



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	28 April 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	<p>Councillors: Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman, C Theobald, Cobb and Caulfield</p> <p>Co-opted Members: Mr J Small (CAG Representative)</p>
Contact:	<p>Jane Clarke Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

	The Town Hall has facilities for wheelchair users, including lifts and toilets
	An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.
	<p>FIRE / EMERGENCY EVACUATION PROCEDURE</p> <p>If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions:</p> <ul style="list-style-type: none"> • You should proceed calmly; do not run and do not use the lifts; • Do not stop to collect personal belongings; • Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and • Do not re-enter the building until told that it is safe to do so.

AGENDA

262. 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.

263. MINUTES OF THE PREVIOUS MEETING

1 - 16

Minutes of the meeting held on 7 April 2010 (copy attached).

264. CHAIRMAN'S COMMUNICATIONS

265. PETITIONS

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

266. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 21 April 2010).

No public questions received by date of publication.

267. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 21 April 2010).

No deputations received by date of publication.

PLANNING COMMITTEE

268. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

269. LETTERS FROM COUNCILLORS

No letters have been received.

270. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

271. APPEAL DECISIONS

17 - 48

(copy attached).

272. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

49 - 50

(copy attached).

273. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

51 - 52

(copy attached).

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

275. REQUEST FOR A VARIATION OF S106 DATED 21 JULY 2004 SIGNED IN ASSOCIATION WITH BH2003/00751/FP

53 - 60

Report of the Director of Environment (copy attached).
Ward Affected: South Portslade;

276. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST

(copy circulated separately).

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

(copy circulated separately).

278. 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

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.

PLANNING COMMITTEE

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.

WEBCASTING NOTICE

This meeting may be filmed for live or subsequent broadcast via the Council's website. At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act 1988. Data collected during this web cast will be retained in accordance with the Council's published policy (Guidance for Employees' on the BHCC website).

Therefore by entering the meeting room and using the seats around the meeting tables you are deemed to be consenting to being filmed and to the possible use of those images and sound recordings for the purpose of web casting and/or Member training. If members of the public do not wish to have their image captured they should sit in the public gallery area.

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 Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Tuesday, 20 April 2010

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 7 APRIL 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

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

Co-opted Members Mr J Small (CAG Representative)

Officers in attendance: Jeanette Walsh (Head of Development Control), Hamish Walke (Interim Area Planning Manager (East)), Zachary Ellwood (Interim Area Planning Manager (West)), Peter Tulson (Principle Transport Manager), Alison Gatherer (Lawyer), Jane Clarke (Senior Democratic Services Officer)

PART ONE

246. PROCEDURAL BUSINESS

246a Declaration of Substitutes

246.1 Councillor Randal declared that he was substituting for Councillor Davey.

246b Declarations of Interest

246.2 There were none.

246c Exclusion of the Press and Public

246.3 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 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.

246.4 **RESOLVED** – That the public be not excluded from the meeting during consideration of any item appearing on the agenda.

247. MINUTES OF THE PREVIOUS MEETING

247.1 **RESOLVED** – That the Chairman be authorised to sign the minutes as a correct record with the following amendment to paragraph 243.11 as follows:

“RESOLVED – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 5 of the report and resolves *to grant* planning permission subject to the conditions and informatives set out in the report and as amended below”.

248. CHAIRMAN'S COMMUNICATIONS

248.1 There were none.

249. PETITIONS

249.1 There were none.

250. PUBLIC QUESTIONS

250.1 There were none.

251. DEPUTATIONS

251.1 There were none.

252. WRITTEN QUESTIONS FROM COUNCILLORS

252.1 There were none.

253. LETTERS FROM COUNCILLORS

253.1 There were none.

254. NOTICES OF MOTION REFERRED FROM COUNCIL

254.1 There were none.

255. APPEAL DECISIONS

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

256. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

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

257. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

257.1 The Committee noted the information set out in the agenda relating to Informal Hearings and Public Inquiries.

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

258.1 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determination of the application:

Application:	Site Visit Requested By:
BH2010/00235, Varley Hall Residences, Coldean	Development Control Manager
BH2009/03156, Wellsbourne Centre, Whitehawk	Development Control Manager

259. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST

(i) SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM POLICY

A. Application BH2009/03154, Gala Bingo Hall & Adjacent Car Park, 193 Portland Road – Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground floor level and part first floor level, new D1/D2 unit at ground level and 35 residential units above in part 2, 3, 4, and 5 storey building to include 14 affordable units. Provision of surface parking for 18 cars, cycle parking and landscaping.

(1) The Interim Area Planning Manager (West), Mr Ellwood, gave a presentation and highlighted the details of the application. He noted that late representations had been received about the scheme but felt that the issues raised were fully addressed in the report. The Environmental Health Team had requested that a construction and environmental management plan should be secured through a S106 agreement, and he confirmed that this was one of the Heads of Terms agreed with the applicant. One issue of objection was not dealt with in the report, regarding policy TR11 which dealt with safe routes to schools, but following clarification from the Road Safety Team it was apparent that the school opposite the site was not within a proposed or existing safe route to schools safety zone, and therefore the policy was not applicable to this school.

(2) Ms Singh spoke in objection to the application and stated that the proposals were an overdevelopment of the site. There was massive local opposition to what was a low quality development and local residents were concerned that the scheme provided no safe outside space, small flats and a lack of views for the new residents. The development would generate a large increase in traffic in the area, jeopardising the nearby school and adding to the already existing traffic problems in the area. Parking requirements for the development had been ignored and would exacerbate pre-

existing parking problems. The scheme would add to the social inequalities already experienced by the area and there was no evidence to suggest that the PCT wanted to use the surgery that would be provided on site.

- (3) Councillor Cobb asked for more details on the parking problems in the area, and Ms Singh replied that the problems were most acute when parents were dropping children off or picking them up from the school. There were issues of blocking and double parking, and several instances of parking rage. However, competition for parking spaces along the road was always high and this scheme would exacerbate this problem.
- (4) Ms Ferguson, Regional Development Director for Downland Housing Association spoke in favour of the application and stated that the aspiration was to provide new, sustainable homes for the community. The application had gone through an appeal process, and the scheme changed to adhere to the requirements of the Planning Inspector. There had been a reduction in height of the scheme, the size and proportion of the garden changed and larger roof gardens created. More efficient use of parking spaces had been utilised and dormer windows fitted to regularise views. An improved outlook onto Marmion Road had been created to increase daylight for residents. Ms Ferguson added that the Inspector had not criticised the scheme with regard to parking and believed that the affordable housing and community use of the site was supported by local residents, planning officers and traders on Marmion Road.
- (5) Councillor Smart asked whether there were any surgeries waiting to use the community provision and Ms Ferguson replied that surgeries were not able to sign up to any scheme until planning permission was in place. The developers were still talking to the PCT however and she was confident that two GPs surgeries were interested in the provision.
- (6) Councillor Smart asked if there was enough room for bespoke parking spaces on the carriageway as well as a bus stop and Ms Ferguson replied that there was.
- (7) Councillor Steedman asked why the scheme had not met Level Four sustainability standards. Ms Ferguson said that the developers had tried as far as possible to achieve this, but due to the orientation and roof space of the development there was no space for extra photovoltaic cells, and therefore Level Four could not be completely achieved.
- (8) Councillor Caulfield asked what alternatives there were for the community facility if it was not wanted by the PCT. Ms Ferguson replied that the PCT was very willing to work with the developers, and the community wanted a surgery in the area.
- (9) Councillor Cobb asked where the car showroom, which was currently using the site, would be relocated. Ms Ferguson replied that this was a business decision and would be up to the showroom owners.
- (10) Councillor Kemble spoke against the application as Ward Councillor, and stated that whilst he was in support of a well thought-out, positive development for the community, and whilst the developers had worked hard to achieve this, he did not

believe that this development achieved this. He was concerned with the height, scale and density of the scheme, and the lack of commitment from the PCT to the community element. There were traffic problems around school drop off and pick up times and he was not sure a GP surgery was the right use for this area. There was very strong local objection to this scheme and he asked the Committee to reject the application.

Questions/Matters on Which Clarification was Sought

- (11) Councillor Steedman noted that the sustainability policy had recently changed and asked why this application was not meeting the highest standards of SPD08. Mr Ellwood explained that the non residential elements of the scheme would meet BREAM “excellent”, as would the disability units. At the time the scheme was originally planned, the requirements were lower. The scheme met Level Three, however new sustainability measures had been introduced to meet Level Four. Whilst this was not quite achieved, Mr Ellwood was confident that the applicants had done all they could to reach level four within the constraints of the development and the financial viability of the scheme.
- (12) Councillor Steedman asked about the financial viability of the scheme as it did not meet level four and Mr Ellwood stated that whilst SPD08 was adopted guidance of the Council, it did not form part of the policy, and the policy did not refer specifically to Level Four requirements, therefore it was not essential that the applicants reach this level.
- (13) Councillor Wells asked whether there was any guarantee that the PCT would use the proposed GP surgery facilities. Mr Ellwood replied that the PCT would not sign up to any scheme without planning permission, however the scheme did receive general support from the PCT and from local residents. A GPs surgery on the site was part of the planning permission and would have to be provided by the applicant. If this surgery was not taken up by the PCT, the applicants would have to put in another planning application to change the use of this part of the scheme.
- (14) Councillor Caulfield noted that the Planning Inspector was not satisfied with the previous application for this site and was concerned about the loss of community space. She added that there was no guarantee that the GPs surgery would be taken up and asked what guarantees could the Council give that this part of the scheme would be retained for community use. She also raised concern over the size of the units. Mr Ellwood replied that there was no guarantee that a GPs surgery would be used here, but added that condition 13 tied this part of the scheme into medical use. He stated that as the decision makers, the Committee could decide what was most appropriate for this part of the scheme if a GPs surgery was not secured, and could retain it for other community use. He ran through comparisons of unit sizes between affordable and market units and noted there was very little difference between the sizes. Councillor Caulfield asked if condition 13 could be fulfilled before any other part of the scheme was built and Mr Ellwood suggested that this could be put forward as a motion if the scheme was approved.
- (15) Councillor Randall asked about the housing mix in the scheme as it appeared to be a compromise on the number of three bedroom units in the scheme. The Housing

Officer responded by highlighting the percentage mix of units and felt the mix was similar to the suggested guidelines from the Council. There was a slight shortfall in three bedroom units, but believed this was acceptable.

- (16) Councillor Cobb asked about the affordable housing policy and whether the housing mix should be up to 40% affordable housing or whether it should be at least 40% affordable housing. The Head of Development Control, Mrs Walsh, responded by reading the policy to the Committee, which stated where there was 10 or more units on site, the Council would negotiate with developers to secure 40% affordable housing.
- (17) Councillor Cobb asked whether the new development would have a larger footprint than the current development. Mr Ellwood agreed that it would be a slight increase in footprint size.
- (18) Councillor Cobb asked if the balconies overhung public areas, and whether the scheme met Lifetime Homes Standards as there was a lack of parking space. Mr Ellwood replied that policy H013 required Lifetime Homes Standards were met and condition 5 of the planning permission would ensure compliance with this. He added that there would be some oversailing of balconies onto the public highway, and a licence from the Council would be needed for this.
- (19) Mr Small from CAG asked for details about the northern boundary treatments. Mr Ellwood replied that there were no details yet available but would be part of the landscaping scheme agreed with officers.
- (20) Councillor Wells asked about the condition dealing with the drainage system on site. Mr Ellwood stated that following consultation, and concerns raised about drainage in the area, a report was required from the developers about how this would be dealt with and was made a specific condition to compensate for the lack of existing capacity in the network.
- (21) Councillor Theobald asked about parking provision on site and the Traffic Manager, Mr Tulson replied that there had been a parking study carried out by the applicants that showed the parking requirements for the site was adequately provided for.
- (22) Councillor Smart asked how far a reasonable distance was considered for parking on-street near to the development. Mr Tulson did not have the figures to hand but would respond to Councillor Smart's question.
- (23) Councillor Hamilton asked whether the parking in the area was pay to park. Mr Tulson replied that it was and that able-bodied patients would need to pay to park if attending the surgery.

Debate and Decision Making Process

- (24) Councillor Wells was concerned about the lack of guarantees from the PCT with regard to the community use element of the scheme. He was very concerned that if this failed, the scheme would come back to Committee with proposals for more flats in the community element, and this would then be a facility that was lost for the

community. He was not convinced the flats were fit for purpose and he would prefer to see family units on the site, given the housing problems in the city.

- (25) Councillor Theobald felt the scheme had improved since the last proposals, but not quite enough. She felt the scheme was still high and bulky and there was a continuing problem with parking provision. Parking was already difficult in the area. She agreed that there should be more family units and felt the site was overdeveloped.
- (26) Councillor Caulfield recognised that the Housing Team supported the application but felt that it would greatly affect the amenity of residents. Proper family housing would be more desirable on this site, and whilst there was some green space for new residents, this was not enough for families. The entire transport system around the area would be affected adversely and she did not believe the scheme had been properly thought-out.
- (27) Councillor Smart felt there was a need for housing in this area, which the scheme provided, but there was also a need to resolve the existing traffic problems, which the scheme would contribute to. He was concerned the PCT had not committed to the development and worried about the alternative uses for the site, which might not be appropriate.
- (28) Ms Walsh addressed the Committee and stated that whilst there was concern expressed about the end-user of the site, it was not unusual for the PCT to not commit to projects until all permission had been granted. Condition 13 of the planning permission would secure the use of the site and any change would be required to come back to the Planning Committee. In addition there were policies to protect the usage on site. The recent appeals process had considered many of the points that Members were raising and Officers were confident that these were dealt with in the report.
- (29) Mr Ellwood added that the overall density of the scheme had been reduced, although the Inspector had no issues with this. The quality and size of the units were conditioned to meet Lifetimes Homes Standards and the overall mix of units was considered to be acceptable. Again the Inspector looked at the quality of the units and felt they were sufficient in size.
- (30) Councillor Randall asked from where the perceived need for a GP surgery was derived. Mr Ellwood replied that the loss of the Bingo Hall needed to be compensated for under policy HO20. There was already D1 usage on site, and this was part of the considerations. The developers felt that a GP surgery was the most viable provision for this site. Ms Walsh highlighted that the PCT had commented on this in the report.
- (31) Councillor Caulfield was concerned that the PCT did not want to use the site and felt that this would not be progressed if the housing unit element was built first. She believed that the surgery issue needed to be resolved before the flats were built on the site. The Solicitor to the Committee, Ms Gatherer, asked Councillor Caulfield for clarification of what she was requesting and Councillor Caulfield asked for confirmation from the PCT that they would use the site before any work commenced

on site. Ms Walsh replied that it would fail the test of a reasonable condition to do this, and she felt it was adequately covered by the existing condition 13.

- (32) Councillor Caulfield asked how condition 13 would be met if no GP surgery wanted the development once it was finished. Mr Ellwood stated that planning laws could not guarantee an end user for a development, but the Committee could require that the entire development was finished before occupation of the residential units took place. Mrs Walsh added that the site was also protected by policy for community use. It was a windfall scheme because it also provided housing, but the site was guaranteed as community use under the existing policies of the Council.
- (33) A vote was taken and on a vote of 4 for, 0 against and 8 abstentions, Minded to Grant planning permission was refused.

148.2 **RESOLVED** – That Minded to Grant planning permission is refused for the reasons that:

1. The proposed development by reason of its arrangement and design would result in unacceptable levels of overlooking and loss of outlook, notwithstanding partial obscure glazing and the provision of privacy screens. The proposal is therefore contrary to Policy QD27 of the adopted Brighton & Hove Local Plan.
2. The proposed development by reason of its site coverage, massing and intensity of use would result in a development that fails to respond to its context and the housing needs of the City. The proposal is therefore contrary to policies HO4 and HO3 of the adopted Brighton & Hove Local Plan 2005.
3. The applicant has failed to demonstrate that the scheme has taken into account and provided mitigation for the cumulative travel demand created by the development, especially at peak times of activity in the area. Contrary to policy TR7 of the adopted Brighton & Hove Local Plan.

Note 1: Councillor Caulfield proposed that planning permission be refused on the grounds set out above, and this was seconded by Councillor Cobb. A recorded vote was then taken and on a vote of 4 for, 0 against and 8 abstentions, planning permission was refused.

Note 2: Councillors Caulfield, Cobb, Hamilton and Theobald voted for refusal and Councillors Hyde, Carden, Randall, Kennedy, McCaffery, Smart, Steedman and Wells abstained from voting.

(ii) MINOR APPLICATIONS

B. Application BH2010/00258, Land adjacent to Surrenden Holt – Construction of one and two storey residential dwellings.

- (1) The Interim Area Planning Manager (West), Mr Ellwood gave a presentation and highlighted the elements of the scheme. It was believed that the scheme would invade the special quality of the road and adversely affect the character of the area. The window to window relationship with the other houses was also not considered acceptable.

- (2) Dr Harrison, a local resident, spoke against the application and stated that it did not have support in the local area. Whilst he sympathised with the ecology and disability aspects of the scheme, felt this was the wrong project in the wrong area. Dr Harrison objected to the detail and extent of the building, the defoliation of the plot and the despoliation of an attractive area of Brighton. The felling of trees on the site was against the statements within the application. The key issues were that the application was outside of the natural building line for Surrenden Road, would create an unbalanced entrance on Surrenden Holt, and went against the character of the buildings already in the area. There was a serious loss of amenity for neighbours and a loss of privacy for the nearest residents.
- (3) Mr Harding, architect for the applicant, spoke in favour of the application and stated that the intention was to provide a high quality contemporary house with disability access and sustainability features. He believed the house respected the space and character of Surrenden Holt and as the building was dug in by one storey and stepped back, would create minimal overlooking for neighbours. The outlook for the house was focussed on the internal courtyard and there would be planting to break up the elevation. The building did not compete with existing buildings in the area and had been carefully designed to take regard of the comments from planning officers to ensure it would integrate into the local area. Mr Harding was unsure why the application was now recommended for refusal as he believed the design had sufficiently deal with all of the objections.
- (4) Councillor McCaffery asked why the design was not in-keeping with the area and Mr Harding replied that the design was to achieve the greatest volume for a family home that would not over-dominate the existing buildings on the street.
- (5) Councillor Smart asked why trees had been removed from the site and Mr Harding replied that the tree in question had in fact been diseased and the applicants had been instructed to remove it by the Council for safety reasons.
- (6) Councillor K Norman as Ward Councillor spoke against the application and stated that he did not object to the development, but did not feel it was in the right area. The building would break the natural line of the street and have a significant visual impact. Councillor K Norman was concerned about the loss of the garden and whilst he appreciated there would be no impact to traffic in the area, the development was out of character and incongruous and was not suitable for this area.

Questions/Matters on which Clarification was Sought

- (7) Councillor Theobald asked if the existing bus stop would have to be relocated if the application was approved and Mr Ellwood replied that it would not. Mrs Walsh reminded Members that the removal of the tree was not a material planning consideration.

Debate and Decision Making Process

- (8) Councillor McCaffery noted that the lower ground floor element of the scheme was obscured and had no objections to the building or its intrusiveness, but she did have concerns about the design in this particular area.
- (9) Councillor Theobald felt the design looked out of place and was in a prominent position on the road. She also believed there was very little amenity space left for the new occupiers.
- (10) A vote was taken and the Committee unanimously decided to refuse planning permission.

148.3 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 1 of the report and resolves to refuse planning permission for the reasons and informatives set out in the report.

C. Application BH2009/02158, Land rear of 11 Longhill Road, Ovingdean –
Erection of detached 2 storey, 4 bed dwelling.

- (1) The Interim Area Planning Manager (East), Mr Walke, gave a presentation to the Committee, detailing the elements of the scheme. He noted that a very similar scheme had previously been approved, but the applicant was not able begin work before the permission lapsed. There had been seventeen letters of local objection, but the principle of development had been established on site. He noted that there would be some overshadowing of 53 Ainsworth Avenue, however this was minimal, and number 53 was responsible for overshadowing most of its own garden during the day.
- (2) Mr Kendall, a local resident, spoke against the application and noted that two small bungalows had previously refused on the site and this had been upheld at appeal as the plot was too small. He believed the previously granted planning permission was inconsistent with the planning history on site and a 3 bed house was not appropriate in this space. He felt that a small bungalow would be more appropriate. Mr Kendall felt that large rear gardens and open space was a feature of the local area, which this development did not have, and highlighted that Council's were able to resist development on gardens and open space as new guidelines from the government supported this. He believed the development would be incongruous in a semi-rural street scene.
- (3) Mr Theobald, the agent, spoke in favour of the application and stated that the building was the exact size of the previously granted application. The Longhill area had several different designs and styles and suited unique developments. The site had been cleared in preparation for development with the previous permission, but this permission had lapsed before the applicant was ready to commence work. A metal roof had originally been proposed but this had been changed to a green roof to gain greater environmental benefits. The maintenance of this roof would be minimal. The development would have several sustainable features including better solar power, rain water harvesting and better insulation.

- (4) Councillor Cobb asked if any overshadowing studies had been conducted and whether the hedgerow would remain. Mr Theobald replied that the intention was always to remove the hedgerow at the rear part of the site. He had not conducted light studies.
- (5) Councillor Smart asked for details about the green roof and Mr Theobald stated there would be a white surround to hold in the roof and prevent it from slipping.
- (6) Councillor Smart asked what the difference was between a green and a brown roof and Mr Walke replied that brown roofs were more bio-diverse than green roofs, which were just formed of grass. Mrs Walsh stated that an SPD on Biodiversity was available and would be sent round to Members.

Questions/Matters on Which Clarification was Sought

- (7) Councillor Caulfield asked what materials were used on the balconies. Mr Walke replied that they were white render and oak balustrades. A green roof was incorporated with solar panels.
- (8) Councillor Theobald asked where the fourth bedroom was situated and Mr Walke replied that there were two bedrooms on the first floor and two on the ground floor.
- (9) Councillor Cobb asked if there was a high impact of overshadowing on number 53. Mr Walke replied that whilst no daylight/sunlight study had been conducted, it was evident that number 53 overshadowed its own garden for most of the day. There would be some extra overshadowing from this development, but the 45 degree rule had been used which gave measurements for overshadowing. If a development was under this line, as this one was, then the overshadowing was considered acceptable.
- (10) Councillor Hamilton asked if the 45 degree line took into account already existing overshadowing of a property and Mr Walke replied it did not. He stated that an application could not be refused because a neighbouring garden was already in shadow.
- (11) Councillor Hamilton noted that a late representation had come in referring to government guidance on "garden grabbing". Mrs Walsh stated that this representation could not be considered as the Officers and applicant had not had time to consider the arguments fairly or properly.
- (12) Councillor Smart asked if there were any other green roofs in the area and Mr Walke replied that he was not aware of any, but it had been approved by Officers as an improvement on the proposed metal roof.
- (13) Mr Small asked questions about the maintenance of the green roof and Mr Walke stated that conditions on the planning permission ensured that the roof would be maintained. Such roofs were typically low-maintenance. He added that the condition could be strengthened to ensure this.

Debate and Decision Making Process

- (14) Councillor Wells felt the house was incongruous in the local area and he would have preferred something more in-keeping.
- (15) Councillor Smart noted that number 53 had planted Leylandi which would create more overshadowing of their garden.
- (16) A vote was taken and on a vote of 8 for, 3 against and 1 abstention, planning permission was granted.

148.4 **RESOLVED** – That the Committee has taken in to consideration and agrees with the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report.

D. Application BH2009/02955, 45-46 North Street – Conversion of existing residential unit into 3 self-contained flats and 5 bedsit units together with extension to third floor. Minor alterations to existing shopfront to allow access to flats above (part retrospective).

(1) The Interim Area Planning Manager (West), Mr Ellwood, referred Members to the late list and details of the previous appeal decision.

(2) A vote was taken and members voted unanimously to refuse planning permission

148.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 1 of the report and resolves to refuse planning permission for the reasons and informatives set out in the report, and with the following amendment to reason 2:

“The scale and proportioning of the third floor extension to 46 North Street, together with the detailing and proportions of the fenestration treatment within the building, would result in the loss of the building’s descending order of scale at upper floor levels. This would adversely impact on the existing architectural hierarchy of the building which, as a result, would appear top heavy and out of scale. Furthermore, the levelling up of neighbouring building heights would have an unacceptable effect on the varied appearance of the street scene. The proposals would therefore be detrimental to the character and appearance of the host building and the wider street scene and fail to preserve or enhance the character or appearance of the Old Town Conservation Area. The proposal is thereby contrary to policies QD14 and HE 6 of the Brighton & Hove Local Plan and to advice contained within PPS5 ‘Planning for the Historic Environment’.

E. Application BH2010/00316, 36 Gloucester Road – Application for variation of condition 2 of application BH1999/00436/FP to allow opening hours 8am to 10pm Monday to Saturday.

(1) The Interim Area Planning Manager (East), Mr Walke, gave a presentation to the Committee highlighting the elements of the scheme. He noted that there had been

noise disturbance caused by the previous occupiers, but a recent lack of complaints to Environmental Health suggested that this issue had been resolved. There was currently a premises licence granted for the development that permitted the sale of alcohol until 21:30 hours Monday – Saturday. Mr Walke noted there was a wide mix of uses in the immediate area of North Laine.

- (2) Mr Braithwaite, a local resident, spoke against the application and stated that the applicant was making incremental changes to the previous permission to ensure an extension of hours. The premises closed regularly in the early evening and Mr Braithwaite did not believe there was a need to extend the opening hours. He felt the application would create more noise and pollution in the local area, and he felt that the opening times would be out of context of the rest of the area, which typically closed around 18:00 hours.
- (3) Councillor Theobald asked why the noise and pollution disturbance had not been reported to the Environmental Health Team and Mr Braithwaite replied that there was not any noise or pollution at the moment, but he felt the application would create these problems if approved.
- (4) Mr Handley, the applicant, spoke in favour of the application and stated that he ran a local business that bought locally produced food, created employment opportunities and benefited the local community. He stated that the premises was small and the outside area would remain operating as it was currently, which would reduce any noise impact. Alcohol was served only when customers were seated and only until 21:30 hours. He felt that the surrounding area was part of the city centre and was developing into a commercial and mixed use neighbourhood. There had been no objections from the Police or Environmental Health Team regarding this application.
- (5) Councillor Theobald asked for clarification on closing times and Mr Handley replied that the premises was closing early at the moment due to the season, but hoped to close at 22:00 hours later in the year.
- (6) Councillor Cobb asked what times the outside area would be closed and Mr Handley replied that it currently closed at 19:30 hours and he was happy for this to be part of the conditions.
- (7) Councillor Davey spoke as Ward Councillor against the application and stated that he hoped the café would be a success but did not believe this should be at the expense of the local residents. He agreed that the small business was an asset to the community but felt the relaunch of the premises as a bar/brasserie was inappropriate for the area and the creeping changes were worrying residents. The area was the largest traffic free area in the North Laine and Councillor Davey was concerned that it would become overdominated by evening drinking establishments. He believed the area needed to be protected, and if the Committee were minded to grant the application he asked that conditions be placed on the permission to include all tables and chairs to be brought in by 20:00 hours, and for condition four to be amended to include consideration of all noise emanating from the building.

Debate and Decision Making Process

- (8) Councillor Wells also expressed concern for the creeping level of change at this establishment and felt that there would be disturbance caused by people drinking and smoking outside the premises.
- (9) Councillor Cobb noted that most places in the vicinity closed at 23:00 hours and was happy for this premises to open later. She felt that the outside area needed to close by 19:30 hours and with a condition that all tables and chairs be removed and cleared by 20:00 hours.
- (10) Mrs Walsh stated that there were enforcement difficulties with regard to including all noise emanating from the building and noted that the owner of the premises stored outside tables and chairs inside the premises. If the outside area was therefore closed at 20:00 hours, this would in effect be the closing time of the business. She believed these conditions would be unreasonable.
- (11) The Chairman stated that these two conditions would not be included as part of the permission.
- (12) A vote was taken and on a vote of 7 for, 4 against and 1 abstention, planning permission was granted.

148.6 **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 to grant planning permission subject to the conditions and informatives set out in the report.

F. Application BH2009/02158, 7 Station Road – Erection of two storey outhouse, incorporating double garage and parking bay to ground floor and home office to first floor (roofspace) over.

- (1) The Interim Area Planning Manager (West), Mr Ellwood, gave a presentation and highlighted the elements of the scheme. He noted that concerns over loss of outlook had been raised by residents but felt there was minimal impact in this regard. There was no loss of privacy from this application. A porous hard-surface had been suggested.

Questions/Matters on Which Clarification was Sought

- (2) Councillor McCaffery asked about the view from Station Road and Mr Ellwood confirmed that the development would not be prominent as it was set behind the existing boundaries.
- (3) Councillor Theobald asked if the willow trees at the front of the development were preserved via TPO and Mr Ellwood stated they were not.

Debate and Decision Making Process

(4) A vote was taken and on a vote of 9 for, 0 against and 2 abstentions planning permission was granted.

148.7 **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 grant planning permission subject to the conditions and informatives set out in the report.

260. 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

260.1 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determination of the application:

Application:	Site Visit Requested By:
BH2010/00235, Varley Hall Residences, Coldean	Development Control Manager
BH2009/03156, Wellsbourne Centre, Whitehawk	Development Control Manager

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

261.1 **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. 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 they should in exceptional circumstances be reported to the Committee. This is in accordance with resolution 147.2 of the then Sub Committee on 23 February 2006.

The meeting concluded at 6.20pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

	Page
A. WESTBOURNE WARD	19
<p>Application BH2008/02488, 121 Portland Road, Hove. Appeal against refusal to grant planning permission for installation of extract equipment passing through adjacent shop, exiting at light well and terminating above dormer roof level (Delegated Decision) APPEAL ALLOWED (copy of the letter from the Planning Inspectorate attached).</p>	
B. GOLDSMID WARD	23
<p>Applications BH2008/03640 & BH2009/01464, Park House, Old Shoreham Road, Hove. Appeal against refusal to grant planning permission for redevelopment of the site to provide a mixed tenure development of 72 residential units. (Committee Decision) APPEALS DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
C. HANGLEON & KNOLL WARD	41
<p>Application BH2009/00864, 116 Goldstone Crescent, Hove. Appeal against refusal to grant planning permission for construction of a three storey building with flat roof comprising 1 one bed and 2 two bed flats, to include 3 roof lights, cycle store and refuse facilities.(Committee Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
D. WITHDEAN WARD	45
<p>Application BH2009/02653, 7Whitehorn Drive, Brighton. Appeal against refusal to grant planning permission for interior and exterior remodelling of dwelling to form additional accommodation, garage and attic room. (Committee Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
E. QUEEN'S PARK WARD	47
<p>Application BH2009/01344, 53 Windmill Street, Brighton. Appeal against refusal to grant planning permission for a dormer loft extension. (Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	



Appeal Decision

Site visit made on 4 March 2010

by **Megan Thomas BA Hons in Law,**
Barrister

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:
30 March 2010

Appeal Ref: APP/Q1445/A/09/2111612 121 Portland Road, Hove, East Sussex BN3 5QY

- 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 Howard Hamilton against the decision of Brighton & Hove City Council.
- The application Ref BH2008/02488, dated 22 July 2008, was refused by notice dated 4 March 2009.
- The development proposed is the installation of extract equipment passing through adjacent shop, exiting at light well and terminating above dormer roof level.

Decision

1. I allow the appeal, and grant planning permission for the installation of extract equipment passing through adjacent shop, exiting at light well and terminating above dormer roof level at 121 Portland Road, Hove, East Sussex BN3 5QY in accordance with the terms of the application, Ref. BH2008/02488, dated 22 July 2008, 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 development hereby permitted and the installation of any extract equipment associated with it shall not be carried out except (i) in complete accordance with the details shown on the submitted plans, numbered 101, 20, 21 & 22 and the manufacturer's specification and declaration and (ii) in complete accordance with the specifications and mitigation measures contained in the noise report dated 5 November 2008 by Acoustic Associates and the addendum noise report dated 17 August 2009 by Acoustic Associates Sussex Ltd. The duct work and extract equipment shall thereafter be retained as installed and operated in accordance with the manufacturer's instructions.
 - 3) Breakout noise from the extract duct within the light well shall not exceed 35dBA with a maximum level at the 63Hz octave band of 33dB measured at the nearest openable window within the light well.
 - 4) No cooking and no use of the extract equipment shall take place at 121c Portland Road outside the hours of 0800 and 2300 daily.

Procedural Matters

2. I have used wording very similar to the description of development given on the Notice of Decision rather than the description written on the planning application form as I consider it to be more precise. I have used the word 'light well' rather than 'service well' as I consider that it better describes the function of the well.

Main Issues

3. The effect of the proposal on the living conditions of residents of nearby residential units with regard to noise, vibration and light.

Reasons

4. The proposal relates to a vacant ground floor hot food takeaway unit situated at 121c Portland Road in a large building comprising retail outlets in Portland Road with two floors of residential flats above. A new extraction duct is sought for the takeaway unit and it is proposed to run it through the ceiling void at 121c Portland Road into the ceiling void at 121b Portland Road and out into the light well which is shared by shop units 121a and 121b Portland Road and some of the residential flats above.
5. There are several windows which look into the light well. However they are predominantly WC, shower and bathroom windows with obscured glass. The ducting would be attached to the outer wall of the light well which has no windows in it. The duct would be stainless steel and rectangular measuring 200mm by 400mm with a bottom silencer and anti-vibration fixings. The hook shaped grill to the open air would be about 1.3m above the nearest window openings to the uppermost flats.
6. The dimensions of the ducting and its location as it passes up the light well indicate that the amount of light it would block from those windows would be negligible. I do not therefore consider that the living conditions of occupants of the flats with fenestration opening into the light well would suffer any undue loss of light to those windows by reason of the proposed development. I was able to confirm this on my site visit having had access to some of the windows which open onto the light well.
7. In respect of any undue noise, vibration or any disturbance which might arise from the development, I am satisfied that this can be overcome by the imposition of appropriate conditions. As noise predictions are based on a particular specification of cooker hood, fan, filters, silencers and other integral parts, it is necessary to specify both the duct work and associated extract equipment is caught by any planning condition. In the interests of proper planning and to ensure that there is no unacceptable disturbance from the use of the extraction system, I have imposed a condition which requires that the duct work and associated extract equipment is installed in strict accordance with the submitted plans and the two noise reports and is thereafter retained as installed and operated in accordance with the manufacturer's instructions.
8. In relation to any noise from the proposed development as it passes under the floors of residential flats, the attenuated duct-borne fan noise would have to

break out of the duct work into the duct enclosure before travelling through the separating floor into the residential areas above. Taking into account, the likely attenuation performance of materials used in the flats' floors and shop ceilings, it is unlikely that fan noise would be audible in the flats above. I do not therefore consider it necessary to require additional sound insulation measures to be taken in relation to the duct work which passes underneath residential flats. However, having noted the evidence of the Council's Environmental Health Officer that provided it is maintained, mechanical equipment need not get to a level where it causes disturbance, condition 2 requires the duct work and extract equipment to be retained as installed and operated in accordance with the manufacturer's instructions. This would ensure that any noise or vibration which might otherwise arise through deterioration of the equipment is avoided.

9. In order to ensure that flat residents are not unduly disturbed by noise, I have considered the evidence of background noise recorded on a Friday afternoon through to a Monday morning and I consider that a condition which requires breakout noise from the ventilation duct within the light well to not exceed 35dBA with a maximum level at the 63Hz octave band of 33dB measured at the nearest openable window within the light well to be sufficient to ensure that there is no undue disturbance.
10. However, I consider it is important to ensure that there is no use of the extract equipment during the very late evening and early hours of the morning given the background noise levels recorded at these times and therefore I have imposed a condition which restricts cooking hours to between 0800 and 2300 on a daily basis. The Council's suggested condition was that the use and opening hours of the takeaway should be restricted to between 0800 and 2230. I have not been told whether the takeaway use has any restriction on its use through a planning permission or any other mechanism but from the information I have, which includes the background noise readings, it is sufficient in my view to ensure that any cooking ceases by 2300. Furthermore, in order to protect amenity, the condition also specifies that the extract equipment shall not be used outside the hours of 0800 and 2300.
11. Having regard to the conditions imposed, I find that there would be no undue harm to the living conditions of occupants of nearby flats by reason of noise or vibration.

Other Matters

12. Given the position of the outlet above the light well, I am satisfied that any fumes and odours would not cause an unacceptable odour intrusion. Whilst there may be some use of the adjacent flat roof as an amenity area, there is insufficient evidence to convince me that odours would interfere with enjoyment of that use.
13. The Council have raised the possibility of there being harm to flat residents through a perceived reduction in living standards. Whilst residents may be aware of the existence of the ducting, I am not persuaded that they would consider their living standards to have been reduced in any way by dint of the development.

Overall Conclusion

14. I conclude that the proposal would not result in undue harm to the living conditions of the occupants of nearby residential flats by reason of noise, loss of light or odour and that policies QD27 and SU10 of the Brighton & Hove Local Plan 2005 are not breached. I allow the appeal and grant conditional planning permission.

Megan Thomas

INSPECTOR



Appeal Decisions

Inquiry held on 2, 3, 4 & 5 March 2010

Site visit made on 5 March 2010

by **John Papworth** DipArch(Glos) RIBA

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:
1 April 2010

Appeal A: APP/Q1445/A/09/2111696

Park House, Old Shoreham Road, Hove, East Sussex BN3 6HU

- 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 Hyde Martlett against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03640, dated 20 November 2008, was refused by notice dated 2 March 2009.
- The development proposed is redevelopment of the site to provide a mixed tenure development of 72 residential units.

Appeal B: APP/Q1445/A/09/2117222

Park House, Old Shoreham Road, Hove, East Sussex BN3 6HU

- 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 Hyde Housing Association (Hyde Martlett) against the decision of Brighton & Hove City Council.
- The application Ref BH2009/01464, dated 17 June 2009, was refused by notice dated 11 November 2009.
- The development proposed is redevelopment of the site to provide 72 residential units.

Application for Costs

1. At the Inquiry an application for costs was made by Hyde Martlett against Brighton & Hove City Council. This application is the subject of a separate Decision.

Decisions

2. I dismiss both Appeal A and Appeal B.

Main Issues

3. A main issue in both appeals is;
 - The effect of the development on the character and appearance of the area including the park and neighbouring buildings.
 4. In addition, in Appeal A only;
 - The amount and quality of play space.
 - The amount and quality of amenity space.
 - The effect of the development on the aims of policies that promote sustainable forms of development.
-

Reasons

Character and Appearance

5. The existing buildings on the site are to be removed and as they are neither listed as being of architectural or historic interest nor sited within a conservation area, that may occur without further consent within the planning regime. However, I consider it appropriate to have regard to the contribution that the buildings and spaces around them make to the character and appearance of the area. Park House is attractive and distinctive and its siting within a westward view along Old Shoreham Road plays a part in the setting of Hove Recreation Ground and provides an urban edge to the wide expanse of that main road. Any new structure on this part of the site should, in my judgement, provide that edge and be a feature of interest.
6. The other buildings approaching the corner with Goldstone Crescent from both directions are less attractive and are poorly related to the urban grain, as well as to the Hove Park setting. The strong lines of the Hove Park Manor block of flats is lessened as the corner is approached and the turn into Old Shoreham Road is weak and poorly accomplished; the need in my opinion here is not for further open space but for a positive corner of built form to enclose the wide open spaces to the west. The failings of an open edge are well demonstrated by the development on the retail park opposite the south end of Hove Park. I attach limited weight to the 'dip' referred to by the appellant as variety in roofline can be welcome, whether up or down. I find the contribution of Park House positive but that of the remainder of the built form on the site negative.
7. The site is within the urban area and is previously developed land. Whilst the bus route along Old Shoreham Road is only hourly in each direction, another more frequent service is within walking distance to the east and a 'Metro' service of six buses an hour crosses Old Shoreham Road to the west. Hove mainline station is close-by to the south. I consider this the type and location of site that is suitable for residential re-development to a higher density in order to make the best use of land, to reduce pressure on less well-suited or countryside sites and to contribute to the provision of the supply of housing in the city, all in line with Local Plan Policy QD3 and advice in Planning Policy Statement 3 "*Housing*". Nevertheless, that statement of Central Government policy makes clear that there is a need for housing to be of a high quality, well designed and which is well integrated with, and complements the neighbouring buildings and the local area.
8. There is variety in the local area although particular character areas have been identified in the Council's appraisal. There is low density generally to the north, made up of individual houses, but this tightens in the vicinity of the site by the development of the neighbouring blocks of flats. On the south of Old Shoreham Road there is the more tightly developed area including Fonhill Road. In architectural and townscape terms I find the appeal site to have little relationship with the lower density housing to the north, separated as it is by the flat blocks, and that the relationship with housing to the south of Old Shoreham Road is reduced by the width of the road and the strong sense of similarity displayed within that group of buildings. I see no compelling reason for the treatment of the appeal site to be similar to the treatment of either of

- the adjoining building forms as such, but that there is a need for the new building to mediate between the separate characters and appearances.
9. Hove Park is a dominant feature of the area and new development should respond to it. The recent Orchard House and City Park to the west of that open space is of particular interest as I consider it successful. However, that development is of a significant size and spread over a number of blocks, some linked. To a great extent I find this development to form its own setting and as such can succeed without needing to respond to the surrounding townscape to the same extent as the appeal site should. Were that other development to be of a single block I am of the view that it would risk appearing incongruent.
 10. One further observation before I consider the detail of the proposals; it was stated by a representative of local residents that the appellant's photomontages incorrectly continued to show trees on the site which would be removed. There was some discussion over whether this was the case and whether trees to the rear of the buildings in those views, either on Hove Park or Hove Recreation Ground, would occupy the same space above and beyond the building. It was clear at the site inspection that from the viewpoints chosen those further trees would be insufficiently tall to do this. I shall therefore take account of this when considering the information on the photomontages.
 11. **Scheme 1, Appeal A.** In plan form I consider it appropriate that the building be sited as proposed, closer to the road at the junction and leaving less open land to its south and west boundaries. Both the Old Shoreham Road and Hove Park provide enough open space to compensate for this move and the resulting corner location would improve on the weakness that I have previously identified with the present building. The proposals to bring the building forward in relation to Hove Park Manor is also welcome; whilst I am not persuaded that the 'bookend' needs to be wholly covered, doing so creates no harm in my opinion and the west facing block would relate well to the line of Fonthill Road, making a link with that strong building form.
 12. In the easterly direction I consider the location of the corner at the junction of Hove Park Road and the main road correct in re-establishing a feature to replace Park House in the view along the road, and the slight angle part way along the south side, in order to achieve a right angled south west corner and yet still follow the road, would add interest. I have studied the Figuregram in the Council's proof of evidence and find that whilst there would be change, it would not be harmful, the 'u' shaped block would form a coherent perimeter to the wider urban block, appropriate to this margin with the two roads and the recreation ground. The placement of the block would, I consider, allow a spacious inner courtyard and the multiple circulation cores would limit the depth of the blocks, providing the maximum of external wall and light to the flats.
 13. That acceptable plan form would be translated into a five storey block stepping twice on the Old Shoreham Road elevation, appropriate in my view to respond to the rise in the ground level. The five storeys would be arranged as a ground floor likened to a plinth, forming a base for the building and recognising the way in which ground levels underpin the accommodation at Hove Park Manor on one side and Fonthill Road on the other. There is no need to do likewise

with ground levels on the appeal site, but to differentiate this level with a set back and shadows I find attractive. Above that would be three largely repeating levels of accommodation with themes of projecting render, balconies, a lively disposition of windows and adjoining coloured panels with projecting *brise soleil* topped by a firm line of masonry. These levels would be well-articulated and pleasing additions to the street scene on all elevations.

14. Above that level would be a mostly glazed top storey, set back and having a varied but flat roof-line. The appellant had shown a relationship between these undulations and the rhythm of sloping roofs on housing to the south but I find this link tenuous and not readily appreciated. The variety would break up the line of the top, but would, along with the varied glazing and varied vertical wall treatment, introduce what I view as an over-strident, inharmonious mixture of planes, colours, textures, possibly reflectivity, and lighting effects all at odds with the well-ordered repetition below. I find the photomontages '*view north along Fonthill Road*' and '*view east along Old Shoreham Road*' particularly telling in this connection. The first shows a prominent corner block at the top of the building which appears to me isolated and not well integrated with the remainder of the top storey in the way that the lower but less isolated version at the east end would be. Although I welcome the introduction of a corner feature, I do not consider this upper part well formed, tending to draw the eye upward and negating the effect of the corner at ground level and just above, where it is needed to enclose space. The second view shows expanses of flank elevation of the higher elements where the attractive and ordered stepping of the lower levels is reduced to an unattractive mixture of shapes and finishes. This would again draw the eye and erode the enclosing value of the south elevation along the main road.
15. There are identified long views across the park from near Park View Road (photo page 6) and along the Old Shoreham Road (photo page 7) from near the Sackville Road crossing. There was much evidence over the relationship with the heights of adjoining buildings, the existing flats especially. In these views the eye line would be somewhat elevated compared with the closer photomontage views and the effect of the height of the building, as expressed by the undulating top storey, would be less apparent, often filtered by nearer trees or subsumed within the background. Within either the expanse of the park or the clutter and activity of Old Shoreham Road, I do not identify that real harm would be caused to these views, notwithstanding my opinion over the nearer views expressed above.
16. In conclusion with regard to Scheme 1, I find attractive and appropriate placement and elevational treatment up to the parapet level but that attractiveness would be undone by an over-prominent and over-assertive top storey, tending to draw the eye and introduce too many shapes and surface finishes at odds with the treatment of the floors below. The resulting building as a whole would, in my judgement, cause harm to the character and appearance of the area in short to medium views, contrary to the requirements in Local Plan Policy QD1 regarding scale and height, together with architectural detailing, and Policy QD2 on the impact on the skyline, which, with regard to the specific requirements of Policy QD4, I do not consider as being restricted to long views and which would be evident due to the limited backdrop of trees in close views.

17. **Scheme 2, Appeal B.** This was promoted to answer the Council's reasons for refusal of the earlier scheme and contains both similarities and differences. In plan form there would be a similar disposition of built form along the Goldstone Crescent and Old Shoreham Road frontages, and which I have found appropriate. There would be an additional section of building extending to the north alongside Hove Park Road, bridging over the vehicular access. This additional structure allows the total accommodation to remain at 72 flats while allowing a reduction in height elsewhere. I do not object to the addition, it would complete the 'u' shape and would not be so close to Gannet House as to cause harm within the sylvan setting close to Hove Recreation Ground.
18. The reduction in height is achieved by taking away one of the storeys between the 'plinth' and the roof storey at the east of the site and round to near Gannet House, and by reducing that top storey in actual height. I consider that the reduction in overall height at this end reduces the beneficial effect of the feature to replace Park House in westward views and diminishes the presence of the corner in the wider street scene. The change to the roof storey would result in a weaker, more horizontal line which, whilst more restrained and whilst having lost the mixture of shapes and finishes that I find so disruptive in the first scheme, has replaced it with a feature that I find over-recessive, lacking in interest and bland, and for those reasons, also at odds with the quality of the treatment below.
19. The corner of Goldstone Crescent and Old Shoreham Road would change from a striking vertical line of glazing and panels that turns the corner, to an indented, more horizontal set of balconies which I consider less successful in forming that important feature in views along Fonthill Road and Old Shoreham Road. These balconies would be used for sitting, with furniture and the like, and I acknowledge the control that the appellant feels able to exercise over that use and any paraphernalia. In the main blocks in Scheme 1 any items would be mostly against a background of the building, but in this later scheme they would be prominent and possibly seen in silhouette, causing a distraction to the view in my judgement.
20. One other change, and to my mind a most unfortunate loss, would be the reduction in the stepping form along the main road, there being only the single step at the slight change in direction. That results in the upper block, nearest Hove Recreation Ground, appearing more dominant despite its reduced height to the east, and reduces the degree to which the elevation responds to the smaller scale of blocks to the south of the road and the topography of the area.
21. My opinion regarding long views is little changed with this scheme, the reduction in the upper extent of the building on the west facing facade and around the corner together with the alteration to the top storey treatment would not cause any greatly different effect to that which was acceptable before.
22. In conclusion with regard to Scheme 2, I find that in the process of changing the top storey and the overall height of parts of the scheme, other changes have been introduced that I consider cause visual harm to the character and appearance of the area, and that as a result the revised scheme fails to accord with the aims of the same Local Plan policies which seek to ensure the quality of new development and to control its effect on the area.

Play Space

23. The first scheme provided an area designated for occasional play that was also the last five spaces at the closed end of the car park. The appellant put forward a plan showing how this area could be treated to reinforce the dual role and aid safety. That dual role appears in the Council's Sustainability Checklist, a required document in this planning application, implying to me that this is regarded as a desirable feature to make best use of land and not sterilise areas of car parking when it is not in use. Be that as it may, I can see conflict if this theory is not put into practice carefully.
24. I acknowledge that there may be developments where it can be all but guaranteed that the last few car park spaces would be little used, or a management regime could ensure that. The proposal here is allocated spaces, but that may not be readily linked to those occupiers who take their vehicles away for long periods during the day, and that situation would be changing as people move dwelling or job, or their lifestyle changes for some other reason. However desirable as a theory, I consider the space of little value to either car park users or children if cars were in the way and at risk of damage. Added to this is the need for care in manoeuvring. The checklist seeks 'to provide flexible space which can accommodate other uses outside the areas of peak parking demand' and asks 'what percentage of car parks will be designated to be flexible use (for example play space....when not being used for parking)'. I am not persuaded in this scheme that, as proposed, the car parking would be 'not used' sufficiently to be suited to this dual role over such a small area.
25. The second scheme overcomes this by designating a separate and distinct area, as a Local Area for Play, and at no loss of car parking space or other adverse effect on what is essentially the same plan layout in this part of the site. It is the case therefore that this layout can be substituted for that in the first scheme by condition without other undue effects, overcoming any objection that might be derived from the aims of Local Plan Policy TR7 of not increasing the danger to users of adjacent pavements, cycle routes and roads.
26. I turn now to consider the role that Hove Recreation Ground and Hove Park can take in the provision of play space to future occupiers of this development. The first is not equipped but is the more accessible without need to cross a busy road, and does provide large areas of grass and open air. The second is well equipped and extensive, providing for a range of leisure and play uses. The access is across Goldstone Crescent but there is a light controlled crossing at the junction near the site. I consider both well placed to provide for the needs of a range of occupiers of the appeal building, not just children's play. Whilst there was evidence of a high level of use, and there is an apparent under-provision of open space and play space in the city as a whole, I have been directed to no definitive evidence that the two areas in question operate at such a high level of use as to preclude use by the future occupiers.
27. Local Plan Policy HO6 states that new residential development will not be permitted unless the requirement for outdoor recreation space, generated by the development, is suitably provided, and goes on to say that where it is not practicable or appropriate for all or part of the outdoor recreation space requirements to be provided on site, contributions to their provision on a suitable alternative site, may be acceptable. The Council has published draft

guidance in SPG9 "A Guide for Residential Developers on the Provision of Outdoor Recreation Space". I find it not only possible to provide an area for play on-site, but desirable. It would allow access to an area for play and for parents or guardians to meet for short periods close to home at times when a trip out to the nearby parks might not be possible or convenient. Policy HO6 therefore can be satisfied in providing part of the requirement on-site, and should be by condition in scheme 1.

28. The appellant has put forward an Agreement pursuant to Section 106 of the 1990 Act which offers a contribution to off-site provision. That is provided for in Policy HO6 and it is my view on the evidence that within the large expanse of Hove Park in particular, but not discounting possible use in the recreation ground, improvements could be made to provide additional capacity and improve quality. I attach full weight to this provision in furthering the aims of the policy and draft Supplementary Planning Guidance in ensuring facilities are available for the new occupiers of the development without adversely affecting the existing users of the facilities. In conclusion on this main issue I consider the on-site provision in Scheme 2 necessary and desirable and that this should be placed also in Scheme 1 to replace a dual use that I find to be not fully resolved and hence unacceptable, and that the aims of the Local Plan policies and draft guidance can be satisfied by way of contribution to off-site provision in addition.

Amenity Space

29. This relates to four flats in the first scheme, Units 49, 62, 68 and 72, which are wheelchair accessible dwellings. Unlike other flats in the scheme, the balconies to these flats are accessible only off a bedroom. I acknowledge that all balconies in the scheme are generous and hence readily usable as an extension of the living space of the flat, and it is for that reason that I consider it appropriate for the balconies to these flats to be accessible from the living room. The provision of a Juliet balcony to these living rooms would be a benefit, but would not be of the same value. I do not discount the possibility of full occupation of these two bedroom flats in which case access through a bedroom only would be a distinct disadvantage to family members.
30. The revised layout presented by the appellant at the Inquiry satisfactorily overcomes this failing without outward effect, and in addition provides natural light to the kitchen area, admittedly at the expense of the bathroom. Unlike representation from a third party, I do not regard a 'land-locked' bathroom as a serious problem and, in a flat development, outside wall and natural light should be reserved for rooms requiring it. I see no reason why, were all other matters acceptable, this revised layout should not be substituted by way of condition, ensuring compliance with the aims of Local Plan Policy QD27 in providing an acceptable standard of amenity to future users and Policy HO5 as it has been shown that private useable amenity space can be provided which is appropriate to the scale and character of the development.

Sustainability

31. This was a reason for refusal in the first scheme and appears to have been overcome in the second scheme by reason of the proposed attainment of Level 4 of the Code for Sustainable Homes. The Statement of Common Ground
-

agrees Level 4 for the first scheme also, albeit that this is additional to the Level 3 that formed part of the application. A condition was put forward by the Council to secure this provision and on that basis no evidence was submitted with regard to the fifth reason for refusal in Appeal A. The appellant stated during the Conditions session at the Inquiry that this reference in the Statement of Common Ground was an error, that the first scheme was intended to be Level 3 as applied for and that the higher level is not required by policy.

32. I did not have the information that I would need to determine this matter and I made clear that this would require formal evidence open to cross-examination. The appellant decided then that they were able to aspire to Level 4 and a form of words for a condition was agreed that provided for this. I am satisfied that a framework could be in place to ensure compliance with Local Plan Policy SU2 that development demonstrates a high standard of efficiency in the use of energy, water and materials, and note that the supporting text refers to the BREEAM analysis which has, for residential buildings, been superseded by the Code for Sustainable Homes.

Other Considerations

33. I have heard no compelling evidence that the proposal to develop 72 flats as such, or to accommodate the numbers of people indicated by that number of flats of the size proposed, would be harmful. I noted, along with both parties that were at the site inspection, that posters displayed in the windows of houses opposite expressed an objection to 72 flats, although again I acknowledge that the evidence of their representative, and the written representation to both the Council at the time of the original applications and to the Planning Inspectorate extended beyond just numbers. My objections in each case are to the effect of part of the built form proposed to accommodate the 72 flats and not to that number. The differences between Scheme 1 and Scheme 2 indicate well the ability to alter that built form.
34. One possible manifestation of numbers that has been objected to by residents and the local Councillor is the effect of parking. The development would provide only a part of the possible demand for parking space, in line with policies aimed at reducing dependence on the private car and making best use of land. Spaces that are provided would be allocated and some flats would be let without the benefit of on-site parking. A car club would be formed with space secured by the Agreement. The appellant has amended the detail of the parking appraisal of surrounding roads in response to later representation but the conclusions are stated as remaining the same. I noted the restrictions in nearby roads designed to discourage commuter parking, by a ban during one hour at mid-morning, and also to ensure a turnover of spaces for users of the park by various time limits. Peak demand from the proposed development would tend to be at the non-commuter times. I concur with the views of the Council and the appellant that, in line with Central Government and local policy, the proposed level of parking provision should not be a reason to refuse permission in these cases.
35. There was information on the housing land supply in the city. From the latest figures it appears that the Council are not able to demonstrate a five year supply of specific deliverable sites to meet the requirements of the South East

Plan and as set out in PPS3. The requirement of the South East Plan is anticipated to be met by adding in an allowance for small unidentified (windfall) sites, and large windfall sites could boost this supply further. Paragraph 59 of the Central Government guidance states that allowances for windfalls should not be included in the first 10 years of land supply unless the Council can provide robust evidence of genuine local circumstances that prevent specific sites being identified. Then the historic windfall delivery rates may be considered, as has been the case in the Council's *"Housing Delivery Technical Background Paper"*. The advice produced by The Department for Communities and Local Government *"Demonstrating a 5 Year Supply of Deliverable Sites"* sets out the requirements for taking account of unallocated sites. I am not persuaded that the reasons put forward by the Council amount to the genuine local circumstances, being a reference to a constrained urban area, although this matter should receive a fuller consideration by relevant parties during the plan-making process. On the information before me and a need to rely on windfall sites I consider it right to consider favourably an application for planning permission for housing, but having regard to policies in PPS3, the Development Plan and other material considerations. Of those matters specifically referred to in paragraph 69 of PPS3 I find the mix acceptable, the site suitable and the development of 72 dwellings appropriate in itself and thus making good use of land, better than the 60 dwellings assumed in the updated *"Strategic Housing Land Availability Assessment"*. However, as previously stated paragraph 16 sets out the need for housing to be of a high quality, well designed and which is well integrated with, and complements the neighbouring buildings and the local area, and it is my findings in the first main issue that neither scheme satisfies this requirement. I shall carry out the planning balance in my concluding paragraph.

Conclusions

36. The site is in a sustainable location, is suitable for development at the density proposed, and flats are a part of the character and appearance of the area. The plan form and main building heights are acceptable in this location, as are the architectural treatment and use of materials of the ground floor and in general, the main floors of accommodation. The matters of play space, amenity space and sustainability can be dealt with by condition and the Agreement. However, Scheme 1 utilises an incongruous top storey building form which would cause visual harm in middle and near views and would not relate well to the surrounding townscape. Scheme 2, whilst addressing certain aspects of the earlier design, introduces new but also incongruent features while removing some attractive aspects of Scheme 1. The result is that neither scheme is of the standard that this prominent site deserves. The provision of affordable housing would be welcome and the development would assist in the making-up of a shortfall in the supply of housing land but these considerations do not outweigh the harm that these particular proposals would cause. The development would not accord with the requirements of the Development Plan nor Central Government planning policy that housing be of a high standard of design. For the reasons given above I conclude that both appeals should be dismissed.

S J Papworth
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

R Williams he called	of Counsel
G Bennett BA MA DipTP IHBC	Senior Planner (Conservation) Design and Conservation Team, Environment Department, Brighton & Hove City Council
C Wright BA(Hons) MA MRTPI	Planning Officer Development Control Team, Environment Department, Brighton & Hove City Council

FOR THE APPELLANT:

H Townsend she called	of Counsel
L Carter BA(Hons) DipTP MRTPI	Director Lewis and Co Planning South East Limited
A Parsons DipArch RIBA	Pollard Thomas Edwards Architects
A French BEng(Hons)	Project Manager The Civil Engineering Practice

INTERESTED PERSONS

Dr Duncan Barker Cllr J Bennett Valerie Paynter	On behalf of residents Ward Councillor Save Hove
---	--

DOCUMENTS

Document	A/1	Tree Preservation Order submitted by appellant
Document	A/2	Addition to Urban Character Study submitted by appellant
Document	A/3	Photographs used for photomontages submitted by appellant
Document	A/4	City Park elevations submitted by appellant
Document	A/5	Photograph of existing building in front of trees submitted by appellant
Document	A/6	Advice Produced by DCLG " <i>Demonstrating a 5 Year Supply of Deliverable Sites</i> " submitted by appellant
Document	A/7	" <i>Strategic Housing Land Availability Assessment</i> " update submitted by appellant
Document	A/8	" <i>Urban Design Issues and Comment</i> " G Thompson 3 September 2009 submitted by appellant
Document	A/9	Revised flat plan Units 49, 62, 68 and 72 submitted by appellant

Document	A/10	Appeal Decision APP/Q1445/A/09/2111237 Plots 1 and 2, Land off Braypool Lane, Brighton submitted by appellant
Document	A/11	Agreements dated 2 March 2010 submitted by appellant
Document	A/12	Appeal Decision APP/Q1445/A/08/2081266 Land east of 55 Highcroft Villas, Brighton submitted by appellant
Document	A/13	Drawing list for both appeals submitted by appellant
Document	A/14	e-mail from A French in response to Cllr J Bennett e-mail (DOC I/3) submitted by appellant
Document	A/15	Costs Application submitted by appellant
Document	C/1	Full copy SHLAA submitted by Council
Document	C/2	Housing Delivery Technical Background Paper submitted by Council
Document	C/3	Building Heights, elevations, original and subsequently amended tables agreed by appellant submitted by Council
Document	C/4	Suggested conditions submitted by Council
Document	C/5	Suggested itinerary for site inspection submitted by Council
Document	C/6	Costs rebuttal submitted by Council
Document	C/7	Letter Council to appellant 27 October 2009 regarding right to speak at Committee submitted by Council
Document	C/8	e-mail Council to appellant 17 September 2009 submitted by Council
Document	I/1	Speaking notes and background information submitted by Save Hove
Document	I/2	Photographs and sketches submitted by Dr Barker on behalf of residents
Document	I/3	e-mail 4 March 2010 Cllr J Bennett to Planning Inspector regarding traffic and parking, referred to appellant (see DOC A/14)



Costs Decision

Inquiry held on 2, 3, 4 & 5 March 2010

Site visit made on 5 March 2010

by **John Papworth** DipArch(Glos) RIBA

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:
1 April 2010

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2111696 Park House, Old Shoreham Road, Hove, East Sussex BN3 6HU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Brighton & Hove City Council for a full award of costs against Hyde Martlett.
- The inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of the site to provide a mixed tenure development of 72 residential units.

Summary of Decision: I refuse the application for an award of costs.

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2117222 Park House, Old Shoreham Road, Hove, East Sussex BN3 6HU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Brighton & Hove City Council for a full award of costs against Hyde Martlett.
- The inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of the site to provide 72 residential units.

Summary of Decision: I refuse the application for an award of costs.

The Submissions for Hyde Martlett

1. These were made in writing and are at Document A/15 of the accompanying Appeal Decision, with annotations. In addition, with regard to timing, the new Circular does emphasise this more than the old one, but the requirement is that the application is to be made at the Inquiry. The application arises from concessions made by Mr Wright in cross examination and it should be no surprise to the Council that the appellants are aggrieved at the need for the appeals. It has been shown that there is cause and effect, something went wrong in both processes, the second more starkly than the first with the likelihood of a positive recommendation. Regarding the need to make both appeals, the deadline for the first appeal had almost run out and the appeal was just in time. The appellant asked for a Hearing.

The Response by Brighton & Hove City Council

2. This was made in writing and is at Document C/6 of the accompanying Appeal Decision, with annotations. In addition, with regard to housing land supply, it is the Council's case that a 5 year supply can be shown, with the addition of windfalls, and therefore paragraph 71 is not applicable. This is reasonable and plausible and no case law has been put forward saying otherwise. Considering the appeal decision at Highcroft Villas, this was as a result of the assessment
-

not being up-to-date and it was reasonable not to have referred to paragraph 71 in the Committee Report.

Conclusions

3. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 4. On the matter of the timing of the application, the 2009 Circular states that costs will normally be awarded when, among other considerations, a party has made a timely award of costs. At Inquiries the application is to be made at the event before closing, with the principle of early disclosure; surprise should not be a tactic. As good practice, advance application should be made in writing unless the decision to make the application is triggered by events at the Inquiry. From that I take it that while early disclosure is desirable, it is not mandatory, and that the requirement to make the application at the event was complied with. I can see that there were issues still at large during the hearing and cross examination of the evidence and that a decision whether or not to apply for costs might well have been left open. Disclosing the intention the evening before is better than it being a surprise at the close and there is no indication to me that the timing of the disclosure was a tactic. I do not turn this application away as being untimely.
 5. With regard to the chronology of events and the consultation that occurred between the appellant and an officer of the Council, I acknowledge firstly the extent of those discussions and the degree to which changes were made in response to the officer's comments, and secondly the expertise of that officer in the subject of those discussions. I acknowledge also though, that the officer is a member of a team and reports to another more senior officer as head of the section.
 6. The report to Committee on the first scheme included the comment that increasing the height of the roof features is not considered to be an effective design and there was criticism of the height and modelling of the top floor, suggesting that the top storey be removed or modified. There were in addition various comments praising the scheme or in favour of particular aspects. The appellant confirms in Appendix 6 to Mr Carter's Proof of Evidence that the Urban Design Officer's comments were included in full in the report.
 7. The Case Officer's planning commentary talked about the scheme being at odds with the prevailing character and of the impact on the sense of enclosure and openness along Old Shoreham Road, saying that it may be considered overbearing. There was reference to the building '*dwarfing adjoining buildings*'. Residents responding to the original application made similar comments. There was felt to be a need for a corner feature, and the conclusions of the report, where I would expect all conflicting views to be balanced, made clear the criticism of the scheme and '*in particular the structures on the top floors*'.
 8. On this scheme I am of the view that the Council members were given a fair and reasonable report on which to base their views. There was a clear conclusion, much of which stemmed from the comments of the Urban Design
-

Officer and it was reasonable for the Case Officer, as a professional person and member of the RTPI, to augment those views. It was clear from the report where that had occurred and the members would have had access to the drawings, other visual information and the site. The Committee resolved to refuse permission on reasonable planning grounds.

9. Further discussions took place and the second application was made in the belief that all the reasons for refusal had been addressed and overcome, that belief resulting from the comments of the Urban Design Officer and the Case Officer. It later transpired that there was an internal difference of opinion on the degree to which the reasons for refusal had been addressed. An e-mail from the leader of the Design and Conservation Team to the Head of Development Control was passed to the appellant containing objections. The appellant's response was that *'it is clear that further discussions concerning the design of the scheme are no longer appropriate and it must now be for the planning authority to consider the conflicting views of Officers within the Council and to reach a decision as to the acceptability of the form of development proposed for the site'*. The appellant received a reply *'as you say the issues will need to be addressed in the report which is written for planning committee. I do understand your position on this and will make sure that the circumstance you have outlined is set out clearly in the report'*.
10. In the Committee report for the second scheme the internal consultation contained the views as expressed by the leader of the Design and Conservation Team but notwithstanding the statement quoted above, I do not see any reference to the other views of the Urban Design Officer. The question here is whether the conflicting advice should have been detailed to members, which was what the appellant took from the e-mail from the Head of Development Control. My view is that this would not have been reasonable and hence failing to detail it would not have been unreasonable. The Council employs officers in different capacities and at different levels of responsibility and accountability. I do not consider it the role of the elected members to pick and choose between the views of one officer against those of her manager or what became the corporate response of that section.
11. There appear to be areas where the management of the Council could have acted differently. On the basis that the leader of the Design and Conservation Team had the responsibility to put his team's views forward, he might have been more involved in the progress of discussions or to have held case reviews at times to ensure that the views being expressed could be ratified as being the team's corporate response. As it was this case review appears to have taken place late in the process. I also consider that the Head of Development Control was wrong to have given the undertaking to set out the circumstance clearly in the report if that was not to occur, and as stated, it is my view that it did not need to occur, as the report should be a statement of a section's corporate advice. Had the appellant felt aggrieved at the content of the report, they had the opportunity of speaking at the Committee, drawing member's attention to this perceived conflict. These matters appear to me to come within the scope set out in paragraph B9 of the 2009 costs Circular; the appellant may well feel aggrieved but cause and effect needs to be addressed.
12. The decision to make the first appeal was taken prior to the determination of the second scheme. That was due to the pressure of the time limit for making

- an appeal. Had the second scheme received approval it may be the case that the appeal would then have been withdrawn. As it was, the second scheme was refused permission, the second appeal was lodged and the two appeals were co-joined. The Council chose to produce two separate proofs of evidence, whilst the appellant combined them and I attached no real significance to this.
13. With regard to the second scheme, I am of the view that the Urban Design Officer may have addressed the reasons for refusal but may not have 'stood back' and considered the effect of the changes being made to the design in the process. These are changes that I have identified in the Appeal Decision and which lead me to conclude that the second scheme fails to reach an acceptable standard. Those changes and their effect were identified by the team leader and whilst I may criticise his late involvement, a fresh pair of eyes often sees things that those close to the scheme, in this case the architect and the Urban Design Officer, do not.
 14. I can only conjecture on the member's view had they been presented with both sides of the internal difference of opinion. My own view is that they would have been likely to have placed more weight on the opinion of the senior officer expressed as a corporate response. I attach significant weight to the fact that the differences were not on matters of fact, but on matters of judgement. There is a tendency to seek to quantify design matters, reducing the scope for subjectivity, and time was spent during the Inquiry on the precise levels of the proposed building and the surrounding structures. But, there remains the need for judgement as to the significance of these quantifiable effects. I am of the view that the members had all the information on the second scheme on which to base their own decision, of which the 'final comments' of officers were only a part. I do not find that the required cause and effect has been shown to the point where I consider unreasonable behaviour has caused unnecessary expense.
 15. I look now at the question of housing land supply. I have come to a conclusion in my Appeal Decision that a five year supply cannot be shown without the need for windfall sites. Paragraph 71 contains advice to consider favourably planning applications for housing, having regard to the policies in the PPS including the considerations in paragraph 69. I do not take that to mean that housing schemes that fail to achieve an acceptable standard of building and urban design in line with paragraphs 16 and 69 should, nevertheless, be granted permission. The members must be aware of the general position on housing need and land supply, and the Committee report contained favourable comments under the heading '*Housing Strategy*'. Here again I am unable to make the clear connection between cause and effect to the extent that members would have put aside their views on the design of the building if the matter of land supply and paragraph 71 had been spelt out in the report.
 16. In conclusion, on a scheme of this size and one generating this level of local objection the views of an officer of the Council are without prejudice to the decision of the elected members. Those views on the first scheme were reported to the Committee, and with a mind to the process adopted for the second scheme, should have been the corporate response of the section even if the views of a single officer were reported word-for-word. With the second scheme that officer's views were modified by those of her manager to become the corporate response. That appears to me a reasonable management role. I

have been critical of the timing of this, and also of an undertaking by the Head of Development Control that should either have been carried out or not made in the first place. However, paragraph B9 of the costs Circular states '*The procedures adopted by a planning authority for determining planning applications are generally a matter for the authority within the context of local government accountability. The process followed by the planning authority may be open to criticism in a particular case; but cause and effect need to be addressed in deciding an application for costs.*' Whilst I have been critical I have not been able to identify this essential link between the cause and the effect in this case sufficient to justify a conclusion that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated in either appeal. I therefore conclude that an award of costs is not justified.

Formal Decision Appeal A

17. I refuse the application for an award of costs.

Formal Decision Appeal B

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

S J Papworth

INSPECTOR



Appeal Decision

Site visit made on 4 March 2010

by **Megan Thomas BA Hons in Law,**
Barrister

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:
29 March 2010

Appeal Ref: APP/Q1445/A/09/2112258

116 Goldstone Crescent, Hove, East Sussex BN3 6BF

- 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 Caveh Sobhanpanah against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00864, dated 14 April 2009, was refused by notice dated 29 July 2009.
- The development proposed is the construction of a three storey building with flat roof comprising 1no. one bed and 2no. two bed flats, to include 3no. rooflights, cycle store and refuse facilities.

Decision

1. I dismiss the appeal.

Procedural issues

2. I have used the description of the development from the Notice of Decision as I consider that this is the more accurate than the description given on the planning application form.

Main issues

3. The main issues are:
 - The effect of the proposal on the living conditions of the occupants of 114 and 116 Goldstone Crescent and flat 32 Balmoral Court by reason of privacy, outlook and light.
 - The effect of the proposal on the character and appearance of the area.
 - Whether the flats would be built to Lifetime Homes standards having regard to policy HO13 of the Brighton & Hove Local Plan 2005 'LP'.

Reasons

Effect on Living Conditions

4. The appeal site is part of the rear garden to 116 Goldstone Crescent which is one of a row of two storey detached houses along that Crescent. It is a very steeply sloping site and it rises up, east to west, to a pavement serving Nevill Road. The proposed flats would be directly to the north of one of the four large blocks of purpose-built flats known as Balmoral Court. The area is predominantly residential in nature and is near a busy main road.

5. The proposal consists of a three storey residential development comprising three flats - one being a maisonette. The maisonette would be on the lower ground floor with private outside amenity space. The flats would have private balconies. The external walls would be smoothly rendered and painted cream with red stock brick to the sills and heads of windows and doors. There would be sedum matting on the flat roofs to create a green environment.
6. At its rear (eastern elevation), the proposal as a whole would have three windows and a set of patio doors and steps down to the garden. There are several habitable rooms within no.114 which would face the eastern elevation and on my site visit I was able to gain access to these rooms and to the terraced garden of no.114. The nearest Balmoral Court block (which has with 5 storeys of accommodation) already strongly influences the outlook from no.114 but that block is not orientated directly towards no.114 and this gives some relief to the rear aspect from no.114. The proposal, whilst being considerably smaller than Balmoral Court, would be orientated directly towards the rear of no.114. That factor, coupled with the steep slope of the land, render the separation distances from the two elevations insufficient to overcome the sense of enclosure that the occupants of 114 would experience when either inside their house or using their rear garden.
7. The impact on privacy for the occupants of no.114 would also be substantial and adverse. I consider that the planting of trees or shrubs in the rear garden of the proposal would be likely to add to a sense of enclosure when in the house or garden of no.114 if they were of a sufficient height to reduce overlooking between windows within the two sites. I would also not be confident that any such trees, if planted, would have a long term future as they would be likely to reduce views from the new development and the incentive to retain them would be weak in the long term.
8. Whilst 116 Goldstone Crescent is not orientated directly towards the proposal, the proposal's position directly above no.116 and its proximity to no.116 would result in it dominating the outlook from the rear of no.116 and unduly compromising the privacy of occupants in the house or in the garden.
9. Turning to the issue of light reaching neighbouring dwellings, given the separation distances and having regard to technical evidence on daylighting and sunlighting produced by the appellant, I do not consider that there would be an unacceptable loss of light from the rooms or garden of no.114 nor from the houses at 116 or 118 Goldstone Crescent.
10. 32 Balmoral Court is the ground floor flat situated on the north side of the nearest block to the appeal site. It would have a bedroom window which would face the southern elevation of the new flats. There would be two windows in the southern elevation serving a bathroom and a study and above that the occupants of the ground floor flat would have to walk down the side of the block to gain access to that flat. Whilst I appreciate that there would be opportunities for enhanced boundary treatment and the possibility of using obscured glass in the flank windows of the proposal, there would continue to be the potential for a significant loss of privacy to flat 32. Given the separation distance and the height of the proposal opposite the bedroom window to flat 32, there would be an unacceptable loss of outlook from that window.

11. On my site visit I was able to gain access to flat 32 Balmoral Court. Notwithstanding that the affected bedroom at 32 would meet the 1% average daylight factor (falling from 1.7% to 1% which is the minimum recommended for a bedroom in BRE 'Site Layout Planning for Daylight & Sunlight'), having had regard to the overall size of the flat and all the other factors set out in the appellant's Daylight and Sunlight Study, I consider that the proposal would cause an unacceptable loss of light to this room.
12. In terms of effects on living conditions of nearby neighbours, I conclude that the proposed development would cause an unacceptable loss of outlook and privacy to 114 and 116 Goldstone Crescent and to flat 32 Balmoral Court, and an unacceptable loss of light to flat 32 Balmoral Court. It would be in conflict with policy QD27 of the LP.

Effect on character and appearance of the area

13. Care has been taken to echo some of the architectural features found at Balmoral Court in the proposed development, such as the fenestration details, the use of balconies and the use of railings. However, overall the design does not relate well to Balmoral Court or to other buildings in Nevill Road. As the Council have identified, a building which relates well in visual terms to the height and scale of Balmoral Court would, by virtue of the gradient of the land, tend to dominate the properties on Goldstone Crescent. However, from the Nevill Road perspective, the contrast in height between the proposal and Balmoral Court looks awkward and the contrast in materials and textural finish is stark. Whilst national policy guidance guards against slavishly requiring replication of existing styles and forms of existing housing in an area or rejecting designs that are unfamiliar, there continues to be a need to ensure that a different style of housing fits sufficiently well into its local context and does not jar with what is there already. This proposal, whether taking its appearance from the rear or the front, does not make a positive contribution to its environment. I conclude therefore that the proposal would unacceptably harm the character and appearance of the area contrary to policies QD1 and QD2 of the LP.

Adequacy of Lifetime Homes Standards

14. The Lifetime Homes Standards do not require level access from the street to all new flats. The aim of policy HO13 of the LP is to ensure that new dwellings can be adapted to meet the needs of people with disabilities without major structural alterations. Whilst there are steps down to the lower ground floor flat from street level and structural alterations might be needed to facilitate access for a wheelchair user or a person with disabilities, this would not necessarily involve major structural alterations especially given the proposed construction features of the steps. In all respects the flats meet the terms of policy HO13. I conclude that the proposal would be adequate in meeting Lifetime Homes Standards and would not be contrary to policy HO13 of the LP.

Conclusions

15. The addition of 3 flats of this size to the housing stock in circumstances where they meet Lifetime Homes standards, make efficient use of previously-developed urban land, are in a location which is well-served by public transport and where there is a shortfall in meeting the 5 year deliverable supply of
-

housing in the Borough are all benefits which I have put into the planning balance in making my decision. However, in this case having had regard to those benefits and the representations made by supporters of the scheme, I consider that the harm flowing from the adverse effects on the character and appearance of the area and the adverse effects on living conditions from loss of privacy, outlook and light clearly outweighs those considerations.

16. Accordingly, having regard to all representations made, I dismiss the appeal.

Megan Thomas

INSPECTOR



Appeal Decision

Site visit made on 23 March 2010

by **P E Dobsen MA (Oxon) DipTP MRTPI**
FRGS

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:
26 March 2010

Appeal Ref: **APP/Q1445/D/10/2120902** **7 Whitethorn Drive, Brighton BN1 5LH**

- 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. N. Law against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/02653), dated 20 October 2009, was refused by notice dated 31 December 2009.
- The development proposed is "interior and exterior remodelling of dwelling to form additional accommodation, garage and attic room".

Decision

1. I dismiss the appeal.

Main issues

2. The 2 main issues in the appeal are the effect of the proposed development on:
i) the character and appearance of the site and its surroundings; and ii) the residential amenities of the adjoining dwellings at Nos. 6 and 8 Whitethorn Drive, with particular reference to potential overlooking of habitable rooms or garden areas, and a consequent loss of privacy.

Reasons

3. Whitethorn Drive is a suburban, residential close containing about 20 modern, 2-storey detached dwellings on fairly substantial plots. It is located off Dyke Road Avenue in the northern part of Brighton. No. 7, the appeal property, lies on a sharp bend in the Drive, giving it a relatively prominent corner position and road frontages both to the north and west. It adjoins No. 8 to the south east, and No. 6 at a lower level to the south west. Built in 1959, it is agreed to be of a somewhat mundane architectural character, and in need of modernisation. Unlike several other houses in the Drive it has not hitherto been extended or significantly altered.
4. The current proposals include a radical enlargement and remodelling of the house, including alterations to about 80% of its external structure, a 2-storey extension at the front, and an additional (second) storey featuring 2 large windows within the new roof at the rear and one at the front. The scheme would provide a considerable amount of additional internal living space, and garaging, and would also include new landscaping and boundary treatments.
5. I have considered the proposals in the light of the relevant saved development plan policies, listed in the decision notice, in the Brighton and Hove Local Plan (2005), including policies QD1 (*design – quality of development and design*

statements), QD2 (*design – key principles for neighbourhoods*), QD14 (*alterations and extensions*), and QD27 (*protection of amenity*). There is no particular dispute as to the relevance or interpretation of these policies, and no need for me to describe them in detail. I have also had regard to the advice in the Council's supplementary planning guidance note 1, roof alterations and extensions.

6. *Issue i) Effect on the character and appearance of the area:* The Council says that in terms of their bulk and scale, the extensions would be inappropriate in design in the context of the existing house and the Drive, and would be unduly obtrusive in the street scene. I disagree with that verdict; in my opinion, they would have the effect of replacing a very ordinary (and indeed, rather unattractive) post-war dwelling with a somewhat larger dwelling in a sensitive and well-designed contemporary architectural idiom, which would not look obtrusive or cramped in the street scene, but would enhance the character and appearance of this part of Whitethorn Drive. The building footprint and site coverage ratio would be no greater than those of most other houses in the Drive. The new flat-roofed areas would add some variety to the street scene, without appearing harmfully out of character.
7. While the addition of a second storey would not be characteristic of Whitethorn Drive, this would not in my view be objectionable on design grounds, given that most of the houses in the Drive are individually distinctive, with substantially varying roof forms and heights, and no two alike. The use of high quality modern materials and new exterior landscaping - both matters which could in principle be secured by planning conditions - would also make a positive contribution to the street scene. In sum, I find that the scheme would not harm, but would tend to enhance the character and appearance of the site and its surroundings.
8. *Issue ii) Effect on neighbours' residential amenities:* I am much less sanguine on this second issue, particularly with respect to the potential overlooking of Nos. 6 and 8 by the new windows at the rear. Although the enlarged house would be over 30m. from the rear of No. 6, and there is a boundary fence between the 2 and a substantial eucalyptus tree alongside it which precludes some mutual overlooking, the scheme includes 2 large, high level windows which, as I have already observed, are not characteristic of the Drive. These would light a large new bedroom in the roof space. In my opinion, these windows would substantially increase the potential for overlooking of habitable rooms and the rear garden of No.6, which is at a lower level, and also the rear garden of No. 8, notwithstanding any existing or proposed boundary fences or vegetation. Despite my findings on the first issue, I consider that this significant drawback of the scheme would be contrary to development plan policies QD14 and QD27, sufficient to warrant the dismissal of the appeal.
9. I have considered all the other matters raised by the scheme architects, but there are none which alter or outweigh my conclusions on the 2 main town planning issues.

Paul Dobsen INSPECTOR



Appeal Decision

Site visit made on 23 March 2010

by **P E Dobsen MA (Oxon) DipTP MRTPI**
FRGS

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:
25 March 2010

Appeal Ref: APP/Q1445/D/10/2121552 53 Windmill Street, Brighton BN2 0GN

- 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. L. Needham-Park against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/01344), dated 4 June 2009, was refused by notice dated 30 July 2009.
- The development proposed is "dormer loft extension".

Decision

1. I dismiss the appeal.

Procedural matter

2. As the development at issue has been implemented, I have dealt with the application as a retrospective one for its retention.

Main issue

3. The main issue in the appeal is the effect of the dormer loft extension as built on the appearance of the host property, and the wider area.

Reasons

4. 53 Windmill Street is a small Victorian terraced dwelling house, located near the southern end of the street and on its eastern side. This is a high density residential area (Queens Park), nearby to the north east of the main centre of Brighton. At the rear, the house backs onto terraced dwellings in Stanley Street. It has a flat roofed extension at the rear, to which a new glazed door in the completed extension might potentially give access.
5. I saw during my site inspection that although the majority of the dwellings on this side of Windmill Street have not undergone major roof level alterations, a few have had loft conversions. Some of these involve full-width extensions at the rear and are clearly visible from the appeal site, and at least one more is currently under construction. I understand from the Council's statement that some at least of these loft extensions were built several years ago as permitted development, and indeed the present appellant was under the genuine impression that his scheme was permitted development before construction works began.

6. Relevant development plan policies are in the Brighton and Hove Local Plan (LP, 2005), and the Council has also drawn my attention to the guidance in its supplementary planning (SPG) guidance note 1, Roof Alterations and Extensions. I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise.
7. LP Policy QD14 (extensions and alterations) sets out design criteria for these categories of residential development, and further advice is given in the SPG. I am in little doubt that this loft extension contravenes the policy and guidance for all the reasons given in the Council's statement. In short, it is not well-designed, as it is too high and wide and not set back within the roof; its door and window openings are poorly related to the rear elevation of the house and to its other fenestration; and it is inappropriately clad using an unduly large expanse of artificial weatherboarding. All this makes it appear excessive in size and scale, unattractively box-shaped, and incongruously related to the original design and external materials of the house. In my opinion, therefore, it detracts from the appearance of the building, from its immediate surroundings, and from the rear of the street block in general.
8. I accept that the completed development is not visible from the surrounding streets, nor from other public viewpoints. Nevertheless, it can be clearly seen from many of the houses in Windmill Street and in Stanley Street. I also accept that the other completed loft extensions in the street affect its existing character and appearance; however, I agree with the Council that these are not to be regarded as encouraging precedents for the design of any future loft conversions in this street block, or in the locality more generally.
9. I have considered all the other points mentioned in the grounds of appeal, but there are none which alter or outweigh my main findings. These are that the development as completed is harmful to the appearance of the host property, and the wider area, contrary to the relevant development plan policy and to the Council's supplementary planning guidance. As there are no other material considerations, the appeal must therefore fail.

Paul Dobsen

INSPECTOR

New Appeals Lodged

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

EAST BRIGHTON

BH2009/02575

17 Madehurst Close, Brighton

Installation of external staircase
(Retrospective).

APPEAL LODGED

19/03/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WITHDEAN

BH2009/02232

10 Hillcrest, Brighton

Extension of existing terrace to rear at ground
floor level. (Part retrospective)

APPEAL LODGED

24/03/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

HOVE PARK

BH2009/02896

33 Bishops Road, Hove

Proposed two storey front extension, single
storey first floor front extension, loft conversion
with roof alterations and two rear dormers and
other external alterations.

APPEAL LODGED

25/03/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

WESTBOURNE

BH2009/02812

130 Cowper Street, Hove

First floor rear extension to provide additional
office space.

APPEAL LODGED

29/03/2010

Delegated

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

APPLICATION DECISION LEVEL

HOVE PARK

BH2009/02673

24 Deanway, Hove

Proposed two storey front/side extension.

APPEAL LODGED

30/03/2010

Delegated

<u>WARD</u>	MOULSECOOMB & BEVENDEAN
<u>APPLICATION NUMBER</u>	BH2009/02624
<u>ADDRESS</u>	25 Lower Bevendean Avenue, Brighton
<u>DEVELOPMENT DESCRIPTION</u>	Erection of two storey 3 No bedroom residential dwelling.
<u>APPEAL STATUS</u>	APPEAL LODGED
<u>APPEAL RECEIVED DATE</u>	30/03/2010
<u>APPLICATION DECISION LEVEL</u>	Delegated



**Brighton & Hove
City Council**

**INFORMATION ON HEARINGS / PUBLIC INQUIRIES
28th April 2010**

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

Covers Yard, Melbourne Street, Brighton

Planning application no: BH2009/00655

Description: Demolition of existing yard buildings and erection of 3 storey terrace along eastern boundary of site, and 4 and 7 storey apartment building along northern boundary of the site, providing a total of 39 residential units, cycle and car parking to rear.

Decision: Committee

Type of appeal: Public Inquiry

Date: 18th May 2010

Location: Council Chamber, Brighton Town Hall

PLANNING & ENFORCEMENT INQUIRY: The Hyde, Rowan Avenue, Hove

Planning application no: • BH2009/01249

Enforcement no: • BH2009/0450

Description: • Proposed construction of two blocks of 2 and 3 storeys to provide a total of 27 new sheltered housing units with associated caretaker's flat, support and recreation areas including private landscaped gardens and car and cycle parking facilities.
• Unauthorised land use and loss of amenity.

Decision: Committee

Type of appeal: Public Inquiry

Date: 25th – 27th May 2010

Location: Hove Town Hall

27-28 Meeting House Lane

Planning application no: BH2009/01898

Description: Change of use of first and second floors from vacant offices to three self-contained flats.

Decision: Committee

Type of appeal: Hearing

Date: TBC

Location: TBC

Subject:	<i>Chandlers, Victoria Road, Portslade</i> <i>Request for a variation of s106 dated 21 July 2004 signed in association with BH2003/00751/FP</i>		
Date of Meeting:	28 April 2010		
Report of:	<i>Director of Environment</i>		
Contact Officer:	Name: Paul Earp	Tel: 29-2193	
	E-mail: paul.earp@brighton-hove.gov.uk		
Wards Affected:	South Portslade		

1. PURPOSE OF THE REPORT:

- 1.1 To consider a proposed variation to the s106 Agreement.

2. RECOMMENDATIONS:

That the Committee resolves to authorise officers to complete a variation to the s106 planning agreement dated 21 July 2004 relating to land at Chandlers, Victoria Road, in the terms set out in section 6 of this report.

3. BACKGROUND INFORMATION:

Application **BH2003/751/FP** granted approval for the demolition of a factory building on the site and construction of a car showroom and service centre on the site, together with the construction of a 3 storey speculative office (B1) building. Approval was subject to a Section 106 Obligation requiring four elements. These included:

- i) within four years following the first occupation of any part of the Chandlers Development to complete development of the B1 building;
- ii) that the Affordable Housing in Carlton Terrace shall be completed and transferred to a Registered Social Landlord not later than 7 years from the date of first occupation of the Chandlers Development at a peppercorn rent on a 125 year lease at a cost of no more than 90% of Housing Corporation Total Cost Indicators for the relevant year of construction;
- iii) that the Affordable Housing in Carlton Terrace shall not be used other than as Affordable Housing for sale by the Registered Social Landlord on a Shared Ownership basis;
- iv) before the Commencement of Development to pay to the Council the Crossing Payment.

The provision of the B1 building is the only outstanding matter to be secured. The building should have been constructed within 4 years following completion of the car showroom and workshops, which was by February 2009.

The site is designated in the Local Plan as an EM1 employment site which identifies sites primarily for industrial and business use under Use Class B1 and B2. The office component of the approval was to address concerns regarding loss of the site to a non-conforming car showroom and in order to make efficient use of the site.

Condition 2 of application BH2003/00751/FP stated:

"The area indicated as B1 and B2 use on the approved site layout plan shall remain in such use, and the area indicated as car sales, showroom and associated customer parking shall not increase without the prior written approval of the Local Planning Authority. Reason: To prevent expansion of the car showroom element of this proposal which has been permitted as an exception to policy EM1 of the Brighton and Hove Local Plan Second Deposit Draft, which seeks to ensure that the use of the site is maximised for B1 and B2 employment uses."

Approval was given to condition 2 on the 26 March 2010.

- 3.5 An application was submitted in June 2009 for the change of use of the vacant land (land allocated to be B1 office space) to customer car park (ref: **BH2009/01450**). The applicant has indicated that this application will be withdrawn pending the variation of the s106 Agreement since a change of use is not necessary because the vacant land formed part of the site under application BH2003/00751/FP.

4. PROPOSAL:

The developer has requested a Variation of the s106 attached to application BH2003/00751/FP to remove the requirement to provide the B1 office space.

5. CONSULTATION:

- 5.1 **Sustainable Transport:** No objection. The additional formalised parking provision remains within the threshold as set within SPG4 for this site. The site is not expanding in anyway and is solely increasing its available formalised off-street parking provision. The additional parking will not result in an increase in generated trips by the site.
- 5.2 **Environmental Health:** No comment.
- 5.3 **Planning Policy:** No objection. Under normal circumstances the proposal would be contrary to policy EM1 and EM3 in the Brighton & Hove Local Plan as it results in the loss of a B1 employment site secured through a Section 106 Agreement linked to the original planning consent for Car Sales and servicing. The applicant, however, has made a strong case for an exception being made to policy on the

grounds of the number and type of jobs being created by Chandlers on the site, the proportion of local employees and the necessity of the additional space for parking to enable the use to function effectively. For these reasons it is considered that an exception can be made to policy.

- 5.4 **Economic Development:** Support the request. The economic development team fully supported the original application (2003/00751) which allowed the redevelopment of the site to facilitate the relocation of Chandlers, a major employer in the city to consolidate their operations onto one site and allow the release of their other sites in the city for more appropriate uses including employment. As part of the original application a Section 106 agreement was agreed this included the development of an office block at the rear of the site.

Since the original development approval, the applicant has expanded its operations on site from initially just cars which employs 125 staff to now motor bikes and also a separate development for the sale and maintenance of mini cars. This has subsequently increased the employment levels on site by an additional 32 jobs which has been confirmed by the applicant. A small element of these jobs (12 in total) are sales jobs and are therefore A use class jobs, the remainder of the jobs created are office, servicing and maintenance which can be classed as B use class jobs. Together with this, the existing business base is expanding and the company expect further employment on site to be in excess of 20 new jobs.

The business has developed their own bespoke apprenticeship scheme which is fully accredited by the Institute of the Motor Industry.

In economic development terms, although the site is well served by public transport etc, the site (located at the rear of the overall site) is not a prominent location and therefore not best suited for modern business requirements. All the demand for office accommodation that is being received, and has been for some considerable time is city centre location (Brighton) rather than edge of city locations such as this site.

Whilst there will be some 'loss' of B1 employment space on the overall site, there has been additional space created by the development of the mini car dealership and the site has grown both in development terms and also in employment terms. The quality of the B1 jobs, especially in the servicing and maintenance element are considered to be high value jobs because of the specialist nature of the work and in essence, the employment levels on site have continued to grow with the expansion of operations on the site.

Discussions have been held between the owners and the economic development team with regards to the appropriateness of this site for B1 office accommodation and it is the professional opinion of the economic development team that this site would not be attractive to businesses looking for good quality office accommodation in the city because of its location.

6. COMMENT:

The proposal is for the use of the site reserved for the office building to be used for the parking of cars being serviced, for cars which are being exchanged and customer parking. This will facilitate the continued expansion of the services offered by Chandlers.

Since the construction of the main dealership, a further 32 jobs have been created with the provision of the Mini showroom, motorbike sales, telesales (located within the main building), finance, executive and maintenance jobs. It is anticipated that the use of the land for parking would enable expansion of services on site and create a further 23 jobs through MOT expansion, servicing, telesales, car collection and delivery. The existing and proposed expansion of services on the site will create an additional 55 jobs of which 9 are technicians, 22 clerical, 7 drivers, 5 management, 10 sales and 2 caretaking. The proposed use would enable Chandlers to continue to expand and create a similar number of jobs anticipated from office use. Additionally, Chandlers have recruited 9 apprentices through the BMW Apprentice Programmes providing training leading to a skilled profession for local people.

Relating to the viability of an office development on the site, the Economic Development Officer is of the opinion that although the site is well served by public transport, as the area is located at the rear of the overall site and not in a prominent location, it is not best suited for modern business requirements. Both vehicular and pedestrian access to the land is through the car sales and servicing area which may also present safety issues. No scope exists to provide alternative vehicular access to the site as the adjacent Southdown Avenue which is a cul-du-sac, is narrow, and with on-street parking is usually reduced to a single lane. For these reasons it is not considered that the site is best suited for an independent and speculative office development.

The original planning approval enabled Chandlers to relocate to the site, provide retail and affordable housing on their former site in Carlton Terrace, and together with the servicing element of the car sales use have provided highly skilled jobs. Whilst the proposal also required the provision of a speculative office building within the northwest corner of the site which was anticipated to create approximately 60 jobs, the business has expanded with the provision of a further 32 jobs associated with the Mini showroom and from telesales based within the main building. Whilst car sales nationally have been struggling, the serving part of the business is buoyant and the use of the land for parking will enable to secure its continued viability and expansion. The number of jobs secured by the expansion of the business is approximately 52 which is similar to the number anticipated from the office development. For these reasons it is considered acceptable for the land to be used for parking in lieu to the provision of the office building as it secures employment in the area.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

Awaiting comments.

Finance Officer Consulted: Peter Sargent

7.2 Legal Implications:

Section s106A of the Town and Country Planning Act 1990 provides that an agreement under s106 of that Act may be varied by agreement between the local planning authority and the person against whom the agreement is enforceable. Insofar as the Report concludes that the office building required to be completed under the terms of the s106 planning agreement dated 21 July 2004 is no longer necessary it is appropriate to vary the terms of the agreement to remove that obligation.

Lawyer Consulted: Hilary Woodward

Date: 15 April 2010

7.3 Equalities Implications:

None identified.

7.4 Sustainability Implications:

None identified.

7.5 Crime & Disorder Implications:

None identified.

7.6 Risk and Opportunity Management Implications:

None identified.

7.7 Corporate / Citywide Implications:

The proposed use and expansion of services provided by Chandlers will strengthen employment opportunities for local people.

BH2009/01450 Chandlers, Victoria Road



Date: 19/01/2010 02:45:12

Scale 1:1250

Reproduced from the Ordnance Survey mapping with the permission of the Controller of HM Stationery Office. (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Aerial imagery copyright of Cities Revealed(R) by The GeoInformation (R) Group, all rights reserved. Brighton and Hove City Council Licence No. 100020999 (2010).



