



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	19 May 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	<p>Councillors: Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Caulfield, Cobb, Davey, Hamilton, Kennedy, McCaffery, Smart, Steedman and C Theobald*</p> <p>* Committee placements will be confirmed at the Annual Council meeting on 13 May 2010 and as such may be subject to change.</p> <p>Co-opted Members: Mr J Small (CAG Representative) – to be confirmed</p>
Contact:	<p>Jane Clarke Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

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AGENDA

1. 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.

2. MINUTES OF THE PREVIOUS MEETING

1 - 10

Minutes of the meeting held on 28 April 2010 (copy attached).

3. CHAIRMAN'S COMMUNICATIONS

4. PETITIONS

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

5. PUBLIC QUESTIONS

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

No public questions received by date of publication.

6. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on Wednesday 12 May 2010).

No deputations received by date of publication.

PLANNING COMMITTEE

7. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

8. LETTERS FROM COUNCILLORS

No letters have been received.

9. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

10. APPEAL DECISIONS

11 - 50

(Copy attached).

11. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

51 - 52

(Copy attached).

12. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

53 - 54

(Copy attached).

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

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

(Copy circulated separately).

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

(Copy circulated separately).

16. 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.

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

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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, 11 May 2010

BRIGHTON & HOVE CITY COUNCIL**PLANNING COMMITTEE****2.00pm 28 APRIL 2010****COUNCIL CHAMBER, HOVE TOWN HALL****MINUTES**

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Carden (Opposition Spokesperson), Cobb, Davey, Fallon-Khan, 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); Claire Burnett (Area Planning Manager (East)); Nicola Hurley (Area Planning Manager (West)); Hilary Woodward (Senior Lawyer) and Penny Jennings (Democratic Services Officer)

PART ONE**262. PROCEDURAL BUSINESS****262A. Declaration of Substitutes**

262.1 Councillor Fallon-Khan was present in substitution for Councillor Caulfield.

262B. Declarations of Interest

262.2 Councillor C Theobald referred to Application BH2003/751/FP, Chandlers Garage, Victoria Road, Portslade (Agenda Item 275) stating that she had become aware that the application site was her garage. The legal adviser to the Committee enquired whether she remained of a neutral mind and had not predetermined the application. Councillor Theobald confirmed that was the case and that she intended therefore to remain present during the debate and decision making process in respect of the application.

262.3 Councillor Fallon-Khan referred to Application BH2009/03156, Wellesbourne Centre, Whitehawk Road, Brighton. He stated that he had no direct interest in the application, although he was aware that that this scheme and other similar ones may have been referred to in reports he had received for information in his capacity as a Cabinet Member. He confirmed that he had never referred to the scheme directly either in opposition or support and that he had not predetermined the application and remained of a neutral mind. Notwithstanding that Councillor Fallon-Khan considered it would it

would not be inappropriate for him to remain present during the debate and decision making process he subsequently decided to leave the meeting during its consideration in order to avoid any perceived conflict of interest between his role as a Cabinet Member and as a Member of the Committee.

162C. Exclusion of Press and Public

262.4 In accordance with Section 100A of the Local Government Act 1972 (“the Act”), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in 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.

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

263. MINUTES OF THE PREVIOUS MEETING

263.1 It was noted that there was an error in Item 271B, Page 17 of that days agenda in the “Appeal Decision” report, as Park House was located in Stanford Ward, (now Hove Park) not Goldsmid as indicated.

263.2 **RESOLVED** - That the Chairman be authorised to sign the minutes of the meeting held on 7 April 2010 as a correct record.

264. CHAIRMAN'S COMMUNICATIONS

New & Returning Members of Staff

264.1 The Chairman introduced Claire Burnett, the newly appointed Area Planning Manager (East) and Nicola Hurley, the Area Planning Manager (West) who had returned from maternity leave recently.

Vote of Thanks: Councillor Wells Deputy Chairman

264.2 The Chairman placed on thanks her thanks and those of the Committee to the outgoing Deputy Chairman, Councillor Wells, congratulating him and wishing him every success during for his year in office as Mayor. This was supported unanimously by the Committee.

Vote of Thanks: John Small, CAG Representative

264.3 The Chairman stated that she understood that day’s meeting was the last to be attended by John Small who had attended as a Co-opted representative on behalf of the Conservation Advisory Group (CAG) for a number of years.

264.4 The Chairman wished to formally place on record her thanks and those of the Committee for Mr Small’s valuable contribution over a considerable period of time. She paid tribute to his breadth and depth of knowledge in relation to complex planning

issues, his insightful comments and his unwavering good humour in face of the arduous schedule that was planning Committee. She concluded by saying that he would be missed and by sending her own and the Committee's best wishes for the future.

- 264.5 The Chairman's comments were supported wholeheartedly and unanimously by the Committee and it was subsequently agreed that the Committee's vote of thanks would be sent to Mr Small in a suitable form accompanied by an extract from these minutes and a covering letter on behalf of the Chairman and Members of the Committee.'

265. PETITIONS

- 265.1 There were none.

266. PUBLIC QUESTIONS

- 266.1 There were none.

267. DEPUTATIONS

- 267.1 There were none.

268. WRITTEN QUESTIONS FROM COUNCILLORS

- 268.1 There were none.

269. LETTERS FROM COUNCILLORS

- 269.1 There were none.

270. NOTICES OF MOTION REFERRED FROM COUNCIL

- 270.1 There were none.

271. APPEAL DECISIONS

- 271.1 It was noted that report B, Applications BH2008/03640 and BH2009/01464, Park House, Old Shoreham Road, Hove was located in Stanford Ward,(now Hove Park) not Goldsmid as referred to in the report.

- 271.2 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 report

272. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

- 272.1 The Committee noted the planning appeals which had been lodged as set out in the agenda.

273. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

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

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

274.1 **RESOLVED** - that the following site visits be undertaken by the Committee prior to determination of the application:

Application:	Site Visit Requested by:
BH2010/00097, Mill House, Overhill Drive, Patcham	Councillor C Theobald
BH2010/00206, Former Legal & General Building, 2 Montefiore Road, Hove	Head of Development Control
BH2010/00498, Former Esso Petrol Station, Hollingdean Road, Brighton	Head of Development Control
BH2010/00559, Dolphin House, Manchester Street, Brighton	Head of Development Control

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

275.1 The Committee considered a report seeking a variation to the Section 106 Agreement dated 21 July 2004 signed in relation to Application BH2003/00751/FP, Chandlers, car showroom and service centre, Victoria Road, Portslade.

275.2 The Area Planning Manager (West), Mrs Hurley gave a presentation referring to site plans and photographs indicating the area of the site to which the proposed variation related. The applicant had requested that that the requirement to provide B1 office space be removed. It was recommended that an exception be made to policies EM1 and EM3 in this instance as the applicant had made a strong case for an exception being made in this instance.

Questions/Matters on Which Clarification was Sought

275.3 Councillor Hamilton enquired as to the height of the office building.

275.4 Councillor Smart enquired whether it was anticipated that a noise nuisance would arise from the use of equipment associated with the site. It was explained that element of the

scheme had been determined as part of the original application and did not form part of the current request to vary a condition of the Section 106 Agreement.

275.5 Councillor Steedman enquired whether that condition had been applied in order to secure and protect the employment use. Councillor Smart sought clarification as to whether the proposed variation would result in a change in the number of jobs to be provided. It was explained that this would not be the case and that a variety of employment was provided on site. In addition to sales and office jobs, there would be a number of posts associated with the workshops and MOT test centre.

275.6 A vote was taken and Members voted unanimously that officers be authorised to complete a variation to the Section 106 Agreement.

275.7 **RESOLVED** - That the Committee resolves to authorise officers to complete a variation to the Section 106 Planning Agreement dated 21 July 2004 relating to land at Chandlers, Victoria Road, Portslade in the terms set out in Section 6 of the report.

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

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

A. Application BH2009/03156, Wellesbourne Centre, Whitehawk Road, Brighton - Erection of part single storey part two storey building to accommodate library, café, offices and ancillary accommodation. Change of use of part of school from D1 to office B1. Creation of new disabled car park and diversion of existing public footpath and creation of new cycle/footway connecting to Whitehawk Way.

(1) It was noted that this application had formed the subject of a site visit prior to the meeting.

(2) The Area Planning Manager (East), Ms Burnett gave a presentation detailing the scheme by reference to elevational drawings and photographs showing the existing and proposed elevations and indicating their appearance within their immediate setting and in longer views. Ms Burnett also referred to two further letters of objection which had been received stating that in their view the level of on site parking proposed was inadequate.

Questions/Matters on Which Clarification was Sought

(4) Councillor C Theobald referred to the TPO trees which were to be removed to enable the scheme to progress. She enquired whether any of them were Elm trees or good specimens, it was confirmed that they were not.

(5) Councillor Kennedy enquired regarding the biodiversity measures proposed.

(6) Councillor Cobb sought clarification whether the cycle route/ footpath would be separate or would be a shared space. It was confirmed that the space would be combined.

- (7) Councillor Smart sought clarification regarding the materials to be used in construction of the library. It was confirmed that these would compliment those of the school.

Debate and Decision Making Process

- (8) Councillor Cobb expressed concern that a shared cycle/footpath could result in an increased risk of accidents. During the course of the site visit the previous afternoon a cyclist had been observed gathering momentum going downhill, in the event of a collision with a pedestrian serious injuries could result. Councillor McCaffery echoed those concerns. Whilst supporting the scheme overall she had misgivings in respect of this shared element of the scheme. It was explained that this proposal was comparable with solutions used elsewhere across the city.
- (9) Councillor Cobb enquired whether it would be possible to add a condition requiring that the cycle/ footway were separated. The Head of Development Control stated that it would not be appropriate to add a condition, as this would not be enforceable, but that an informative could be added to any permission granted requesting the applicant to ensure that the most appropriate means of providing a safe walking /cycle route be explored. Councillor McCaffery stated that she still had concerns regarding the safety of that element of the scheme.
- (10) Councillor Davey stated that he considered that the available space was probably too narrow to provide segregated spaces. However, he supported the proposed informative. Councillor Smart concurred in that view given that there was a steep incline to one side of the site.
- (11) Councillor C Theobald stated that she supported the scheme which she considered represented a good design solution.
- (12) Councillor Kennedy stated that she considered the development had been well designed, although it was disappointing that the opportunity had not been taken to include more elements which supported biodiversity.
- (13) A vote was taken and the 11 Members present when the vote was taken voted by 10 with 1 abstention that planning permission be granted.

276.1 RESOLVED – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 9 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report and to the additional informatives set out below:

6. The applicant is advised that a formal Stopping up Order for the current footpath crossing the site must be secured prior to any works affecting the footpath being carried out.

7. The applicant is advised of the need to seek to ensure that all possible measures are taken and advice sought to ensure that the appropriate safety measures are provided in relation to the shared cycle/walking route.

Note: Having declared an interest in the application Councillor Fallon-Khan withdrew during its consideration and took no part in the debate and decision making thereon. Councillor McCaffery abstained.

(ii) **MINOR APPLICATIONS**

B. Application BH2010/00097, Mill House, Overhill Drive, Patcham – Erection of 3 detached 2 storey dwellings and a single storey detached bungalow.

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

276.2 **RESOLVED** – That consideration of the above application be deferred pending a site visit.

C. Application BH2010/00394, 7 Brunswick Street West, Hove – Change of use of ground floor store into 1 self contained studio flat.

(1) The Area Planning Manager (West), Mrs Hurley gave a presentation detailing the proposed scheme. The application before the Committee that day as a re-submission of refused application BH2009/02388. The revised proposal now incorporated a studio flat instead of a one bedroom flat within the ground floor store, with the main open-plan studio room to the front. The bathroom would be located at the rear and would be served by the window granted planning consent and installed under BH2007/04452.

(2) Reference was made to the observations received from the CAG and set out in the “Late Representations List “expressing their concern that external alterations to the windows had not been detailed. In consequence they had deferred making a comment. It was explained that Listed building consent was not required for the internal works proposed and that no external works to the building were proposed.

(3) Mr Chavasse spoke on behalf of neighbouring objectors stating that they considered the scheme to be acceptable. Concerns remained however regarding the rear bathroom window, which if it was clear glazed would overlook a rear shared court yard area. It was often a condition of grant of planning permission that such windows were obscure glazed and top opening only. Local residents were of the view that this would be appropriate in this instance too.

Questions/ Matters on Which Clarification was Sought

(4) Councillor Davey stated that he had no objections to the scheme in principle but queried why obscure glazing to the bathroom window had not been sought in this instance. It was explained that the rear windows of a number of neighbouring dwellings and flats over looked this area a condition had been added, this could however be done if Members considered it appropriate.

(5) Councillor Smart stated that he considered it would be appropriate to require the rear bathroom to be obscure glazed and for it to be top opening only, this would provide the necessary levels of light and ventilation without directly overlooking the courtyard area. That was the general consensus among other Members of the Committee.

(6) A vote was taken and on a vote of 8 to 2 with 2 abstentions it was agreed that an additional condition be added to ensure that the bathroom window overlooking the rear courtyard was obscure glazed and hung so that it was top opening only. A further vote was taken and on a vote of 10 with 2 abstentions planning permission was granted.

276.3 **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 and to the addition of a further condition requiring the rear (bathroom) window to be obscure glazed and top opening only.

Note: Councillors Cobb and Fallon-Khan abstained from voting in respect of the above application.

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

277.1 **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 by 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.

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

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

Application:	Site Visit Requested by :
BH2010/00097, Mill House, Overhill Drive, Patcham	Councillor C Theobald
BH2010/00206, Former Legal & General Building, 2 Montefiore Road, Hove	Head of Development Control
BH2010/00498, Former Esso Petrol Filling Station, Hollingdean Road, Brighton	Head of Development Control
BH2010/00559, Dolphin House, Manchester Street, Brighton	Head of Development Control

The meeting concluded at 3.10pm

Signed

Chairman

Dated this

day of

APPEAL DECISIONS

	Page
A. PATCHAM WARD	13
<p>Application BH2009/02255, 11 Carden Avenue, Patcham, Brighton. Appeal against a refusal to grant planning permission for removal of a chimney and existing rear extensions and the construction of new extensions to rear, side and front. (Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
B. HOVE PARK	17
<p>Application BH2009/02673, 24 Deanway, Hove. Appeal against a refusal to grant planning permission for a two storey front/side extension. (Committee Decision) APPEAL ALLOWED (copy of the letter from the Planning Inspectorate attached).</p>	
C. ST PETER'S AND NORTH LAINE	19
<p>Application BH2009/0049, 33 Sydney Street, Brighton. Appeal against an enforcement notice for installation of an Automatic Teller Machine (ATM), Dutch Blind and solid roller shutter in breach of planning control. (Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
D.	21
<p>Application BH2009/00083, 36 Victoria Street, Brighton. Appeal against refusal to grant planning permission for a staircase access from existing terrace balcony to ground floor courtyard. (Committee Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	
E. REGENCY WARD	23
<p>Application BH2009/01439, 45-46 North Street, Brighton. Appeal against refusal to grant planning permission for the conversion of, and extension to, the upper floors to provide 9 self-contained flats. (Delegated Decision) APPEAL DISMISSED (copy of the letter from the Planning Inspectorate attached).</p>	

F. WESTBOURNE WARD **27**

Application BH2009/01741, 158 Westbourne Street, Hove. Appeal against refusal to grant planning permission for the reconstruction of a single-storey double garage into a 2 storey, self-contained dwelling with amenity space frontage. (Committee Decision) **APPEAL DISMISSED** (copy of the letter from the Planning Inspectorate attached).

G. WISH WARD **31**

Application BH2009/01365, r/o 8-16 St Leonards Road, Hove. Appeal against refusal to grant planning permission for the demolition of garages and the provision of three new 1½ storey houses. (Committee Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached).

H. PATCHAM WARD **39**

Application BH2009/00058, The Priory, London Road, Brighton. Appeal against a failure to give notice within the prescribed period of a decision on an application for planning permission. (Delegated Decision) **APPEAL ALLOWED** (copy of the letter from the Planning Inspectorate attached).

I. HANGLETON & KNOLL WARD **47**

Application BH2009/01249, The Hyde, Rowan Avenue, Hove. (Committee Decision) **APPEAL WITHDRAWN** (copy of the letter from the Planning Inspectorate and Solicitors for the Applicant attached).



Appeal Decision

Site visit made on 14 April 2010

by **M F Aldous BA (Hons), Dip Mgt, MRTPI**

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

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

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

Decision date:
19 April 2010

Appeal Ref: APP/Q1445/D/10/2123216

11 Carden Avenue, Patcham, Brighton BN1 8NA.

- 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 Paolo Packham against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02255, dated 14 September 2009, was refused by notice dated 16 December 2009.
- The development proposed is the removal of a chimney and existing rear extensions and the construction of new extensions to rear, side and front.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues in this case are:
 - i) The effect of the proposal on the character and appearance of the building and the surrounding residential area; and
 - ii) The effect of the proposal on the living conditions of the occupiers of 9 and 13 Carden Avenue, with particular regard to overbearing impact.

Reasons

Character and Appearance

3. The appeal property is a sizeable, detached family house in an area typified by such dwellings and which, in the immediate vicinity of the site, are mostly individually designed. In its current form the dwelling represents a nicely proportioned and balanced property with a pleasing front elevation which contributes positively to the general street scene.
4. The property is adjoined by others on all sides. It enjoys the benefit of a substantial rear garden containing trees, but despite this its rear elevation is still readily visible from a number of other properties. To the side it enjoys a good deal of separation from number 13 to the east, but number 9 to the west has a much closer spatial relationship with the appeal dwelling.
5. The proposed works would see the removal of one of the two chimney stacks and the single storey side utility room extension, with minor amendments to the front roof form and the bringing forward of the front of the garage. However, the net result would feature relatively little substantive change to the

- main front elevation, preserving its essential shape and character, and as such I find this aspect of the proposal to be acceptable.
6. The remodelled house would extend considerably further back into the site at two storey level, with the existing summer house area to the rear of the existing garage also absorbed into the building in a single storey form. The works would add considerably to its overall bulk and mass and changes at the first floor level would see every one of the four bedrooms equipped with an en-suite bathroom, with a fifth master bedroom suite incorporated into the roof space at second floor level.
 7. The level of change is therefore rather ambitious and significant and both side elevations and the rear elevation would be significantly amended in order to incorporate the substantially increased floor space. This would be notably evident to the rear, where the existing gabled features would be removed and replaced by a central stair case tower that would extend from the ground to within a metre or so of the roof ridge line.
 8. This feature would represent a stark and inconsistent contrast to the more traditional lines and elevational treatment of the house. In my view given the particular size and prominence of this feature it would represent a significantly discordant element that would not sit well with the retained and overall shape and character of the dwelling.
 9. This element would be prominent and readily visible when viewed from surrounding properties and would form a significant bulky increase to the profile of the building when viewed from the east, where new window openings at upper levels of the building would also register as features that are inconsistent with the prevailing character of the house. To the west, the revised side elevation would be largely contained by the close proximity with number 9 Carden Avenue but would have a considerably increased mass and bulk and a net gain in window openings.
 10. I concur with the view expressed by the Council that overall the net result would be to produce a disjointed and rather incongruous blend of traditional and more contemporary features that would register as an incoherent treatment, harmful to the visual qualities of the building and the character and appearance of the surrounding area and in conflict with saved policies QD1, QD2 and QD14 of the Brighton & Hove Local Plan (Local Plan).

Living Conditions

11. The Council has cited the properties to be most affected in this respect as numbers 9 and 13 Carden Avenue. Other dwellings to the rear in Overhill Gardens and Charles Kingston Gardens have a more significant degree of separation with intervening landscape features, and as such are unlikely to suffer any damaged amenity as a result of the proposal.
12. With regard to the occupants at number 13 I consider the same applies. The two houses have a good degree of side to side separation with intervening gardens, walls and garaging arrangements. Whilst the east elevation of the appeal property would be amended, the single storey projection under a flat roof would effectively be behind the garden wall. At the upper levels window openings would be inserted but two of these would be to bathrooms and would

be fitted with obscured glazing. Given the distance involved I do not consider that any unacceptable overlooking would result and for similar reasons the remodelled side elevation would not be have any notable effect upon enclosure or create an overbearing relationship with number 13 or its garden areas, which are quite extensive.

13. As indicated above, number 9 has a much closer physical relationship with the appeal property. Number 9 also has a smaller rear garden which is already quite enclosed given the containment afforded by the dwellings to the side and by Charles Kingston Gardens properties a fairly short distance to the north.
14. The proposed amendments to the western side elevation of the appeal property would be significant. Although the existing single storey utility room would be removed, the remodelled building would be increased by around three metres in depth, extending along a good proportion of the rear garden to number 9. Given that the extension would be two storey in nature, close to the mutual boundary, this would inevitably create a greater sense of enclosure and would deprive the immediate garden area of some light, particularly during the early part of the day.
15. On balance I consider the net result to be harmful to the living conditions of the occupants of number 9 and thereby inconsistent with the requirements of saved policies QD14 and QD27 of the Local Plan.

Conclusions

16. I have found this proposal to be unacceptable in terms of its effect upon the character and appearance of the building and the surrounding area and because of its adverse implications for the living conditions of the occupiers of 9 Carden Avenue. In both respects the proposal is in conflict with the adopted development plan. For the reasons set out above, and having had full regard to all other matters raised, I therefore conclude that this appeal should not succeed.

Michael Aldous

INSPECTOR



Appeal Decision

Site visit made on 20 April 2010

by **B D Bagot BA (Arch) MCP MRTPI**

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

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**Decision date:
28 April 2010**

Appeal Ref: APP/Q1445/D/10/2125431 24 Deanway, Hove, East Sussex BN3 6DG

- 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 Henrik Schou against the decision of the Brighton & Hove City Council.
- The application, Ref: BH2009/02673 dated 5 November 2009, was refused by notice dated 25 January 2010.
- The development proposed is two-storey front/side extension.

Preliminary Matter

1. The appeal application was amended following submission by revised plans submitted on 11 November 2009. I have determined the appeal on the basis of those revised plans.

Decision

2. The appeal is allowed and planning permission granted for two-storey front/side extension on land at 24 Deanway, Hove, East Sussex BN3 6DG, in accordance with the terms of the application No BH2009/02673 dated 5 November 2009, as amended by revised plans submitted on 11 November 2009, subject to the following conditions:
 - (1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
 - (2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
 - (3) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the revised plans, numbers 23/01c, 23/02i, 23/03a, 23/04d, 23/05a, 23/06a, and 23/07a.

Main Issues

3. The main issues are whether the proposed extension would appear incongruous and out of character with the existing building and the street scene generally, and whether it would interfere to an unreasonable extent with the outlook from the adjoining house at 55 Woodland Drive, and have an overbearing impact in relation to that house.

Reasons

4. The appeal property is on the north-east side of the angled junction of Deanway with Woodland Drive. It is a 2 storey house built on rising ground above a lower ground floor garage, and is one of a number of houses of similar style built on the north-east side of Deanway as it rises up from the road junction towards the south-east. The appeal proposal is to add a gabled 2 storey extension on the north-west side, with its floors level with the existing garage and ground floor of the property. The extension would be set 200 mm back from the front of the existing house, and would be separated from it by an external staircase leading to an extended entrance lobby.
5. The front of the extension has been designed to reflect the overall character and appearance of the existing house, with a similar gable angle and similar window proportions and detailing. The overall height of the gable, being one floor lower than that of the main house, would be subservient to it. The extension would be of good architectural quality in design terms, and would not appear incongruous in relation to the design of the existing house.
6. The front of the extension would add to the curved line of the properties in Woodland Drive and Deanway on the north-east side of the road junction, and would effect a visual transition from the higher properties in Deanway to the lower scale of the houses fronting Woodland Drive. It would not be unduly prominent or out of character with the street scene or the locality generally.
7. The adjoining property at 55 Woodland Drive is at an angle to this property, and the proposed extension would not interfere to any marked degree with the outlook from 2 first floor windows to habitable rooms in the side elevation of that house. The building of the extension would have the merit of preventing the overlooking of those windows that can now be had from the staircase landing outside the entrance to this house. The eaves level of the extension would be only slightly higher than that of the adjoining house, and there would be sufficient space between the dwellings to avoid creating an unreasonable sense of enclosure or overbearing impact for the neighbouring occupiers.
8. I conclude that the proposed extension would not appear incongruous or out of character with the existing building or the street scene generally, and would not interfere to an unreasonable extent with the outlook from the adjoining house at 55 Woodland Drive, or have an overbearing impact in relation to that house. The development would be in accordance with the saved policies of the Brighton & Hove Local Plan adopted in 2005 to which the Council have referred, namely QD1 (design quality), QD2 (local characteristics), QD14 (extensions and alterations), and QD27 (protection of amenity).
9. In granting planning permission I have required the external materials of the extension to match those of the existing house, so as to ensure consistency in architectural character. I have also required the development to be carried out in accordance with the revised plans, for the avoidance of doubt and in the interests of proper planning.

Brian Bagot

INSPECTOR



Appeal Decision

Site visit made on 30 March 2010

by **Alan Langton** DipTp CEng MRTPI MICE MCIHT

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Decision date:
15 April 2010

Appeal Ref: APP/Q1445/C/09/2113956

Good News, 33 Sydney Street, Brighton BN1 4EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Tariq Gamil against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2009/0049.
- The notice was issued on 7 September 2009.
- The breach of planning control as alleged in the notice is, without planning permission:
 - 1) The installation of an Automatic Teller Machine (ATM) with Alarm Box above, within the shop front.
 - 2) The installation of a 'Dutch Blind' below the fascia of the shop front.
 - 3) The installation of a 'solid' roller shutter to the front entrance with shutter housing above.
- The requirements of the notice are:
 - 1) Remove Automatic Teller Machine (ATM).
 - 2) Remove the additional vertical window mullion, black panelling and burglar alarm and restore the shopfront to that which existed prior to installation of the ATM.
 - 3) Remove the 'Dutch Blind'
 - 4) Remove the solid roller shutter, shutter box and guide rails from in front of the entrance recess.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision: I dismiss the appeal and uphold the enforcement notice.

Reasons

1. As submitted the appeal was limited to ground (a) only, which lapsed as the fees required to consider it were not paid. Implicit within that initial appeal were issues within the scope of grounds (f) and (g), which do not require a fee, and the appeal proceeded on this basis. I have to say though that very little was submitted in support. The merits of the works, including such matters as the service provided by the ATM lie outside the scope of grounds (f) or (g), although I note the dismissal of an appeal under Section 78 with respect to the ATM¹. Also, although discussions are to be encouraged, as advised by the Inspectorate's case officers it is not open to them or me to mediate between the appellant and the Council. My role is to decide on the disputed enforcement notice.

¹ APP/Q1445/A/09/2107574 – issued following a site visit on 7 December 2009

Ground (f)

2. The enforcement notice lists more items required to be removed than it expressly identifies in the alleged breaches of planning control. However, it is clear that the window mullion and black panelling were installed as integral parts of the ATM and similarly the guide rails are self evident components of the roller shutter. Accordingly I am satisfied that the notice does not go further than necessary in order to remedy the breaches, and that the appeal fails on ground (f).

Ground (g)

3. Should the appellant wish to apply to install a different shop front, rather than restore the former one in compliance with the notice, this would be something for the Council to consider at least in the first instance. The Council have discretionary power to extend the compliance period should they consider that appropriate in the light of new proposals submitted to them. However, direct compliance with the notice could practicably be carried out within 3 months which is accordingly not too short and the appeal fails on ground (g).

Alan Langton

Inspector



Appeal Decision

Accompanied 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

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Decision date:
25 March 2010

Appeal Ref: APP/Q1445/A/09/2107590 36 Victoria Street, Brighton BN1 3FQ

- 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. I. Heath against the decision of Brighton & Hove City Council.
- The application (Ref BH2009/00083), dated 6 January 2009, was refused by notice dated 21 April 2009.
- The development proposed is to "provide staircase access from existing terrace balcony to ground floor courtyard".

Decision

1. I dismiss the appeal.

Procedural matter

2. Since the staircase which is the subject of the appeal has already been installed, I have treated the application as a retrospective one for its retention.

Main issue

3. The main issue (in the light of the relevant development plan policies) is whether the staircase significantly harms the residential amenities of No. 35 Victoria Street, in terms of increased overlooking and a consequent loss of privacy.

Reasons

4. The appeal site is at the rear of No.36, a terraced dwelling house which lies on the east side of Victoria Street, and within the Montpelier and Clifton Hill Conservation Area. The lightweight metal staircase links a small ground floor patio area with a first floor terrace, (which has its principal access from an adjoining bedroom.) Contained within the property, it can only be used by the occupiers of No.36. The staircase runs directly alongside the common property boundary with No.35, the adjacent dwelling to the north, whose occupier objects to actual and potential overlooking of his property from anyone using it.
5. During my site visit I saw that the street block between Victoria Street and Clifton Place to the east is densely built-up with 2- and 3-storey terraced houses, such that there are in general only narrow gaps between their backs. Several of them have small patios etc. at the rear which, although partially

enclosed by walls, can be overlooked by higher level windows, such that privacy hereabouts is at a premium.

6. There is a low wall between Nos. 35 and 36, but any user of the staircase is and would be able readily to see over it, and into both the patio garden at No. 35, and into a first floor habitable room there. This room has a projecting window in very close proximity to the staircase.
7. Although, as I have indicated, the relationship between the properties in this part of the streets is such that none are free of being overlooked to some extent, I consider that the staircase has significantly increased the potential for overlooking of No.35, compared with the situation before it was installed, and over and above any potential overlooking from the terrace balcony alone. Despite the arguments on behalf of the appellant, it seems to me that this has materially reduced its privacy and the residential amenity of its occupier/s. This is contrary to the provisions of policies QD14b (*extensions and alterations*) and QD27 (*protection of amenity*) of the Brighton and Hove Local Plan 2005, and is the reason why the appeal must fail.
8. As I have mentioned the locality falls within a conservation area, but in this tightly contained situation at the rear of the house I am satisfied that the staircase has no significant effect - for better or worse - on the character or appearance of the CA as such. Therefore the appeal does not fail for that reason. I have considered all the other points raised in the representations, including those made at the application stage, but there are none which alter or outweigh my conclusions on the main town planning issue.

Paul Dobsen

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil**
MRTPI

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for Communities and Local Government

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Decision date:
1 April 2010

Appeal Ref: APP/Q1445/A/09/2111729 45-46 North Street, Brighton BN1 2SG

- 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 M Sanidad against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01439, dated 9 June 2009, was refused by notice dated 21 August 2009.
- The development proposed is the conversion of, and extension to, the upper floors to provide 9 self-contained flats.

Decision

1. I dismiss the appeal.

Procedural Matter

2. Internal building works have commenced and I was able to view some of the partly completed flats during my site visit.

Main Issues

3. I consider the main issues in this case to be:
 - i) whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to the standard of accommodation, Lifetime Homes standards and private amenity space provision;
 - ii) the effect of the proposal on the character and appearance of the host property and the street scene, and whether it would preserve or enhance the character or appearance of the Old Town Conservation Area.

Reasons

Living Conditions

4. The proposal comprises the conversion and extension of the upper floors of a pair of narrow adjoining properties to provide 6 self-contained studio units and 3 self-contained 1-bedroom flats. The dwellings would be accessed via a street level entrance formed within the North Street elevation. All of the studios would provide less than 15sqm of living space inclusive of kitchen areas. There would be limited scope for any furniture other than beds within these areas resulting in cramped accommodation, which I consider would fail to provide satisfactory living conditions for future occupants. I conclude that the proposal would therefore be contrary to Brighton and Hove Local Plan (LP) Policy QD27,

under which the Council will not grant planning permission where development would cause loss of amenity for future users of development.

5. LP Policy HO13 states that conversions and changes of use to provide residential accommodation will be expected to demonstrate that, wherever it is practicable, Lifetime Homes criteria have been incorporated. There is no evidence before me to demonstrate that Lifetime Homes standards have been considered or that the scheme would, where possible, meet the standards. I therefore conclude that the proposal would be contrary to LP Policy HO13.
6. Having regard to the number of dwellings proposed and the standard of internal space proposed, I consider that the absence of amenity space in this case would unacceptably exacerbate the poor quality living conditions for future residents identified above. I conclude therefore that the proposal would be contrary to the aims of LP Policy HO5, which seeks private amenity space in residential development where appropriate to the scale and character of the development.
7. The Council has referred to LP Policies HO3 and HO4 in its first reason for refusal. Amongst other matters these policies seek residential development that provides a mix of dwelling types and sizes to reflect the Council housing needs. There is no information before me relating to the Council's preferred mix of housing in the city centre. However, as I have concluded that the studio units would provide cramped accommodation I also consider that, in this respect at the least, the proposal would also be contrary to LP Policies HO3 and HO4. Although I note the appellant's view that the layout of the existing buildings prevents the provision of larger flats, there is nothing before me to demonstrate that this is the case.

Character and Appearance

8. The street frontage, of which the appeal properties form part, is located within the Old Town Conservation Area and is characterised by a varied mix of building styles, heights and scales. In particular, the smaller buildings within the frontage, such as the appeal properties, make a significant contribution to the street scene. These aspects of the Conservation Area are characteristics to which I attach significant weight.
9. The proposal would involve the erection of an additional storey on 46 North Street. Although the height of the extended street frontage would be slightly below that of No.45, I consider that this levelling-up of neighbouring building heights would have an unacceptable effect on the varied appearance of the street scene. Although I note that some neighbouring buildings have regular proportioned windows, I consider that the effect of the additional storey combined with the proportions and detailing of the new and replacement windows would be detrimental to the appearance of No.46 and the street scene.
10. For the reasons set out above, I conclude that the proposal would be contrary to the aims of Supplementary Planning Guidance Note 1: *Roof Alterations and Extensions*, which seeks the retention of varied roof lines where these are an important aspect of an area's character, and LP Policy QD14, which states that planning permission for extensions and alterations will only be granted where proposed development takes account of the character of the area. For the

same reason I also conclude that the proposal would fail to preserve the character or appearance of the Old Town Conservation Area and would therefore be contrary to the aims of LP Policy HE6.

Other Matters

11. I note that the proposal would create new residential accommodation in a town centre location and the appellant's view that there is a high level of demand for small units in this location. However, neither of these matters is sufficient to outweigh my conclusions on the main issues above.

Conclusions

12. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Simon Poole

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil**
MRTPI

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Decision date:
31 March 2010

Appeal Ref: APP/Q1445/A/09/2114527 158 Westbourne Street, Hove BN3 5FB

- 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 Ms Eman Barakat-Ajmi against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01741, dated 15 July 2009, was refused by notice dated 18 September 2009.
- The development proposed is described as the reconstruction of a single-storey double garage into a 2 storey, self-contained dwelling with amenity space frontage.

Decision

1. I dismiss the appeal.

Procedural Matters

2. Although the name entered on the planning application form as the applicant is "Ms Eman Barakat", all other documentation, including the appeal form, refers to "Ms Eman Barakat-Ajmi". I have therefore used the latter in the banner heading above.

Main Issues

3. The main issues in this case are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy;
 - iii) whether the proposal would result in satisfactory living conditions for future occupiers of the property, with particular regard to private amenity space provision, privacy, outlook and natural light; and
 - iv) whether the proposal would adequately conserve energy and resources.

Reasons

Character and Appearance

4. The appeal site is located to the rear of 158 Westbourne Street and fronts onto Coleridge Street. To one side there is a narrow alleyway, beyond which is the flank wall of the terrace on the southern side of Coleridge Street. Immediately to the rear is a small garden serving 156 Westbourne Street. The site is

occupied by a single-storey flat-roofed garage which abuts the rear of No.158 and has a small paved forecourt area to the front. The surrounding area is characterised by parallel streets of predominately 2 and 3 storey terraced dwellings of relatively regular appearance.

5. The proposal would comprise a 2-storey house with a shallow-pitched roof which would occupy the footprint of the existing garage. It would sit proud of the main front building line in Coleridge Street and would occupy a significant proportion of the gap between the upper floors of the houses to either side, a feature which is a common characteristic of the area. Due to this forward projection, the increase in height and bulk of built form on the site and the significant degree of in-filling between properties, I consider that the proposal would have a harmful effect on the distinctive pattern of the development in the area and appear incongruous in the street scene.
6. I therefore conclude that the proposal would fail to meet the aims of the Brighton and Hove Local Plan (LP) Policies QD1 and QD2, which seek new buildings to make a positive contribution to the visual quality of the environment and take account of local characteristics, including the developed framework against which development will be set.

Living Conditions - Occupiers of Neighbouring Properties

7. The appeal site abuts the rear boundary of 158 Westbourne Street and the entirety of the side rear garden boundary of No.156. The proposal would result in a significant increase in the height and bulk of development along these boundaries which I consider would substantially enclose the neighbouring rear gardens resulting in an unacceptable reduction in outlook from both the gardens and the windows that overlook them.
8. For these reasons I consider that the proposal would have an unacceptable effect on the living conditions of the occupiers of Nos. 156 and 158. The proposal would therefore be contrary to LP Policies QD3 and QD27, which state that proposals for 'backland' development will be rigorously examined in respect of impacts on amenities and planning permission will not be granted for development that results in a loss of amenity to existing and future residents.
9. The proposed rooflights in the rear section of pitched roof would provide light to a bathroom and a corridor. As the rooflights would be above eye level, the scope for overlooking of neighbouring properties would be limited. I therefore consider that the proposal would not give rise to an unacceptable sense of loss of privacy for neighbouring property occupiers.
10. I note that the proposal would involve the blocking up of an existing window in the rear wall of the garage which forms the boundary with No.156. However, as the garage does not form regularly occupied accommodation, the blocking up would have only a minor benefit for the occupiers of No.156. I conclude that this would not outweigh the harm I have identified above in respect of the effects on outlook for existing neighbouring occupiers.

Living Conditions - Future Occupiers

11. LP Policy HO5 requires the provision of private amenity space in residential development where appropriate to the scale and character of the development. The proposal would provide a front garden of about 7.7sqm in area, much of which would be taken up by the refuse/recycling and cycle storage. As this would be overlooked from the street and of limited size, I consider that it would not constitute useable private space.
12. The proposal would comprise a 1-bedroom dwelling and would therefore be likely to form 'starter' accommodation for a single person or a couple. However, I consider that it is appropriate for a dwelling of this type, located in a primarily residential area such as this, to provide some private outdoor space. I therefore consider that the proposal would be substandard in this respect and would result in unsatisfactory living conditions for future occupiers. The proposal would therefore be contrary to the aims and objectives of LP Policies HO5 and QD27.
13. It is proposed that a small window is retained at ground floor level facing the alleyway and that this would serve a cloakroom. As the alleyway serves 5 houses its use is likely to be infrequent. I therefore consider that provided the window comprises obscured glass, which could be secured via a planning condition, the future occupants of the appeal proposal would not experience unacceptable levels of privacy.
14. The primary living accommodation in the proposal would face the street and therefore benefit from a level of outlook that is typical for properties in a residential street. The ground floor living space would be open plan with a kitchen area at the rear. Although it would be single aspect, the distance between the large street facing glazed doors and the kitchen area would be relatively short. I am therefore satisfied that acceptable levels of internal natural light would be provided.
15. Although I have concluded that the proposal would provide adequate levels of internal natural light and acceptable privacy for future occupants, this does not outweigh the harm I have identified above in respect of the lack of private outdoor amenity space provision.

Conservation of Energy and Resources

16. LP Policy SU2 states that development proposals are required to demonstrate what measures have been integrated into the siting, layout and design of buildings to conserve energy, water and materials. The Council's Supplementary Planning Document 8: *Sustainable Building Design* (SPD) sets out a range of recommended requirements for different scales of development. I am satisfied that the requirements for a small house could be adequately met via the imposition of a planning condition, were the development acceptable in other respects. I therefore conclude that the proposal would not be contrary to LP Policy SU2 or the SPD. For the same reasons the proposal would comply with LP Policy SU16, which supports, rather than explicitly requires, the provision of renewable energy power generation installations.

Conclusions

17. Although I have concluded that the proposal would be acceptable in terms of the conservation of energy and resources, I conclude overall, for the reasons given above and having regard to all other matters raised, that it would have an unacceptable effect on the character and appearance of the area and on the living conditions of residents of neighbouring properties and future occupiers of the development. The appeal should therefore be dismissed.

Simon Poole

INSPECTOR



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil**
MRTPI

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Decision date:
29 April 2010

Appeal Ref: APP/Q1445/A/09/2115694

Land to the rear of 8-16 St Leonards Road, Hove BN3 4QR

- 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 John Kelly against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01365, dated 28 May 2009, was refused by notice dated 24 August 2009.
- The development proposed is described as the demolition of garages and the provision of three new 1½ storey houses.

Decision

1. I allow the appeal, and grant planning permission for the demolition of garages and the provision of three new 1½ storey houses on land to the rear of 8-16 St Leonards Road, Hove BN3 4QR in accordance with the terms of the application, Ref BH2009/01365, dated 28 May 2009, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue in this case is the effect of the proposal on highway safety, with particular regard to the provision of car parking.

Reasons

3. The appeal site is occupied by 17 lock-up garages and situated in a backland location to the rear of predominately residential properties facing St Leonards Road, Seaford Road and Boundary Road. Immediately beyond the southern boundary of the site there is a 2-storey commercial building and along part of the northern boundary there is a single-storey warehouse, which is currently used for equipment storage by a coin machine company. Users of the appeal site and the coin machine company share an approximately 3.5m wide driveway from St Leonards Road, to one side of which there is an alleyway which runs along the rear boundaries the Seaford Road properties.
4. A planning application (Ref BH2008/01689) for the redevelopment of the site to provide 3 dwellings was refused by the Council in August 2008 and a subsequent appeal was dismissed in April 2009 (APP/Q1445/A/2086855). Although the Council as Highway Authority did not object to the proposal, the Inspector concluded that the provision of 3 off-street car parking spaces would not be sufficient to avoid some increased demand for on-street parking and

- that this could have a significant effect on the convenience of road users and lead to increased 'parking stress' for local residents.
5. I note my colleague's observations regarding the on-street parking conditions in the area experienced during his visit. However, during my visit I did not find the car parking situation to be un-typical of a residential street. I observed relatively light level of traffic in St Leonards Road and Seaford Road in the mid afternoon during my visit. I did, however, observe the 3 coin machine company vans double-parked for a while in the street close to the entrance to the site.
 6. The proposal before me is essentially the same as the previous scheme but with off-street car parking provision increased to 5 spaces. This level of car parking would slightly exceed the maximum stated in the Council's Supplementary Planning Guidance Note 4: *Parking Standards* (SPG), which is, for sites outside controlled parking zones, 1 space per dwelling plus 1 space for every 2 dwellings for visitors. As the dwellings would be small 1 or 2 bedroom units and the site is within reasonable walking distance of a railway station, a range of bus routes, local shops, community facilities and recreational facilities, I am satisfied that the level of car parking proposed would adequately meet the needs of future residents.
 7. The appellant has stated that of the 17 garages on the appeal site, 10 are currently used for storage, 5 are vacant and the use of the remaining 2 is not known. In respect of the previous appeal the Inspector noted that on the basis of information provided by the appellant then that 1 or 2 of the garages appeared to be used by local residents. Whether the situation has changed in the last year is not clear from the information before me. However, I consider that the proposal would give rise to no more than, at most, a very small increase in demand for on-street parking in the area.
 8. The Council as Highway Authority has not objected to the proposal and has stated that the loss of the existing garages would not lead to additional car parking on the highway. I attach significant weight to these views and for the reasons set out above conclude that the proposal would not adversely affect on-street parking problems in the area and would not therefore be detrimental to highway safety in this respect.
 9. The Highways Authority considers that the proposal would lead to an increase in trip generation. Although no evidence has been provided on the existing level of trip generation, I consider that the appeal scheme would potentially, at the least, give rise to increased trips during peak times if compared to the current situation. However, there are 17 garages on the appeal site which, if fully utilised, could give rise to trip generation that is greater than that resulting from the appeal proposal. For this reason I consider that significant weight needs to be attached to the potential future situation if planning permission is withheld in this case.
 10. The shared use of the access driveway currently leads to some conflict between users of the garages and vans accessing the warehouse. I recognise that, for as long as the warehouse is in active use, this would remain the case with the appeal proposal in place. However, I consider that the provision of a pavement

to one side of the driveway would improve pedestrian safety within the site resulting in better highway safety conditions than currently exist.

11. For the reasons set out above, and having regard to the site's good public transport accessibility, I conclude that the proposal would not have an unacceptable effect on highway safety within the site or on surrounding roads. I conclude therefore that the proposal complies with Brighton and Hove Local Plan (LP) Policies TR1 and TR7, under which planning permission will be granted only if developments provide for the demand of travel created and do not increase the danger to users of adjacent pavements, cycle routes or roads.
12. The appellant has submitted a signed unilateral undertaking that would trigger the payment of contributions towards sustainable transport improvements. However, there is little before me to justify the Council's request for contributions or how the contributions would be spent. In particular it has not been demonstrated that the obligation would be directly related to the proposed development or that it is necessary to make the proposal acceptable in planning terms. I therefore consider that the tests in Circular 05/2005 are not met. For these reasons I attribute limited weight to the unilateral undertaking and therefore conclude that the proposal complies with LP Policies QD28 and SU15, which states that planning obligations will be sought for contributions for public transport and pedestrian and cycle routes where appropriate and reasonably related to the proposed development.

Other Matters

13. The appeal proposal would be similar to the previous scheme in terms of layout, height, bulk, massing and appearance. I therefore concur with my colleague's conclusions in respect of effects on daylight, sunlight and privacy to, and outlook from, nearby residential properties. I consider that the vehicular traffic movements generated by the proposal would be low and would not therefore give rise to unacceptable levels of noise disturbance. For the reasons I therefore conclude that the proposal would not have unacceptable effects on the living conditions of neighbouring residents.

Conditions

14. I have considered the conditions suggested by the Council having regard to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. I have adjusted their wording where necessary in the interests of clarity. In order to protect the character and appearance of the area I have imposed conditions requiring the submission and approval of materials, refuse storage and landscaping. To protect the living conditions of occupants of neighbouring properties and the appearance of the dwellings I have imposed a condition removing certain permitted development rights.
15. In response to the second condition put forward by the Highway Authority, and the concerns raised by my colleague in respect of the earlier appeal I have imposed a condition requiring the car parking spaces to be in place prior to the occupation of the development and retained thereafter. To seek to reduce car use, a condition is imposed requiring the provision and retention of cycle storage.

16. To ensure the development would make efficient use of energy, water and materials, a condition requiring Code for Sustainable Homes certification has been imposed. Having regard to the concerns raised by the Council in respect of previous uses of the site and the potential for contamination, I have imposed a condition requiring site investigation prior to development commencing. This is the model condition circulated in a letter to chief planning officers by the Department for Communities and Local Government on 30 May 2008 as a replacement for the conditions set out in Annex A to PPS23.
17. I am satisfied that the information submitted with the planning application adequately demonstrates that the proposal would comply with Lifetime Homes standards and a condition requiring compliance with the standards is unnecessary. The condition put forward a seeking details of a scheme to provide sustainable transport infrastructure is vague and not directly relevant to the development. It is therefore contrary to the advice in Circular 11/95 and has not been imposed.

Conclusions

18. For the reasons set out above, and having regard to the previous appeal decision, the Highway Authority's comments, concerns raised by local residents and all other matters raised, I conclude that the appeal should be allowed.

Simon Poole

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2398/10B, 2398/11B, 2398/12B, 2398/13B, 2398/14A, 2398/15.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the on-site refuse and recycling storage facilities, including details of the means of enclosure, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The refuse storage facilities shall be completed before any part of the development hereby permitted is occupied and shall be retained in the approved form for as long as the development hereby permitted remains on site.

- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include: means of enclosure; car parking layouts; vehicle and pedestrian access and circulation areas; hard surfacing materials and planting.

The approved soft landscaping scheme shall be implemented in the first planting season following the first occupation of the development or the substantial completion of the development, whichever is the sooner. If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building, structure or alteration permitted by Class A, B or C of Part 1 of Schedule 2 of the 1995 Order (as amended), shall be erected or made within the curtilages of the dwellings hereby permitted without the prior approval in writing of the local planning authority.
- 7) The dwellings shall not be occupied until the 5 car parking spaces shown on drawing 2398/10B have been provided and the spaces shall be retained in the approved form for as long as the development hereby permitted remains on site. The car spaces shall be used solely for the benefit of the occupants of the dwellings of which they form part and their visitors and for no other purpose.
- 8) No dwelling shall be occupied until spaces have been laid out for bicycle storage within the site in accordance with details which have been submitted to and approved in writing by the local planning authority, and the bicycle storage shall be permanently retained thereafter.
- 9) The dwellings shall achieve Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 10) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 1 to 4 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report)

that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.



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
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**Decision date:
9 April 2010**

Appeal Ref: APP/Q1445/A/09/2111981 The Priory, London Road, Brighton BN1 8QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Anstone Estates Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00058, is dated 9 January 2009.
- The development proposed is a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store.

Application for Costs

1. An application for costs was made by Anstone Estates Ltd against Brighton & Hove City Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal, and grant planning permission for a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store at The Priory, London Road, Brighton BN1 8QS in accordance with the terms of the application, Ref BH2009/00058, dated 9 January 2009, 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 shall be carried out in accordance with the following approved plans: A1008/01B, A1008/02D, A1008/03C, A1008/05, A1008/08.
 - 3) Access to that part of the flat roof to the original building to the north-east of the roof extension marked on drawing A1008/02D shall be for maintenance purposes only and the area shall not be used a roof garden, terrace, patio or similar amenity area.
 - 4) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
 - 5) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby

- permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Unless otherwise agreed in writing by the local planning authority, the new dwellings hereby permitted shall be constructed to Lifetime Homes standards prior to their first occupation and shall be retained as such thereafter.
 - 7) Unless otherwise agreed in writing by the local planning authority, no residential development shall commence until:
 - (a) evidence that the development is registered with the Building Research Establishment (BRE) under Ecohomes and a Design Stage Assessment Report showing that the development will achieve an Ecohomes Refurbishment rating for all residential units have been submitted to the local planning authority; and
 - (b) a BRE issued Design Stage Certificate demonstrating that the development has achieved an Ecohomes Refurbishment rating for all residential units has been submitted to, and approved in writing by, the local planning authority.
 - 8) Unless otherwise agreed in writing by the local planning authority, none of the residential units hereby approved shall be occupied until an Ecohomes Design Stage Certificate and a Building Research Establishment issued Post Construction Review Certificate confirming that each residential unit built has achieved an Ecohomes Refurbishment rating has been submitted to, and approved in writing by, the local planning authority.
 - 9) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the local planning authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.
 - 10) Unless otherwise agreed in writing by the local planning authority, construction work on block D shall not be carried out outside the period 1 September to 1 November in any year.
 - 11) The flight corridor of the bats into the roost located on block D and to nearby trees as shown on figure 4 of the Bat Assessment Report dated January 2009 by the Ash Partnership shall be kept clear of all obstructions, including construction equipment, from sunset to sunrise for the duration of the construction period.
 - 12) No development shall commence until details of bat boxes to be installed on the development and on trees on the site have been submitted to and approved in writing by the local planning authority. The bat boxes shall be installed prior to the first occupation of the development and shall be so retained.

Procedural issue

3. The original planning application sought permission for 6 car parking spaces (of which 2 were for use by the disabled). However, during the course of consideration of the application, some amendments were made including the deletion of the 6 car parking spaces. I have therefore amended the description of the planning application by omitting reference to the parking spaces.

Main issues

4. The main issues are the effect of the proposal on the character and appearance of the streetscene with particular regard to height and bulk, and the effect on the living conditions of occupants of Homeleigh flats and The Priory flats with regard to privacy and noise.

Reasons

Effect on character and appearance

5. The appeal site is located on the western side of London Road near its junction with the Deneway. It stands back from the road behind a very wide swathe of grass and some mature trees on the eastern site boundary. The Priory consists of four separate blocks of flats each of four storeys with flat roofs. They are of brick construction with projecting bays clad in white fascia boarding. Blocks A and B are located to the rear of the site and blocks C and D are situated at the front. There are 80 flats in total.
6. To the north of the site is Homeleigh, a four storey purpose-built block of flats. On the opposite side of London Road (a busy distributor road), is a further purpose-built block of sheltered homes known as Elwyn Jones Court. To the south of the appeal site are the rear gardens of detached two storey houses and bungalows fronting The Deneway. There is a veterinary practice in a building between the site and the elevated railway line to the west.
7. The proposal is to construct an extra storey on top of blocks C and D consisting of 4 flats with roof terraces. The materials used would include large panels of glazing and white powder-coated flat metal panels. New lift motor rooms would replace the existing ones and a new brick built cycle store would be provided near one of the existing garage blocks.
8. The additional height to blocks C and D would be about 3 metres. However, the new north-facing flank elevation would be set back by about 4m from the roof parapet and would be difficult to see when viewed from north to south along London Road above the neighbouring blocks of flats known as Homeleigh and Brangwyn Court. There would also be about a 4m set back from the south-facing roof parapet of the building which would make views of the new built development hard to see from the dwellings along The Deneway and on London Road to the south. The east-facing elevation would also be set back from the perimeter of the roof with the central section very deeply recessed. Consequently, owing to the careful design, the streetscene would be little affected by the proposal. I am not persuaded that the building would appear any taller than Elwyn Jones Court on the east side of London Road. The two developments are separated by a busy main road and tend not to be viewed together in any event. They are both stepped back from the road with either

parking and/or vegetation in front of them. Even if they were viewed together, any differences in height are likely to be perceived as small and such views are not harmful or visually adverse in any way whatsoever.

9. On the western elevation, the new built elements would, for the most part, step back from the edge of the roof, and the widespread use of glazing would give the extra storey a lightweight appearance ensuring that the mass and bulk of the new building was not overwhelming.
10. I conclude therefore that the proposal would not harm the character or appearance of the streetscene by reason of its bulk or height and would not conflict with policies QD2, QD3, QD14 or HO4 of the Brighton & Hove Local Plan 2005 'LP'.

Effect on Living Conditions

11. Although there are habitable room windows in the south-facing side elevation of Homeleigh, the built element of the development nearest to it would be set back by about 4m from the edge of the roof leaving a separation distance of over 14m between windows. Moreover, there would be no access to that 4m strip of roof other than for maintenance purposes and this can be secured by planning condition. Therefore, I consider there would be no unacceptable loss of privacy for the occupants of any Homeleigh flats or any undue disturbance from noise emanating from the new development.
12. Turning to the occupants in blocks A and B of the Priory, the western elevation of the proposal is made up of bedroom windows and stairway/lift windows but occupants of the new flats would have access outside to terraces. However, given that there would be a separation distance of about between 22m to 25m between block B and the roof terraces, and a separation distance of about 21m between block A and the usable roof terraces, I am not persuaded that any loss of privacy through overlooking would be other than negligible. In coming to that view I have borne in mind the difference in site levels of the blocks of flats. Similarly, with those separation distances, I am not persuaded that the occupants of blocks A and B would be unduly disturbed by noise emanating from the occupants of the new flats whether inside or using the roof terraces.
13. The proposed 4 new kitchens would not be directly over bedrooms in the flats situated on the floor below. The kitchen in proposed Flat D2 at the north eastern corner of the site would have a small overlap with a bedroom below. There would be some lounges of the new flats over bedrooms in the floor below. However, I do not consider these proposed vertical arrangements to be unusual, or likely to cause any unacceptable noise or disturbance given that building regulations impose requirements in relation to sound insulation between floors.
14. Turning to use of the roof terraces, there is always potential for noise disturbance in blocks of flats with private outdoor space. Balconies and roof terraces are a common way of providing such space in flat development. I am not convinced in this case that the potential for such disturbance should be a reason for refusing this appeal.
15. Accordingly, I conclude that the proposal would not result in undue harm to the living conditions of the occupants of Homeleigh or The Priory with regard to

noise or loss of privacy. There would be no conflict with policies QD14 or QD27 of the LP.

Other matters

16. The separation distances between Homeleigh and the proposed roof extension and blocks A and B and the proposed roof extension are more than sufficient to prevent any loss of light to those surrounding flats or any other dwellings in the area.
17. I am satisfied that any new traffic generated by the development could be accommodated safely on the estate roads and would not present a hazard to pedestrians, and that the access into the site would be able to accommodate any additional traffic movements. I note that the Highway Authority have not objected to the proposal on highway safety grounds.
18. The appeal site is in a very sustainable location in relation to public transport. London Road is part of a city centre bus route and there are stops very close to the site. There is a rail service from Preston Park into the city. Moreover, a cycle store would be provided as part of the scheme. The number of delineated parking spaces including garages would be about 74 for the 84 flats. There is also some parking available on The Deneway and a pedestrian route through to the site from there. Given all these factors, I am not persuaded that the lack of provision for the parking of any additional cars associated with the development is a reason for refusing planning permission.
19. Whilst the appellants have volunteered a financial contribution of £6000 towards sustainable transport improvements there is no planning obligation pursuant to s.106 of the Town and Country Planning Act 1990 before me. The Committee Report dated 14 October 2009 indicates that "transport generation will be off-set by a financial contribution" but the lack of a s.106 obligation was not a deemed reason for refusal of the planning permission. There is no indication from the Council as how or why a sum of £6000 might fairly and reasonably relate in scale and kind to the proposed development. The Secretary of State's policy requires that planning obligations are only sought when they meet that test, which is one of four other tests found in Circular 5/05 *Planning Obligations*. Accordingly, the absence of a s.106 obligation securing £6000 for sustainable transport improvements is not a factor which, in my view, weighs against the grant of planning permission in this case.
20. It appears that Pipistrelle Bats are roosting and possibly hibernating behind the shiplap timber boarding to block D. English Nature have no objection to the proposal subject to the imposition of appropriate conditions. They are content that the mitigation measures proposed would mean that there would be no detriment to the maintenance of the population of the species concerned. I too am satisfied that, with the imposition of suitable conditions, the bat population associated with the site would not be unduly harmed. I have addressed these matters below in the conditions section.
21. Reference is made to land ownership issues but these are outside the scope of factors I can generally take into account in my decision-making process.

Conditions

22. I have considered the imposition of conditions in the light of Circular 11/95 *The Use of Conditions in Planning Permissions*. Bats are a protected species and in order to safeguard their habitat, I have attached three conditions; one limits the period of construction work on block D to only two specified months in any year because, subject to further survey results, it appears that bats may be using part of block D as a winter hibernation location as well as a roost. The option is given in the condition for the Council to revise the condition because further survey results are awaited. I appreciate that the restriction allows only a very short time for construction on block D but the appellants, having seen the condition and had the opportunity to comment on it, have not objected to it. The second bat-related condition protects their flight corridor and the third secures the provision of bat boxes.
23. In the interests of the proper planning of the area and for the avoidance of doubt, I have attached a condition which ensures that the development is implemented in accordance with the specified plans. In order to protect privacy and tranquillity, part of the original roof is prohibited from being used as a roof terrace.
24. To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households, I have imposed a condition ensuring that Lifetime Homes Standards are met. Compliance with Lifetime Homes Standards, which exceed current building regulation requirements, is voluntary. However, the application design and access statement indicates that the dwellings would be built to those Standards and the appellant has made no objection to the Council's suggested relevant conditions referred to in the report to Committee. To ensure that the development is sustainable and makes efficient use of energy, water and materials, I have imposed conditions seeking to achieve ecohomes ratings at design stage and post construction.
25. To secure and encourage the use of transport other than the car, I have required details of the cycle facilities to be approved prior to the start of development, and to protect amenity, details of refuse and recycling storage are required to be submitted and approved prior to commencement of development, as are details of external materials to be used in construction.

Conclusions

26. Whilst there would undoubtedly be disruption to surrounding residents during construction of the scheme through the potential for additional noise, dust and parking congestion and the lifts being out of use for a period of time, there are substantial benefits to balance against that which flow from the addition of four units to the housing stock which make full and effective use of previously-developed land in a sustainable location. In addition to that I find that there would be no unacceptable harm to the character or appearance of the area or to the living conditions of surrounding residents. Accordingly, having taken into account all representations made, I allow the appeal.

Megan Thomas

INSPECTOR



Costs 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**

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**Decision date:
9 April 2010**

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2111981 Land at The Priory, London Road, Brighton BN1 8QS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Anstone Estates Ltd for a full award of costs against Brighton & Hove City Council.
- The appeal was made against the failure to determine an application within the prescribed period for a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store.

Summary of Decision: The application is refused.

Reasons

1. 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.
 2. Paragraph B11 of the Circular confirms that where an appeal against non-determination is allowed, the planning authority may be at risk of an award of costs if it is concluded that there were no substantive reasons to justify delaying the determination and a greater level of communication with the applicant would have enabled the appeal to be avoided altogether. The applicant has based the costs application primarily on this paragraph and paragraph B10 and considers the Council to have "acted unreasonably causing the appeal to take place due to unjustifiably failing to determine the application within the determination period".
 3. The email correspondence reveals protracted and in part, unexplained delay by the Council between the date of the application (9 January 2009) and the date that the appeal against non-determination was made (3 September 2009). However, whilst I have considerable sympathy for the applicant I am obliged to consider whether they have been made to incur wasted expense by having to appeal this case. The key question is whether they would have found themselves in a position of having to make an appeal in any event.
 4. The Council indicate in their costs representations that under Council Protocol due to the number of objections received from local residents the planning application had to be reported to Members of the Planning Committee in order for a decision to be made. The determination could not apparently have been made by an officer under delegated authority. Consequently, even though the eventual Report to Committee on this application recommended that planning permission should be granted, Members resolved that they would have refused
-

the application on three grounds had they had the jurisdiction to do so. Those three reasons for refusal have formed the main issues in the accompanying appeal decision.

5. Paragraph B20 of the Circular makes it clear that planning authorities are not bound to accept the recommendations of their officers. In this case, there was always a risk, given the number of objections lodged, that at Committee stage Members would exercise their own planning judgment and disagree with the officer's recommendation. It seems to me that that was a risk which applied at any time during or after the relevant time limit for determination. Therefore, referring to paragraph B11, I cannot in this case conclude that there were no substantive reasons to justify delaying the determination and a greater level of communication with the applicant would have enabled the appeal to be avoided altogether. Whilst there has been prolonged delay by the Council in dealing with the application, I cannot conclude that speedier and better communication with the applicant would have resulted in avoidance of the appeal altogether.
6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Formal Decision

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

Megan Thomas

INSPECTOR



The Planning Inspectorate

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Appeals Officer
Brighton and Hove City Council
Development Control
Hove Town Hall
Norton Road
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E Sussex
BN3 3BQ

Your Ref:

Our Ref: APP/Q1445/C/09/2112130

Date: 18 March 2010

Dear Sir/Madam

Town and Country Planning Act 1990
Appeals by Birch Restorations Ltd
Site at The Hyde, Rowan Avenue, Hove, BN3 7JH

I enclose for your information a copy of a letter received on 17 March 2010, withdrawing the above appeals.

I confirm no further action will be taken. However, appeal ref no 2115545 will proceed to the inquiry on 25 May 2010 as scheduled.

Yours sincerely

Przemek Szczodry

E208B(BPR)

You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



Malcolm Lewis DiplArch(Dist)

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17 March 2010

Przemek Szczodry
Room 3/26a
The Planning Inspectorate
Temple Quay House
2 The Square, Temple Quay
Bristol, BS1 6PN

Dear Mr Szczodry

**THE HYDE, ROWAN AVENUE, HOVE
APP/Q1445/A/09/2112130**

I write to confirm my client's request that the above appeal be withdrawn. It is hoped that further negotiations with the Council will overcome some of the objections and in order to save all parties time and expense the decision to withdraw has been taken.

The enforcement appeal, APP/Q1445/C/09/2115545, is not being withdrawn and therefore I assume that the inquiry set for 25 May 2010 will continue to be heard on that day.

Yours sincerely

Malcolm Lewis

NEW APPEALS RECEIVED**WARD****APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****APPLICATION DECISION LEVEL****ST. PETER'S & NORTH LAINE**

BH2009/02642

56 North Road Brighton

Replacement UPVC windows to front elevation.

APPEAL LODGED

08/04/2010

Delegated

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

BH2009/01359

Land to rear of 29 Medina Villas Hove

Erection of a 5 storey dwelling house with integral garages at lower ground floor with ramped access.

APPEAL LODGED

12/04/2010

Delegated

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

BH2009/03154

Gala Bingo Hall & Adjacent Car Park 193
Portland Road HoveDemolition 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 floor 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.

APPEAL LODGED

26/04/2010

Environmental Services Planning Committee



**Brighton & Hove
City Council**

**INFORMATION ON HEARINGS / PUBLIC INQUIRIES
19th May 2010**

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

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: Delegated
Type of appeal: Hearing
Date: 22nd June 2010
Location: Brighton Town Hall

Gala Bingo Hall & Adjacent Car Park, 193 Portland Road, Hove

Planning application no: BH2009/03154
Description: 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 floor 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.
Decision: Committee
Type of appeal: Informal Hearing
Date: TBC
Location: TBC

25 Hazeldene Meads

Planning application no: BH2010/00242

Description: Hip to gable roof extension to south end including 3 No. dormers, 1 No. rooflight and pitched roof porch extension at front elevation. Installation of 9 No. Solar Panels to rear over existing dormer.

Decision: Committee

Type of appeal: Public Inquiry

Date: TBC

Location: TBC