



Appeal Decision

Site visit made on 2 October 2008

by **S J Emerson BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
21 October 2008

Appeal Ref: APP/Q1445/A/08/2073225 37/38 Providence Place, Brighton BN1 4GE.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Holt against Brighton & Hove City Council.
- The application Ref BH/2008/00612 is dated 20 February 2008.
- The development proposed is the demolition of the existing redundant storage building and redevelopment to provide 6 residential units in a 3 storey plus attic building.

Procedural Matter

1. One of the Council's putative reasons for refusal is that, in the absence of on site parking, the development should be made permanently car-free and contribute to sustainable transport measures. At the application stage there was no section 106 obligation to facilitate the necessary changes to the Traffic Regulation Order (TRO) or to pay a sum for sustainable transport. The sum of £4,500 was highlighted as being necessary for the latter.
2. At a late stage in the appeal proceedings, the appellant submitted a section 106 obligation which purports to provide £4,500 to the Council for sustainable transport and £2,000 to amend the TRO. The obligation received by the Inspectorate was not dated and did not have the plan of the site referred in the obligation. Via the Case Officer, I raised these omissions with the main parties and asked the Council whether it had a complete, dated copy of the obligation and, if so, whether it satisfied the Council's concerns in relation to transport. No comments were received from the Council, but a new obligation was subsequently submitted which is dated (8 October 2008) and contains a plan of the appeal site. The Council was given a further opportunity to comment, but no comments were received. I have no reason to doubt that the dated obligation would ensure the necessary payments were made to the Council if I were to allow the appeal and I consider that this satisfactorily addresses the Council's concerns about transport.

Decision

3. I allow the appeal, and grant planning permission for the demolition of the existing redundant storage building and redevelopment to provide 6 residential units in a 3 storey plus attic building at 37/38 Providence Place, Brighton in accordance with the terms of the application, Ref BH/2008/00612, dated 20 February 2008, and the plans submitted with it (drawings 002/04, 002/05, 002080220/09 and 002071227/09) subject to the conditions listed below:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted and the surfacing of the rear courtyard have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) The bins store and the cycle store and cycle parking shown on the approved plans shall be provided before any of the dwellings hereby permitted are occupied and thereafter retained for their specified purpose.
- 4) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Main issues

4. The main issues are:
 - (a) Whether the development would result in the harmful loss of business premises.
 - (b) The effect on the character and appearance of Providence Place.

Reasons

Loss of employment premises

5. Nos 37 and 38 Providence Place are at the rear of 45/45a London Road which have retail uses on the ground floor with flats above. The access to these flats is across the appeal site. No 38 is a layer of rubble. No 37 consists of a flat-roofed building in 2 parts which is joined to the rear of No 45 London Road. That part of the building fronting Providence Place has a door wide enough for a vehicle to enter and the building is somewhat wider than a typical domestic garage. About a car's depth into this structure there is a partition and the floor drops to a lower level. This lower part of the building has no windows or doors and is currently a rather disorganised store of small timber. At the partition there is staircase which leads to an old covered walkway over the flat roof to the rear of the London Road building, but now no longer used.
 6. The appellant explains that the lower part of the building was used as ancillary storage for the shop fronting London Road and the part nearest Providence Place was a garage for the owner who lived in the flat above. This explanation seems to me to be logical and consistent with the character of a number of other plots between London Road and Providence Place. The internal staircase between the inside of the garage and the rear of the flat confirms the past link between these uses. The Council does not dispute this background, but suggests that the building was separated from No 45 sometime ago and operated independently of No 45. The Council consider that the building has an authorised use for B8 storage purposes. There is no specific evidence for these assertions. The appellant explains that the building was separated from No 45 in 2004 by the present owner and since that time he has pursued various applications to redevelop the site for flats. The interior of the building
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does not suggest that it has been used other than by the owner for casual storage and it does not appear to be fitted out to make it suitable for letting as a separate storage unit. The drop in the floor level part way into the building would make it unsuitable for many storage uses served from Providence Place.

7. Policy EM6 of the Brighton and Hove Local Plan 2005 states that small industrial, business and warehouse premises (Uses Classes B1, B2 and B8 of 235m² or less) will be retained for employment purposes unless one of 5 criteria are met (such as being genuinely redundant or would cause undue disturbance to residential neighbours). In my view, this policy can only effectively be engaged in relation to premises that can lawfully and practically be used for business purposes. The building on the appeal site was ancillary storage and parking for the retail unit and flat of 45 London Road. I am not convinced that it has since been used as an independent storage unit in any meaningful way or that it could be so used without planning permission. I consider that the configuration of the building does not make it readily suited to a storage use. The Council does not appear to be concerned to secure the retention of these particular premises because it suggests that the redevelopment of the site should incorporate an office use as the appellant has done in previous schemes for the site (all refused planning permission for various reasons). I am therefore satisfied that policy EMP6 is not engaged and the redevelopment of the site would not result in the harmful loss of business premises.

Character and appearance

8. Providence Place is a road of mixed uses and considerable variety in the scale and character of buildings. Its eastern side is at the back of London Road which is a main shopping street. In places, the London Road premises extend back at ground floor level to the back edge of Providence Place. Such buildings have a utilitarian appearance. Some of the London Road premises have small parking and service yards served from Providence Place. Some buildings front Providence Place. To the north of the appeal site is a 3 storey block of flats built in the 1980s. Adjoining this block are some 2 storey Victorian buildings now used for car repairs. A little to the south of the appeal site is a recently completed narrow 3 storey building with an office on the ground floor and 2 flats above and beyond these are some substantial 2 storey Victorian buildings also used for car repairs. Opposite the appeal site is a multi storey car park. Overall, Providence Place has a disjointed and generally unattractive appearance and must, at night, seem a rather unwelcome place because of the lack of informal visual surveillance from occupied buildings.
9. The appeal building would consist of 3 main floor floors with additional bedrooms in the roof space. The building would have a symmetrical layout. At the front, the main living room windows would be set inside the building shell with internal balconies finishing flush with the main front wall and enclosed with glass panels. The ground floor of the building would be slightly below the level of Providence Place. The shallow pitch roof would incorporate 2 dormers at the rear and 2 cut-outs within the roof at the front to create 2 small sitting areas. These would be concealed from street level by the lower part of the roof slope.

10. The application drawings included the development in the context of the street scene along Providence Place. The height of the recently completed new building to the south of the site was shown incorrectly, but this has been amended in a drawing submitted with the appellant's appeal statement. The Council has not highlighted any other errors, but I have not relied solely on this drawing in judging whether the height of the proposed flats would be appropriate. I was able to consider the scale of the building in the street scene of Providence Place from the elevated position of the 2nd floor of the multi-storey car park directly opposite.
11. The ridge of the proposed flats would not be as high as the block of flats to the north which also has 3 main floors of accommodation, but a steeper pitch to the roof. Nor would it be as high as the larger 2 storey Victorian buildings a little to the south which have quite steep and high pitched roofs. The ridge would be slightly higher than the recently completed narrow 3 storey building nearby to the south, but that building has a very shallow sloping roof and I do not consider that the height of that building sets the maximum height for redevelopment nearby. The small differences in height would not however be noticeable from Providence Place itself. I consider that the proposed building is of an acceptable height and scale.
12. The design of the building is relatively simple and conventional. The ratio of windows to walls would fall between the rather solid and somewhat austere 1980s flats, which have very small windows, and the dominance of glazing in the recently completed new building which the Council consider is preferable. I see no reason why that building should be the design template for the rest of the street. The Council is critical of the mix of materials. The walls would be mainly painted render which is the same as the recently completed building. Panels of red cedar are also proposed. Although this would be a new material within Providence Place, cedar is a material used extensively on some of the new large blocks of flats in the New England Quarter nearby. I cannot see that its introduction in Providence Place is harmful.
13. The inset balconies would give the building a suitable visual depth and interest. Although the kitchen windows for the ground floor flats are high level, the living rooms would have patio doors to the balconies and thus provide an active frontage. The entrance to the flats (which would also be the entrance to the flats at the rear of 45/45a London Road) would be a simple door, centrally placed in the Providence Place frontage. I accept that more could have been made of this entrance, but the entrance would be clear to all who need to find it and I consider that the street frontage of the building would have sufficient visual interest without the need for further embellishment of the entrance. The Council is critical of the dormers, but these would be small and on the rear roof slope. I see no material conflict with the Council's supplementary planning guidance on dormers. Neither the front balconies nor the proposed solar panels would be readily noticeable at street level. I consider that these are acceptable features.
14. The development would make a positive contribution to the character and appearance of Providence Place and the design accords with the policy requirements of QD1 (design) and QD5 (street frontages) of the local plan.

Conditions

15. I have considered the need for conditions in the light of the advice in Circular 11/95 and the Council's suggested conditions. In the interests of visual amenity, external materials should be approved. I see no need for soft landscaping given the small size of the rear courtyard. Also in the interest of visual amenity and the amenity of residents, the bin store shown be provided. To facilitate alternative means of transport, the cycle store should be provided. The Council seeks a Code for Sustainable Homes rating of level 3 or higher. There is no evidence-based development plan policy justifying a more demanding standard than the current Building Regulations, but the appellant indicated in the Design and Access Statement that the building has been designed to meet Code 3. In the interests of sustainability, I consider that this higher standard can therefore reasonably be required. How Code 3 is achieved is a matter for the developer and I see no need to specifically require the installation of the solar panels shown on the drawing.
16. The Council seeks a condition to ensure that the units are constructed to Lifetime Homes Standard *to the satisfaction of the local authority*. Such a condition is unreasonably vague as to what has to be achieved and I will not impose it. The appellant indicates that the building has been designed to achieve Lifetime Homes Standard. The Council also seeks a Site Waste Management Plan indicating how demolition and construction waste will be recovered and reused on site or elsewhere. Policy SU13 of the local plan seeks to minimise construction waste and the Council's supplementary guidance on the matter requires all applications over 5 dwellings to include such a plan at the application stage. This requirement was met within the Design and Access Statement. Given the small building to be demolished and the minimal site excavation required, I consider that submission of further details is not justified. I consider that no other conditions are required.

Simon Emerson

INSPECTOR

