the application site.

Principle of Development

The West Hill Conservation Area Article 4 Direction states that:

'The council now directs that house frontages that face a highway or public open space (but not rear facades) within the West Hill Conservation Area should be subject to the same restrictions that apply to commercial premises or residential flats...Permission is also required to demolish, alter or erect a front boundary wall, fence or railings.'

- 9.2. Considering the boundary wall in question relates to the rear, it can be concluded that the wall retains PD rights.
- 9.3. For the completeness it is prudent to consider two different sections of the General Permitted Development Order (GPDO) to assess whether the alteration adheres to the legislation and therefore does not require planning permission:

Schedule 2, Part 11, Class B - demolition of buildings

The first question is whether the alteration constitutes 'development' (which is PD) or 'demolition' (which would not benefit from PD). Case law supports the assertion that the alteration would constitute 'development' via the case of 'Barton v Secretary of State for Communities and Local Government, [2017] EWHC 573 (Admin)', which relates to the alteration of a portion of wall in a Conservation Area.

- 9.4. The key difference between the referenced case and the alteration at the application site is that in the former, a the 'pedestrian gate, lintel and stonework' was removed and nothing constructed in it's place. In this application the initial demolition gave rise to the erection of a doorway. The case law dictates that whether an alteration can be considered 'development' or 'demolition', hinges on whether the demolished portion of the wall is left 'to lay in ruins' or is developed upon. In this case the wall has not remained part demolished and is thus not considered as "demolition".

Schedule 2, Part 2, Class A - gates, fences, walls etc

The development carried out on site has been assessed and it is concluded that the alteration adheres to Schedule 2, Part 2, Class A - gates, fences, walls etc of the General Permitted Development Order 2015 (as amended).

- 9.5. As such, it is considered that the alteration subject of this application, adheres to the General Permitted Development Order 2015, and would therefore be possible under Permitted Development rights, and does not require planning permission. This "fallback" is given considerable weight in this assessment.
- 9.6. Notwithstanding this an application for permission has been made to the Council and therefore a complete assessment follows in the interest of completeness.

Design and Appearance and Impact on Heritage Assets

- 9.7. There are no listed buildings or locally listed heritage assets in close proximity to the application site or affected by the development.

- 9.8. 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.
- 9.9. Case law has held that the desirability of preserving or enhancing the character or appearance of a conservation area should be given "*considerable importance and weight*".
- 9.10. The NPPF at DM8 states:
'In cases of unauthorised development where consideration is being given to an application for retrospective planning permission (or through an enforcement appeal, whether to grant planning permission in respect of a breach of planning control), if it is concluded based on evidence that the unauthorised development was intentional, that fact should be given substantial weight in considering whether to grant planning permission.'
- 9.11. In this case, the carrying out of works to the rear wall was brought to the council's attention via an enquiry made to the Enforcement Team in November last year.
- 9.12. In terms of the NPPF, there is no firm or clear evidence that the unauthorised development was intentional – there is no clear private benefit to the unauthorised door location, as opposed to the approved location. The applicant was advised that a planning application would be required to seek to regularise the development which was submitted in February of this year.
- 9.13. The installed door as implemented is considered somewhat regrettable due to use of non matching materials in the door surround and the style of door being a non traditional garden door.
- 9.14. Any disturbance to the existing historic bungaroosh wall should ideally have been made good to match at the time of construction, however an irregular infilling of red brick has been implemented. Whilst the presence of a small amount of red brick in the pre-existing (prior to ref. BH2024/01964) situation is noted, the increased amount of red brick is visually very different to the adjoining bungaroosh wall.
- 9.15. However, crucially, the aforementioned concerns with the door and doorway are tempered by the fact that it is not visible from the public realm, limiting the extent of its impact on visual amenities, and having limited impact on the streetscene and wider Conservation Area.
- 9.16. On balance, the proposed door is a discordant addition to the rear wall departing from the use of traditional materials, for this reason the development does cause a small degree of harm to the Conservation Area. It is also noted however that the development is not visible from the public realm. No significant harm is therefore considered to result and no significant conflict with City Plan policies has been identified sufficient to warrant refusal of the application.

Impact on Amenities

- 9.17. 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.
- 9.18. The installed door, when open, would afford additional views into the adjacent alleyway, which is shared by a number of properties. A residential unit (forming part of the rear of 38 Queens Road) is sited within this back-land setting and the patio area associated with No. 38 is part open to the alleyway.
- 9.19. The views afforded when the installed door is open would be oblique when viewed from the application site dwelling, and the aforementioned patio is likely already visible from the upper floors of neighbouring dwellings. Any views afforded whilst the application site occupants are using their garden (with the door open) would be mutual and not unacceptable in planning terms given the close proximity and tight knit nature of dwellings in the city centre.
- 9.20. The installed doorway does not give rise to any harmful overshadowing, loss of light, or sense of enclosure.
- 9.21. Representations have raised additional noise as a concern. The installed door would provide access to a garden area and would not create or facilitate any additional noise impacts above the use of the existing amenity areas.
- 9.22. Whilst the concerns expressed within the representations are noted no amenity harm has been identified.
- 9.23. The impact on the adjacent properties has been fully considered in terms of daylight, sunlight, outlook, overlooking and loss of privacy and no significant harm has been identified to warrant refusal.

Impact on Access and Highways

- 9.24. The alteration sees a new access point created leading to a privately owned alleyway. The alleyway is not accessible by the public, being protected by a secure metal gate, operated by physical and electronic keys, and is too narrow to accommodate vehicular traffic. The rights relating to access to the alleyway, and who is given/currently has keys, is not clear. The installed door opens inwards into the application sites rear garden, so there is no risk of the door striking anyone or obstructing pedestrian movement in the alleyway.
- 9.25. The sharp drop between the doorway and the ground level of the alleyway is noted, the concerns relating to health and safety are acknowledged, however this is not considered to raise any reasons to warrant refusal of the application.
- 9.26. Objectors have raised concerns relating to the application site occupants' right to access the alleyway and have also cited security concerns. Whilst the concerns expressed are noted, matters such as access right are a strictly civil matter not a material planning consideration in this context. Approval of the

installed doorway would not have any bearing on the applicants right, or lack thereof, to use the alleyway.

Biodiversity Gain Plan

- 9.27. 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 an application relating to a householder.

Conclusion

- 9.28. Significant weight is given to the fact that no planning permission would be required for the installation.
- 9.29. The development undertaken at the site cannot be seen from the public realm and would have a limited impact on the Character and appearance of the West Hill Conservation Area causing a small degree of harm which, in this context, is not considered to warrant refusal of the application. No notable harm to neighbouring amenity or transport planning matters has been identified.
- 9.30. In consideration of all the above the application is recommended for approval.

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

- 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 the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

- 11.3. The aforementioned large drop from the doorway to the alleyway is noted, and it is acknowledged that this would not be suitable for people with mobility issues.

