



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	2 September 2009
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Mrs Cobb, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and C Theobald Co-opted Members: Mr J Small (CAG Representative)
Contact:	Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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AGENDA

82. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

83. MINUTES OF THE PREVIOUS MEETING

1 - 14

Minutes of the meeting held on 12 August 2009 (copy attached).

84. CHAIRMAN'S COMMUNICATIONS

85. PETITIONS

No petitions had been received by the date of publication of the agenda.

86. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 26 August 2009)

No public questions received by date of publication.

87. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 26 August 2009)

No deputations received by date of publication.

PLANNING COMMITTEE

88. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

89. LETTERS FROM COUNCILLORS

No letters have been received.

90. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

91. CLARIFICATION AND AMPLIFICATION OF REASONS FOR REFUSAL 15 - 20 APPLICATION BH2007/03454, LAND AT BRIGHTON MARINA

-Report of the Director of Environment (copy attached)

Contact Officer: Sue Dubberley Tel: 29 2322

Kevin Goodwin

Ward Affected: Rottingdean Coastal

92. APPEAL DECISIONS 21 - 98

(copy attached).

93. LIST OF NEW APPEALS LODGED WITH THE PLANNING 99 - 102 INSPECTORATE

(copy attached).

94. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES 103 - 104

(copy attached).

95. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

96. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST : 2 SEPTEMBER 2009

(copy circulated separately).

97. TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST

98. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY

PLANNING COMMITTEE

PART TWO

99. CONSIDERATION OF LEGAL MATTERS

- Report of The Director of Environment (copy to follow)

Contact Officer: Chris Wright Tel: 29-2097

Ward Affected: Hangleton & Knoll

Members are asked to note that officers will be available in the Council Chamber 30 minutes prior to the meeting if Members wish to consult the plans for any applications included in the Plans List.

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

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If you have any queries regarding this, please contact the Head of Democratic Services or the designated Democratic Services Officer listed on the agenda.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065), email penny.jennings@brighton-hove.gov.uk or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Monday, 24 August 2009

PLANNING COMMITTEE

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 12 AUGUST 2009

GREAT HALL, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Mrs Cobb, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and C Theobald

Co-opted Members Mr J Small (CAG Representative)

Officers in attendance: Jeanette Walsh (Development Control Manager), Steve Walker (Area Planning Manager (West)), Kathryn Boggiano (Senior Planning Officer), Sue Dubberley (Major Projects Officer), Michael Lowe (Planning Enforcement Manager), Di Morgan (Assistant Arboriculturist), Steve Reeves (Principal Transport Planning Officer), Pete Tolson (Principal Transport Planning Officer), Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

PART ONE

65. PROCEDURAL BUSINESS

65A Declaration of Substitutes

65.1 There were none.

65B Declarations of Interest

65.2 Councillor Steedman explained that he had requested information of officers regarding premises in Richmond Parade, Brighton, situated close to the former Saunders Glass Works, Application BH2009/00834. He had not expressed an opinion in respect of the application, remained of a neutral mind and would therefore remain present during the discussion and voting thereon.

65.3 Councillor Hyde (Chairman) referred to Application BH2009/01384, 57 Falmer Road. She explained that she lived in the general vicinity of the application site but it did not border her own dwelling and she had no direct interest in the application and remained

of a neutral mind. She would therefore remain in the Chair during consideration of the application and during the debate and voting thereon.

65C Exclusion of Press and Public

65.4 In accordance with Section 100A of the Local Government Act 1972 ("The Act"), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely, in the view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of (The Act).

65.5 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

66. MINUTES OF THE PREVIOUS MEETING

66.1 **RESOLVED** - That the Chairman be authorised to sign the minutes of the meeting held on 22 July 2009 as a correct record.

67. CHAIRMAN'S COMMUNICATIONS

Web casting

67.1 The Chairman explained that afternoon's meeting of the Planning Committee was being web cast. Members were reminded to speak directly into the microphones and to switch them off when they had finished speaking in order to ensure that they could be heard clearly.

Royal Alexandra Hospital Site

67.2 The Planning Enforcement Manager, Mr Lowe advised Members that officers had visited the site with the landowners who during the visit had served an Eviction Notice on squatters who were currently occupying two of the buildings on the site. If the squatters did not vacate the site in accordance with the terms of the notice, the landowners estimated that it would take 4-8 weeks to seek court approval to instruct bailiffs to remove them.

67.3 A plan was displayed showing those areas of the site where the landowners had agreed to improve existing security arrangements. This would include door and window guarding, and increased security to the perimeter fence. The Planning Enforcement Manager explained that officers were investigating the option of exercising powers under the Listed Building and Conservation Areas Act carry out security works to the site if the landowners failed to carry out their commitment.

67.4 Councillor Smart asked whether, if the Council carried out works to make the site secure, reimbursement could be sought from the landowner. The Planning Enforcement Manager stated that the powers provided under the above Act were rarely used; if they were to be invoked clarification would be sought regarding the mechanisms by which the Council could seek redress.

- 67.5 Councillor Wells enquired whether measures would be put into place in order to expedite action in the event that the squatters did not vacate the site in accordance with the terms of the Eviction Notice. It was confirmed they would.
- 67.6 Mr Small CAG stated that it appeared that the squatters had gained entry onto the site at several points, he hoped that all of these would be properly secured once they had left in order to prevent the possibility of further incursions taking place in the future.
- 67.7 **RESOLVED** - That the position be noted.

68. PETITIONS

- 68.1 A petition was presented by Councillor Allen on behalf of residents of Exeter Street in relation to works being carried out at 18 Exeter Street.
- “We the undersigned object to the use and potential harm relating to the change of use of 18 Exeter Street.

We object on the following grounds:

No.18 Exeter Street is a church-owned house which has always been an upstairs self contained residential flat and a downstairs area used occasionally for church committee meetings and the like. With no consultation or concern for residents St Luke’s Prestonville is currently changing the whole house into a drop in centre, despite the fact they have an existing centre attached to the church itself at the end of Stanford Road (approximately 200 yards away and not adjoining private houses).

The Centre will lead to an increase in the number of people coming into Exeter Street from outside the area. Considering the large number of children and elderly people living in this quiet residential street, we are especially concerned at those coming for advice with potential drug and alcohol related problems.

Traffic volume will increase, as will demand for parking spaces. We have three disabled people living within 50 yards of 18 Exeter Street. A Member of the (church) committee has already indicated that they would need to have use of the two disabled spaces near no.18 which would cause these three disabled residents additional distress.

Most importantly of all, the character of our quiet residential family street will be changed for the worse.

St Luke’s has a large and seriously under used church at the bottom of Stanford Road with as explained above - an existing Drop in Advice Centre operating away from residential homes. We object to this change of use and potential harm to residents (with no prior opportunity to object).” (52 signatures).

- 68.2 The Development Control Manager confirmed that the Council’s Planning Enforcement Manager had been notified regarding this matter. Planning approval had not been

sought for these works and investigations were being carried out to ascertain whether planning permission was required.

68.3 **RESOLVED** - That the contents of the petition be received and noted.

69. PUBLIC QUESTIONS

67.1 There were none.

70. DEPUTATIONS

70.1 There were none.

71. WRITTEN QUESTIONS FROM COUNCILLORS

71.1 There were none.

72. LETTERS FROM COUNCILLORS

72.1 There were none.

73. NOTICES OF MOTION REFERRED FROM COUNCIL

73.1 There were none.

74. BRIGHTON MARINA PUBLIC INQUIRY: ADDITIONAL MATTERS

74.1 The Major Projects Officer, Mrs Dubberley gave an oral update in respect of the Public Inquiry lodged by Explore Living in relation to Application BH2007/03454, Land at Brighton Marina including the inner harbour and adjacent sites.

74.2 Key dates in relation to the Public Inquiry were outlined and it was noted that the Inquiry itself was set to run from 3 November - 9 December 2009. A Planning Consultant had been engaged and the Council's reasons for refusal were currently being considered. A report would be brought to the next scheduled meeting of the Committee to enable Members to clarify and amplify those reasons.

74.3 **RESOLVED** - That the position be noted.

75. APPEAL DECISIONS

75.1 The Committee noted the content of the letters received from the Planning Inspectorate advising of the result of the planning appeals which had been lodged as set out in the agenda.

76. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

76.1 The Committee noted the list of planning appeals which had been lodged as set out in the agenda.

77. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

77.1 The Committee noted the list of planning appeals set out in the agenda relating to Informal Hearings and Public Inquiries.

78. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

78.1 **RESOLVED** - That the following site visits be undertaken by the Committee prior to determining of the application:

Application	Site visit requested by
BH2009/01249, The Hyde, Rowan Avenue	Development Control Manager
BH2008/00792, Former Nurses' Accommodation, Brighton General Hospital	Development Control Manager
BH2009/00696, 39 Salisbury Road	Councillor Kennedy
BH2009/0161, 130 Cowper Street	Councillor Cobb
*BH2005/06784, George Williams House, Highlands Road, Portslade *Implemented scheme	Mr. Small, CAG.

79. TO CONSIDER AND DERERMINE PLANNING APPLICATIONS ON THE PLANS LIST: 12 AUGUST 2009

(i) TREES

(1) A vote was taken and on a vote of 11 to 1 consent to fell the tree referred to below was refused.

79.1 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 7 of the report and resolves to refuse consent to the following:

Application BH2009/01615, North Lodge, Highcroft Villas

Note: Councillor McCaffery voted that approval to fell the trees be granted.

(1) A vote was taken and Members voted unanimously that permission to fell the trees referred to below be granted.

- 79.2 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 7 of the report and resolves to grant consent to the felling of the trees covered by the following application subject to the conditions set out in the report:

Application BH2009/01695, Hamilton Lodge School for the deaf, Walpole Road, Brighton

(ii) **SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM COUNCIL POLICY**

- A. **Application BH2009/00834, Saunders Glass, Sussex Place, Brighton** – Demolition of existing former glassworks and erection of a 7 storey student halls of residence providing 196 units and ancillary cycle parking.

- (1) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the constituent elements of the proposed scheme by reference to floor plans and elevational drawings. The application failed to comply with local plan policies TR1, TR14 and TR18. The proposal sought to cram too much onto the site, the standard of accommodation which would be provided was considered to be poor, the units being very small with limited aspect and having no dedicated outside amenity space. The form of development proposed would have a detrimental impact on the neighbouring street scene and neighbouring conservation area and refusal was therefore recommended.
- (2) Mr Bareham spoke on behalf of the applicant in support of their application stating that the development would respond to an identified need, a letter of support had been submitted by Brighton University highlighting the severe problems it had in finding suitable accommodation for its students. It was not considered that the height and configuration of the development would be detrimental to neighbouring amenity and the dimensions of the rooms and their layout was comparable or larger than that provided by similar models of student accommodation throughout the United Kingdom.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Steedman enquired whether/where a setting down/picking up point would be provided and whether it was considered any additional traffic would compound existing parking/traffic problems.
- (4) Councillor C Theobald sought details of the materials to be used, location of bathrooms and confirmation as to whether it was proposed that lift(s) would be installed. It was confirmed that they would.
- (5) Councillor Kennedy referred to access/equalities implications and enquired whether any of the units would be wheelchair accessible. It was explained that the absence of wheelchair accessible units did not constitute a reason for refusal.
- (6) Councillor Davey enquired whether there were guidelines regarding the size of student accommodation. It was explained that there were not, however, the proposed units were considered to be very small.

- (7) Mr Small, CAG sought clarification of the difference in terms of size and dimension between the studio units and those with shared facilities.
- (8) Councillor McCaffery sought confirmation whether any further information had been received regarding the potential risk to groundwater posed by the development. No further information had been received.

Debate and Decision Making Process

- (9) Councillor Caulfield referred to the identified need for such housing, borne out by support being expressed by the University and by the Council's own research. Provision of such accommodation helped to free up affordable family accommodation within the City.
- (10) Councillor Steedman stated expressed supported for recommendation to refuse stating that if permission were to be granted the applicant should be required to provide dropped kerbs and a setting down/picking up point adjacent to the site entrance.
- (11) Councillor Kennedy concurred stating that she also considered that the lack of wheelchair accessible units was disappointing.
- (12) Councillor C Theobald considered that whilst supporting the freeing up of family homes, this proposal was too high, too dense and sought to cram too much onto the site. The result would be a large ugly building which would overshadow its neighbours. It was also vital to provide a suitable dropping off point close to any accommodation provided.
- (13) Councillor McCaffery expressed concern regarding the small size of some of the proposed units. Additional cycle parking facilities would be welcome given the site's location.
- (14) Councillor Davey whilst supporting the need to provide student accommodation considered that a number of matters remained to be addressed and that as it stood he was unable to support this application. Councillor Smart concurred stating the impact of this scheme on the Valley Gardens Conservation Area would be too great.
- (15) A vote was taken and on a vote of 9 to 1 with 2 abstentions the Committee agreed that it was minded to refuse planning permission.

79.3 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in this report and resolves that it is minded to refuse planning permission subject to the expiry of the publicity period and receipt of no further representations which raise no new material planning considerations, which have not already been considered within the report for the reasons and subject to the informatives also set out in the report.

Note: Councillor Caulfield voted that the application be granted. Councillors Mrs Cobb and Wells abstained.

(iii) MINOR APPLICATIONS

B. Application BH2008/01052, 169-174 Western Road, Brighton – Retrospective application for part second/third floor extension to incorporate storage and staff facilities.

(1) The Development Control Manager recommended that consideration of the application be deferred. New very late information had been received which needed to be considered and consulted upon.

79.4 **RESOLVED** - That consideration of the above application be deferred pending consideration/consultation on late information received.

C. Application BH2009/01193, All Saints Church Hall, Church Hill, Patcham – Proposed ground floor north extension and first floor extension incorporating 7 roof lights and creation of access from path adjacent to church.

(1) A vote was taken and on a vote of 11 with 1 abstention minded to grant planning approval was given.

79.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 8 of the report and resolves it is minded to grant planning permission subject to the expiry of the publicity period and the receipt of no further representations which raise no new material planning consideration, which have not already been considered within the report and subject to the conditions and informatives set out in the report.

Note: Councillor Mrs Cobb abstained from voting in respect of the above application.

D. Application BH2009/01384, Former Gospel Hall, 57 Falmer Road, Rottingdean – Demolition of existing vacant church hall (D1) and construction of 6 two storey town houses (C3) with provision of 12 cycle spaces and one car parking space.

(1) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposal. Elevational drawings and photographs showing views across the site from the south were shown. The scheme was considered to be of an acceptable design and to adequately protect the amenity of adjoining occupiers whilst providing a good standard of accommodation for future occupiers. It was not considered that the development would result in hazard to the highway network and would achieve an acceptable standard of sustainability and nature conservation enhancement.

(2) Mrs Wright spoke as objector to the scheme explaining that the existing Victorian drainage system was inadequate to support the existing dwelling houses, in consequence the system became blocked and sewage and effluent deposited itself onto her back garden at periodic intervals. The system would be unable to cope with extra demand unless it was extensively upgraded.

(3) Mr Carpenter spoke on behalf of the applicant in support of their application. He explained that the proposed development was modest and that the applicant had spent a considerable amount of time in discussions with Southern Water in order to ensure

the development would not exacerbate any existing drainage problems. Measures to address surface water run off were different from those relating to waste and the measures proposed would improve the existing situation. He suggested that if permission were to be granted that the word "foul" be added before the word "surface" in relation to Condition 17.

- (4) In response to questions by Councillors Smart and Wells in relation to drainage/waste being deposited in the objector's garden, the Development Control Manager confirmed that this was not a matter which could be addressed by Planning Conditions.

Questions/Matters on which Clarification was Sought

- (5) Councillor Caulfield queried that only one parking space was proposed given that the area was hilly and it's out of city location. Reference was made to the traffic surveys carried out and the fact that the level of on-street parking available was considered to be adequate.
- (6) Councillor Caulfield also referred to the issues set out regarding waste/drainage stating these appeared to be similar to those raised in relation to Application BH2009/00834, Saunders Glassworks (referred to above), yet a different conclusion appeared to have been reached. The Development Control Manager explained that the issues were different. Objections had been made by the Environment Agency on the basis that insufficient information had been provided to demonstrate that the risk of pollution to controlled waters was acceptable.

Debate and Decision Making Process

- (7) Councillor C Theobald stated that she was concerned that the traffic surveys carried out did not take account of busy highway activity during the day associated with the nearby doctor's surgery and Longhill Secondary school. Also, the area was not well served by public transport. Councillor Hyde, the Chairman concurred in that view.
- (8) Councillor Wells expressed concern regarding the sewerage/drainage issues which Southern Water should in his view be seeking to resolve.
- (9) Councillor Steedman stated that he considered the scheme to be excellent and represented a good use of the site. He was in agreement that Southern Water needed to be pressed by local residents to resolve issues relating to the antiquated Victorian drainage system.
- (10) Councillor Davey expressed support for the scheme which in his view fitted into its surroundings well and sought to utilise the availability of cycle lanes nearby. It was important to move away from the assumption to all residents of new developments would be car owners.
- (11) A vote was taken and on a vote of 7 to 1 with 4 abstentions planning permission was granted.

- 79.6 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 8 of the report and resolves that

it is minded to grant planning permission subject to a Section 106 Obligation and to the Conditions and Informatives in the terms set out in the report, to the addition of the word “foul” before the word “surface” in relation to Condition 17 and amendments to Condition 19 and, the additional Condition set out below:

Condition 19 to read:

“No development shall commence until a nature conservation and protection enhancement strategy has been submitted to and approved in writing by the Local Planning Authority. This shall include measures to protect slow-worms on the site from injury and the erection of 6 bat and bird boxes should be required as a minimum (constructed in Schwegler woodcrete, or lbstock bat bricks, or equivalent). The development shall be carried out in strict accordance with the approved details.

Reason: To ensure the protection and enhancement of the ecological interest of the site and to comply with policies QD17 and QD18 of the Brighton & Hove Local Plan.”

Additional Condition to read as follows:

“No development shall commence until details of the access gate to the rear alleyway to the north of the site had been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

Reason: To ensure the development is built to a good standard of design in accordance with QD1 of the Brighton & Hove Local Plan.

Note: Councillor Hyde the Chairman voted that the application be refused. Councillors Caulfield, Mrs Cobb, C Theobald and Wells abstained.

E. Application BH2009/00696, 39 Salisbury Road, Hove – Demolition of existing building and erection of four storey private residential building containing nine mixed size units and community area on the ground floor.

(1) Members considered that it would be beneficial to carry out a site visit prior to determining the application.

79.7 **RESOLVED** - That consideration of the above application be deferred pending a site visit.

F. Application BH2009/00579, Land R/o 1 Orchard Avenue, Hove – use of site as car park (retrospective).

(1) A vote was taken and Members voted unanimously to refuse planning permission and to authorise enforcement action.

79.8 **RESOLVED: A** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse planning permission for the reasons set out in the report.

B: - Authorises enforcement action to seek the removal of the car park and reinstatement of the land to its former use and condition.

G. Application BH2009/00838, 40 Tongdean Avenue, Hove - Erection of 3 storey residential dwelling on land between 36 & 40 Tongdean Avenue.

- (1) The Area Planning Manager (West), Mr Walker gave a presentation detailing the planning history of the site and the extant (but yet to be executed) permissions granted in relation to neighbouring plots. He also referred to the recent permission granted to erect a pair of semi detached houses on the plot of no 42; these would read as one dwelling house, would be surrounded by ample amenity space and could be easily accommodated within a more spacious plot.
- (2) If granted this development would be located on a smaller plot than many of the surrounding properties which would significantly harm the character of the conservation area would appear crammed in and would be detrimental to the appearance of the street scene. The dwelling would cause significant problems for neighbours as a result of its height and positioning and its very close proximity to neighbouring boundaries. The application was therefore recommended for refusal.
- (3) Mrs Ransome spoke on behalf of neighbouring objectors referring to the close proximity of the proposed dwelling to her boundary and its proposed configuration within the plot which would result in overlooking and loss of amenity as it would tower over neighbouring properties.

Questions Matters on Which Clarification was Sought

- (4) Councillor Steedman whilst agreeing with the Officer's recommendation that the application be refused on design grounds queried whether it ran contrary to the principle of development given that permission had been given to build a pair of semi-detached houses on Plot 42 the previous September. The Area Planning Manager referred to the complexities of the neighbouring plot sizes in terms of their size and configuration; this site was significantly smaller and narrower than its neighbours.
- (5) Councillor Mrs Cobb requested to see visuals and Plans, enquiring whether a plot 38 had ever existed.
- (6) Councillor C Theobald enquired regarding the height and number of bedrooms proposed and whether the existing Beech would be retained. It was confirmed that the 4 bedrooms were proposed including a study located in the roof space and that the existing on site trees would be retained.

Debate and Decision Making Process

- (7) Councillor Steedman reiterated that whilst agreeing with the recommendation to refuse he was not necessarily averse to the principle of development of the site per se. He was of the view that greater densities should be sought to protect the area outside the urban fringe.
- (8) Councillor Hamilton stated that he supported refusal of the application in this instance.
- (9) A vote was taken and Members voted unanimously that planning permission be refused.

- 79.9 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in Paragraph 8 of the report and resolves to refuse planning permission for the reasons and informatives set out in the report.
80. **TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST**
- 80.1 **RESOLVED** - That the following site visits be undertaken by the Committee prior to determining the application:

Application	Site visit requested by
BH2009/01249, The Hyde, Rowan Avenue	Development Control Manager
BH2008/00792, Former Nurses' Accommodation, Brighton General Hospital	Development Control Manager
BH2009/00696, 39 Salisbury Road	Councillor Kennedy
BH2009/01561, 130 Cowper Street	Councillor Cobb
*BH2005/06784, George Williams House, Highland Road, Portslade *Implemented scheme	Mr. J Small (CAG)

79. **TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY**

- 81.1 **RESOLVED** - That those details of applications determined by the Director of Environment under delegated powers be noted.

Note 1: All decisions recorded in this list are subject to certain conditions and reasons recorded in the planning register maintained by the Director of Environment. The register complies with legislative requirements.

Note 2: A list of representations received by the Council after the Plans List reports had been submitted for printing, was circulated to Members on the Friday preceding the meeting (for copy see minute book). Where representations are received after that time they should be reported to the Chairman and Deputy Chairman and it would be at their discretion whether these should in exceptional cases be reported to the

Committee. This is in accordance with Resolution 147.2 of the then Sub Committee on 23 February 2005.

The meeting concluded at 4.35pm

Signed

Chairman

Dated this

day of

PLANNING COMMITTEE

Agenda Item 91 Brighton & Hove City Council

Subject:	Clarification and amplification of the reasons for refusal of Planning Application BH2007/03454, Land at Brighton Marina
Date of Meeting:	2 September 2009
Report of:	Director of Environment
Officer:	Sue Dubberley Tel: (01273) 292322 Kevin Goodwin
Wards Affected:	Rottingdean Coastal

1. Purpose of the report

- 1.1 To agree the points of clarification and amplification in relation to the reasons for refusal of the planning application prior to the forthcoming public inquiry due to commence on 3rd November 2009.

2. Recommendation

- 2.1 That the planning committee agree the clarification and amplification of the reasons for refusal nos.1, 2, 3, and 4 as set out below and the conditional removal of reason for refusal no.6.

3. Information/background

- 3.1 A planning application for major development at Brighton Marina for the Inner Harbour site was submitted in September 2007 (ref: BH2007/03454) by X-Leisure and Explore Living. The application was considered by the council on 12th December 2008 and was refused. The applicant has now submitted an appeal in respect of the council's decision to refuse the planning application and a public inquiry has been scheduled to commence on 3 November 2009.
- 3.2 The Council has appointed the planning consultant Kevin Goodwin Director and Head of Planning of CgMs as the lead witness for the Inquiry. The other witnesses are Adam Roake of Urbanise (architect), David Allen managing Director of Allen Pyke Associate (landscape architect), Dr Nicholas Doggett of CgMs (Heritage expert). The Council's appointed advocate is Morag Ellis QC.
- 3.3 Conference with Counsel took place on Friday 24 July. One of the items discussed was the reasons for refusal and on the advice from Counsel and in agreement with the witnesses and Cllrs the amplification and clarification below is proposed to Planning

Committee. In particular the policies of the Structure Plan have been replaced by those of the South East Plan and also the two letters received from the appellant's agents in respect of inviting the Council to reconsider their position on Reasons for Refusal 4, 5 and 6.

- 3.4 Each of the reasons for refusal is considered in turn below. The reason for refusal as set out in the decision notice appears first followed by the clarified and amplified version:

Reason for Refusal No. 1

The proposed development, by reason of siting, layout and height, would be overly dominant and would not relate satisfactorily to existing development within the Marina and would fail to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff which is a Site of Special Scientific Interest. The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan and policies S1, S6, EN1, EN2, EN3 and EN26 of the East Sussex and Brighton and Hove Structure Plan.

Proposed wording: (includes relevant replacement policies from the South East Plan, the East Sussex and Brighton and Hove Structure Plan, having been superseded since the date of the decision). Additional text is in **bold** and text to be removed is in *[italics]*.

The proposed development, by reason of **design**, siting, layout and height, would be **unacceptable, overly dominant and would fail** *[overly dominant and would not relate satisfactorily to existing development within the Marina, and would fail]* to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff. **The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan policies CC1, CC6, CC8, C2, C3, HO4 and BE1 of the South East Plan, PPS1 and PPG15.**

Reason for Refusal No. 2

The proposed development would cause material nuisance and loss of amenity to residents living opposite and within the Marina. In addition, by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan.

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

The proposed *[development would cause material nuisance and loss of amenity to residents living opposite and within the Marina. In addition by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan]* **dwellings within the Cliff Building would not provide good quality accommodation by reason of a preponderance of single aspect dwellings and shaded courtyards, the size of units, coupled with their poor relationship to the cliff, ramps and access road, giving rise to cramped and unsatisfactory living conditions, contrary to policies QD1, QD3 QD27 and HO4 of the Brighton and Hove Local Plan and PPS 1 and PPS 3”.**

Reason for Refusal No. 3

The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan.

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

[The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan] **The proposed development with its preponderance of one and two bed units and its affordable housing tenure mix, fails to respond adequately to identified housing needs within the City contrary to policies HO2, HO3 and QD3 of the Brighton and Hove Local Plan. Furthermore, the disposition of affordable units within the proposed development would not counter social exclusion or foster the creation of cohesive sustainable communities contrary to PPS 3, in particular paras 9, 10 and 12 and PAN 04 in particular paras 3.2, 13.3 and 16.0, of the Brighton Marina Masterplan.**

Reason for Refusal No. 4

The applicant has failed to demonstrate that the proposed development would result in a scheme with an adequate provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policy HO6 of the Brighton and Hove Local *Plan*.

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

The applicant has failed to demonstrate that the proposed development would result in a scheme with adequate **design and** provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of [policy] **policies QD1, QD2, QD3, HO4 and HO6** of the Brighton and Hove Local Plan **and PAN04 in particular paras 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3 of the Brighton Marina Masterplan.**

Reason for Refusal No. 5 – no alteration

The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy HO21 of the Brighton and Hove Local Plan.

Reason for Refusal No. 6 – conditionally withdrawn

The proposed development would be in a High Probability Flood Zone as defined in PPS25: Development and Flood Risk and does not pass the Exception Test as set out therein.

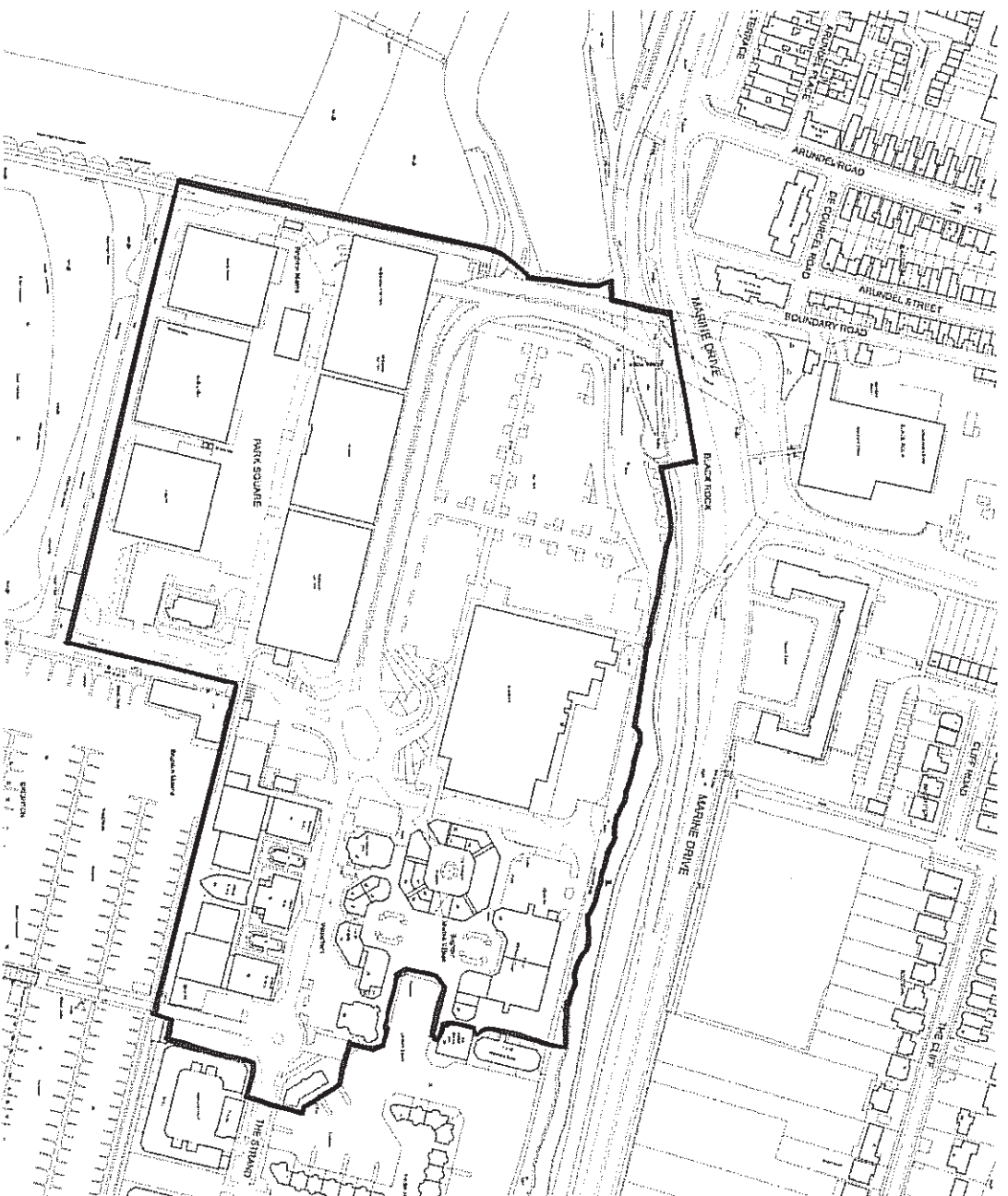
The terms of this reason for refusal have been considered. It is recognised that the Environment Agency reached a qualified position of not objecting. They did, however, seek express reassurance in relation to the maintenance of current sea defences and the provision of future upgrades to sea wall defences. The Environment Agency expressly sought measures to secure these through the s106 obligation. Therefore it is recommended that on a without prejudice basis the committee agree that they would be prepared to withdraw this reason for refusal, provided that there is prior agreement of suitable wording for insertion in the s.106 obligation.

Background Documents:

Planning Application BH2007/03454

Letters from Nathaniel Litchfield and Partners dated 29 June 2009 and 15th July 2009

**BH2007/03454
LAND AT BRIGHTON MARINA
SITE PLAN**



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F. ST PETER'S & NORTH LAINE WARD

Applications (A) BH2008/02670 & (B) BH2008/02671, 24 Albert Road, Brighton. Appeal against (A) refusal to grant planning permission for a two storey side extension- resubmission of application BH2001/02392/FP, approved on appeal and (B) two storey side extension to form separate dwelling. (Committee Decision). **APPEALS DISMISSED** (copy of the letter from the Planning Inspectorate attached).

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G. WITHDEAN WARD

Applications (A) BH2008/02033 and (B) BH2008/03379, 68 Tongdean Lane, Brighton. Appeal against (A) refusal to grant planning permission for rear extension over existing garage and (B) resubmission of BH2008/02033 to erect a rear extension partially extending over existing double garage. (Delegated Decisions) **APPEALS DISMISSED** (copy of the letter from the Planning Inspectorate attached).

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H. ROTTINGDEAN COASTAL WARD

Application BH2008/01903, 2 Longhill Road, Ovingdean. Appeal against refusal to grant planning permission for extension from single to double garage and balcony across front of property on first floor (Delegated Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached).

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Appeal Decision

Hearing held on 1 and 2 July 2009

Site visit made on 2 July 2009

by **P W Clark MA MRTPI MCI**

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

The Planning Inspectorate
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**Decision date:
30 July 2009**

Appeal Ref: APP/Q1445/A/09/2097917

Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Downland Housing Association Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2008/02586, dated 30 July 2008, was refused by notice dated 14 November 2008.
- The development proposed is demolition of the existing building and redevelopment of the site to provide a new GP surgery at part ground, part first floor, a new D1/D2 unit at ground floor and 38 (revised to 37) residential units above in a part 3, part 4 and part 5 storey building, including 16 affordable units (40%) (revised to 42%) with surface car parking and landscaping at rear.

Application for costs

1. At the Hearing an application for costs was made by Downland Housing Association Ltd against Brighton & Hove City Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Procedural matters

3. As submitted, drawing P07D indicates a proposed A1/A2/A3 use. Both parties agree that this is an error. In consequence, the eleventh reason for refusal is withdrawn.
4. Amended drawings P06C, P07E, P08E, P10D, P11E, P12E, P13E, P14B and P20A were submitted during the course of the appeal with a request that these be substituted for those originally submitted. They correct the error and make further changes. They reduce the number of flats by one and so increase the proportion of affordable units to 42% but otherwise the description of development would be unchanged. Together with other changes to the building, surface car parking would be decreased in extent and landscaping increased in extent. The omission of 24 cycle spaces from the revised landscaping area on drawings P06C and P07E is acknowledged to be an error.
5. The amendments reduce the quantity of development by a few percentage points, so are minor. They give rise to no new points. The appellant has notified the amendments in good time to all who might be expected to be

interested. Therefore, nobody would be prejudiced by the substitution and so I have considered the case and based my decision on the revised drawings.

Main issues

6. There are five main issues, several with component parts. These are the effects of the proposal on;
 - the living conditions of potential future occupants, with particular reference to outdoor recreation space, amenity space, privacy, noise and air quality;
 - the living conditions of neighbours in terms of noise, privacy, light and outlook;
 - local infrastructure, in terms of indoor recreation, community facilities, education facilities and transport. Outdoor recreation also figures as part of this issue but I consider the point as part of the first issue;
 - energy consumption in terms of its use of internal bathrooms; and
 - the character and appearance of the area in terms of its scale, bulk, height, form, position, mix of uses and public art.

Reasons

Potential future occupants

Outdoor recreation space

7. Brighton and Hove Local Plan policy HO6 requires housing development to benefit from three kinds of outdoor recreation space; children's equipped play space, casual or informal play space and adult or youth outdoor sports facilities, to be provided on site, where practicable. No provision would be made on site for equipped play space or for adult or youth outdoor sports facilities. After deductions for overflow car parking and for cycle spaces inadvertently omitted from the drawings, the scheme would only provide about 50-60% of the requirement for casual or informal play space at ground floor level. This would be supplemented by two separate areas of casual or informal play space on rooftops to reach approximately the total required for casual or informal play.
8. Although the total amount of casual or informal play space approximates to the Council's quantitative requirements, its division into three separate pieces would reduce its utility. The largest space, at ground floor level, would be placed between the car park of the adjoining site and the car parking proposed for the doctor's surgery on site. Access to it, from all flats, would require crossing the surgery car park and, for the majority of flats, would also require a circuit of the building on the public highway around the site. It could not be placed on site further away from the majority of flats it would be intended to serve.
9. The quantity and layout of open space on site would be the result of a three-way balance between the footprint of the building, the footprint of the car park and the footprint of the open space. The car park is proposed to have a single-

sided layout. This is inherently inefficient, consuming a disproportionate area of the site for any given number of parking spaces.

10. It was explained that this layout was chosen to have a close relationship between the car park and the surgery it would serve and to avoid a break in the street frontage which might result from a differently configured car park placed partly under the building. Whilst recognising the desirability of a continuous street frontage, I observe that the current proposal would anyway result in a considerable break at ground floor level caused by the combination of residential entrance, car park entrance and cycle, refuse and recycling store.
11. Whatever the reasons, the layout chosen would result in inadequate, poorly located, casual play space. The implications for living conditions would be both practical in terms of access to play space and visual, in that an outlook for the majority of flats, over a main road in one direction and a car park in the other, would have little relief. Although the development would achieve the greater intensity sought by government policy set out in Planning Policy Statements 1, *Sustainable Development* and 3, *Housing* (PPSs 1 & 3) and by local plan policy QD3, it would not achieve the efficient and effective use of the site required by that policy and so, through an inadequate provision of casual play space, would not achieve the quality of life for residents also sought by PPSs 1 & 3.
12. There is existing off-site provision of outdoor recreation space at Stoneham Park, Davis Park and Wish Park, too far way for casual use but with potential for supplying the other components of local plan policy HO6. The Council was unable to supply me with the evidence of its Open Space Sport and Recreation Study because it was not yet completed. Its summary conclusions described in the material before me relate only to city-wide figures so cannot contradict the appellant's view that the three local parks would satisfy the other two components of local plan policy HO6 in respect of this site.
13. Even if their enhancement were required, as the Council contests, there is no current proposal to do so, so any financial contribution made through a s106 obligation could not be shown to remedy any deficiency. The appellant does not propose to make one in the absence of any demonstrable need. Although I saw that Stoneham Park was well used at the time of my visit, the same was not true of Davis Park and Wish Park, so I am not convinced that there is a deficiency in the local area of open space to serve two of the three components of policy HO6. Part (i) of policy S1 of the recently adopted South East Plan would also be satisfied in so far as this requires community access to amenities such as parks, open spaces and physical recreation activity. However this finding does not override the unacceptable inadequacies of the scheme in relation to the first component of HO6, casual or informal playspace.

Private amenity space

14. In terms of private amenity space, the revised scheme was shown to provide a balcony for each flat capable of accommodating a table and chairs. The Council accepted, and I concur, that this would be sufficient to meet the requirements of local plan policy HO5 which requires a usable quantity of private amenity space.

Privacy

15. The scheme would include some bedroom windows opening on to a communal walkway at first and second floor levels. The revised scheme includes obscure glazing to the lower half of these windows, which could be secured by condition. This would provide adequate visual privacy without preventing a complete loss of outlook which would be unacceptable in a habitable room. It would thus avoid nuisance or loss of amenity to proposed residents and so in that respect meet one of the requirements of local plan policy QD27.

Noise

16. The site lies on a main road carrying frequent buses. However there is no information by which to classify the site within the noise exposure categories set out in the government's planning policy guidance *Planning and Noise* (PPG24). The appellants considered that the effect of the development in providing a noise barrier against Portland Road would benefit residents of Marmion Road behind the site. As that demonstrates awareness that noise from Portland Road is a problem, I am not convinced by both parties' lack of concern for the effects of traffic noise from Portland Road on the residents of the development itself, reliant on natural ventilation and on balconies on the Portland Road frontage for private amenity space.
17. There would be no plant within the scheme likely to cause internally-generated noise. Modern construction methods can achieve noise reduction. Although not specifically discussed at the Hearing, these could be secured by condition to comply with the part of local plan policy SU10 which requires potential occupants to be protected against noise, so my concerns do not amount to a reason to dismiss the appeal.

Air quality

18. The site lies within an Air Quality Management Area with excessive concentrations of Nitrogen Dioxide expected at ground floor level. Air pollution levels at first floor level and above are expected to be acceptable for residential accommodation. The proposal contains no residential properties on the ground floor so would not give rise to unacceptable living conditions on that count.

Occupants' living conditions - conclusions

19. As PPS3 advises, good design is fundamental to the development of high quality new housing, which contributes to the creation of sustainable, mixed communities. Particularly in the revisions to this scheme, ingenious design skills would ensure acceptable conditions for potential future residents in terms of air quality, privacy and private amenity space. A satisfactory noise environment could be ensured by condition.
20. The local area is provided with equipped children's play space and outdoor sports facilities for adults. However, the layout of the site would provide casual play space inadequate in both size and location. In consequence of the latter, most flats would also have a poor outlook. PPS3 emphasises the importance of ensuring that there is good provision of well designed, safe, secure and stimulating recreational areas, including informal play space, particularly where family housing is proposed. I conclude that in this respect, the proposal would

not achieve the high quality of living conditions for future residents which is sought by PPSs1 & 3. It would therefore not comply with local plan policies QD3 and HO6.

Neighbours

Light

21. Loss of light to neighbouring properties is not one of the Council's reasons for refusal, but is raised by third parties. The extensive bulk of the existing building on site is placed close up against the northern boundary and so causes considerable light restriction to the rear of the properties in Marmion Road. Nevertheless, whereas the previous development occurred before the planning system was in place, what is now proposed is a redevelopment requiring planning permission. Previously unacceptable or undesirable situations should not necessarily be replicated.
22. The developer's daylight analysis is not challenged by any party. It examines the effects of the scheme as originally submitted. Its methodology is intended to highlight unacceptable deteriorations in daylighting but it is also possible to identify locations where an existing outcome would not be acceptable by today's standards. These are to the ground floor rear windows of numbers 70 to 82 (even) Marmion Road.
23. In most cases the proposal would result in an improvement to daylighting to acceptable levels because the extent of building on the boundary would be so much less. In a few cases deterioration is recorded but so small that it would not be noticed in practice. The test of the Building Research Establishment Guidelines, which are commonly used for assessing daylight impacts, would be passed. However, this test only measures deterioration. From the figures supplied it would appear that the existing constrictions on daylight would be perpetuated but made no worse in respect of the ground floor windows of number 82 Marmion Road. Some restriction on daylight would continue at numbers 76 to 80 Marmion Road but at an improved level. The benefits to numbers 70 to 74 would be unequivocal.
24. The revised scheme would narrow the width of the fourth floor of the wing projecting towards Marmion Road. However, no further calculation of the effects on daylighting have been made, so it is not possible to quantify any further benefit of this change on daylighting.
25. The development would recreate inadequate daylighting conditions to certain properties in Marmion Road and so harm the living conditions of their occupants. This would be contrary to local plan policy QD27 which seeks to protect neighbours' amenities. On its own this would not be a sufficient reason to dismiss the appeal because the daylighting to most properties in Marmion Road would benefit from the demolition of the existing bingo hall which is proposed as part of this development. I dismiss the appeal for other reasons in any event, so it is a contributory reason but no more than that.

Outlook

26. In part, consideration of the outlook from neighbours' property parallels the consideration of their daylight. The existing building, positioned close on the
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- boundary with properties in Marmion Road, is oppressive over an extensive length. The width of the School Road wing of the proposal is much less, so many properties would benefit from the demolition of the existing building.
27. The rear garden of numbers 80 and 82 Marmion Road together with their rear alleyway (known locally as a twitten) is about 10 metres. It would be normal, in a built up area, for the flank of another two storey house to rise in that position and for that outlook to be acceptable.
28. In this case, however, what is proposed would not be far short of twice the depth of a house. A house would normally comprise two storeys plus a gable end whereas the proposal would be four storeys in height, discounting the minor set-back above the ground floor. There would be a further storey, albeit more significantly set back. For these reasons, the outlook from numbers 80 and 82 would be harmed by the new development in much the same way as is their outlook to the existing building and so would be contrary to local plan policy QD27.
29. To the east of the site, houses in Marmion Road face the rear of existing terraces in Portland Road with a comfortable effect on outlook. In that case, their upper floors are at least 31 metres away and their top floors are contained within pitched roofs. For the most part, the Portland Road wing of the new building would be between 25 and 28 metres away from the rear façade of the Marmion Road properties. The outlook to the three storey part would therefore be a little less comfortable than to those terraces to the east but, in my view, still tolerable as the projection and recession of walkways and the varied treatment of the pavilions either side of the walkways would provide interest to the façade.
30. The four storey element to the west commands the narrowest part of the site. The very shallow pitch of the roof would not be visible, so the termination against the sky would appear block-like. The elevation of the same block to Portland Road, which is a wider space than that to the rear of Marmion Road, would have its top floor set back so as not to appear oppressive in the street scene. By contrast, to the rear, although there would be a change in cladding at the fourth storey, it would be vertically hung, in line with the wall below. The metal cladding, in conjunction with windows wider than those on floors below, would give it a top-heavy appearance. This characteristic, in the narrower space to the rear, would present an oppressive outlook for the houses in Marmion Road and so would be contrary to local plan policy QD27.

Noise

31. In the site as previously used, there are 15 car parking spaces abutting 7 residential properties. In the revised scheme as proposed there would be 17 car parking spaces and cycle storage spaces abutting 9 residential properties. Nevertheless, whereas the previous use commenced before the planning system was in place, what is now proposed is a redevelopment requiring planning permission. Previously unacceptable or undesirable situations should not necessarily be perpetuated. A condition could require the provision of an acoustic fence specified to reduce any noise from the car park to acceptable levels. With such a condition in place, the parts of local plan policy SU10 which
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require a new development not to cause undue noise to neighbours would be satisfied.

32. There is concern that the first and second floor walkways would lead to residents socialising on them and so causing nuisance to the neighbours in Marmion Road. There are four separate walkways, two serving six flats each, two serving four flats each, so the potential for socialising is not great. If it occurred, it would cause no more noise nuisance than neighbours chatting in the street or across a garden fence.

Privacy

33. The amended scheme would provide louvred screens attached to each walkway. Their provision could be required by condition. These would prevent views down whilst allowing light to pass through to the rooms fronting on to them. Other windows in the rear of the main body of the proposal would directly face windows of living rooms in Marmion Road at distances varying from 28metres in plots 12 and 28 at the eastern end to 25 metres in plots 1, 17 and 33 at the western end.
34. Local plan policy QD27 contains no measurable standards by which to judge the possibility of overlooking. The CABI publication *By Design, Better Places to Live* recognises that a minimum face to face distance of 20 metres is a well established rule of thumb. Whilst acknowledging that a greater distance is sometimes sought for buildings over two storeys in height, the distance would be adequately exceeded in this case.
35. The amended scheme would contain no principal windows to habitable rooms in the northern elevation of the wing along School Road. All windows in this elevation are proposed to be glazed in obscured glass, which could be required by condition, so no issue of overlooking would arise. There would be habitable room windows in the eastern elevation of this wing. These would be more than 15 metres from the rear window of any house in Marmion Road and angled away at slightly more than a right angle, conditions which are normally accepted as providing privacy in an urban situation.

Neighbours' living conditions - conclusion

36. Notwithstanding the acceptable effects of the proposal on neighbours' privacy, which could be secured by conditions, and its acceptable effect on their living conditions in terms of noise, which could also be secured by conditions, I conclude that the proposal would have unacceptable effects on their outlook and, to a lesser extent, on their daylight. It would therefore be contrary to local plan policy QD27. Policies QD1 and QD2 referred to in the Council's reasons for refusal do not appear to have a bearing on this issue.

Infrastructure

Indoor recreation

37. The parties dispute the relevance of local plan policy SR21. This seeks to prevent a reduction or loss of indoor recreation or sporting facilities. Although the justification to the policy concentrates on sporting facilities, the words "indoor recreation or" in the policy indicate that sport is not its sole interest. Both the common dictionary definition of recreation and the definition of sport
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and recreation in the annex to the government's Planning Policy Guidance 17: *Planning for Sport and Recreation* (PPG17) confirm that the term recreation should not be used narrowly so I take the view that policy SR21 applies to the bingo hall which is proposed to be demolished in this case.

38. The national decline in demand for bingo and evidence of other facilities within Brighton and Hove confirm that there is an excess of provision within the catchment area of the facility. This evidence satisfies the requirements of South East Plan policies S1(i) and S5 for access to cultural facilities. Another, modern, improved, flat floor bingo hall has been provided elsewhere in Brighton which can replace the facility previously provided on the appeal site. A number of previous users of the appeal site have joined the new facility which indicates that it is as close as practicable to existing and potential users and readily accessible by a choice of transport modes.
39. Unlike local plan policy HO20, which governs the loss of community facilities and which states that the needs for all other types of community use must be considered when entertaining the loss of any one type of facility, there is no similar requirement within local plan policy SR21 to consider the needs for other types of sport and recreation facility when considering a proposal to lose one specific type. In any event, the condition of the building, its inflexible form and the reported presence of asbestos have dissuaded the providers of other types of facility from pursuing an interest. The conditions set by policy SR21 for permitting a loss of the bingo facility are therefore met.

Community facilities

40. The bingo hall provided a luncheon club for older people and so is regarded as a community facility. It was previously a theatre and cinema, both of which are included in a list of the types of community facility whose loss is resisted by local plan policy HO20. The policy includes a list of circumstances, any one of which would justify the loss of a facility.
41. Although the building has a larger capacity, for a number of decades only a proportion of its total floorspace has been in use for its authorised purpose. For the reasons set out in previous paragraphs there is now no need for that use. The replacement development would provide a very similar quantity of floorspace for the GP surgery and for a supplementary D1/D2 use. This would accord with the provisions of policy S2 of the South East Plan which seeks the provision of primary care facilities. The proposed uses are within the same list of community uses which local plan policy HO20 seeks to retain. Most of the site area would be retained in that community use. Therefore, the conditions set out in local plan policy HO20 are met.

Education facilities

42. Both parties accept that all schools in the local area are full. The development would give rise to a need to provide additional facilities to serve the needs of its future residents. Although the local planning authority has no specific proposal to remedy the deficiency, I was informed of a strategy to develop a proposal to do so. I have no reason to disbelieve the local authority's good faith, so in this case I am confident that a financial contribution from the developer would be applied to a relevant solution in a timescale appropriate to the needs of the development as required by local plan policy QD28.

43. A contribution has been calculated by reference to the numbers of children likely to be resident in the development, so I am satisfied that it is proportionate to the needs of the development. It has been included in a s106 undertaking which would therefore resolve any objection to the development resulting from its impact on educational infrastructure as required by local plan policy SU15. Policy S6 of the South East Plan requires coordination between development and essential infrastructure provision, with particular priority for health and education. The proposals, including the s106 contribution, would therefore comply with that policy.

Transport

44. The residential component of the development has been designed to be car free. This is consistent with local plan policy HO7 which provides for car free housing in locations with good access to public transport. A car club is proposed, to be secured by condition. Parking surveys show that there remain on-street spaces within the local controlled parking zone sufficient to serve the needs of the development. The Council confirms that there is a surplus of available residents' car parking permits, so there is no need to seek the exclusion of the scheme's residents from the controlled parking zone.
45. A limited number of parking spaces would be provided on site for the GP surgery. A travel plan in accordance with local plan policy TR4 would ensure that the travel needs of staff would not exceed the capacity of the car park. This could be secured by condition. The appellant's parking survey was not challenged by the Council. It demonstrates that notwithstanding the pressures of parents at school pick up times, sufficient on-street spaces would be available at the times needed by patients of the GP surgery.
46. Both parties expect the proposal to be less dependent than the previous use on the provision of car parking and more dependent on walking, cycling and public transport to serve its transport demands. The development would provide on street cycle parking, to be secured by condition, in accordance with local plan policy TR14. Some local transport facilities, such as the westbound bus stop serving the site, and local cycling facilities would need upgrading to serve the development's needs in accordance with local plan policies TR5 and TR15 and with policy S1 of the South East Plan which amongst other things seeks the incorporation of healthier forms of transport in planned developments.
47. The Council has specific, costed proposals for these improvements in its Local Transport Plan. A s106 obligation provides for a proportionate contribution to their provision and so would provide for the travel demand created by the development in accordance with local plan policy TR1. With this, and the conditions already noted, in place, objections to the scheme's impact on transport infrastructure would be overcome.

Local infrastructure - conclusions

48. For the reasons set out in earlier paragraphs, I conclude that the proposal will not have an unacceptable effect on local infrastructure through the loss of recreation or community facilities. A combination of section 106 obligations and planning conditions can ensure that its effects on other items of local infrastructure would be neutralised. The proposal would therefore comply with

local plan policies TR1, TR4, TR5, TR14, TR15, SU15, SR21, HO7, HO20 and QD28 and with South East Plan policies S1, S2, S5 and S6.

Energy consumption

49. The amended scheme would reduce the number of bathrooms dependent on artificial ventilation and light. Although a number of internal bathrooms would continue to require artificial ventilation which would consume energy, I was informed that compliance with the Building Regulations would require mechanical ventilation in any event, so I conclude that the number of remaining internal bathrooms would not be inconsistent with the Council's local plan policy SU2 which seeks efficiency in the use of energy.

Character and appearance

50. The commercial section of Portland Road is characterised by lengthy terraces comprising commercial and retail uses on the ground floor, residential on an upper floor, surmounted by steeply pitched roofs containing a third floor. The length of the terraces is broken up by occasional three storey gables symmetrically placed, frontispieces and the dormers in the roofs. Little of distinction breaks the relentless east-west progress of the road other than the tower of St Peter's Church and that of the bingo hall.
51. The proposal would comprise a lengthy mixed use terrace like others in Portland Road but would adopt a different approach to massing and articulation. It would rise asymmetrically in three blocks from one mimicking the two storeys plus steeply pitched roof of other terraces in Portland Road to a five storey block reaching near to the height of the tower of the bingo hall at the junction with School Road. The elevation in School Road would swiftly descend as a series of linked pavilions.
52. The approach which the development takes is not inappropriate in view of the termination of commercial activity on the north side of Portland Road at this point and the break in its continuity represented by West Hove Infant and Junior Schools. Although the form of the development would take a different approach from that of other terraces in Portland Road, it has the endorsement of the South East Design Review Panel, supported by CABE. As the only objective evidence produced by either party, it is particularly compelling.
53. The provision of public art as a part of the scheme remains a feature of the revised proposals. It can be secured by condition and so does not require any payment to the Council by way of planning obligation in order to secure its completion in compliance with local plan policy QD6
54. I therefore conclude that the proposal would have an acceptable effect on the character and appearance of the area. It would comply with local plan policies QD1 and QD2 which require high standards of design, taking into account local characteristics.

Summary, conclusions and other matters

55. A high standard of design is not just good aesthetic appearance, though the external elevations to Portland Road and School Road would have that. There is also a high standard of design shown in the ingenious solutions to a number of problems such as privacy and private amenity space. Infrastructure

objections are either unsubstantiated or can be overcome. But although these aspects of the scheme would be acceptable, or even good, they do not compensate for, or outweigh, its deficiencies.

56. The demolition of the bingo hall would improve neighbours' quality of life to an extent but the replacement development would still infringe current planning standards to an unacceptable degree and would impose its own oppressive presence on neighbours' outlook. The layout of the site resulting in a poor outlook for most flats, an inefficient and disproportionate allocation of land to parking, and an inadequacy of casual play space would not produce the high quality of life for potential future residents which government policy expects.
57. The building's good or acceptable features would ensure it would have little adverse impact on the world at large and so would not be noticed or would be taken for granted by the wider public. In contrast, its adverse factors would determine the unavoidable daily experience of a number of people living in and around the development and so would be more intensely felt. For that reason I attach great importance to them.
58. PPS3, paragraph 71 states that where local planning authorities cannot demonstrate an up to date 5-year supply of deliverable sites they should consider favourably planning applications for housing, having regard to other policies in the PPS, including paragraph 69. The Council cannot demonstrate an up to date 5-year supply of deliverable housing sites. However, the development fails two of the five bullet points in paragraph 69 of PPS 3, in that it would not achieve high quality housing for the reasons explained above and it would not use its site effectively and efficiently. For those reasons I am not able to give it the favourable consideration sought.

P. W. Clark

Inspector

DOCUMENTS

- 1 Consultation letter on amended scheme dated 21 May 2009
- 2 Appeal decision APP/Q1445/A/08/2092613
- 3 E-mail, newspaper article and website extract concerning air pollution
- 4 Extract from PINS website; Demonstrating a 5 year supply of deliverable sites
- 5 E-mail from Cllr Maria Caulfield to Derek Rist
- 6 Timetable, bus route 7
- 7 Photograph, partially-obscured glazing
- 8 Photograph, balconies over footpath
- 9 Consultation on ice rink building
- 10 Corrected Appendix K, Council's statement
- 11 Core Strategy – proposed amendments paper
- 12 Core Strategy – revised preferred options
- 13 Extracts from South East Plan
- 14 Balcony detail drawing
- 15 Extracts from websites – CABE regional panels
- 16 Two photographs, traffic conditions in Marmion Road
- 17 Copy of petition to use site as a playing space
- 18 Letter dated 17 June 2009 from Brighton & Hove City Council to Robinson Escott
- 19 Pair of s106 agreements



Costs Decision

Hearing held on 1 and 2 July 2009

Site visit made on 2 July 2009

by **P W Clark MA MRTPI MCM1**

**an Inspector appointed by the Secretary of State
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**Decision date:
30 July 2009**

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2097917 Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Downland Housing Association Ltd for a partial award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for demolition of the existing building and redevelopment of the site to provide a new GP surgery at part ground, part first floor, a new D1/D2 unit at ground floor and 38 (revised to 37) residential units above in a part 3, part 4 and part 5 storey building, including 16 affordable units (40%) (revised to 42%) with surface car parking and landscaping at rear.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Procedural matter

1. The application was made with reference to paragraphs B16, B25 and B29 of Circular 03/2009 but that does not apply to appeals made at the time this appeal was made. I have therefore translated the references to their equivalents in Circular 8/93 (Annex 3, paragraphs 8, 11 and 20), which applied at the time, although now cancelled.

The Submissions for Downland Housing Association Ltd

2. The application is made for a partial award of costs in respect of refusal reasons 3 & 4 (loss of indoor recreation and loss of community facility), the first part of refusal reason 8 (external walkways causing overlooking to neighbours) and refusal reasons 9 & 12 (noise and disturbance).
 3. The Council confirms that reasons for refusal 3 & 4 were principally based on an insufficiency of information, including marketing information, to justify an exception to the policies. The appellant produced detailed evidence, concerning the marketing of the property and concerning the need and demand for indoor recreational, sporting and D2 uses, including aerial photographs. The evidence is not challenged by any technically expert rebuttal evidence from the Council but only by unsubstantiated assertion. The Council's position is wholly undermined by its decision in respect of its own Ice Rink site.
 4. At the hearing, the Council specifically confirmed that there is no in principle objection to housing, yet reasons 3 & 4 in effect raise objection in principle unless certain criteria are met. For the recreation use the Council was unable to give any evidence to demonstrate that there was not an excess of provision
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- within the catchment area of the bingo hall. It accepted that the facilities had been replaced elsewhere and that they were as close as possible to existing users without any rebuttal or contrary evidence. For the community use, the Council accepted that the scheme incorporated a replacement use and also confirmed that there was no evidence to contradict marketing evidence which showed no demand for this or other types of community use, so the criteria of the policies were met.
5. In the circumstances, the evidence produced by the Council to substantiate these two reasons for refusal falls woefully short of providing a respectable basis for its stance. Therefore the Council's behaviour is unreasonable. Unnecessary costs have been incurred in commissioning the work of two expert witnesses to rebut these reasons for refusal.
 6. Concerning reason for refusal 8, it was accepted by the Council that the provision of a louvred screen to the walkways could eliminate overlooking and loss of privacy to neighbours. Such a matter is one that is capable of being dealt with by condition. Paragraph 11 of Annex 3 of Circular 8/93 is relevant.
 7. Reasons for refusal 9 & 12 concern noise and disturbance to neighbours and to potential occupants. In response to a question the Council confirmed that it had no technical or expert evidence to support its reasons for refusal. The appellants were said not to have produced evidence but paragraph 8 of Annex 3 to circular 8/93 expects the authority to produce evidence to substantiate each reason for refusal.
 8. Revisions to the scheme had been submitted informally to the Council but advice was received that they would still lead to a refusal, so no revised application was made. The Council has been put on notice at an early stage concerning these issues. There is no excuse for a failure to produce relevant evidence or, as invited, to withdraw the refusal reasons. This constitutes unreasonable behaviour and has incurred unnecessary costs in challenging these points at the hearing.

The Response by the Council

9. The Council determined the appeal in November 2008, based on the plans as originally submitted in August 2008. It withdrew refusal reason 11 once the error on the plans was acknowledged. It is the Council's right to pursue other reasons despite an invitation to withdraw.
 10. At a hearing, as opposed to an inquiry, it is normal for non-experts to give evidence. The appellant's evidence missed the point of the policies which are concerned with need, not with redundancy or viability. The claimed replacement facilities replaced others in the Brighton area, not the site in question. The policy is designed to retain uses unless their replacement is considered through the plan-making process, so it places the burden of proof on the appellant, whose evidence remains insufficient. The Council's advice concerning its own ice rink is that lack of marketability is not a sufficient ground on its own to come to a decision and so does not undermine its position on this appeal.
 11. The acceptability of housing in principle does not undermine the case for retaining recreational or community uses in a mixed use scheme.
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12. At the time of determination of the application, there was no proposal to screen the walkways. The proposals were only put forward at a late stage and are a contrived solution.
13. The Council accepts that it has not put forward technical evidence in support of reasons 9 & 12 but it is difficult to do so. The appellants have also not produced technical evidence in challenging these reasons. Nevertheless, the Council has real and justified concerns with noise from the car parking and from other aspects of the development.
14. The Council was put on notice only in April. The decision was made in November last year. The developer had time to put forward a revised application and gain a decision which might have avoided the necessity of an appeal.

Conclusions

15. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 16. It is fair to say that policy SR21 sets high hurdles for its criteria to be met but there is nothing within the policy itself which puts the burden of proof on the applicant. In contrast, Paragraph 8 of Annex 3 of Circular 8/93 places the burden of proof clearly on the local authority. As ever, it remains the responsibility of the local planning authority to make its own evaluation of an application in the light of the policies in the development plan and other material considerations. If a local authority considers that insufficient information is provided for it to determine the application, a procedure exists under Article 4 of the Town and Country Planning (Applications) Regulations 1988, not used in this case.
 17. The information provided by the applicant may not have been sufficient to meet the punctilious and exacting standards of the local authority's own evaluation processes but that does not excuse the local authority from the responsibility of producing its own evidence to justify its decision. The material submitted with the application, incomplete and partial though it may be, clearly indicates a probability that the requirements of policy SR21 would be met. Corroborating evidence has been supplied during the appeal. In the face of that, it is not reasonable for the local authority simply to repeat a mantra of insufficient information.
 18. In the case of policy HO20, the hurdles are lower, so the same arguments apply more forcefully. Furthermore, in this case, the local authority appears to have overlooked the fact that the existing and proposed uses both appear in the same list of community facilities for which the Council is trying to preserve accommodation. Within the policy itself, criterion (d) specifically provides for the needs of one use in the list to be substituted for another. I conclude that the Council has been unreasonable in refusing permission for reasons 3 & 4 and that unnecessary costs have been incurred in challenging those reasons for refusal.
-

19. The revisions to the application demonstrate that a louvred screen, attached to the walkways proposed, would provide privacy without loss of light to rooms along the walkway and could be required by a condition. The screen would be an ingenious device, a testimony to the skill of the applicant's architect. It is a device new to my experience and, as the Council freely admitted, new to it. In these circumstances it is not unreasonable for the Council to have failed to anticipate the possibility of its design and so, not unreasonable for it to have failed to use a condition to meet this objection to the scheme. I conclude that refusal reason 8 is not unreasonable.
20. Refusal reason 9 was simply answered by the provision of an acoustic fence in the revised scheme. Such devices are commonly used and should be within the experience of the local planning authority, so I agree that it was unreasonable to have refused permission on this ground when a condition could require its use. Unnecessary costs have been incurred insofar as any evidence was prepared for the appeal but on the basis of the brief time (15-20 minutes) spent on this point at the hearing, I would expect the costs to be small.
21. Refusal reason 12 is based on an allegation of insufficient information, so my previous comments about the burden of proof and the applicability of paragraph 8 of Annex 3 of circular 8/93 apply. It was unreasonable to refuse permission on this ground but I would expect the unnecessary costs incurred to be small, given that the point was dealt with at the hearing in a matter of minutes by a simple assurance that no plant or machinery was intended which could give rise to noise.

Formal Decision and Costs Order

22. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Downland Housing Association Ltd the costs of the appeal proceedings limited to those costs incurred in challenging reasons for refusal 3, 4, 9 and 12, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of planning permission for demolition of the existing building and redevelopment of the site to provide a new GP surgery at part ground, part first floor, a new D1/D2 unit at ground floor and 38 (revised to 37) residential units above in a part 3, part 4 and part 5 storey building, including 16 affordable units (40%) (revised to 42%) with surface car parking and landscaping at rear on land at Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB.
23. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

P. W. Clark Inspector



Appeal Decision

Site visit made on 23 July 2009

by **John Chase** MCD Dip Arch RIBA MRTPI

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Decision date:
3 August 2009

Appeal Ref: APP/Q1445/A/09/2099838

33 Sackville Road, Hove, East Sussex, BN3 3WA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Colasurdo against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03952, dated 13 December 2008, was refused by notice dated 12 February 2009.
- The development proposed is the conversion of single dwelling into 1x2 bedroom flat, 2x1 bedroom flats, and 1 studio flat including a front roof light and refuse/recycling store.

Procedural Matter

1. The appellants' description of the development has been amended to reflect that on the decision notice, and this is the form I have used.

Decision

2. I allow the appeal, and grant planning permission for the conversion of single dwelling into 1x2 bedroom flat, 2x1 bedroom flats, and 1 studio flat including a front roof light and refuse/recycling store at 33 Sackville Road, Hove, East Sussex, BN3 3WA in accordance with the terms of the application, Ref BH2008/03952, dated 13 December 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The flats shall not be occupied until the refuse, recycling and bicycle storage facilities have been completed in accordance with the approved drawings, and they shall thereafter be retained for their designated uses.
 - 3) The roof light serving the kitchen of the second floor flat shall be of a 'conservation' style, fitted flush so as not to project above the adjoining roof surface.

Main issue

3. I consider that the main issue is the effect on the living conditions of the future residents in terms of the provision of internal living space, external amenity space, and the potential for disabled access and facilities.

Reasons

4. With respect to the quantity of living space in each flat, the Council has drawn particular attention to the small proportions of the bathroom and kitchen in Unit 3, and to the restricted size and headroom of the kitchen in unit 4. It is certainly the case that these areas are of a minimum size. However, I accept that compromises are necessary in adapting existing property, and that the flats in question are intended for one or two people, rather than families. I consider that it would be possible, by imaginative and specific design solutions, to accommodate the necessary fittings and storage to provide adequate facilities for the residents. In particular, the open plan character of unit 3 would help to avoid an unduly constricted environment, and the limited headroom in unit 4 would not prevent the functional use of the kitchen.
5. The existing garden would be allocated to unit 1 which, in being larger than the other flats, would be more likely to accommodate a family. Whilst it would be desirable for the other flats to have private amenity space, I accept that there would be practical difficulties in making the provision. Policy HO5 of the Brighton and Hove Local Plan (LP), adopted 2005, recognises that the requirement for open space should be appropriate to the scale and character of the development. In this case, having regard to the nature of the upper floor units, which would not be suitable for families, and that there is open space at the sea-front within a short walking distance, I consider that the absence of on-site provision would not unduly diminish the living conditions of the residents.
6. In the case of conversions, LP Policy HO13 requires that Lifetime Homes criteria should be incorporated in the design wherever practicable. Whilst it would be possible to make wheelchair access to the ground floor flat, difficulties would arise in making similar provision in the upper floor units. Their restricted floor areas, and the structural limitations imposed on them by the existing building, would diminish the ability to meet the needs of people with disabilities. Similar problems would arise in adapting the existing staircase, especially if adequate ambulant access and escape were to be maintained. In these circumstances, I consider that it would not be practicable to fully meet the Lifetime Homes standards, but that this would not be a sufficient reason to require dismissal of the appeal.
7. I conclude on the main issue that the development would not have a detrimental effect on the living conditions of the future residents in terms of the provision of internal living space, external amenity space, and the potential for disabled access and facilities. In these respects it would satisfy the requirement of LP Policy QD27 by maintaining the amenity of the occupiers. The circumstances of the scheme would justify the flexible approach implied by the wording of Policies HO5 and HO13.

Conditions

8. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95. I shall apply a condition to require the construction of refuse, recycling and bicycle storage, for the benefit of sustainability, and to maintain the appearance of the development. Subject to the inclusion of a condition to control the appearance of a roof light at the front of the building, I
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consider that the development would preserve the character and appearance of the Old Hove Conservation Area.

9. I take note of the Council's Supplementary Planning Document concerning Sustainable Building Design. However, having regard to the scale and nature of the development and the existence of other legislation, along with the difficulties of enforcement, I consider that the approval of further sustainability details would not be necessary in this instance. It is clear that the scheme for the provision of transport infrastructure is intended to secure a financial contribution, but I am not satisfied that the submitted information makes a compelling case that such a contribution would be essential for the development to proceed, nor that it could be properly secured by a condition along the lines proposed.

John Chase

INSPECTOR



Appeal Decision

Site visit made on 18 June 2009

by **Y Mwanza BA(Hons) MRTPI**

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for Communities and Local Government**

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**Decision date:
7 August 2009**

Appeal Ref: APP/Q1445/A/09/2098189

38 Wilbury Road, Ground floor flat, Hove, East Sussex, BN3 3JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Florence Tapiwa against the decision of Brighton and Hove City Council.
- The application Ref BH2008/03214, dated 3 October 2008, was refused by notice dated 22 December 2008.
- The development proposed is the enlargement of approved single storey rear extension.

Decision

1. I dismiss the appeal.

Main issue

2. The effect on the living conditions of the neighbouring occupier with reference to visual impact.

Reasons

3. The appeal proposal would be flanked by an existing single storey rear extension, boundary wall and fence to the north at No.40 Wilbury Road of similar height and projection. In my view there would be no adverse impact on the living conditions of the occupiers at No.40 as it would be screened from the appeal proposal.
4. An extension of similar depth to the appeal proposal was approved in 2005 under Council Reference BH2005/01000. The appeal proposal seeks to make the extension wider than that permitted in 2005. Policies QD14 and QD27 of the Brighton & Hove Local Plan relate to extensions and alterations and the protection of amenity respectively and seek to resist development that would cause loss of amenity to neighbouring residents. Policy QD14 states that account will be taken of the overall height relationships and how overbearing the proposal will be.
5. The flank wall of the proposed kitchen extension would be located significantly closer to the basement lightwell and patio area of the existing dwelling at No.36. In my opinion because of its height above the basement accommodation and patio, rear projection and proximity to the basement windows the appeal proposal would have an overbearing effect and would result in an increased and unacceptable sense of enclosure. I conclude that the development would be harmful the living conditions of the occupiers of No.36

and would be contrary to Policies QD14 and QD27 of the Brighton & Hove Local Plan.

Other Matters

6. The appellant states that the appeal proposal improves upon the previous approval, Council Ref: BH2005/01000, in that it creates a seamless rear extension by doing away with the stepped design and would not result in any significant loss of light, outlook or privacy. In my view whatever benefits that may be gained by altering the stepped design of the extension would be outweighed by the significant harm caused by the closer proximity of the appeal proposal to the neighbouring basement property at No.36 Wilbury Road.

Conclusion

7. For the reasons given and having had regard to all other matters raised, including comments from the neighbour at No. 36 Wilbury Road, I conclude that the appeal should be dismissed.

Y Mwanza

INSPECTOR



Appeal Decision

Hearing held on 15 July 2009

Site visit made on 15 July 2009

by **Wm C Cunningham BSc(Hons) MA**
MCP MRTPI

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Decision date:
7 August 2009

Appeal Ref: APP/Q1445/A/09/2093159 17 - 19 Duke Street, Brighton, BN1 1AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Dyan against the decision of Brighton & Hove City Council.
- The application Ref BH2008/02993, dated 5 September 2008, was refused by notice dated 11 December 2008.
- The development proposed is the replacement of existing roof with mansard roof extension to create additional storey.

Decision

1. I dismiss the appeal.

Application for Costs

2. At the Hearing an application for costs was made by Mr David Dyan against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural Matter

3. At the Hearing a number of plans that formed part of the application as determined were submitted by the Council to supplement the two plans submitted with the appeal. These comprise Drawing No 21 - Existing Plans, Elevations; a drawing showing Sections B-B and C-C through the existing building; a drawing showing Section D-D through the existing building; and a site plan with the appeal site outlined in red. The appeal has been determined on this basis.

Main Issue

4. The main issue in this case is the effect through the massing, elevation treatment and design of the proposed development on the host building and on the character or appearance of the Old Town Conservation Area.

Reasoning

5. From the drawings submitted at the Hearing, the existing roof on the appeal property comprises a parapet wall about 0.8m high fronting Duke Street with a pitched roof feature about 2.4m high and 5m deep immediately to the rear. The rear pitch of that part of the roof feature above No 17 has a box dormer or similar extension. The remainder of the roof is flat and extends to about 7m deep by between about 7.5m and 10m wide. I formed the view at my site inspection that from public vantage points in the vicinity of the appeal property the form of the roof behind the parapet is not apparent. The pitched roof feature and its covering with concrete tiles that are not a

characteristic material in the locality, is however visible from the upper floor of nearby properties, particularly from those on the opposite side of Duke Street.

6. The proposed development would replace that part of the pitched roof feature and flat roof for the most part above Nos 18 and 19, with what was described at the Hearing as a 'false mansard'. This would comprise steeply pitched (approx 70⁰) front and rear roof slopes set back about 0.5m from 0.8m high parapet walls. These roof slopes, each of which would contain three flat topped dormer features, would rise to an extensive flat roof about 2.7m above the existing flat roof and about 0.4m above the ridge on the existing pitched roof feature. This 'false mansard' roof would not therefore extend across the full width of the appeal property. At the front it would be almost 8m wide and would retain a gap of about 1m with No 20 to the west and about 3.2m with No 16 to the east. At the rear it would be a little more than 10m wide and would retain a gap of about 1.5m with No 16.
7. The 'false mansard' roof as proposed would be partially screened in views from ground level by the presence of the existing and proposed parapet walls to the front and rear respectively and by its being set back about 0.5m from those walls. It would however be materially visible above the parapet walls, particularly when viewed obliquely from Duke Street through the gaps that would be retained between Nos 16 and 20. From these and other vantage points, particularly from the upper floors of premises facing the appeal site across Duke Street, the mass, elevation treatment and overall design of the proposed roof extension would be apparent and would be seen in the context of the host building and the street scene.
8. Whilst pitched roofs are the predominant roof form in the vicinity, I noted steeply pitched roofs and flat roofs are not uncommon features within what is a roofscape displaying a wide variety of styles. As such I consider the principle of a 'false mansard' roof on the appeal property would not look out of place particularly taking into account the relatively low key visual impact such a roof form would have in this location and also the proposed use of slates on the roof slopes in place of the current inappropriate concrete tiles.
9. The dormer windows proposed on the roof slopes, particularly those on the front elevation have been positioned to relate to three of the five distinctive sash windows on the first floor of Nos 18 and 19. From the limited information provided on the appeal drawings it is however apparent their height and width would mean they would present a much more bulky and somewhat visually heavy impact relative to the first floor windows. In particular their relatively wide frames and more modern form of glazing would not relate well in terms of scale and design to the first floor fenestration below.
10. Gaps between the proposed roof extension and the adjoining properties would mean it would not relate to the whole of the built structure that comprises the appeal property. Despite differences in first floor elevation, this group of three properties are closely related visually. As a result the proposed roof extension would have a contrived and somewhat unfinished and incongruous appearance, particularly on the front elevation.
11. In the light of the above I conclude that the height, width, overall bulky appearance, and inappropriate glazing detailing of the dormer windows, together with the incongruously unfinished nature of the front and rear elevations of the proposed roof extension would have an adverse visual impact on the host building and on the character or appearance of the Old Town Conservation Area. In these respects the appeal proposal would not comply with Policies QD14(a) and HE6(a) and (c) of the Brighton & Hove Local Plan 2005 and would be unacceptable.

Wm C Cunningham

Inspector

TO BE PLACED ON FILE - NOT TO BE INCLUDED WITH DECISION OR REPORT

APPEARANCES

FOR THE APPELLANT:

Mr Malcolm Lewis	Architect and Planning Consultant
Mr David Dayan	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Earp	Senior Planning Officer, Brighton & Hove City Council.
Mr Geoffrey Bennett	Conservation Officer, Brighton & Hove City Council.

DOCUMENTS

- 1 Hearing notification letter and address list - submitted by Mr Earp.
- 2 Hearing attendance sheet.

APPEAL PLANS

- A Drawing No 23 - Proposed Floor Plans - submitted with appeal.
- B Drawing No 24 - Proposed Section and Elevations - submitted with appeal.
- C Drawing No 21 - Existing Plans, Elevations - submitted at the Hearing by Mr Earp.
- D Existing Sections B-B and C-C - submitted at the Hearing by Mr Earp.
- E Existing Section D-D - submitted at the Hearing by Mr Earp.
- F Site Plan - submitted at the Hearing by Mr Earp.



Costs Decision

Hearing held on 15 July 2009

Site visit made on 15 July 2009

by **Wm C Cunningham BSc(Hons) MA**
MCP MRTPI

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

The Planning Inspectorate
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Decision date:
7 August 2009

Costs application in relation to Appeal Ref: **APP/Q1445/A/09/2093159** **17 - 19 Duke Street, Brighton, BN1 1AH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Dyan for a full award of costs against Brighton and Hove City Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for the replacement of existing roof with mansard roof extension to create additional storey.

Decision: The application fails and no award of costs is made.

The Submissions for the Appellant

1. The application as submitted was for raising the existing flat roof to form an additional floor and providing steeply pitched sloping roofs to the front and rear roofslopes with 3 dormers in each slope. With reference to paragraphs 7 and 8 of Annex 3 to Circular 8/93, it is considered that the Council misdirected itself, having described the proposed development as a mansard roof form with a flat roof. It then applied a provision of SPG1 "*Roof Alterations & Extensions*" to conclude that a flat roofed mansard was unacceptable. The Council's approach was wholly unreasonable and has led to the appellant incurring unnecessary expense in pursuing this appeal.
2. In addition, the decision does not properly reflect the situation where the proposed roofscape would not generally be seen from public or other vantage points. Where it would be seen it would represent a significant visual improvement compared to the existing small section of pitched roof covered with interlocking concrete tiles.

The Response by the Council

3. It is accepted that the proposed roof extension would not be a true mansard, but would have a form that is often referred to as a mansard by professionals and others. In fact, the appellant's documents that accompanied the application include a Design and Access Statement and a Fire Escape Statement, both of which refer to the appeal proposal as including a mansard roof.
 4. In any event, the application was dealt with on its merits based on the roof form shown on the application drawings. Evidence was submitted to demonstrate that the roof form shown on those drawings, however described, would not be appropriate to the host building or to the character/appearance of the area. The largely subjective differences of opinion expressed by the two
-

principal parties do not constitute unreasonable behaviour on the part of the Council.

5. The reason for refusal is comprehensive, refers to the relevant policies and was substantiated by evidence. It is not therefore considered that this costs application is justified.

Conclusions

6. The cancellation of Circular 8/93 by Circular 03/2009 applies with effect from 6 April 2009 to all appeals made on or after that date. As this appeal was made before 6 April 2009, in accordance with paragraph 9 of Circular 03/2009 I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. It is clear to me that the Council's evidence assesses the proposed roof extension as shown on the application plans and its impact both on the host building and on the surrounding area. These plans show a mainly flat roof form with steeply pitching front and rear slopes, each of which contain three flat roofed dormers. In this way the Council produced evidence that sought to substantiate the reason for refusal. The revised description of the proposed development as used by the Council on the refusal notice that refers to a mansard roof is in any event consistent with the appellant's own use of that term on the documents that accompanied the application. It is also a term used on the rear elevation drawing on one of the application plans (Drawing No 24).
8. I do not consider the Council in any way misdirected itself when it referred to the appeal proposal as a mansard, did not act contrary to paragraphs 7 and 8 of Annex 3 to Circular 8/93 and did not therefore act unreasonably in a way that would justify an award of costs being made.

Wm C Cunningham

Inspector



Appeal Decisions

Inquiry opened on 2 June 2009

Site visit made on 13 July 2009

by **G P Bailey MRICS**

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

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**Decision date:
10th August ,2009.**

Appeal A: APP/Q1445/C/08/2079660 20-26 York Place, Brighton, BN1 4LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Park Avenue Estates Limited against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2006/0324.
- The notice was issued on 29 May 2008.
- The breach of planning control as alleged in the notice comprises various alterations to the external appearance of the buildings as set out in Schedule 1 attached to this decision notice.
- The requirements of the notice are as set out in Schedule 2 attached to this decision notice.
- The period for compliance with the requirements is 52 weeks.
- The appeal was made on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). On 9 January 2009, the appellant withdrew the appeals made on grounds (a) and (f), so the appeal is proceeding on ground (g) only. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) also falls to be considered.

Summary of Decision: The appeal succeeds and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/Q1445/A/08/2089915 St Peter's House and 20-26 York Place, Brighton, BN1 4LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Park Avenue Estates Limited against the decision of Brighton & Hove City Council.
- The application (ref: BH2008/01562), dated 29 April 2008, was refused by notice dated 24 October 2008.
- The development proposed is described in the application as "*remedial works to the façade to replace missing architectural details (and) new frontages to shop fronts on the ground floor*".

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The inquiry sat for four days on 2, 15 and 16 June 2009 and 13 July 2009.
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Background

2. Appeal A and Appeal B each concern seven properties, numbered consecutively 20-26 York Place, which form part of a longer terrace fronting the western side of a busy main road, between the junctions of Trafalgar Street to the south and Cheapside to the north. Opposite lies St Peter's Church, a grade II*(starred) listed building, standing in open gardens that form an "island" within a traffic gyratory system. The appeals sites lie towards the northern part and adjacent to the western edge of the extensive Valley Gardens Conservation Area, originally designated in 1973 and subsequently enlarged, which extends northwards, in irregular elongated form, from and including the Palace Pier and embracing the Royal Pavilion.
3. The issues to be determined in these appeals evolve from the planning history of the appeals sites which is now of some complexity. Planning permission¹ was granted in 2004 (and conservation area consent² granted in 2003) in respect of the appeals sites for development that included commercial uses on the ground floor with residential use above, various alterations to the existing frontage buildings, the provision of a mansard roof extension to Nos.23-26 to provide third floor residential accommodation and the erection of a flat-roofed rear extension, comprising a five-storey block of flats (the '2004 permission').
4. Development of such description has been erected that provides 44 flats of which eighteen are above the frontage properties at Nos.20-26³. The appellant accepts that, the scheme has not been built entirely in accordance with the permitted scheme; that in effect, the 2004 permission could not now be implemented; and, in any case, that that permission expired in April 2009.
5. Whilst the appeal site in Appeal B is limited to the original frontage buildings only, the enforcement notice (Appeal A) is directed at the whole of the land including the new block at the rear, although the allegations and requirements of the notice are directed solely at alterations undertaken to the original frontage buildings; however, nothing turns in these cases on the differing extent of the two appeals sites.
6. In respect of Appeal B, revisions to the scheme as originally submitted, made prior to its determination by the Council, brought about alterations to the description of the proposed development to:

"regularisation of development as built (commercial on ground floor with residential over); specifically, regularisation of the roof and alterations to the architectural adornments to parapet walls"

and the scheme was refused by the Council in October 2008 on that basis. I have considered Appeal B on that same basis.

¹ Council ref: BH2003/00630/FP dated 19 April 2004 – "use of derelict shops at 22-23 as restaurant/café; external alterations to retail units 20, 21, 24-26; part-3/part-4-storey extension rear of 23-25; mansard roof extensions to 23-26, all to create a total of 44 flats at first to fourth floors";

² Council ref: BH2003/00852/CA dated 11 June 2003 – "demolition of rear parts and outbuildings";

³ Collectively, the flats are known as 1-44 St.Peter's House, York Place;

7. Subsequently, planning permission was granted⁴ in December 2008 for certain works to the façade of the buildings including eaves corbelling; parapet walls and their adornment; and new shop fronts (the '2008 façade permission').
8. In addition to the scheme now the subject of Appeal B, in April 2009, planning permission was refused⁵ for alterations to the roofs of Nos.20-26 (the '2009 roofs refusal').
9. Essentially, it would be the case that a number of the unauthorised alterations referred to in the allegation in the enforcement notice would be remedied and resolved by implementation of the 2008 façade permission. During the progress of these appeals, the main parties have also reached agreement on certain further matters.

Plans (Appeal B)

10. Proposed revisions to the proposed front elevation (Dwg.No.AC/20-26YorkPI/01R Revision 2) were submitted in October 2008, just prior to the Council's determination of the application (now the subject of Appeal B). But that application was determined by the Council on the basis of plans comprising, firstly, a location plan and block plan (Dwg.No.AC/20-26YorkPI/LP) (the 'location/block plan drawing') and, secondly, existing and proposed front elevations (Dwg.No.AC/20-26YorkPI/01R Revision 1). No rear or side elevations or roof layout are shown in these plans, although the lack of such information is not included in the Council's reason for refusal.
11. After the lodging of the Appeal B and arising from discussions with the Council, prior to the opening of the inquiry, the appellant sought to introduce further amendments to the scheme. Existing and proposed front and side elevations are included on a further revised plan (Dwg.No.AC/20-26YorkPI/01ROOF Revision 3) (the 'Revision 3 Plan') and an additional plan illustrates the proposed rear elevation and roof layout (Dwg.No.AC/20-26YorkPI/ROOFPLANS) (the 'roofs layout plan').
12. In respect of the acceptability of amendments to proposals from those contained in the original application, it was held in *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37, that the appropriate test is whether the permission, as might be granted, would represent a "substantial alteration" of what had been proposed by the application. The main criterion is whether the development is so changed that to grant permission would be to deprive those who should have been consulted the opportunity of consultation.
13. At the inquiry, the Council raised no objections to Appeal B being considered on the basis of the scheme shown in these latest plans.
14. The differences between the scheme as submitted and considered by the Council and that as now proposed, as shown on the Revision 3 Plan and the roofs layout plan, relate primarily to the design and appearance of the roofs of

⁴ Council ref: BH2008/01563 dated 22 December 2008 - "remedial works to the façade to replace missing architectural details (and) new frontages to shop units on the ground floor";

⁵ Council ref: BH2009/00039 dated 9 April 2009.

the buildings within this part of the terrace⁶. Primarily, these are matters of detail that, as a matter of fact and degree and in the terms of the *Wheatcroft* tests, would not be of sufficient scale or proportion to amount to a "substantial alteration" of the scheme as originally submitted and determined by the Council.

15. Moreover, the Revision 3 Plan and the roofs layout plan had been submitted to the Council and considered as part of the scheme the subject of the 2009 roofs refusal. That scheme had been the subject of consultation processes including those statutorily required, so, as the scheme has been placed in the public domain, interested persons likely to be affected by the latest version of the Appeal B scheme would be aware of its provisions and the basis on which Appeal B is now promulgated; so, their interests would not be prejudiced by taking the latest version of the scheme into account.
16. Furthermore, nothing would be gained by considering Appeal B on the basis of the originally-determined scheme (which the appellant no longer wishes to pursue), thereby requiring the appellant to lodge an appeal against the Council's refusal of the 2009 roofs refusal (which embraces the scheme the appellant does wish to pursue), further delaying a resolution of the issues in dispute and consequentially increasing the costs to all interested parties. In all of these circumstances and in the light of the *Wheatcroft* tests, I am satisfied that Appeal B would be properly considered on the basis of the latest drawings⁷ which also supply details missing from the originally-submitted drawings.
17. But before considering the merits of Appeal B, it would be appropriate to address Appeal A.

APPEAL A

Appeal A: The Deemed Application for Planning Permission

18. Although the appeal made on ground (a) was withdrawn prior to the opening of the inquiry, no similar provision exists, as far as I am aware, for the deemed planning application to be withdrawn. However, as no evidence has been adduced in support of this deemed application, no further action is being taken in consideration of its merits; so in order to avoid any potential future doubt, planning permission on the deemed application will be refused.

Appeal A: Ground (g)

19. In the notice of appeal, the appellant maintains that the period for compliance cited in the notice would be too short and had sought an extension to 91 weeks, derived not only from the extent and complexity of the physical works to the building, but also to accommodate the legal processes arising from the

⁶ The revisions comprise (i) the proposed reversion of the roof structure at Nos.21-22 to their original position and angle of pitch to match that at No.20 with rainwater goods of certain specification; (ii) the mansard roof of Nos.23-26 to the front to be covered with natural slate with a flat crown covered in lead sheet; (iii) the flank end walls to No.23 and to No.26 respectively to be reduced in height and provided with a raked angle; and (iv) the intermediate walls between Nos.23, 24 and 25 to project forward of the tiles on the mansard roof.

⁷ The relevant drawings comprise:- Dwg.No.AC/20-26YorkPI/LP; Dwg.No. AC/20-26YorkPI/01ROOF Revision 3; Dwg.No. AC/20-26YorkPI/ROOFPLANS.

- residential occupation of the flats in the upper part of the terraced properties. The Council is opposed such an extension, maintaining that, notwithstanding the extent of the works, the period, as cited, would not be unreasonable.
20. However, at the inquiry, it was the position of both main parties that an appropriate period for compliance would be 15 months and seek the notice to be varied accordingly.
 21. Nevertheless, such agreement would not set aside the need to consider the appeal on its merits. There is a danger that a lengthy period for compliance would not only blunt the urgency of the notice, but would also bring into question the very expediency of the taking of enforcement action in the first place. There is also the provision available to the Council in s.173A(1)(b) of the 1990 Act (as amended) to extend the compliance period, if circumstances so justify.
 22. In the making of an appeal, it would be the case that the appellant is entitled to assume success and is entitled to a reasonable period after the notice takes effect. But in withdrawing the Appeal A made on ground (a) in January 2009 (and in not seeking to pursue the deemed application for planning permission), the appellant was assured that, subsequently, the notice would come into effect. Arguably, therefore, processes to achieve eventual compliance with the notice could have been commenced from January 2009.
 23. However, in the present case, dismissal of Appeal B would mean that the requirements of the notice would "bite", to the extent that they would not be overridden, under the provisions of s.180(1) of the 1990 Act (as amended), by works comprised in the 2008 façade permission. If Appeal B succeeds, the main parties are agreed that all of the steps of the notice would be, effectively, overridden. Therefore, the appellant's assurance that the notice would come into effect would be clouded by the need for the Appeal B to be resolved. Hence, such resolution would now be the appropriate starting point on which to assess the "reasonable period" for compliance.
 24. The extent of the steps specified in the requirements of the notice illustrate that the works to the terraced buildings would be complex in themselves. The need to prepare specifications and plans, to obtain the relevant consents and permissions, to find and engage contractors and for the carrying-out the work, together with the implementation of the legal requirements pertaining to the tenancies of the residents, would justify a substantial period. The circumstances of this case would be sufficiently exceptional such as to justify a period of 15 months and the notice will be varied accordingly. To this extent, the appeal on ground (g) will succeed.

APPEAL B

Introduction and Main Issue

25. In essence, the scheme the subject of Appeal B seeks to alter unauthorised construction works already undertaken (which are the subject of the
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enforcement notice) that would not be addressed by the 2008 façade permission. The principal proposed works in dispute comprise, in summary:-

- (a) the design and form of the mansard roof at Nos.23-26;
- (b) the absence of a chimney stack between Nos.21 and 22;
- (c) the presence of a dormer window in the front elevation of No.24.

In addition, the main parties are agreed that the Council's concerns expressed about the glazing bar pattern of the casements of dormer windows in the front elevation of Nos.23-26; the external materials of the roof of Nos.21-22; and the treatment of party wall upstands, would each be matters capable of being addressed by appropriate conditions, if permission is granted.

26. Having regard to the background in this case, the **main issue** is, in the light of the Council's policies, the effect of the scheme on the appearance of the terraced buildings having regard to their setting in the street scene, including that of listed buildings and whether the scheme would preserve or enhance the character or appearance of the conservation area.

The Development Plan and Other Policy Provisions

27. The development plan includes the "*East Sussex and Brighton & Hove Structure Plan 1991-2011*" adopted in 1999 and the "*Brighton and Hove Local Plan*" adopted in July 2005. Under current legislation⁸, policies of structure and local plans no longer have effect unless "saved" by direction of the Secretary of State; all policies relied on by the main parties have been so saved. It is incumbent on me to take into account all relevant policies, including those of the development plan not cited in the Council's decision notice. Policies of the development plan most relevant in this case are those found in the Local Plan.
28. All proposals for new buildings must demonstrate a high standard of design and make a positive contribution to the environment; account will be taken of, among other matters, scale and height, architectural detailing, quality of materials and visual interest (Local Plan Policy QD1). The positive qualities of the local neighbourhood should be emphasised and enhanced by taking into account local characteristics (Policy QD2).
29. Development should display a high quality of design to preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings; those of strategic importance include views into and from within conservation areas and the setting of listed buildings including landmark buildings of townscape merit (Policy QD4). Attractive street frontages are sought (Policy QD5) and, in respect of extensions and alterations in particular, development will be well-designed, sited and detailed in relation to the building to be extended, adjoining properties and the surroundings (Policy QD14).
30. The statutory need to pay special regard to the desirability or preserving the setting of listed buildings⁹ finds expression in policy requirements to permit development only where it would not have an adverse effect on the setting of a

⁸ See s.119 of and Schedule 8 to the Planning and Compulsory Purchase Act 2004.

⁹ See s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

listed building (Policy HE3). In the light of further statutory requirements¹⁰, proposals should preserve or enhance the character or appearance of the conservation area and should show, among other matters, no harmful impact on the townscape and roofscape of the conservation area and the retention and, where appropriate, the re-instatement of original features, such as chimneys and chimney pots, which individually and cumulatively contribute to the character or appearance of the area (Policy HE6).

31. In addition, also relevant as a material consideration is the Council's "Supplementary Planning Guidance Note BH1: Roof Alterations and Extensions" ('SPGBH1'), adopted in 1995 (but cross-referenced in current adopted Local Plan Policy HE6) which provides guidance, including detailed design considerations, based, it is stated, on that contained in national advice in Planning Policy Guidance 15¹¹ ('PPG15') (1994) and in "Mansard Roofs – Listed Building Guidance Leaflet" (1989) published by English Heritage (the 'EH guidance leaflet'). Further material considerations comprise the Council's "The Valley Gardens Conservation Area Study and Enhancement Plan" (approved 1995) (the 'Conservation Area Study') and "Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment" (2008), also published by English Heritage.

Reasons

The Character and Appearance of the Locality

32. The evidence indicates that the terrace in York Place was developed as dwellings in the period c.1810 to c.1820, but neither the terrace, nor any individual building within it, is listed. The terrace is generally of three storeys, but of varying architectural styles. It forms a northward continuation of St. George's Place and, beyond its junction with Cheapside (at which point stands the prominent Hobgoblin public house (No.31)), leads into London Road, a busy shopping street to the north-west. Ground floor uses in York Place comprise primarily retail, together with cafés, hot food shops and other commercial uses, with residential and other uses on upper floors.
33. St. Peter's Place and Richmond Place, fronted by period terraced properties some of which are listed, lie on the northern and eastern sides respectively of the "island" containing the substantial and dominant form of the St. Peter's Church, set in its spacious open gardens.
34. Outside the conservation area, to the rear of the appeal site, fronting both sides of the parallel Pelham Street, stand the substantial buildings of a college, including, on the western side, a multi-storey tower block. Some distance further to the north-west, to the rear of the western side of London Road, stands the tall, narrow and imposing St. Bartholomew's Church, a grade I listed building.
35. Valley Gardens is described in the Conservation Area Study as:-

¹⁰ See s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

¹¹ "Planning Policy Guidance: Planning and the Historic Environment" (Dept of Environment & Dept of National Heritage, 1994)

"...the central spine of historic Brighton... (and) includes some of the earliest buildings from Brighton's fashionable Regency development phase..." (para.1.1).

"...(Its) built form...was not developed to any kind of planned layout, nor within a planned timescale, nor in a common architectural style. Rather, the conservation area is made up of different terraces or groups of buildings as well as several larger buildings (linked and unified by) the 23 acres of (mainly) public gardens which run the length of the conservation area..."(para.2.1.1).

"The central part of the conservation area is formed by Victoria Gardens and the buildings which directly front onto the gardens" (para.2.4.1).

"Further north are the grounds of St Peter's churchyard.... The church itself dominates this part of the conservation area... (para.2.4.2). The terraces fronting Victoria Gardens developed gradually northwards from the 1770s to the 1820s... York Place... has retained its original terraced form, but has suffered from the addition of poor quality modern shop fronts and some unsympathetic alterations to the elevations above..."(para.2.4.3).

"The typical building form is the terrace, generally of three or four storeys, but often with an additional attic storey. The roofline is not uniform, but is characterised by pitched or mansarded slate roofs, often behind parapets, with prominent chimney stacks forming a rhythmic skyline. The architecture generally shares a common Regency/early-Victorian style based on classical architecture ... punctuated by sash windows graduated in size... The windows provide the visual rhythm..."(para.3.2.2).

"The character of the Valley Gardens as a whole stems from its wide mix of uses: commercial, residential, retail, cultural, educational and recreational. (I)ts character lies in its role as a 'green corridor' of open space in an urban centre (para.3.2.3). ... The grandness of the original terraced frontages and public buildings is also an element of the area's character" (para.3.2.4).

36. The designated area is divided into sub-areas; the appearance and character of that of "Victoria Gardens" containing the appeal site, is described as:

"...St.Peter's Church forms the main landmark in all views northwards...and is lent an important sense of enclosure by the continuous terraces on either side. Looking north, the tall chimney gable wall of the Hobgoblin public house in York Place visually terminates the view..."(para.3.5.1).

"The west side has the grand terrace of St George's Place...Elsewhere, the west side is now much more mixed in terms of roof line and architectural style..."(para.3.5.4).

"York Place remains consistently 3 storeys plus attic, but has been spoilt by inappropriate modern shopfronts...The roofline rises slightly and gradually at the northern end, culminating in the Hobgoblin public house; this gradual rise is very important in emphasising the end of the conservation area at this point and in turning the right angle to the taller, grander terrace of St. Peter's Place..." (para.3.5.6).

"York Place forms a retail parade more in character with the London Road shopping area to the north and has become dominated by fast-food/take-away outlets, with resulting brash illuminated advertisements... In this respect, York Place is somewhat out of character with the rest of the conservation area" (para.3.5.12).

37. From the evidence to the inquiry and my own observation of the locality, the essential characteristics of the designated area, including its traffic and
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vibrancy, remain largely in place, some fourteen years after publication of the Conservation Area Study.

The 'Mansard' Roofs at 23-26 York Place

38. The scheme indicates that the proposed roof structure would not possess secondary upper roof pitches, but would have a steeply-pitched frontage, punctuated by dormer windows and a flat crown, covered in lead sheet, with a vertical rear wall. The individual crowns of Nos.25 and 26 would stand about 0.5m higher than those of Nos.23 and 24, reflecting differences in the design of the original buildings.
39. The end-most party walls, that is, those at the southern end of No.23 and at the northern end of No.26, would project above the height of the roofs at Nos.22 and 27 respectively, as well as the crowns of Nos.23, 24, 25 and 26; each of these crowns would be divided by party wall upstands. It is intended that those end walls would be altered from those as already built such as to include the provision of a shallow angle, sloping down from a central point towards both the front and the rear. The intermediate party wall upstands would also be altered to provide a raked angle and to project forward of the slate front roof slope.
40. The Council's SPGBH1 indicates that where the existing roof form is an important element of a building's character, or contributes to the local street scene, then significant changes to the roof structure will be resisted. Hence, it would be the case that, in permitting the scheme the subject of the 2004 permission, the erstwhile roof form of this part of the terrace was not considered to possess those stated attributes.
41. Although the 2004 permission, granted under policies of a former development plan, has now expired, it remains a material consideration¹². Indeed, it is not the Council's case that, under its current adopted policies, it objects in principal to the provision of an additional storey in the form of an enlarged roof structure; the objection lies in the detail and the resultant impact of the scheme.
42. The SPGBH1 advises that where such significant changes are acceptable on unlisted buildings, the design should complement the building. Examples are given namely, a traditional steeper-pitched roof, or mansard, or gambrelled roof. As examples, they would not, necessarily, be exhaustive of the range of potentially-acceptable designs.
43. The SPGBH1 further advises that the design of traditional eighteenth- and nineteenth-century mansard roofs should incorporate a lower steeper slope between 72°-75° from the horizontal, that the upper gentler slope should normally be between 27°-30° from the horizontal and that flat-topped roofs or those with very shallow upper slopes mimicking mansards "...are not acceptable" (emphasis added).

¹² See *South Oxfordshire DC v Secretary of State for the Environment and Faherty Brothers Ltd*, [1981] 1 WLR 1092. The current adopted Local Plan had reached an advanced stage towards adoption – Second Deposit version – at the date of the 2004 permission.

44. Contrast such advice with that contained in the EH guidance leaflet which, the Council accepts, underpins its SPGBH1. The national guidance again advises against visible extra storeys where the existing roof structure is of historic or of architectural importance, or where the scale of the house or terrace would be damaged, particularly in respect of listed buildings or in conservation areas. But it adds that the correct form for roof extensions for Georgian and Victorian terraced houses (as these once were) "*...is generally the mansard*" (emphasis added) and that 'flat-topped' mansards "*...are not usually acceptable*" (emphasis added). That would indicate other potentially-acceptable designs would also be appropriate, dependant on particular circumstances.
 45. The tests of the scheme would be against those of the statutory requirements exercised in conservation areas and where the setting of listed buildings is affected, as reflected in Policies HE6 and HE3 respectively and, more generally, against Policies QD1, QD2, QD4, QD5 and QD14. The function of both local and national supplementary guidance, as a material consideration, is primarily to assist in the interpretation of those development plan policies.
 46. As an adopted statement, the SPGBH1 ordinarily would carry substantial weight. But no reference has been made to any particular parts of those Policies which would clearly demonstrate the need to invoke the more proscriptive approach of the SPGBH1, or that it would carry greater weight than the more permissive approach of the EH guidance leaflet. Indeed, the Council accepts that its SPGBH1 does not accord with the national advice on which it draws and, to that extent, reduced weight is accorded to this advice in the SPGBH1.
 47. The form of the roof structure, as proposed, would be different from the mansard arrangement of the 2004 permission and would not repeat the style of the mansard roof at No.29. But such differences would not, in themselves, give rise to objection as there is a wide variety of roof designs of these non-listed buildings in York Place and in the area as a whole, including on listed buildings elsewhere. All contribute to the appearance of the locality from which the character of the area is drawn.
 48. The northern end wall of No.26 would be visible as such from only a limited number of vantage points, primarily in St. Peter's Place and at an acute angle. Such feature would not appear stridently in the street scene. The southern end wall of No.23 would be seen more widely, particularly from the south and south-east. Nevertheless, the form of the end wall, with its steeply-pitched frontage (echoing that of the front of the roof structure) surmounted by the shallow-angled parapet, together with its proportions, would not stand out obtrusively as an over-poweringly bulky, or as a dominantly-discordant feature of the street scene; moreover, it would be comparable to the impact of that likely to have arisen had the scheme the subject of the 2004 permission been constructed.
 49. The proposed vertical end wall would be less-readily seen, as such, from public vantage points and largely obscured from upper floor windows of buildings in Pelham Street by the intervening five-storey extension block. No harm would arise to the form of the roof structure by reason of its design and,
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- consequently, it would not detract from the appearance of the building or the terrace within which it would be contained.
50. From these southerly vantage points of the York Place terrace, the eye is, and would continue to be, drawn, more readily, to the more-distant but noteworthy presence of the tall flank wall and chimney stack of the Hobgoblin public house at No.31, to which reference is made in the SPGBH1. To a substantial extent, the scheme would be seen against and as part of that backdrop. The eclectic mix of styles and designs of the roof line and architectural style of York Place, as acknowledged in the Conservation Area Study¹³, would be readily capable of absorbing the form and proportions of the proposed structure, including the altered intermediate party wall upstands, without material harm to the appearance of this group of buildings within the terrace.
51. As part of the character of Victoria Gardens within the designated conservation area, the Conservation Area Study also points out¹⁴ that, with one or two exceptions, buildings are not visible over the frontage terraces; in order to protect the historical primacy of the frontage buildings and the sense of enclosure, the Conservation Area Study seeks to ensure that new development immediately behind the frontage buildings should not intrude above the roof line of the frontage buildings.
52. At the inquiry, considerable debate arose from the Council's concern that, by reason of its lowered height, the proposed structure would not screen development to the rear to same the extent as would have been the case had the taller scheme the subject of the 2004 permission, or some other form of "traditional" mansard, were to have been erected.
53. Reference is made to an illustrative drawing¹⁵ (the 'Ash Sakula perspective') that seeks to show the view westward, with the scheme the subject of the 2004 permission in place, from a vantage point within the gardens to the north of St. Peter's Church. That drawing, submitted to the Council contemporaneously with that application, indicates the likelihood that the proposed five-storey rear extension would not be visible, to a material extent. However, the drawing is essentially a perspective, or an illustration, that is not drawn to scale. Moreover, it is not one of those cited in the Council's decision notice as being one on which the grant the 2004 permission is based.
54. It is also suggested that the approved drawings of that scheme are not wholly accurate. Be that as it may, from vantage points on the ground looking west to the appeal site, one of the most striking features, as illustrated in the submitted photographs, is that of a flat-roofed open-sided canopy enclosing accessways on the uppermost part of east side of the five-storey block, which is seen above the height of the unauthorised roof structure as built. This would likely remain the case if the Appeal B is allowed and the scheme implemented.
55. Hence, the extent of visibility of the rear structure might be a relevant material consideration in determining the expediency of enforcement action, taken in respect of any alleged non-compliance with the scheme the subject of the 2004

¹³ At para.3.5.4.

¹⁴ At paras.3.5.9 and 7.5.

¹⁵ "View of Proposal with St. Peter's Church" - Dwg.No.BRI 202, dated 13 November 2002 - Ash Sakula Architects.

- permission. But it would carry much less weight in determining the acceptability, or otherwise, of Appeal B as it is not the Appeal B scheme which would, in itself, result in development at the rear intruding above the roof line.
56. Moreover, if Appeal B were to be dismissed, the probability would arise that the appellant would be compelled by the effective enforcement notice to re-instate the former roof, which would be lower than that proposed in Appeal B, thereby exposing more of the rear block to views from the east. Such prospect would lend further weight to the appeal scheme. The possibility of a further alternative scheme being put forward by the landowner, as suggested by the Council, is not supported by any evidence of its likelihood and carries very little weight.
57. Turning to the setting of listed buildings, the Council's primary concern, as reflected in its reason for refusal, is that of St. Peter's Church¹⁶ which dominates this part of the conservation area, but reference is made also to the listed terrace on the northern side of St. Peter's Place and to the more-distant St. Bartholomew's Church.
58. St. Peter's Church stands prominently in views westward and southward from surrounding roads. But it is in northward views, to which reference is made in the Conservation Area Study¹⁷ and reflected in historical engravings and photographs to which the appellant refers, that the Church and its tall tower at its southern end forms the main landmark building of a type within the wide-ranging classification identified in Policy QD4 as being of strategic importance.
59. The appeal buildings are part of the terrace of York Place which, together with the terrace in St. Peter's Place and others elsewhere, comprise parts of the enclosure of the open grounds within which this landmark is viewed. The proposed roof would differ from the original structure and from that of the scheme the subject of the 2004 permission. But it would be seen, primarily in westward views across the gardens, but also from the north-east and south-east, as a minor part of a much wider townscape that comprises a complex mix of styles, form and proportions into which the scheme would be absorbed.
60. As I have found that no material harm would arise in terms of the design and form of the proposed roof, it would follow that the scheme would not harm any strategic or other important views within the conservation area, including those contributing to the setting of St Peter's Church or the listed terrace in St. Peter's Place. For the same reason, to the extent that the proposed roof would be seen in vistas towards the more-distant St. Bartholomew's Church, no harm would arise to the setting of that listed building.
61. In summary therefore, the proposed mansard roof would not conflict with the need to demonstrate a high standard of design in respect of the existing terrace and adjoining buildings, having regard to form and detailing, in accordance with Local Plan Policies QD1 and QD14, taking into account also local characteristics in accordance with Policy QD2. As such, strategic views and important vistas, including the setting of listed buildings, would be

¹⁶ Built in 1824-1828 to the designs of Charles Barry (chancel added 1896-1902) – Conservation Area Study para. 2.4.2

¹⁷ para.3.5.1.

preserved, in accordance with Policies QD4 and HE3 and an attractive street frontage would be maintained in accordance with Policy QD5. Accordingly, the appearance and character of the conservation area would be preserved, in accordance with Policy HE6.

The Roofs at, and the Chimney Stacks and Pots between, 21-22 York Place

62. The design of Nos.19-20 and 21-22 comprises handed pairs such that, in respect of the upper storeys, each pair has a substantial forward projection, the front of which is aligned with the ground floor frontage, whilst the main building is recessed at some depth. That forward projection has hipped roof slopes to the sides (on to the recess) and to the front and is surmounted by a modest flat crown. The main element is surmounted by a pitched roof with main slopes to front and rear. The unauthorised works have included the raising of the height of the main roof and the forward projection of Nos.21-22 by up to about 0.7m above that of Nos.19-20. The appeal scheme seeks the reduction in the overall height of the roof structures to align with that of No.20 adjoining.
63. The Council raises no objections to such work, subject to agreement of the materials used in the roof cladding; the form of the structure would be comparable to the arrangement shown in the scheme comprised in the 2004 permission and would be acceptable.
64. Plans, submitted as part of the scheme the subject of the 2004 permission, illustrate the presence of two stacks on the party wall between Nos.21 and 22, each with six pots set one-behind-the-other. Nothing indicates that either or both would be removed as part of that permitted scheme. Both have been removed, though the allegation in the enforcement notice and the evidence to the inquiry refer to the "stack" in the singular. And the proposed roof of Nos.21-22 in the appeal scheme would not include the provision of any re-instated chimney stack.
65. The retention and re-instatement of chimneys and chimney pots are included in those matters which proposals in conservation areas should include, in accordance with Policy HE6. The SPGBH1 seeks the retention of "(i)nteresting features at roof level, such as stacks...". The prominence of chimney stacks, "...forming a rhythmic skyline...", is referred to in the Conservation Area Study¹⁸ as a facet of the wider conservation area, but in its references to York Place, no specific mention is made of such features, apart from that on the gable wall of the Hobgoblin public house.
66. The properties in those parts of the terrace immediately to the north and south of the appeal site lack chimney stacks, though they are prevalent on properties a little further to the south and are found to the north between Nos.28-29, 29-30 and, notably, at the Hobgoblin public house. In the scheme the subject of the 2004 permission, one stack only, set on the end wall of No.26, is included in the proposed roof structure at Nos.23-26, but none is included in the appeal scheme.

¹⁸ Para.3.2.2.

67. Chimney stacks would be an element of the design of period buildings and, by their very nature, they would often be seen prominently. But the roofs of Nos.21 and 22 would form part of a run of properties within York Place without chimney stacks. As a consequence, there is no pronounced pre-existing "rhythm" that would be interrupted, to a material extent, by the omission of such feature in the replacement roof scheme.
68. Hence, the re-instatement of such feature would not be justified in terms of preserving the qualities of the roofscape of the wider terrace. The scheme, without a chimney stack, would be accommodated without detriment to the appearance of these buildings, in accordance with Policies QD1, QD2, QD4 and QD14. Accordingly, the appearance of the conservation area and its character would be preserved in line with Policy HE6; moreover, no harm would arise to the setting of the listed St. Peter's Church.

The Additional Dormer Window at No.24

69. The plans of the then-existing terrace, submitted with the scheme the subject of the 2004 permission, show that the upper parts of the street frontage of Nos.23 and 24 include splayed bays whilst that at Nos.25 and 26 include bowed bays. The fenestration of these upper parts of Nos.23, 25 and 26 had similarities, each possessing a single, large, centrally-placed window at first and second floor levels. This differs from that originally at No.24 in which the large splayed bay window extending through the first and second floors are off-set (towards No.25) and an additional, smaller, second floor window is sited in that part of the façade between No.23 and the larger splayed bay window. This off-set arrangement reflects the accommodation of a ground floor entrance door which now provides street access to the flats at St. Peter's House.
70. The scheme the subject of the 2004 permission includes four dormer windows in the front elevation of the proposed roof structure to Nos.23-26 and each reflecting the alignment of the larger first and second floor windows below, respectively. This is repeated in the appeal scheme, but which also includes an additional dormer window in the roof structure at No.24, situated above the smaller original second floor window. Although not included in the permitted drawings cited in the decision notice of the 2004 permission, the contemporaneous Ash Sakula perspective illustrates this additional dormer window, but it is this additional feature to which the Council now objects, referring principally to the provision of an unbalanced façade at roof level.
71. The SPGBH1 seeks to ensure that dormers are carefully positioned in relation to the arrangement of windows below and the shape of the roof. Some discussion arose at the inquiry about the exact positioning of this proposed additional dormer in relation to spaces about the opening and that the submitted plan illustrates that it would be a little wider than those below. But from the street, in angled upward views and in oblique views from the north-east and south-east, such differences in the relationship between these windows would be barely perceptible as such, being interrupted by the presence and detailing of the junction of the front wall and the sloping face of the roof structure. In longer views across the open gardens, the differences identified would not be immediately obvious, even to an informed observer.
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72. The off-set fenestration of No.24 noticeably differs from that of the more regular arrangement of Nos.23, 25 and 26 and would readily accommodate the additional dormer window without material harm to the appearance of the building or to the terrace of which it forms a part, in accordance with Policies QD1 and QD14. As such, the appearance of the conservation area would be preserved in accordance with Policy HE6 and no harm would arise to the setting of any listed building hereabouts, in accordance with Policies QD14 and HE3.

Glazing Bars, Roof Claddings and the Treatment of Party Wall Upstands

73. The Council seeks glazing-bar sub-divisions of the proposed dormer windows of Nos.25 and 26 that would be appropriate to the Regency character of these buildings and would match the pane size of the windows below. The appellant has no objections to such amendment to resolve valid design concerns.

74. The Revision 3 Plan indicates natural slates to be used on the front roof slope of Nos.23-26. But the cladding materials of the roofs of Nos.21-22, would also need to be of satisfactory quality in order to achieve an appropriate appearance, in accordance with advice in the EH guidance leaflet.

75. The appellant accepts that, in order to achieve a satisfactory appearance, the design and form of the gables and intervening party wall upstands on the proposed roof structure of Nos.23-26 would need to be altered to include concrete copings and to project forward of the slate-clad mansard.

76. All of these matters, which would serve to preserve the appearance of the terrace and that of the conservation area in accordance with the Council's policies, would be addressed by appropriate conditions.

Conditions

77. I have considered the Council's suggested conditions in the light of advice contained in Circular 11/95. As these conditions pertain to the s.78 appeal (Appeal B) (which comprise proposed additions and alterations), the "scheme to be agreed" format discussed at the inquiry would not now be appropriate as that format would primarily pertain to the retention of unauthorised development (that is, matters which would have been the subject of the deemed planning application in Appeal A). I have substituted a period of fifteen months for implementation of approved details to accord with the compliance period of the enforcement notice as I intend to vary and conditions have been re-worded in the interests of certainty.

78. The need to provide details of the glazing bar sub-divisions of the dormer windows of Nos.25 and 26; the sliding sash windows; the colouring of the gable ends of the roof structure at Nos.23 and 26; the painting of the joinery of the dormer windows; the design and external materials of the party wall upstands; the cladding materials of the roofs of Nos.21-22; and further details of the rear elevation of the terrace not shown on the submitted plans, are all matters that would be reasonably required in the interests of the design and appearance of the terrace. However, having regard to Local Plan Policy SU13, the proposed alterations would not be of a scale that would justify the need for a "waste management scheme"; none was required by conditions

imposed on the more-extensive 2004 permission under provisions of the Second Deposit Draft version of the now-adopted Local Plan.

79. A further condition was suggested, requiring implementation of the reversion of the roof structures at Nos.21-22 to their original position and angle of pitch, matching that at No.20, but at the site visit, it was observed that such constructional work was almost complete; a condition in addition that required to address cladding materials would serve no purpose.

Conclusions

80. In respect of Appeal A, for the reasons given above I conclude that a reasonable period for compliance would be fifteen months. I am varying the enforcement notice accordingly, prior to upholding it and the appeal under ground (g) succeeds to that extent. I refuse to grant planning permission on the deemed application.
81. In respect of Appeal B, I have taken into account all of the many other matters raised, including reference to the appeal decision at 5-6 Western Road, Hove¹⁹, but for the reasons given above, I conclude that the appeal should be allowed.

Formal Decision

Appeal A: APP/Q1445/C/08/2079660

82. I allow the appeal on ground (g), and direct that the enforcement notice be varied by the deletion of "52 weeks" and the substitution of "15 months" as the period for compliance. Subject to this variation, I uphold the enforcement notice. The application for planning permission deemed to have been made under s.177(5) of the Town and Country Planning Act 1990 (as amended) is refused.

Appeal B: APP/Q1445/A/08/2089915

83. I allow the appeal, and grant planning permission for regularisation of development as built (commercial on ground floor with residential over); specifically, regularisation of the roof and alterations to the architectural adornments to parapet walls, at St Peter's House and 20-26 York Place, Brighton, BN1 4LG in accordance with the terms of the application, (ref: BH2008/01562), dated 29 April 2008, and the plans submitted with it, comprising Dwg.No.AC/20-26YorkPI/LP; Dwg.No. AC/20-26YorkPI/01ROOF Revision 3; and Dwg.No. AC/20-26YorkPI/ROOFPLANS, subject to the following conditions:
- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The proposed dormer windows shall (a) include glazing-bar sub-divisions to those at Nos.25 and 26 York Place; and (b) comprise painted softwood double-hung vertical sliding sashes with concealed trickle vents. No development shall take place until details of the said dormer windows, including 1:20-scale sample elevations and 1:1-scale joinery sections, shall have been submitted to and approved in writing by the local

¹⁹ Ref: APP/Q1445/C/07/2042680 dated 10 January 2008.

- planning authority. Within 15 months of the date of this permission, the scheme shall be carried out in accordance with the details as approved and they shall be maintained as such thereafter.
- 3) The joinery details referred to in condition No.2 hereof shall be painted externally dark grey (British Standard 4800 – BS18B25).
 - 4) No development shall take place until details of the construction and external materials of the party wall upstands of 23-26 York Place, including 1:5-scale sections, shall have been submitted to and approved in writing by the local planning authority. Within 15 months of the date of this permission, the scheme shall be carried out in accordance with the details as approved and they shall be maintained as such thereafter.
 - 5) No development shall take place until details of a colour scheme for the painting or other treatment of the south elevation of the party wall upstand of 23 York Place and that of the north elevation of the party wall upstand of 26 York Place shall have been submitted to and approved in writing by the local planning authority. Within 15 months of the date of this permission, the scheme shall be carried out in accordance with the details as approved and they shall be maintained as such thereafter.
 - 6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the roofs of 21-22 York Place hereby permitted shall have been submitted to and approved in writing by the local planning authority. Within 15 months of the date of this permission, the scheme shall be carried out in accordance with the details as approved and they shall be maintained as such thereafter.
 - 7) No development shall take place until full details of the proposed alterations to the rear elevation and roof of the building at 20-26 York Place, at a scale no less than 1:50, shall have been submitted to and approved in writing by the local planning authority. Within 15 months of the date of this permission, the scheme shall be carried out in accordance with the details as approved and they shall be maintained as such thereafter.

G P Bailey
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Edmond	Partner, Marrons, Solicitors & Planning Consultants, 1 Meridian South, Meridian Business Park, Leicester LE19 1WY.
He called:	
Dr J Edis BA(Hons) MA PhD MIFA IHBC	Director and Head of Historic Buildings, CgMs Ltd, 26 Holborn Viaduct, London EC1A 2AT;
Mr D Prichard BA(Hons) MA MRTPI	Director of Planning, Marrons, as above.

FOR THE LOCAL PLANNING AUTHORITY:

Miss J Lean	of Counsel, instructed by the Solicitor of Brighton & Hove City Council.
She called:	
Ms E Baxter	Senior Planning Investigations Officer, of the same Council;
Mr G R Bennett BA MA DipTP IHBC	Senior Planner (Conservation), Design and Conservation Team, Environment Department, of the same Council;
Miss K Brocklebank BA DipTP MRTPI	Senior Planning Officer, Development Control Team, of the same Council.

ADDITIONAL DOCUMENTS PUT IN AT THE INQUIRY

- 1 list of appearances for the appellant, put in for the appellant;
- 2 Council's letter dated 29.4.09 notifying interested persons of the date, time and place of the inquiry and circulation list;
- 3 letter 12.5.09 from Planning Inspectorate to Marrons confirming scheduling of inquiry to one day, put in by appellant;
- 4 letter 23.1.09 from Philip Hall Associates to Marrons confirming elements of Mr Prichard's proof of evidence;
- 5 extracts from "*Conservation Principles: Policies and Guidance*" (publ: English Heritage), put in for the appellant;
- 6 notice of refusal of planning permission dated 9.4.09 (Council ref: BH2009/00039) re "*alterations to roof*" & officers' report, put in for the Council;
- 7 Planning Report April 2003 – Ash Sakula Architects, put in for the Council;
- 8 Council's Supplementary Planning Guidance Note "*Roof Alterations and Extensions*" ('SPGBH1'), put in for the Council.

VERIFIED AND ADDITIONAL PLANS PUT IN AT THE INQUIRY

- A with the enforcement notice (Appeal A);
B1-B2 reduced plans on which Council's decision based (Appeal B) viz:
Dwg.No: AC/20-26YorkPI/LP (submitted 4.8.08),
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- C Dwg.No: AC/20-26YorkPI/01R Revision 1 (submitted 22.7.08);
plan superseded prior to Council's decision (Appeal B) viz: Dwg.No
AC/20-26YorkPI/01R;
- D additional plan submitted prior to Council's decision (Appeal B) viz:
Dwg.No. AC/20-26YorkPI/01R Revision 2;
- E1-E2 additional plans submitted with Appeal B viz:
Dwg.No. AC/20-26YorkPI/ROOF Revision 3 &
Dwg.No. AC/20-26YorkPI/ROOFPLANS, put in by the appellant;
- F extract from Dwg.No. AC/20-26YorkPI/01R Revision 1, (Appeal B)
put in by the Council.



Schedule 1

This is the Schedule 1 referred to in my decision dated: 10th August ,2009.

by **G P Bailey MRICS**

**Land at: 20-26 York Place,
Brighton, BN1 4LG**

References:

APP/Q1445/C/08/2079660

APP/Q1445/A/08/2089915

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

The breach of planning control alleged in the enforcement notice is, without planning permission:-

20 York Place, Brighton

1. The front walls' corbelled eaves feature has been removed and the depth of the eaves fascia altered on the front elevation and in the recess to the front elevation;
2. The right hand side pilaster of the front façade has been removed;
3. The first and second floor front windows in the recess on the north (right hand) side of No.20 do not match the original windows or the design of the windows as shown in the approved drawings, planning permission ref. BH2003/00630/FP dated 19 August 2004 as they lack cills and have exposed sash boxes instead of concealed recessed sash boxes and lack glazing bar sub-divisions;
4. The timber capital mouldings at the tops of the sash boxes of the first and second floor front windows have been removed and not replaced;
5. The corbelled cap to the left hand pilaster of the shopfront, which is shown in the approved drawings, has been omitted; and
6. Installation of a shopfront fascia above the shopfront and new entrance doors between Nos.20 and 21, without prior approval in writing as required by condition No.2 of the approved planning application dated 19 August 2004, ref: BH2003/00630/FP.

21 and 22 York Place, Brighton

1. The hipped roof over Nos.21 and 22 has been raised and the angle of the pitch of the ridged rear part of the roof has been made steeper and the upstand party wall capped in lead;
2. The front walls' corbelled eaves feature has been removed and the depth of the fascias altered to the left of the bay of No.21 and in the recess of No.21;
3. The corbelled eaves feature has been removed and the depth of the fascia altered in the recess on the north side of No.22;
4. The central chimney stack to Nos.21 & 22 has been removed and not replaced;

5. The south pilaster on the front façade of No.21 has been removed and the pilaster capital has been relocated or reformed at a higher level under the raised eaves;
6. The first and second floor windows in the recess in the front façade on the south side of No.21 and on the north side of No.22 do not match the original windows or the design of the windows shown in the approved drawings relating to the planning permission dated 19 August 2004, ref. No. BH2003/00630/FP, as they lack cills and have exposed sash boxes and they lack glazing bar sub-divisions;
7. The installation of the shopfront fascias above the shopfront and the infill of the recess and the new entrance doors between Nos.22 & 23 without prior approval of details in writing as required by condition No.2 of the planning permission dated 19 August 2004, ref: BH2003/00630/FP.

23 York Place, Brighton

1. The parapet wall around the top of the front window bay and its band mouldings and cornice have been removed and not replaced and the mouldings and cornice on the main wall parapet have been removed. The parapet wall has been extended in height and runs straight along the line of the main wall instead of around the window bay;
2. The mansard roof has been constructed without upper roof slopes and with a flat top. The upstand party wall on the front roofslope has been omitted on the south side and the slate roof covering has been run over the party wall and the upstand party walls on the top of the roof on both the south and north sides have been clad in lead instead of having a brick finish. As such, these works are not in accordance with the approved drawings relating to the planning permission dated 19 August 2004, ref. BH2003/00630/FP;
3. The front dormer head is too deep and the window has no glazing bars and is not in accordance with the approved drawings relating to the planning permission dated 19 August 2004, ref. No. BH2003/00630/FP;
4. The installation of shopfront fascia above shopfront.

24 York Place, Brighton

1. The parapet wall above the front window bay has been removed. The height of the parapet wall on either side of the bay has been raised and the parapet wall has been rebuilt along the line of the front main wall of the building;
 2. The capital detail of the pilaster to the left of the front bay window has been removed, the pilaster has been extended to the top of the bay and the corbelling-out of the upper part of the wall has been removed to the south (left) of the bay;
 3. The mansard roof has been constructed without upper roof slopes and with a flat top. The south upstand party wall on the front roofslope in relation to the roof of No.24 has been omitted and the upstand on top of the roof has been completely clad in lead. The whole north party wall with No.25 has been clad in lead, instead of having a brick finish. These works are not in accordance with the approved drawings relating to planning permission dated 19 August 2004, ref. BH2003/00630/FP;
 4. The head of the front dormer above the bay is too deep and the window lacks the vertical glazing bars and is not in accordance with the approved drawings relating to planning permission dated 19 August 2004, ref. BH2003/00630/FP;
 5. An additional front dormer window to the front elevation has been constructed;
-

6. The installation of shopfront fascia above shopfront and new entrance door, without prior approval in writing as required by condition No.2 of the planning permission dated 19 August 2004, ref: BH2003/ 00630/FP.

25 York Place, Brighton

1. The first and second floor front curved sash window boxes with divided pane curved hornless sashes have been removed and replaced with new straight sash boxes double glazed straight sashes without glazing bar sub-divisions and with horns;
2. The mansard roof has been constructed without second upper roof slopes and with a flat top. The right-hand upstand party wall on the front roofslope has been omitted and the upstand on top of the roof has been completely clad in lead.
3. The front dormer head is too deep and the window does not have the two vertical glazing bars, as shown on the approved drawings relating to planning permission dated 19 August 2004, ref. BH2003/00630/FP;
4. The installation of shopfront fascia above shopfront and new entrance doors.

26 York Place, Brighton

1. The first and second floor front curved sash window boxes with divided pane curved hornless sashes have been removed and replaced with new straight sash boxes double glazed straight sashes without glazing bar sub-divisions and with horns;
2. The first floor front window and cill is unauthorised;
3. The mansard roof has been constructed without upper roof slopes and with a flat top. The upstand party wall on the north side of the front roofslope has been omitted and the upstand on top of the roof has been completely clad in lead, instead of having a brick finish;
4. The front dormer head is too deep and the window should have two vertical glazing bars, as per the approved drawings;
5. The installation of shopfront fascia above shopfront and new entrance doors without prior approval of details in writing as required by condition No.2 of the planning permission dated 19 August 2004, ref: BH2003/00630/FP;
6. The corbelled cap to the top of the pilaster to the south side of the shopfront opening has been removed.

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Schedule 2

This is the Schedule 2 referred to in my decision dated: 10th August ,2009.

by **G P Bailey MRICS**

**Land at: 20-26 York Place,
Brighton BN1 4LG**

References:

APP/Q1445/C/08/2079660

APP/Q1445/A/08/2089915

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

The requirements of the enforcement notice are:-

20 York Place, Brighton

1. Remove the existing front eaves fascias and reinstate the corbelled eaves features and eaves features and eaves fascia on the front elevation and in the recess to the front elevation, exactly to their original design, dimensions and materials;
2. Reinstall the north (right hand) side pilaster of the front façade to match exactly the original;
3. Remove the first floor front window in the recess to the north (right) of No.20 and reinstate a single glazed timber sash window with concealed sash boxes and glazing bar sub-divisions in the original design, dimensions, materials and finish to match the original. Reinstall the masonry cill to its original design, dimensions, materials and finish;
4. Remove the second floor front windows in the recess to the north (right) of No.20 and reinstate the recessed blind window and cill to their original design and dimensions;
5. Reinstall the timber capital mouldings at the tops of the sash boxes of the first and second floor front bay windows to match the originals; and
6. Remove the shopfront fascia above the shopfront and the proposed new entrance doors between Nos.20 and 21.

21 and 22 York Place, Brighton

1. Remove the existing roof and raised walls and upstand party wall and reinstate the hipped roof over Nos.21 and 22 and the ridged rear part of the roof to its original height, pitch, design and materials;
2. Reinstall the front wall's and recess wall's corbelled eaves features and fascias to their original design, dimensions and materials;
3. Reinstall the central chimney stack and its chimney pots to their original design, dimensions, materials and finishes;
4. Reinstall the south (left hand) pilaster on the front façade of No.21 and reinstate the pilaster capital in its original position, all in the original design, dimensions, materials and finishes;

5. Remove the first floor front window in the recess to the north (right) of No.20 and reinstate the single glazed timber sash window with concealed sash boxes and glazing bar sub-divisions in the original design, dimensions, materials and finishes to match the original. Reinstall the masonry cill to its original design, dimensions, materials and finishes;
6. Remove the second floor front windows in the recess to the north (right) of No.20 and reinstate the recessed blind window and cill to their original design, dimensions, materials and finishes;
7. Remove the first floor front window in the recess to the north (right) of No.22 and reinstate the single-glazed timber sliding sash window with concealed sash boxes and glazing bar sub-divisions in the original design, dimensions, materials and finishes and method of opening to match the original. Reinstall the masonry cill to its original design, dimensions, materials and finishes;
8. Remove the second floor front windows in the recess to the north (right) of No.22 and reinstate the recessed blind window and cill to their original design, dimensions, materials and finishes;
9. Reinstall the timber capital mouldings at the tops of the sash boxes of the first and second floor front bay windows of Nos.21 and 22 in their original design, dimensions, materials and finishes; and
10. Remove the shopfront fascias above the shopfront and the new entrance doors between Nos.22 and 23.

23 York Place, Brighton

1. Remove the section of parapet wall above the front bay window, reduce the height of the parapet wall on either side of the bay to its original height, reinstate the parapet wall around the top of the front window bay in its original position, and reinstate the band mouldings and cornice above the second floor window and on the parapet wall, all to their original heights, designs, dimensions, materials and finishes;
2. Remove the mansard roof extension and its dormer window and reinstate the original roof structure party walls, chimney stacks and pots to their original heights, designs, dimensions, materials and finishes; and
3. Remove the shopfront fascias above the shopfront.

24 York Place, Brighton

1. Remove the section of parapet wall above the front bay window and reduce the height of the parapet wall on either side of the bay to its original height and design, including its corbelling out and reinstate the parapet wall around the top of the front window bay in its original position, height, design, dimensions, materials and finishes;
2. Reduce the height of the pilaster to the (south) left of the front bay window and reinstate it to its height and reinstate the capital detail at its top, all in their original designs, dimensions, materials and finishes;
3. Remove the mansard roof extension and its dormer window and reinstate the original roof structure, party walls and chimney stacks and pots to their original designs, heights, dimensions, materials and finishes; and
4. Remove the shopfront fascia above the shopfront and new entrance doors.

25 York Place, Brighton

1. Remove the first and second floor front windows and reinstate single glazed timber curved sash window boxes with divided paned curved hornless sashes to match exactly the design, dimensions, materials and finishes of the original windows;
2. Remove the mansard roof extension and its dormer window and reinstate the original roof structure, party walls, chimney stacks and pots to their original heights, designs, dimensions, materials and finishes;
3. Remove the shopfront fascia above the shopfront and new entrance doors.

26 York Place, Brighton

1. Remove the first and second floor front windows and reinstate single glazed, timber, curved, sliding sash window boxes with divided paned, curved, hornless sashes to match exactly the design, dimensions and finishes and method of opening of the original windows;
2. Remove the mansard roof extension and its dormer window and reinstate the original roof structure, party walls, chimney stacks and pots to their original heights, designs, dimensions, materials and finishes;
3. Remove the shopfront fascia above the shopfront and new entrance doors; and reinstate the corbelled cap to the top of the pilaster to the south (left hand) side of the shopfront opening in its original dimensions, design, materials and finishes.

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Appeal Decisions

Hearing held on 9 June 2009
Site visit made on 9 June 2009

by Mrs H M Higenbottam

BA (Hons) MRTPI

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

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**Decision date:
5 August 2009**

Appeal Ref: APP/Q1445/A/09/2093160 (Appeal A)

24 Albert Road, Brighton BN1 3RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Z Solomon against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/02670, dated 12 May 2008, was refused by notice dated 24 October 2008.
- The development proposed is a 2 storey side extension - resubmission of application BH2001/02392/FP approved on appeal.

Appeal Ref: APP/Q1445/A/09/2093161 (Appeal B)

24 Albert Road, Brighton BN1 3RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Z Solomon against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/02671, dated 12 May 2008, was refused by notice dated 24 October 2008.
- The development proposed is a 2 storey extension to form a separate dwelling.

Application for costs

1. At the Hearing applications for costs were made by Mr Z Solomon against Brighton and Hove City Council. These applications are the subject of separate Decisions.

Decisions

2. I dismiss both appeals.

Procedural Matters

3. Appeal A is described as the resubmission of application BH2001/02392/FP. This previous permission was granted at appeal in 2003 (APP/Q1445/A/02/1095629). This was for the same scheme which was granted on appeal in 1990 (T/APP/N1405/A/89/134335/P7). The plans the subject of Appeal A are not identical to those previously approved. This was agreed by both parties. I will therefore deal with Appeal A on the basis of the submitted plans for a 2 storey side extension.
4. Appeal B is for a two storey extension to form a separate dwelling. A two storey side extension has already been built at the site. However, I consider that the extension, as built, is materially different to the Appeal B scheme. In particular, the extension as built differs from the submitted plans for Appeal B

in relation to the incorporation of quoins, the flank elevation details, the Voussoir, window and cill details and the depth of the eaves projection, which was agreed to be 0.25m as built and 0.2m on the submitted plans.

5. Although I have considered each proposal on its individual merits, to avoid duplication I have dealt with the schemes together in this decision, except as otherwise indicated.
6. Also at the site visit, a number of inaccuracies in relation to the submitted plans were noted. In particular, these relate to the location of the existing boundary wall pillars, which are only 3.77m apart, the location of the basement retaining wall, the elevation detailing of the host building, particularly in relation to the ground and basement front elevations.

Main issues

Appeal A

7. I consider that the main issue in this case is whether or not the proposed extension would preserve or enhance the character or appearance of the West Hill Conservation Area (CA).

Appeal B

8. At the Hearing it was confirmed that there was adequate space within the rear amenity area to accommodate cycle parking and that communal refuse containers are sited within Albert Road. The Council accepted that reasons for refusal 2 and 3 could therefore be adequately addressed by the imposition of conditions requiring the submission of cycle parking details and a scheme of refuse management. In the light of this, I consider that the main issues in this case are whether or not the proposed extension to form a single dwelling would;
 - preserve or enhance the character or appearance of the CA;
 - achieve Lifetime Homes Standards; and
 - demonstrate an efficiency of development in the use of energy, water and materials.

Reasons

Character and Appearance

9. The CA is situated on the east facing slope of the Downs in a mainly residential area between Brighton Station and Seven Dials. It comprises mainly late 19th century housing, some semi-detached villas to the west and smaller artisan terraced houses closer to the station. The CA is divided into six areas within the West Hill Conservation Area Character Statement (CACS), adopted October 2005. The appeal site is within Area 1 of the CACS on the south side of Albert Road. Although the north side of the road is a continuous terrace, the south side comprises the more spacious development of semi-detached houses of the 1870's and 1880's. The houses on the south side are three storeys high, rendered and painted, with canted bays to the ground and first floors and channelled stucco to the ground floor. Most have been converted to flats, and

whilst generally retaining their original sash windows and heavily panelled front doors, many of the slate roofs have been replaced with concrete tiles.

10. The appeal site is prominent in views when approaching from Buckingham Road, to the east.

Appeal B

11. In the case of Appeal B, the proposal is for a separate self contained dwelling. Whilst it would be subservient in scale, the front elevation with a front door at ground level, would not, in my view, appear subservient in function. This would fail to preserve the character of the CA.
12. The proposals would extend beyond the rear wall of the host building, creating a poorly detailed and awkward junction between the proposal and the host building.

Appeals A and B

13. In both appeals, the ridge of the proposals would be about 6.5m from ground level and would project above the level of the first floor decorative horizontal banding of the host building. Furthermore, although the proposals would be set back about 0.1m from the front façade of the host building, the eaves would project about 0.2m from the front elevation and thereby project forward of the front façade of the host building.
 14. To my mind, the proposals neither reflect the proportions of the host building, nor respect the details of it, such as window recesses and channelled stucco details. Furthermore, the siting of the proposals would fail to accommodate the quoin corner detailing or create a satisfactory junction between the quoins and the proposals.
 15. Only limited information in relation to window details has been provided. However, these fail to demonstrate an adequate recess or the extent of the sash box.
 16. The proposals also fail to respond to the proportions of the host building and would result in an unresolved junction between the existing and proposed, with the ridge of the proposals extending above the horizontal banding between the ground and first floor of the host building and the eaves projecting beyond the front façade.
 17. The proposed flank wall rustication lacks the hierarchy of the host building, in that it continues on both the ground and first floor levels. This would fail to respect the appearance of the host building, which would in turn fail to preserve the character and appearance of the CA.
 18. I note that the previously permitted extension (BH2001/02392/FP) did not extend above the horizontal banding, was set back about 0.3m from the front elevation of the host building, approximately in line with the single storey garage it replaced. A condition was also imposed relating to materials and architectural details to be submitted and approved by the local planning authority. To my mind, the previously permitted scheme was materially different to the current proposals in terms of its effect on the host building and on the street scene.
-

19. In my view, the current appeal proposals would neither reflect nor complement the design details of the host building and would result in a 'clumsy' addition, poorly sited and detailed. Due to the prominence of the proposals within the street scene I consider the additions in both Appeals A and B would fail to preserve the character and appearance of the CA. This would be contrary to Policies QD14 and HE6 of the Brighton and Hove Local Plan 2005 (LP) which require proposals to preserve or enhance the character or appearance of the CA and be of a consistently high standard of design and detailing, in relation to the property to be extended, adjoining properties and to the surrounding area.

Lifetime Homes – Appeal B only

20. The Council have identified a number of areas where they consider the proposals fail to achieve the requirements of lifetime homes. I accept that in some respects, such as the width of the staircase and level access to the proposal, as submitted, it fails to achieve the required standards. However, I am satisfied that minor adjustments to internal layout and detailing and requirements for driveway details could address these concerns. In my view, this could be accommodated within the proposal and could be achieved by the imposition of conditions requiring further details.
21. In relation to the car parking space it was agreed that the required width of 3.3m could be achieved with alterations to the basement retaining wall of the host building and the entrance pillars. However, I note that the depth of the parking space, measured on site, would be 4.52m. The lifetime homes standards only require parking spaces to be 3.3m wide; no minimum depth is stated for parking spaces.
22. Therefore on the information before me, I consider that subject to the imposition of suitable conditions the proposals could comply with the requirements of lifetime homes standards and LP Policy HO13.

Efficient Use of energy, water and materials – Appeal B only

23. The Council have adopted Supplementary Planning Document 8: *Sustainable Building Design* since the planning application was determined. This requires all applications for new dwellings to complete a sustainability checklist and to achieve Level 3 of the Code for Sustainable Homes. Whilst I appreciate the sustainability checklist was published after the determination of the application the subject of Appeal B, the appellant has neither provided details to demonstrate the efficient use of energy, water and materials as part of the proposals nor completed a sustainability checklist to support the appeal. Although, at the Hearing the appellant stated that the proposals could achieve Level 3 of the Code for Sustainable Homes.
24. In my view, the appellant has been unable to demonstrate that the proposals are efficient in the use of energy, water and materials or that a Level 3 of the Code for Sustainable Homes could be achieved. Therefore on the evidence before me, I consider that the proposals have failed to demonstrate that efficiency in the use of energy, water and materials has been taken into account and that the proposals have incorporated suitable measures within it. This would be contrary to LP Policy SU2.
-

Conclusions

Appeal A

25. For the reasons given above I conclude that the appeal should be dismissed.

Appeal B

26. Whilst I have not found harm in relation to achieving lifetime homes standard, this does not outweigh the harm I have identified to the character and appearance of the CA and the failure to demonstrate the efficient use of energy, water and materials. For the reasons given above I conclude that the appeal should be dismissed.

Hilda Higenbottam

Inspector

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 Plans relating to applications BH2001/02392/FP & BH2001/02395/CA
- 2 Policy HE6 of Second Deposit Draft 2001 Local Plan
- 3 Policies ENV5 & ENV22 of Brighton borough Plan – Towards 2000



Costs Decisions

Hearing held on 9 July 2009
Site visit made on 9 July 2009

by **Mrs H M Higenbottam**
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Decision date:
5 August 2009

Costs application in relation to Appeal Ref: **APP/Q1445/A/09/2093160** (Appeal A)

24 Albert Road, Brighton, BN1 3RN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Z Solomon for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a 2 storey side extension - resubmission of application BH2001/02392/FP approved on appeal.

Summary of Decision: The application fails and no award of costs is made.

Costs application in relation to Appeal Ref: **APP/Q1445/A/09/2093161** (Appeal B)

24 Albert Road, Brighton, BN1 3RN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Z Solomon for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a 2 storey extension to form a separate dwelling.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Mr Z Solomon

1. The application is for a full award of costs and refers to paragraphs 7, 8, 11 and 16 of Annex 3 of Circular 8/93.
 2. In determining the appeal which was allowed in 2003 (APP/Q1445/A/02/1095629) the Inspector concluded that the extension would remain subservient to the large principal building, it would not unbalance it and would not harm the street scene. The Inspector in this case concurred with the previous Inspector in the 1990 appeal (T/APP/N1405/A/89/134335/P7) and concluded that the extension would probably enhance the conservation area in accordance with relevant planning policies.
 3. The Council's evidence relates to changes in planning policy and that it disagreed with the previous Inspectors conclusions. Whilst the Brighton and Hove Local Plan (LP) has been adopted since the 2003 decision, the general thrust of both National and Local Planning Policies have not changed.
-

4. Appeal A is virtually identical to that previously approved twice on appeal and the Council has shown blatant disregard to both previous appeals and has clearly prevented development which could have been permitted. Appeal B has the same form, apart from a small projection at the rear, so should have been permitted.
5. The Council failed to respond to a letter from the appellant's solicitors and refused meetings to discuss the impasse. A meeting with the Council's enforcement officer was set up but then cancelled.
6. The Council failed to consider the possibility of imposing conditions to overcome reasons for refusal 2 to 5 in relation to Appeal B.
7. Due to the wholly unreasonable stance taken by the Council the appellant has been put to considerable expense in having to pursue these appeals and therefore a full award of costs is justified.

The Response by the Council

8. The Appeal A proposals are materially different to that which was allowed on appeal in 2003. The main differences between the Appeal A proposal and the previously permitted scheme are an increase in ridge height, reduced set back and alterations to the window and garage door positions.
9. The Council consider that there has been a material change in policy since the 2003 appeal decision. The previous local planning policies did not make any reference to the importance of gaps. The LP and Conservation Area Character Appraisal were both adopted after the 2003 appeal decision. LP Policies HE6 (d) and QD14 (c) refer to space around/between buildings and retaining an appropriate gap.
10. The Council consider what has been built on site is different to the 2003 appeal scheme. There has been no valid commencement of the approved scheme. The appellant does not appear to have sought to implement the 2003 approved schemes and the development on site indicates a different use, levels, windows and details.
11. In the light of evidence submitted with the appeal and at the Hearing, the Council accept that some reasons for refusal concerning Appeal B could be overcome by the imposition of conditions.
12. The Council have not acted unreasonably in determining the planning applications.

Conclusions

13. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 14. Whilst I accept that the national and local planning policies have not fundamentally changed since the 2003 appeal decision, the appeal proposals are, in my view, materially different to that previously permitted.
-

15. In relation to Appeal A and reason for refusal 1 of Appeal B the dispute essentially involves a matter of judgement. While the appellants may not agree with the weight that the Council gave to this matter, it is one of judgement and there is no call to say that the Council was unreasonable in this regard, merely that it gave the issue a different weight to the appellants, as, indeed, do I.
16. In the light of evidence presented by the appellant during the course of the appeal and at the Hearing the Council accepted that reasons for refusal 2 and 3 of Appeal B could be addressed by the imposition of conditions. In relation to reason for refusal 4 of Appeal B I concluded that the proposal could be amended to meet lifetime homes standards. However, in relation to the efficient use of energy, water and materials (reason for refusal 5) the appellant did not produce evidence in relation to this matter. In my view, it was not unreasonable of the Council, on the evidence available at the time of determining the application the subject of Appeal B, to have refused the scheme for the reasons stated.
17. I conclude unreasonable behaviour resulting in unnecessary expense as described in Circular 8/93, has not been demonstrated. Awards of costs are not justified.

Formal Decisions

18. I refuse the applications for an award of costs.

Hilda Higenbottam

Inspector



Appeal Decisions

Hearing held on 8 July 2009.
Site visit made on 8 July 2009.

by **B C Scott BA(Hons) Urban & Regional Planning MRTPI**

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

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Decision date:
16 July 2009

Appeal A: APP/Q1445/A/09/2098926

68 Tongdean Lane, Brighton, East Sussex, BN1 5JE.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Blight against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/02033, dated 5 June 2008, was refused by notice dated 27 August 2008.
- The development proposed is rear extension over existing double garage.

Appeal B: APP/Q1445/A/09/2099302

68 Tongdean Lane, Brighton, East Sussex, BN1 5JE.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Blight against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/03379 dated 10 October 2008, was refused by notice dated 8 December 2008.
- The development proposed is re-submission of planning application no.BH2008/02033 to erect rear extension, partially extending over existing double garage.

Application for Costs

1. At the Hearing an application for costs was made by the Appellant. That application is the subject of a separate decision.

Procedural Matters

2. The appeal applications follow a lapsed planning permission (1989) for a two-storey extension where the existing rear double garage is now built.
3. These appeals relate to an original scheme and a subsequently revised one. The Appellant adopts the Council's more precise wording in both cases, which I use: [A] *first floor rear extension with hipped roof over existing double garage;* and, [B] *first floor rear extension, partially extending over existing double garage.*
4. Scheme [A] is a full extent extension with a hipped roof. Scheme [B] is a partial extent extension with a low-pitched roof (or crown-ring roof). Drawing nos. 07/0809442 & 08/, 09/, 10/, 11/ show a variant to scheme [B] (having a shortened depth) but the Appellant confirmed at the Hearing that that scheme was not intended to be put before me. I disregard those drawings.

Decisions

5. I allow the appeal for scheme [A] and dismiss the appeal for scheme [B].
6. I allow the appeal and grant planning permission for first floor rear extension with hipped roof over existing double garage at 68 Tongdean Lane, Brighton, East Sussex, BN1 5JE, in accordance with the terms of the application Ref: BH2008/02033, dated 5 June 2008 and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no window, dormer window, roof-light or door other than those expressly authorised by this permission shall be constructed without planning permission obtained by the local planning authority.
 - 3) The external finishes of the development hereby permitted shall match in material, colour, style bonding and texture those of the existing building.

Main issues

7. I consider the two main issues in each case to be the effect of the proposed development on; firstly, the character and appearance of the area; and secondly, the living conditions of the adjoining occupiers, with particular reference to outlook.

Reasons

Character and appearance

8. The appeal property is an individually designed detached dwelling amongst others in a suburban residential area with striking topography and split-level designs. There is an attached flat roof double garage at basement level at the rear orientated towards a basement integral single garage facing rearwards. Owing to the sharply falling ground levels about the double garage, the proposed developments would enlarge the fundamentally single-storey host dwelling outwards at the rear with a two-storey split-level resultant building. Scheme [A] would have a more integrated form than scheme [B], because of its fully hipped roof design and embracing footprint over the depth of the attached garage.
9. The thrust of policies in the Brighton & Hove Local Plan 2005 (LP) is to require a high standard of design that makes a positive contribution to the visual quality of the area, with particular reference to such things as height and topography. In particular, LP Policy QD2 requires development to emphasise and enhance the positive qualities of the local neighbourhood. LP Policy QD14 states that extensions must be well designed, sited and detailed in relation to the host property, adjoining properties and to the surrounding area.

Scheme [A]

10. This scheme would have great height above natural ground levels at some depth away from the host dwelling. However, I observed that this feature is characteristic of many buildings in the surroundings. I saw that ground levels rise on the subject boundary side of the appeal site and that nearby (at no.72) on similarly falling ground, a two-storey rear extension has resulted in a building of considerable scale and imposing appearance. I examined the surroundings, including Hillside Way and Redhill Drive, and came to the view that such developments are not out of place but give emphasis to the topography and are both positively distinctive and not unusual.
11. I acknowledge that a weakness of this scheme is the detailing of the roof around the existing rear dormer as that would be inset within the proposed roof plane and interrupt the otherwise flowing roof lines. Even so, I do not disagree with the Appellant that this is not a harmful feature, mainly because it would not compromise the integrated form of the whole. Also, I acknowledge that, owing to the scale and integrated nature of this scheme, the present arrangement of structures at the rear of the host building would be improved as the Appellant claims.
12. To my mind, the scale of this scheme would be suited to the ground levels and buildings around it, as they would absorb its lateral impact on the subject boundary side and would enable an imposing building to face into the valley over a generously sized plot. Those things are not immediately apparent from the submitted drawings but become plainly evident on site.
13. In the circumstances, I conclude that scheme [A] would not be harmful to the character and appearance of the area, in accordance with the requirements of policies QD1, QD2 and QD14 of the Development Plan.

Scheme [B]

14. This scheme has been inspired by the 1989 permission. That permission was for a crown ring roof design. The key features of this subject appeal scheme are its crown ring roof and partial footprint over the garage. Whereas it clearly has been designed to have more limited depth and height than scheme [A], I have found those things not necessarily to be merits in an area that engenders imposing split-level structures on steeply falling ground. Although this scheme would not interfere with the existing rear dormer because of its smaller scale, it has other design weaknesses.
 15. The 1989 permission was for a much smaller scheme all round. The appeal scheme would be sizeable in comparison with the hipped roof of the host building and with it, two different roof forms would be added; a 'lean-to' roof at the rear would reach over the remaining part of the garage. In my opinion, due to the juxtaposition of three different roof forms of divergent scales, the appeal scheme would be a disjointed addition to the host building. For those reasons I consider this to be a discordant scheme that would not be well designed in relation to the host property.
 16. I acknowledge that the proposed development would only be glimpsed from the street and that the appeal dwelling may not look over-extended from there.
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Although I bear that in mind, good design is to be encouraged everywhere to make attractive places in which to live, whether viewed from private or public land. The extension does not amount to good design for the reasons I have given and would fail to make a positive contribution to the visual quality of the area.

17. Accordingly, I conclude that scheme [B] would be harmful to the character and appearance of the area, in conflict with the above policies.

Living conditions

18. The appeal site adjoins a detached dwelling (no.70) which is at a distance away from the shared boundary and separated from it by a substantial garage. The rear (and conservatory) of the adjoining dwelling is farthest from where the proposed developments would be. There is a small detached annex to the adjoining dwelling that is along the shared boundary, but I saw no signs that it constitutes a habitable room as it appears to be a former garage used for storage. The proposed developments would be close to the shared boundary and would raise the height of development along it.
19. LP Policy QD27 requires development not to cause material nuisance and loss of amenity to residents, including such things as outlook and privacy. LP Policy QD14 applies a similar requirement to extensions and alterations.
20. I acknowledge that the effect of the ground levels here is to make the proposed developments large scale imposing structures. In my opinion, the distinctiveness of this area (in this context) means that such imposing structures have a commanding relationship one-to-another. To my mind, this is to be expected and it does not necessarily follow that the large mass of scheme [A] or that of scheme [B] would be overbearing on the adjoining occupiers. Given the relative ground levels and distances involved here, I satisfied that the outlook of the adjoining occupiers would not be materially adversely affected.
21. The adjoining occupiers raise concerns about overlooking. At the Hearing the Council withdrew its objection on this ground to scheme [A] and makes no such objection to scheme [B]. With the orientations and distances involved and given the effect of the neighbour's garage, I am not convinced that overlooking would be a problem with either scheme. In particular, the proposed window in the flank elevation would serve a shower room and would be top-hung above eye-level. Anyway, views from that window towards the adjoining occupiers would be obscured by the intervening garage.
22. Thus, I conclude on the second issue that no unacceptable affect on the living conditions of the adjoining occupiers would result from either scheme [A] or scheme [B], in accordance with the requirements of the above policies.

Other Considerations

23. The Appellant asserts that scheme [B] is similar to that in the lapsed permission, which serves as a precedent. In my opinion, there are material differences between this appeal scheme and the lapsed one, which I have identified. Moreover, planning policies have moved on since 1989 and a key
-

principle of Planning Policy Statement 1 *Delivering Sustainable Development* (2005) is to promote high quality inclusive design, such that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted. Thus, I find no reason to consider the appeal before me other than upon its individual planning merits.

24. I have considered all other matters raised, including those other examples of split-level development, but none alters my conclusions in each case on the main issues, which lead me to find in favour of appeal [A] and to dismiss appeal [B].

Conditions

25. I have considered the conditions suggested by the Council having regard to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. In addition to the standard condition concerning time limit, in view of the main issues in this case, I agree that conditions are necessary concerning appearance (matching materials) and privacy (windows and doors), which I impose. I do not impose the Council's suggested condition relating to the proposed side (west facing) window because I consider that to be unnecessary for the reasons I give at paragraph 22. At the Hearing the Council conceded that the condition was unnecessary. The Council conceded that this was so at the Hearing.

B C Scott
INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

- | | |
|-------------------|--|
| Document 1 | The Council's letter of notification of the arrangements for the Hearing. |
| Document 2 | Direction dated 4 June 2008 by the Secretary of State concerning saved policies contained in the Brighton and Hove Local Plan 2005 |
| Document 3 | The Appellant's costs application statement |
| Document 4 | The Council's pre-application correspondence concerning scheme [B] |

PHOTOGRAPHS SUBMITTED AT THE HEARING

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|----------------|------------------|
| Photo 1 | 4/6 Hillside Way |
| Photo 2 | 6/8 Hillside Way |
| Photo 3 | 24 Redhill Drive |

DRAWINGS SUBMITTED AT THE HEARING

- | | |
|------------------|--|
| Drawing 1 | 07/90275 Rev A (April 1989) ~ the 1989 permission scheme |
|------------------|--|



Costs Decision

Hearing held on 8 July 2009
Site visit made on 8 July 2009

**By B C Scott BA(Hons) Urban & Regional
Planning MRTPI**

**an Inspector appointed by the Secretary of
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**Decision date:
16 July 2009**

Costs application in relation to:

Appeal [A] Ref: APP/Q1445/A/09/2098926

Appeal [B] Ref: APP/Q1445/A/09/2099302

68 Tongdean Lane, Brighton, East Sussex, BN1 5JE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr C Blight for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with appeals against the refusals of planning permissions for: [A] rear extension over existing double garage; and [B] to erect rear extension, partially extending over existing double garage.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Applicant

1. The Applicant cites Circular 8/93 Annex 3 and in particular paragraphs 7, 8 and 15. Paragraphs B15, B16, B17 and B21 of Circular 03/2009 refer. The Applicant contends that the Council has been unduly influenced by local residents. The Applicant's case is that the Council has not substantiated each reason for refusal with reference to the Development Plan and all other material considerations and, therefore, seeks a full award of costs.
2. Concerning the first reasons for refusal (relating to character and appearance), the Applicant argues that the Council has failed to take account of the prevailing character of the area yet has concluded in each case that the proposed development would be harmful to the visual amenity of the surrounding area. In the Applicant's view the Council has refused the appeal applications just because the proposed developments would be large extensions. The Applicant points out that it is accepted that the extensions would be large, but that this does not automatically make them unacceptable.
3. Concerning the second reasons for refusal (relating to the living conditions of the adjoining occupiers), the Applicant draws attention to the separation distance involved and the position of the neighbour's garage. The Applicant asserts that it is inconceivable that each proposed development would result in an undue sense of enclosure, given such features. Furthermore, the Applicant points to an inconsistency in the Council's second reasons in that for the first appeal application (Scheme [A]) objection is raised to a proposed side-facing window, whereas in the second appeal application (Scheme [B]) no such objection is raised to the same proposed window. Moreover, it would be unreasonable to require that such a window should be fixed shut, as indicated in the Council's suggested conditions, due to its design and purpose.

The Response by the Council

4. The Council asserts that it has acted reasonably and determined the appeal applications with regard to the policies of the Development Plan and to all other material considerations. The Council contends that the reasons for refusal are justified and that the disagreement between the Parties about the merits of the proposed developments does not demonstrate otherwise. In that regard, the Council points to the reasoning set out in its Officer reports and Hearing statement.
5. Following the first refusal, the Council engaged in pre-application discussions. From the Council's standpoint, this amounted to constructive co-operation and dialogue between the Parties in accordance with the suggestions for good practice in the Circular. At those discussions, the Council made clear its reasons for what it considered to be an appropriate development and has maintained good records about that.
6. Concerning its second reasons for refusal relating to the proposed side-facing window, the Council draws attention to the additional detail given on the submitted drawing to scheme [B] (particularly the roof line of the neighbour's garage; drawing no.05/0809442) with which the impact of the proposed window could be more fully assessed than with the previous scheme.

Reasons

7. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

The first reasons for refusal

8. The reasoning given in the Council's officer reports and Hearing statement focuses on the sizes of the proposed developments in relation to ground levels. From that, the Council arrives at the conclusion that an excessively large addition and an over extended appearance would result from each scheme. The record of pre-application discussions (appeal document 4) does not show otherwise.
 9. The policies of the Development Plan require that the qualities of the local neighbourhood and the context of the surrounding area are features that are to be taken into consideration. With my appeal decisions, I have found that split-level developments of considerable scale and imposing appearance are not out of place in the surroundings. The Council makes no such assessment, without which there is unlikely to be a respectable basis for the Council's stance that the schemes would be detrimental to the visual amenity of the surrounding area.
 10. In my opinion, had the Council gone on to assess the 'large addition' of scheme [A] in its wider context, it might well not have concluded that it was excessive or that it would result in an over extended appearance. However, owing to my finding about the discordant nature of scheme [B], it is understandable that a conclusion be reached that an excessively large addition
-

and an over extended appearance would result. The Council's refusal reason uses the words 'an incongruous and unsympathetic feature' and, to my mind, it is axiomatic to state that this would be detrimental to the visual amenity of the surroundings.

The second reasons for refusal

11. From the appeal submissions, I come to the view that the Council's conclusion about excessive size has driven its assessment of each scheme's impact upon the outlook of the adjoining occupiers. The Council makes scant assessment of the living arrangements of the neighbours in terms of the use of buildings and spaces in juxtaposition (including relative heights) with the proposed developments. In the circumstances, I consider the Council's objections not to have been substantiated in each case.
12. With reference to scheme [A], at the Hearing the Council was unable to substantiate its concerns about privacy because of the intervening position and height of the neighbours' garage and the proposed floor levels, which were examined. Thus, the Council accepted that its suggested condition to restrict the use of the proposed window would be unnecessary.

Appeals [A] and [B]

13. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated. In the case of appeal [A] a full award of costs is warranted. In the case of appeal [B] a partial award is warranted, to the extent of the Applicant's unnecessary expenditure arising from the Council's second reason for refusal.

Formal Decision and Costs Order

14. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Mr C Blight the costs of the appeal proceedings, limited to those costs incurred in dealing with the Council's refusal reasons nos.1 and 2 for appeal [A] and reason no.2 only for appeal [B], such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned two appeals under section 78 of the Town and Country Planning Act 1990 against the refusals of applications for planning permission, for appeal [A] *rear extension over existing double garage* and for appeal [B] *to erect rear extension, partially extending over existing double garage*, on land at 68 Tongdean Lane, Brighton, East Sussex, BN1 5JE.
15. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

B C Scott
INSPECTOR



Appeal Decision

Site visit made on 18 June 2009

by **Y Mwanza BA(Hons) MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 August 2009

Appeal Ref: APP/Q1445/A/09/2097251

2 Longhill Road, Ovingdean, Brighton, East Sussex, BN2 7BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Jeanie Civil against the decision of Brighton and Hove City Council.
- The application Ref BH2008/01903, dated 30 May 2008, was refused by notice dated 7 August 2008.
- The development proposed is extension from single to double garage and balcony across front of property on first floor.

Decision

1. I allow the appeal, and grant planning permission for the extension from single to double garage and balcony across front of property on first floor at 2 Longhill Road, Ovingdean, Brighton, East Sussex, BN2 7BE in accordance with the terms of the application, Ref BH2008/01903, dated 30 May 2008, and the plans submitted with it, subject to the following conditions
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main issue

2. I consider the main issue in this appeal to be the effect of the proposal upon the character and appearance of the property and the surrounding area.

Reasons

3. The appeal proposal would create an enlarged garage at ground floor level. The enlarged garage would retain the existing pitched roof design and in my view its scale and design would be in keeping with the character and appearance of the property.
4. When I visited the appeal property and the wider area I saw a wide variety of architectural styles and noted that a number of properties had balconies. Indeed the appellant has submitted photographic evidence of similar balconies. In my opinion while the architectural styles vary in the locality a common feature seems to be a balcony on the front elevation.

5. Supplementary Guidance on Roof Alterations and Extensions (SPGBH 1) states that roof extensions, terraces or dormers should respect the particular character of the building and be carefully related to it. In my view, the appeal proposal would retain the basic shape and symmetry of the roof, and the existing roof slopes and form would remain clearly visible. Double French doors would provide access to the balcony, and an appropriately worded condition would ensure that the materials used match the existing house, in order to reflect the character and appearance of the property and the immediate surroundings.
6. I conclude that the appeal proposal would not be harmful to the character and appearance of the property or the immediate surroundings, and would comply with Policies QD1, QD2, and QD14 of the Brighton and Hove Local Plan and SPGBH 1.

Conclusion

7. I conclude having regard to all other matters raised that the appeal should be allowed.

Y Mwanza

INSPECTOR

NEW APPEALS LODGED

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

CENTRAL HOVE

BH2008/02561

43 Osborne Villas, Hove

Extension of existing rear wooden balcony and creation of additional storage space underneath (retrospective).

APPEAL LODGED

23/07/2009

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WOODINGDEAN

BH2008/02746

48 Cowley Drive, Brighton

Front extension and loft conversion to include gable ends, velux windows and increase in ridge height.

APPEAL LODGED

27/07/2009

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

BRUNSWICK AND ADELAIDE

BH2009/00415

The Old Market, 11A Upper Market Street, Hove

Erection of 2no. new penthouse apartments on the roof of the Old Market combined with a new meeting room facility for the Old Market.

Extension of existing stair/lift well to south for access to the new apartments, alterations to windows and installation of front canopy.

APPEAL LODGED

28/07/2009

Committee

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

ROTTINGDEAN COASTAL

BH2008/03708

1 & 2 Northgate Cottages, Falmer Road, Brighton

Creation of a new opening in the existing flint walling and erection of approximately 0.85m high flint and brick wall.

APPEAL LODGED

03/08/2009

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****ROTTINGDEAN COASTAL**

BH2008/03707

1 & 2 Northgate Cottages, Falmer Road,
Rottingdean, BrightonSubdivision of the studio from 1& 2 Northgate
Cottages to form a self contained residential
unit and construction of a square bay window
on the south eastern elevation and the erection
of approximately 0.85m high flint and brick wall.

APPEAL LODGED

03/08/2009

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****ROTTINGDEAN COASTAL**

BH2009/00957

19 Burnes Vale, Rottingdean, Brighton

Loft conversion incorporating 2 no dormers to
the rear, 1 no rooflight to the front and 1 no
window to the side elevation.

APPEAL LODGED

05/08/2009

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****WITHDEAN**

BH2008/03961

24 Redhill Drive, Brighton

Alterations to existing decking and proposed
erection of a retaining wall and partial
demolition of decking. (part retrospective).

APPEAL LODGED

04/08/2009

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****WISH**

BH2009/01174

Land At Rear Of 240 Portland Road, Hove

Erection of a single storey building for D1 use
and resurfacing of access from Hogarth Road.

APPEAL LODGED

10/08/2009

Delegated

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****PATCHAM**

BH2008/03653

48 Greenfield Crescent, Brighton

Erection of a single storey side extension with
hip to gable roof extension over and loft
conversion including front and rear dormers.

APPEAL LODGED

11/08/2009

APPLICATION DECISION LEVEL Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

GOLDSMID

BH2009/00814

Land to the rear of 37 and 38 Cromwell Road,
Hove

Construction of a new five-storey building
comprising 4 No. residential flats. To include 4
No. photovoltaic panels on roof. Provision of
cycle store and waste /recycling facilities.

APPEAL LODGED

10/08/2009

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

CENTRAL HOVE

BH2009/00550

1A Victoria Terrace, Hove

Change of use from A1 to A2.

APPEAL LODGED

03/08/2009

Delegated



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES
2nd September 2009

This is a note of the current position regarding Planning Inquiries and Hearings

6 Cliff Approach, Brighton

Planning application no: BH2008/03090

Description: Demolition of existing detached house. Erection of apartment building comprising 7 no. self-contained flats, with provision for communal garden, cycle parking and car parking facilities (Resubmission of BH2007/03867).

Decision: Non determination

Type of appeal: Informal Hearing

Date: Tuesday 15 September 2009

Location: Hove Town Hall, Committee Room 2

Land rear of 140 – 146 Springfield Road, Brighton

Planning application no: BH2008/03194

Description: Erection of a terrace of 4 no. two bedroom dwellings.

Decision: Committee

Type of appeal: Public Inquiry

Date: Tuesday 29th September – Thursday 1st October

Location: Hove Town Hall

53a New Church Road, Hove

Planning application no: BH2009/00837

Description: Demolition of existing dwelling and the erection of 3no. detached houses with ancillary landscaping works.

Decision: Delegated

Type of appeal: Informal Hearing

Date: Tuesday 20th October

Location: Hove Town Hall

Land at Brighton Marina

Planning application no: BH2007/03454

Description: Demolition of Asda superstore to create 3 -10 storey building with enlarged store (3112 sqm increase) and 2,025 sqm of other Class A1-A5 (retail/restaurant/drinking) uses on ground floor with 779 residential units above and community hall and new pedestrian/cyclist bridge link from cliff to roof of building and associated engineering works. Demolition of petrol filling station to create 28 storey building with 182 sqm of Class A uses at ground floor and 148 residential units above. Demolition of McDonalds restaurant to create 5 - 16 storey building with enlarged drive-thru restaurant (285 sqm increase) and 131sqm of other Class A uses and 222 residential units above. Demolition of estates office to create 3-4 storey building of 35 residential units. Demolition of

western end of multi-storey car park to create 6-11 storey building adjacent to western breakwater of 117 residential units with stair access from breakwater to Park Square. Demolition of part of the eastern end of multi-storey car park to create single storey petrol filling station, pedestrian footbridge and new lift and stair access. Total: 1301 residential units. Associated car parking spaces (805 residential, 666 commercial), cycle parking (1907 residential, 314 in public realm), servicing, plant, refuse, CHP unit, public and private amenity space, hard & soft landscaping and outdoor recreation areas. Change of use of two A1 retail units (524 sqm) within Octagon to medical use (Class D1). Alterations to vehicular, pedestrian and cyclist access and circulation, including new roundabout and transport interchange behind Waterfront.

Decision:

Committee

Type of appeal:

Public Inquiry

Date:

Tuesday 3rd November – Friday 6th November
Tuesday 10th November – Friday 13th November
Tuesday 17th November – Friday 20th November
Tuesday 24th November – Wednesday 25th November
Tuesday 1st December – Friday 4th December
Tuesday 8th November – Wednesday 9th November

Location:

Brighton Centre – East Wing