



# Appeal Decisions

Site visit made on 20 January 2009

by **Elizabeth Fieldhouse** DipTP DipUD  
MRTPI

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

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**Decision date:**  
**10 February 2009**

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## Appeal A Ref: APP/Q1445/E/2084843

### 43 George Street, Brighton BN2 1RJ

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by Portland Properties against Brighton & Hove City Council.
- The application Ref BH2008/00303 is dated 11 January 2008.
- The demolition proposed is the demolition of the existing building and erection of office with flats over.

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## Appeal B Ref: APP/Q1445/A/08/2084829

### 43 George Street, Brighton BN2 1RJ

- 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 Portland Properties against Brighton & Hove City Council.
- The application Ref BH2008/00302, is dated 11 January 2008.
- The development proposed is the redevelopment of the site to provide office with 4 no. self contained flats over.

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## Decisions

1. I dismiss the appeals and refuse conservation area consent for the demolition of the existing building and erection of office with flats over and planning permission for the redevelopment of the site to provide office with 4 no. self contained flats over.

## Main issues

2. I consider the main issues in respect of appeal B are whether the proposed development would serve to preserve or enhance the character or appearance of the East Cliff Conservation Area; whether the proposed residential units would provide a satisfactory standard of accommodation for future occupiers; the effect of the proposal on the amenities of neighbouring residential occupiers; and whether the proposal would represent sustainable development. The issue in respect of appeal A is whether the loss of the appeal building would serve to preserve or enhance the character or appearance of the area.

## Reasons – Appeal B

### Character or appearance

3. The appeal site currently comprises a double-height, single-storey commercial building on the east side of George Street backing onto Dorset Gardens. It was

last used for vehicle repairs. The surrounding area is mixed. There are mainly two-storey dwellings with rooms within the roof opposite, and on the same side of the road a three-storey bay fronted terrace with ground floor retail/commercial uses to the south and a large two-storey retail/commercial building to the north. At the rear there is a small park, Dorset Gardens, over which the rear of the appeal property is clearly viewed from the road at the other side of the gardens.

4. Planning permission was refused and the appeal dismissed in April 2005 (ref. APP/Q1445/A/04/1164918) for a similar building to that proposed except that two live work units and three flats would have been provided and the depth of the building would have been less. That Inspector found an unacceptable loss of employment premises but did not consider that the local street scene would be adversely affected by the proposal.
5. I consider that the proposed ground floor office use would preserve an active street frontage and therefore the provisions of policy QD5 of the Brighton & Hove Local Plan 2005 (LP) would be met. Although there would be a reduction in the business use floor area, employment uses would be retained. I find no harm from the loss of some employment floorspace and consider that the provisions of LP policy EM6 would not be compromised by the proposal.
6. The Council's supplementary planning document (spd 02) *shop front design* adopted in 2005 requires details of the shop front to be provided at 1:20 scale. I consider that without these details the full impact of the proposed 'shop' front on the character or appearance of the conservation area cannot be adequately assessed. In view of the impact of the 'shop' front on the street scene, I consider that this is a matter that could not be left to be required by condition.
7. The proposal would provide four residential units on the two upper floors and, in line with the advice in Planning Policy Statement 3 *Housing*, it would make efficient use of previously developed land in a sustainable location. Nevertheless, the Government policy indicates that the more efficient use of land should be without compromising the quality of the local environment.
8. The proposed building would be three storeys high topped by a substantial pitch roof. By reason of its height, I consider that the proposed building would dominate the street scene with the upper floors some 1.2m forward of those in the three-storey bay fronted terrace to the south. Therefore the detailing of the building is important and necessary in assessing whether the proposal preserves or enhances the character or appearance of the conservation area.
9. The proposed window details are not adequately shown on the submitted drawings. I consider that opening details can change the visual emphasis of the window and thereby the appearance of the building. Therefore, due to the impact of building detailing on the character and appearance of the building and thereby the conservation area, I consider that it is detailing that is necessary and could not reasonably be covered by condition.
10. In addition, the Dorset Gardens face of the proposal would only be 1m back from the boundary compared to the approximately 3m set back of the terrace to the south and the approximately 1.8m set back in the previous appeal. In my opinion, the proposal would appear overbearing and fail to enhance the setting of the open space. By reason of its scale, depth and lack of adequate

detailing, I consider that the proposal would fail to preserve or enhance the character or appearance of the conservation area contrary to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the provisions of LP policy HE6. For this reason appeal B should fail.

#### Standard of residential accommodation

11. The Council advise that the minimum size for a single bedroom under the Housing Act 1985 is 6.56sqm whereas the proposed second bedroom in each flat would provide 6.435sqm of space. Nevertheless, the single bedroom would have a fitted wardrobe which internally measures about 0.7 by 0.5 and could be incorporated into the room. Therefore, although the second bedroom would be of limited size, I consider that it would not result in an unsatisfactory standard of accommodation for future occupiers. I find no harm in terms of LP policy QD27 in this respect.

#### Neighbouring occupiers' amenities

12. Due to the set back of the terrace to the south at the rear, there would be no adverse impact on neighbouring occupier's amenities from the proposed balconies. The Council is concerned that there would possible loss of light to neighbouring occupiers from the proposed building projecting about 2.2m further to the rear than the terrace to the south. The road rises from the south with the neighbouring terrace at a lower level than the proposed flats. As a result of the depth of the proposed development, I consider that there could be some loss of light/aspect to immediate neighbouring occupiers to the south. Nevertheless, due to the appeal site lying to the north of these windows and the open aspect of Dorset Gardens at the rear, I do not consider this would be sufficient to withhold planning permission.

#### Sustainability

13. In February 2008 the Government confirmed that from 1 May 2008 it would be mandatory for all new homes to be rated against the Code for Sustainable Homes. The Code replaces BREEAM EcoHomes standards which are no longer relevant for housing. LP policy SU2 provides for efficiency of development in the use of energy, water and materials. In the design and access statement, the appellants made no mention of development being carried out to any particular sustainable criteria. The Council does not have a development plan policy requiring new dwellings to be designed to meet the Code. Paragraph 33 of the Supplement PPS1 *Planning and Climate Change* advises that requirements should be set out in a DPD. The Supplement goes on to advise in paragraph 39 that before the development plan is updated to reflect policies in the PPS Supplement, developments should be consistent with the policies in the Supplement.
14. The Supplement to PPS1 and Ministerial Statements refer to the importance of sustainable development. Nevertheless, paragraph 42 of the Supplement to PPS1 indicates that new development should comply with adopted DPD policies unless it can be demonstrated among other points that compliance is not feasible or viable. The Code is not mandatory at present and imposing a requirement to build to Code level 3 that is not backed by a DPD policy or supported by the appellants, would not be consistent with the approach set out in the Supplement to the PPS. There is no alternative to the Code for

Sustainable Homes in relation to residential development and, without the developers' agreement that the homes can be designed to meet the standards, it is not possible to cover the matter by condition.

15. LP policy SU13 provides, among other points, that planning permission will not be granted for developments which cannot demonstrate that the minimisation and reuse of construction industry waste has been sought in an effective manner. The proposal would require the demolition of an existing fairly sizeable building and I have found no details of the reuse of the construction industry waste. Therefore in respect of both these matters appeal B fails and this adds to the harm I have already identified.

### **Appeal A**

16. The double height former garage contributes little to the streetscene or the wider conservation area. Nevertheless, Planning Policy Guidance 15 *Planning and the Historic Environment* (PPG15) advises that consent should not be given unless there are acceptable and detailed plans for any redevelopment. Therefore, as I have found that appeal B should fail, I consider that conservation area consent for the demolition of the building in the absence of an approved scheme should not be granted and to do so would be contrary to LP policy HE8 and the advice in PPG15.
17. For the reasons given above I conclude that the appeal A should fail and appeal B be dismissed.

*Elizabeth Fieldhouse*

INSPECTOR