

<b><u>No:</u></b>	<b>BH2023/01017</b>	<b><u>Ward:</u></b>	<b>Hangleton &amp; Knoll Ward</b>
<b><u>App Type:</u></b>	<b>Householder Planning Consent</b>		
<b><u>Address:</u></b>	<b>Studio Workshop At Rear 49 Elm Drive Hove BN3 7JA</b>		
<b><u>Proposal:</u></b>	<b>Erection of a new roof, incorporating a dormer and rooflights. Incorporates fenestration alterations, and the removal of existing summerhouse with additional landscape planting.</b>		
<b><u>Officer:</u></b>	James Ing, tel: 290485	<b><u>Valid Date:</u></b>	17.05.2023
<b><u>Con Area:</u></b>	N/A	<b><u>Expiry Date:</u></b>	12.07.2023
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	
<b>Agent:</b>			
<b>Applicant:</b>	Paul Heath 7 Montpelier Villas Brighton BN1 3DH United Kingdom		

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

**Reason:** For the avoidance of doubt and in the interests of proper planning.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location and block plan	PLAN 1		5 April 2023
Proposed Drawing	PLAN 2		5 April 2023

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. The 2no. loft level windows on the north elevation shall be:

- Obscure-glazed, unless the parts which are clear-glazed are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such.
- Non-opening, unless the parts which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such.

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

4. The development hereby permitted shall not be commenced (including demolition and all preparatory work) until protection measures for the street tree

to the front of the application site are in place and retained throughout the construction process. The fences shall be erected in accordance with British Standard BS5837 (2012) Trees in relation to design, demolition and construction - Recommendations shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.

**Reason:** As this matter is fundamental to protecting the trees which are to be retained on the site during construction works in the interest of the visual amenities of the area and to comply with policies DM22 of Brighton & Hove City Plan Part 2, and CP12 / CP13 of the Brighton & Hove City Plan Part One and SPD06:Trees and Development Sites.

5. One or more bee bricks shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.

**Reason:** To enhance the biodiversity of the site and to comply with policies CP10 of the Brighton & Hove City Plan Part One, DM37 of the Brighton & Hove City Plan Part Two, and Supplementary Planning Document SPD11: Nature Conservation and Development.

6. The external finishes of the development hereby permitted shall be as follows:
  - All external walls to be painted white, to match the existing front elevation
  - Proposed clay roof tiles should be red, to match the tiles of many of the surrounding buildings, unless otherwise agreed in writing.

**Reason:** To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with policies CP12 of the Brighton & Hove City Plan Part One and DM21 of the Brighton & Hove City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant is advised that the application of translucent film to clear glazed windows does not satisfy the requirements of condition 3.
3. Where possible, bee bricks should be placed in a south facing wall in a sunny location at least 1 metre above ground level.
4. Where asbestos is found/suspected on site, it will fall under the Control of Asbestos Regulations 2012, overseen by the Health and Safety Executive. Further information can be found here: [www.hse.gov.uk/asbestos](http://www.hse.gov.uk/asbestos)

## 2. SITE LOCATION

- 2.1. The application site comprises a single storey dwelling at the rear of the plot of no.49 Elm Drive. It was originally built as an incidental outbuilding servicing the main dwellinghouse; however, it has been established that it has been in use as

a separate dwelling since at least 2016 and therefore benefits from a lawful status by being immune from enforcement action, in accordance with Section 171B of the Town and Country Planning Act 1990 (as amended).

### **3. RELEVANT HISTORY**

#### **BH2023/00026**

- 3.1. Demolition of existing studio and erection of 2no bedroom dwelling (C3) - Application Withdrawn

#### **BH2021/00573**

- 3.2. Prior approval for the erection of an additional storey to form a first floor extension.' - Prior Approval Refused - Appeal Dismissed, with the Inspector upholding only reason for refusal no.3

1. The proposed development includes slate roof tiles which are dissimilar in appearance to the existing corrugated roofing material. The development would not therefore represent permitted development as it would breach the restrictions of Schedule II, Part One, Class AA.2(2a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. The proposed additional storey would include windows that would be highly visible from the private gardens and rear windows of properties including no.44 Wayfield Avenue and nos. 49 and 51 Elm Drive; this would result in significant perceived loss of privacy for occupants of these properties which would be detrimental to their amenities.
3. By virtue of the building's position, size and materials, the design and architectural features of the principal elevation of the dwellinghouse as a result of the proposed development would result in a bulky building form which would be out of character with the area and harmful to the wider streetscene.

#### **BH2020/03788**

- 3.3. Prior approval for the erection of an additional storey to form a first floor extension. - Prior Approval Refused

1. The proposed additional storey would include windows that would provide unobstructed views into the private gardens and rear windows of properties including no.44 Wayfield Avenue and nos. 49 and 51 Elm Drive; this would result in overlooking that would cause a significant perceived and actual loss of privacy for occupants of these properties which would be detrimental to their amenities.
2. By virtue of the building's position, size and materials, the design and architectural features of the principal elevation of the dwellinghouse as a result of the proposed development would result in a bulky and utilitarian building which would be out of character with the area and harmful to the wider streetscene.

#### **BH2020/02147**

- 3.4. Certificate of lawfulness for existing use as 3no self-contained dwellings (C3) - Approved

**BH2003/00656/CL**

- 3.5. Certificate of Lawfulness for proposed development of a block-built garage under a tiled roof - Approved

**4. APPLICATION DESCRIPTION**

- 4.1. Planning permission is sought to erect a new roof, incorporating an east facing dormer with recessed window, 2no. rooflights to the west roof slope, 1no. rooflight to south slope, and 2no. loft level windows to the north facing gable end. The roof would feature clay tiles to the hipped slopes. The application also incorporates fenestration alterations at ground floor level to the southern and eastern elevations, and the removal of the existing summerhouse, to be replaced by landscape planting.

**5. REPRESENTATIONS**

- 5.1. **Fourteen (14) (from 13 different occupiers)** representations have been received, objecting to the proposal on the following grounds:
- Inappropriate height of development
  - Noise pollution
  - Light pollution
  - Overdevelopment/excessive building density in local area
  - Overshadowing/light loss
  - Overlooking/loss of privacy
  - Concerns that the obscure glazed windows will be openable
  - Would create additional traffic/parking stress
  - Concerns over emergency services access
  - Poor design/not in keeping with character of local area
  - Too close to boundary
  - Damage to local trees
  - Sets undesirable precedent.
  - Potential for being converted into an HMO
  - Potential for using PD rights to add additional dormers
  - Concerns over standard of accommodation for occupants
  - Concerns that work has already commenced
  - Negative impact on the streetscene
- 5.2. **Councillors Grimshaw, Hewitt and Bagtho** have objected to the proposal. A copy of their representation is attached to the report.

**6. CONSULTATIONS**

- 6.1. **Arboriculture:**  
The trees in the rear garden of no.47 Elm Drive are not of sufficient quality to merit an emergency Tree Preservation Order. However, tree protection

measures to mitigate the potential impact on the street tree in front of the application site on Elm Drive should be secured by condition in the interest of mitigating the impact of development.

**6.2. Environmental Health:**

The previous uses of the site are unknown, and the existing roof could contain asbestos. It is recommended that if planning permission is granted that it be subject to a condition requiring further investigation into potential land contamination (comments received from previous application).

**7. MATERIAL CONSIDERATIONS**

7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report.

7.2. The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016);
- Brighton & Hove City Plan Part Two (adopted October 2022);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour Joint Area Action Plan (JAAP) 2019.

**8. RELEVANT POLICIES**

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One (CPP1)

SS1 Presumption in Favour of Sustainable Development

CP1 Housing Delivery

CP8 Sustainable Buildings

CP9 Sustainable Transport

CP10 Biodiversity

CP12 Urban Design

CP13 Public Streets and Spaces

Brighton & Hove City Plan Part Two

DM1 Housing Quality, Choice and Mix

DM18 High quality design and places

DM20 Protection of Amenity

DM21 Extensions and alterations

DM22 Landscape Design and Trees

DM33 Safe, Sustainable and Active Travel

DM35 Travel Plans and Transport Assessments

DM36 Parking and Servicing

Supplementary Planning Documents:

SPD06 Trees and Development Sites

SPD11 Nature Conservation and Development

SPD12 Design Guide for Extensions and Alterations

## **9. CONSIDERATIONS & ASSESSMENT**

- 9.1. The main considerations in the determination of this application relate to the following: principle of development; design and appearance of the proposed development; the standard of accommodation that would be offered to future residents; and the potential impacts on the amenities of local residents; and on potential highway impacts.

### **Principle of Development**

- 9.2. The proposed new clay tiled roof (incorporating first floor accommodation) would replace the existing corrugated concrete sheet roof, which has fallen into disrepair and needs replacing. Given the fact that an established lawful dwelling currently occupies the development site, it is not considered reasonable to raise any objection in principle to alterations that would enlarge the property subject to other planning considerations set out below. There would be no net gain in residential units on the site as a result of the proposed development.

### **Design and Appearance**

- 9.3. The proposed development would have a hipped roof form with a rear (north) gable end, a modest dormer with a recessed window on the east roof-slope, and a total of 3no. rooflights on the front (south) and east-side roof slopes. The gable end would feature 2no. loft level windows. Alterations to the ground floor fenestration is proposed - though the overall arrangement and size would be similar to the existing.
- 9.4. External materials would include red clay roof tiles and breeze blocks on the external walls. Red clay tiles are characterful of the wider area and are considered to integrate well with the built environment - far better than the existing corrugated concrete sheets. Breeze blocks are not common within the local area but are considered to be acceptable for this small, back-land development. The proposed external materials for the development shall be secured by condition in the interest of visual amenity.
- 9.5. The proposed alterations would result in a building with a generally similar scale to the existing dwelling, but would evoke a more traditional residential character. The existing building is of limited architectural merit and has an industrial appearance as a result of its corrugated roof.
- 9.6. It is considered that the proposed alterations would overall result in an improvement to the appearance of the building. Though concerns have been raised regarding the appearance of the building, it is considered simple in design and suitable as a back land garden development. Though the proposed

additions would result in a greater ridge height than the existing structure (and slightly lower eaves), the proposed resulting building is considered to be acceptable, would not cause any significant harm to the visual amenity of the area and, whilst architecturally simple in design, it is not considered so harmful as to warrant refusal of the application.

- 9.7. Concerns have been raised that the development would not fit in well with the character of the local streetscene. As a back-land development the existing building is already atypical of the area. It is considered that in terms of form and roof materials the proposed development would fit in as well as can be expected with the other dwellings in the area. The consideration is whether the proposed structure is so significantly different to the existing that it would cause further harm. The proposed structure is not highly visible from the Elm Drive streetscene and so its need to directly adhere to the character of the streetscene is not considered to be a significant issue. It is considered that the proposal would have a neutral impact on the character of the area given the existing structure and establishment of a dwelling in this position.
- 9.8. The dwelling, as extended would be more visible from Wayfield Avenue across a car park to the rear of no.44. However, it is not considered that this would cause any significant harm to the visual amenities from the north of the site.
- 9.9. A structure in the rear garden is an existing form of development and through a lawful development certificate, its use as a residential dwelling is established. The proposed alterations to the design of the structure are considered acceptable and not harmful in design terms to warrant refusal of the application.
- 9.10. It is noted that a Prior Approval application (BH2021/00573) for a first floor extension to the existing dwelling was refused in 2021 and subsequently dismissed on appeal. The Planning Inspector agreed with the Council that the additional floor would result in a bulky building, out of character with the area. However, the refused application would have resulted in a full two storey dwelling. As set out above, the current application is considered to overcome the reason for refusal by providing the first floor rooms within the roof, thereby significantly reducing the bulk of the addition and limiting its height.

#### **Impact on Amenities**

- 9.11. The proposed development would be approximately 1.75m taller than the existing structure, though it would have an eaves height which is approximately 0.3m lower. It would cast a longer shadow than the existing structure but given it rises to a central gable point it is not considered that this shadow would result in any particularly harmful loss of light that would warrant refusal of the application.
- 9.12. West of the site is the garden of no.51 Elm Drive; given the orientation of the land, the hipped roof-form, and the fact the proposed development would be adjacent to a garage within the curtilage of no.51, it is considered that the impact from shadowing would be acceptable. Some limited shadowing may occur in the early hours of the day, but this would only impact on the far (north) end of the

rear garden and should not be significantly impactful on the amenities of neighbouring residents.

- 9.13. Northwest of the site is the rear garden of no.46 Wayfield Avenue, the closest boundary of which is approximately 6m from the corner of the application site dwelling. The hipped roof-form of the proposed development will mitigate overshadowing, and the potential morning shadow cast across the south end of the garden of no.46 Wayfield Avenue is not considered to cause any significant harm.
- 9.14. Directly north of the development is a car park, and the private gardens of nos.42 & 44 Wayfield Avenue. The gardens of these two properties are separated from the application site by approximately 9m and it is considered that the development would have an acceptable impact on the amenities of occupants therein from overshadowing.
- 9.15. The rear (south) end of the garden of no.38 Wayfield Avenue is approximately 3.8m northeast from the closest corner of the proposed development and may experience some overshadowing in the afternoon hours. However, any shadowing from the proposed development would only affect the southern tip of the garden and is unlikely to be significantly impactful.
- 9.16. Directly east of the proposed development is the north end of the rear garden of no.47 Elm Drive. The shadow of the proposed works is only likely to fall across any of this curtilage in the late afternoon/early evening and would not affect the areas closest to the main house. Shadowing is also already likely from the mature trees in this garden, so additional significant impact is unlikely.
- 9.17. It is considered that the overshadowing as a whole would be less than harmful, and the development is acceptable in this regard. It should also be noted that previously refused applications for a full two-storey building in this location would have cast a larger shadow than the current proposal and were both found acceptable in this regard. The Planning Inspector for application BH2021/00573 also did not raise shadowing as a concern.
- 9.18. Concerns have been raised that the proposed development would cause harm to the amenities of local residents due to the impact on privacy from the upper floor windows.
- 9.19. The south-facing rooflight would serve a landing and be both small and high-level with minimal impacts on Nos 47 and 49 Elm Drive.
- 9.20. The west-facing rooflights would serve the first floor bathroom and the ground floor respectively. Both are small in size and high level and would therefore not have any unacceptable impacts on properties to the west.
- 9.21. The north-facing windows would serve a bedroom and a bathroom and would offer views across the car park and potentially into the gardens of nos.42 and 44 Wayfield Avenue. There is potential for harm in this regard; loss of privacy would make these rear gardens less desirable as amenity spaces. The Planning

Inspector for application BH2021/00573 considered that windows fitted with measures to restrict views (such as obscure glazing and limited opening method) would have an acceptable impact on the amenities of local residents, and that the LPA had given too much weight to perceived overlooking. In light of that decision, it is considered that the two windows could be acceptable subject to a condition requiring both be fitted with obscure glazing up to an internal height of 1.7m, and also to be fixed shut to an internal height of 1.7m. This should allow for acceptable outlook and natural ventilation for occupants, whilst also safeguarding the amenities of neighbouring residents.

- 9.22. The east-facing dormer would also serve the loft level bedroom and whilst the primary view from this window would be over the garden area of the application property, it would potentially provide views across the rear gardens of nos.43-47 Elm Drive. The proposed dormer would have recessed glass to prevent oblique views into houses along Elm Drive and Wayfield Avenue and whilst some views of the rear gardens of Wayfield Avenue and Elm Drive may be possible it is not considered that the impact on privacy would be significant enough to warrant a reason for refusal. It is therefore believed that this window would not cause significant harm to neighbouring amenity, and would not need to be obscurely glazed.
- 9.23. The potential impact caused by the building works themselves has been raised as a concern by local residents but this is not a material planning consideration to be given any weight in the assessment of the acceptability of this proposal. Although some level of disruption is very likely, this would be in the short-term only and is not reason to withhold planning permission. The proposed development represents a net increase of one bedroom on the site and it is not considered likely that the additional noise output associated with the occupation of this dwelling would be significant or warrant objection.
- 9.24. Concerns have been raised that the proposed development would lead to an impact on amenities due to light pollution. Light spill from ground floor windows/doors would be largely blocked by the boundary fencing and trees in the area. Light spill from the rooflights and upper floor windows is not considered likely to cause any significant harm or merit refusal of the planning application. The application site is surrounded by other residential properties that are two-storey in height, many of which also have habitable lofts, and have a larger number of windows. Any light from the windows of the proposed development would have a similar impact to the existing setting; the LPA has no significant concerns in this regard.

### **Impact on the Public Highway**

- 9.25. It has been raised in the representations received that the proposed development would promote an unsustainable lifestyle, and that occupants are unlikely to cycle and more likely to own multiple private motor vehicles, putting pressure on local highways in terms of traffic congestion and parking stress. This view is not considered to be supported by any clear evidence; the application site is proximate to local bus routes and Aldrington Railway Station, and there is

ample space for an secure outdoor bicycle shed, so future occupants would have practical means of sustainable travel.

- 9.26. The application site does not lie within a Controlled Parking Zone, so occupants would be free to park any vehicles on the public highway, The concern of local residents that there is a high level of parking stress in the area is noted, however, there is a dwelling sited in the rear garden currently and the provision of an additional bedroom is not considered to have a significant impact on highway safety or significantly increase vehicle use associated with the site.
- 9.27. Concerns have been raised that the proposed development would limit the access to the two flats within no.49 Elm Drive. Given that access would be unchanged from the existing, it is not clear why this would be the case.
- 9.28. Overall, the LPA has no concerns relating to the highways as a result of the proposed alterations.

#### **Standard of Accommodation**

- 9.29. The proposed alterations would result in an increase to the amount of liveable space. The proposed layout would be sensible with good circulation spaces, and ample natural light provision for each room.
- 9.30. The private garden for the dwelling is small but commensurate with the size of the property. There is space to the front of the dwelling for refuse and recycling bins, and for secure cycle parking if desired.
- 9.31. There are no concerns with the standard of accommodation that would be offered to future residents.

#### **Other Considerations**

- 9.32. It has been stated in the representations received that development has commenced prior to any permission being granted. To seek planning permission retrospectively is a valid course of action in the development process and should not be weighed against a developer in the assessment of the propriety of a proposal. As there has been no evidence that significant development beyond alterations to fences has commenced, this application has been treated as a prospective proposal.
- 9.33. The Council has adopted the practice of securing minor design alterations to schemes with the aim of encouraging the biodiversity of a site, particularly with regards to protected species such as bumblebees. A suitably worded condition will be attached to secure an appropriate number of bee bricks within the proposal in order to help meet the requirements of policies CP10 of the City Plan Part One and DM37 of the City Plan Part Two as well as SPD11.
- 9.34. Concerns have been raised that by granting permission for the proposed development a harmful precedent could be established. Each planning

application is assessed on its own merits and the decision made in this regard to this application would not automatically set a precedent either for or against similar development in the area. It should again be reiterated that the proposed development site is atypical of the area and represents alterations to an existing lawful dwelling that has become lawful due to the length of time it has been in situ; it should not be considered as a new subdivision of the land or establishment of a new planning unit.

- 9.35. Concerns have been raised that granting planning permission would lead to the conversion of the property into an HMO. Objectors are reminded that Brighton and Hove is covered by a city wide Article 4 Direction that prevents the conversion of a residential dwelling (C3) into an HMO (C4) by Permitted Development rights. Therefore, if the application site owners wished to change the use of the property from C3 to C4, this would constitute a change of use and would require planning permission.
- 9.36. Concerns have been raised that emergency services would not be able to access the new dwelling; however, it has been confirmed with a Building Control Surveyor that this is not the case. The access to the site is unchanged from the existing arrangement, which includes a driveway with a length of approximately 28m. Emergency Services use hoses with a length of 40m, so there are no reasonable grounds to suppose that the dwelling would be inaccessible.
- 9.37. There are several mature trees adjacent to the development site in the rear garden of no.47 Elm Drive. The Council Arboriculture Officer has assessed these trees based on photographs taken at the time of a site visit and does not consider them to be of sufficient quality to merit a Tree Preservation Order, and that they should not be considered as a constraint to development.
- 9.38. The street tree at the front of the site contributes positively to the visual amenity of the area and requires protection measures to ensure its health is safeguarded throughout the delivery and construction period. On-site tree protection measures for the street tree outside of the development site shall be secured by condition in the interest of safeguarding the biodiversity of the site, as well as visual amenity.

### **Conclusion**

- 9.39. For the reasons outlined above, the proposed development is considered to be acceptable in terms of appearance and the impacts it is anticipated to have on the amenities of local residents. Planning conditions in the interest of visual and residential amenity and biodiversity shall be included. For the foregoing reasons the proposal is considered to be in accordance with policies CP1, CP8, CP9, CP10, and CP12 of the Brighton and Hove City Plan Part One, and DM1, DM18, DM20, DM21, DM22, DM33, DM35, DM36 and DM37 of the City Plan Part Two.

## **10. EQUALITIES**

None identified.

## **11. COMMUNITY INFRASTRUCTURE LEVY**

- 11.1. Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. The exact amount of money owed, if any, will be confirmed in the CIL liability notice which will be issued as soon as it practicable after the issuing of planning permission.

## **12. CLIMATE CHANGE/BIODIVERSITY**

- 12.1. Biodiversity improvements including a bee brick shall be secured by condition within the approved development. The applicant has proposed the installation of a bat box on the north facing gable end which, if installed could provide biodiversity benefits in the local area. Tree protection measures shall be required in order to safeguard the street tree at the front of the site.