



**Brighton & Hove
City Council**

Planning Committee

Title:	Planning Committee
Date:	22 September 2010
Time:	2.00pm
Venue	Council Chamber, Hove Town Hall
Members:	<p>Councillors: Hyde (Chairman), C Theobald (Deputy Chairman), Carden (Opposition Spokesperson), Alford, Cobb, Davey, Hamilton, Kennedy, McCaffery, Simson, Smart and Steedman</p> <p>Co-opted Members: Philip Andrews (Chairman Conservation Advisory Group)</p>
Contact:	<p>Jane Clarke Senior Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

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AGENDA

100. 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.

101. MINUTES OF THE PREVIOUS MEETING

1 - 18

Minutes of the meeting held on 1 September 2010 (copy attached).

102. CHAIRMAN'S COMMUNICATIONS

103. PETITIONS

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

104. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 15 September 2010).

No public questions received by date of publication.

105. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 15 September 2010).

No deputations received by date of publication.

PLANNING COMMITTEE

106. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

107. LETTERS FROM COUNCILLORS

No letters have been received.

108. NOTICES OF MOTION REFERRED FROM COUNCIL

No Notices of Motion have been referred.

109. APPEAL DECISIONS

19 - 68

(copy attached).

110. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

69 - 70

(copy attached).

111. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

71 - 72

(copy attached).

112. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

73 - 76

(copy attached).

113. LAND AT AND ADJACENT TO WEST PIER AND 62-73 KINGS ROAD ARCHES, KINGS ROAD, BRIGHTON

77 - 82

Request to vary S106 Agreement signed in connection with planning permission BH2006/02369 for partial demolition of existing West Pier structure and construction of 183 metre high observation spire and heritage centre (use class D2).

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

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

(copy circulated separately).

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

PLANNING COMMITTEE

117. 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 plans for any planning application listed on the agenda are now available on the website at:

<http://www.brighton-hove.gov.uk/index.cfm?request=c1199915>

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

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

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

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

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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, 14 September 2010

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 1 SEPTEMBER 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors C Theobald (Chairman), Carden (Opposition Spokesperson), Alford, Caulfield, Cobb, Davey, Hamilton, McCaffery, Older, Rufus, Smart and Steedman

Co-opted Members Philip Andrews ((Chairman) Conservation Advisory Group)

Officers in attendance: Jeanette Walsh (Head of Development Control), Nicola Hurley (Area Planning Manager (West)), Claire Burnett (Area Planning Manager (East)), Aidan Thatcher (Senior Planning Officer), Pete Tolson (Principal Transport Planner), Steve Reeves (Principal Transport Planner), Hilary Woodward (Senior Lawyer) and Jane Clarke (Senior Democratic Services Officer)

PART ONE

83. PROCEDURAL BUSINESS

Note: Councillor Mrs Theobald took the chair for the meeting.

83a Declarations of Substitutes

83.1 Councillor Caulfield declared that she was substituting for Councillor Simson.

83.2 Councillor Rufus declared that he was substituting for Councillor Kennedy.

83.3 Councillor Older declared that she was substituting for Councillor Hyde.

83b Declarations of Interests

83.4 The Chairman declared a personal interest in applications BH2010/00908 and BH2010/00909, 4 Tongdean Road, Hove in that she knew the applicants but did not think this would prejudice her judgement of the applications and remained of a neutral mind. She remained in the meeting and took part in the voting thereon.

83.5 The Chairman declared a personal interest in application BH2010/01059, 51 Westbourne Villas, Hove in that she knew the applicants but did not think this would prejudice her judgement of the application and remained of a neutral mind. She remained in the meeting and took part in the voting thereon.

83.6 Councillor Carden declared a personal interest in application BH2010/00630, City Park, Orchard Road, Hove in that he knew a resident of March House. He did not think this would prejudice his judgement of the application and remained of a neutral mind. He remained in the meeting and took part in the voting thereon.

83c Exclusion of the Press and Public

83.7 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.

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

84. MINUTES OF THE PREVIOUS MEETING

84.1 **RESOLVED** – That the Chairman be authorised to sign the minutes of the meeting held on 11 August 2010 as a correct record of the meeting.

85. CHAIRMAN'S COMMUNICATIONS

85.1 The Deputy Chairman, Councillor Mrs Theobald, stated that she would be acting as Chairman for the meeting as the Chairman, Councillor Hyde, was unwell and could not attend.

The Chairman added that there was a new item on the agenda regarding information on pre-application presentations and requests that was for the Committee to note.

86. PETITIONS

86.1 There were none.

87. PUBLIC QUESTIONS

87.1 There were none.

88. DEPUTATIONS

88.1 There were none.

89. WRITTEN QUESTIONS FROM COUNCILLORS

89.1 There were none.

90. LETTERS FROM COUNCILLORS

90.1 There were none.

91. NOTICES OF MOTION REFERRED FROM COUNCIL

91.1 There were none.

92. APPEAL DECISIONS

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

93. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

93.1 The Committee noted the new planning appeals that had been lodged as set out in the agenda.

94. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

94.1 The Committee noted the information regarding informal hearings and public inquiries as set out in the planning agenda.

95. INFORMATION ON PRE APPLICATION PRESENTATIONS AND REQUESTS

95.1 The Committee noted the position on information on pre-application presentations and requests as set out in the planning agenda.

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

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

Application:	Requested by:
BH2010/01966, Mitre House, 146 Western Road	Head of Development Control
BH2010/001833, St Mary's Hall, Eastern Road	Head of Development Control

97. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST**(i) TREES**

97.1 There were none.

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

A. Application BH2010/00235, Varley Halls of Residence, Coldean Lane, Coldean – Demolition of existing student halls of residence to provide replacement facilities between 3 and 5 storeys including 564 bed spaces, seminar rooms, a café/bar, laundry facilities, car parking, cycle parking and associated landscaping.

- (1) The Area Planning Manager (East), Ms Burnett, introduced the application and presented plans and elevational drawings. She noted that the Head of Term had been deleted from the proposed Section 106 Agreement following additional information on the Late List from the Environmental Health Department, an additional condition had been added relating to car park management and a correction of wording on condition 22.
- (2) The site bordered the South Downs National Park and the Stanmer Conservation Area, and the proposed local nature reserve. The main central buildings would be demolished and 10 new buildings erected to accommodate a net increase of 294 bed spaces. Four letters of objection had been received.
- (3) The principle of development was accepted on the site and there were no policy constraints to this development. The impact on views from Stanmer Park, the National Park and the conservation area had been assessed and the development would not be visible from either Stanmer Park or the conservation area. There would be views from the South Downs National Park however, but the site was on lower ground and would be seen in the context of other development in the area. The overall dominant topography would also remain as woodland. Appropriate choice of materials would also lessen any impact. The height, scale, massing and design of the development was acceptable and although there would be the loss of 51 trees on site, these were mainly of poor quality and would be replaced by the planting of 88 trees on and off the site.
- (4) There would be 3 large areas of open space and a trim trail created with the development, which resulted in a reduction of the monies requested for the adult/sport contribution. There would also be a reduction in car parking from 128 spaces to 61 spaces, and 200 cycle spaces would be proposed. There would be some displaced parking created by the development however and sustainable transport measures and an on-site parking permit system were required to mitigate this. As real-time bus information would be available on site the transport contribution would also be reduced.
- (5) In terms of sustainability only phase 1 of the scheme would not reach BREEAM excellent within the energy sections, however the subsequent phases would exceed such levels, and this was therefore deemed acceptable. There would be a 5-6 metre buffer zone between the buildings and the nature reserve to assist with ecology

measures, and additional conditions regarding ecology had been included with the permission.

Questions/Matters on Which Clarification was Sought

- (6) Councillor Smart asked if the university was confident that the site would be filled with university students. The Head of Development Control, Ms Walsh, replied that the allocations policy was up to the university to control as they saw fit, but the intention was for the whole site to be filled.
- (7) Councillor Alford asked if any extra provisions for bus services were included for the site, and what type of trees would be replanted. The Principal Transport Planner, Mr Tolson, responded that a travel plan would monitor displaced parking in the Coldean area to judge the success of the sustainable transport schemes, which did include provision of extra bus services and bus passes for students. Ms Burnett replied that the landscaping scheme specified native species of tree and planting and conditions had been proposed which secured long-term management of the trees.
- (8) Councillor Davey asked how far off-site would the off-site planting be and Ms Burnett demonstrated a visual and stated that it would be immediately adjacent to the site.
- (9) Councillor Davey asked for details around the cycling lane improvements and Mr Tolson replied that the existing lane would be widened and resurfaced and as much would be done with the contribution as possible, but no dates for works to commence had been agreed.
- (10) Councillor Cobb noted that the parking on site would be reduced and that displacement parking was expected. She asked if there would be any nightlife entertainment provided on site. Mr Tolson replied that the displacement parking would be minimal as the existing demand for parking on site was driven by employees of the Falmer site who would park in Coldean and take the university shuttle bus up to Falmer. This service had now been stopped and so this demand had decreased. He added that a travel plan would be implemented to alleviate the situation.
- (11) Councillor Cobb asked what facilities would be provided with the adult/youth/sport contributions and Ms Burnett replied that she would detail this in a note to Councillor Cobb after the meeting. Councillor Cobb added that there were already extensive sporting facilities at Sussex University and she was unsure whether this was accessible by the public.
- (12) Councillor McCaffery asked why a reduction in the sport contribution had been negotiated and Ms Burnett replied that a reduction on the casual/informal play element had been negotiated as the applicants were providing a variety of facilities on site that covered this. Councillor McCaffery asked for the details of this to be sent to her after the meeting.
- (13) Councillor Rufus noted the views from Coldean Lane and asked if night time light intrusion for residents had been considered. Ms Burnett replied that there was a proposed condition to limit external lighting so that it would not be intrusive.

- (14) Councillor Rufus asked if there was a commitment to aftercare for the nature reserve and Ms Burnett replied that this was also covered by condition.
- (15) The Chairman of the Conservation Advisory Group, Mr Andrews, asked how prominent from the South Downs National Park the buildings would be. Ms Burnett replied that the Conservation and Design Team had been heavily involved in the application from pre-application stage to ensure a minimal impact on the national park.
- (16) Councillor Cobb raised a point of order and asked if Mr Andrews was allowed to ask questions on applications that were not in a conservation area. The Solicitor to the Committee, Ms Woodward, replied that whilst it was strictly not within CAG's remit, the committee had in the past allowed the CAG Representative to ask questions on applications.
- (17) Mr Andrews asked if the tiles were handmade and Ms Burnett replied that they were Keymer clay hung tiles.
- (18) Councillor Older noted the reference to undisturbed sleep in the report and asked if this was now a consideration. Ms Walsh replied that this was a comment from the Environmental Health Team who were not present at the meeting, and she would provide more information after the meeting.
- (19) Councillor Cobb asked about the materials and whether the paint was durable and hardwearing and Ms Burnett agreed that this was the case.
- (20) The Chairman asked about the bathroom facilities available to students and Ms Burnett replied that most of the bedrooms would have en suite, but there were 72 beds that shared facilities on a ratio of 1:3.
- (21) The Chairman asked where the staff would park their cars and Mr Tolson replied that staff would be encouraged to use other forms of transport and this would form part of the travel plan.

Debate and Decision Making Process

- (22) Councillor Davey asked that all of the Section 106 contributions to transport were paid before commencement of phase 1, and this was agreed by the committee.
- (23) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to a Section 106 Agreement, the conditions and informatives listed in the report, the additional condition referred to on the Late List and a change to the recommended Head of Term for the proposed S106 Agreement.

97.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report, and resolves that it is Minded to Grant planning permission subject to the completion of a Section 106 Planning Agreement, the conditions and informatives listed in the report and the additional condition in the Late List, and a change to the recommended Head of Term for the proposed S106 Agreement to read:

- A) That the recommended Head of Term for the proposed Section 106 Agreement relating to the timing of the payment of the sustainable transport contribution be changed so that the full amount of the contribution is paid prior to the commencement of Phase 1.

Note: Councillor McCaffery was not present during the voting on this item.

B. Application BH2010/00498, Former Esso, Hollingdean Road – Redevelopment of the site providing for the erection of a part 2, 3, 4 and 5 storey building comprising 24 no. residential units and associated external amenity space.

- (1) The Senior Planning Officer, Mr Thatcher, introduced the report and presented plans and elevational drawings. He explained that the application was to vary the Head of Term on the affordable housing element of the scheme from 100% to a minimum of 40%. The developers had stated they were experiencing difficulty in raising the funding for a scheme with 100% affordable housing.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Caulfield noted that the financial climate could change in the coming months and asked why the developers could not wait to see if this occurred. Mr Thatcher explained that the request was for a minimum of 40% housing and the developers were keen to gain as much affordable housing on site as possible, but this would be dependant on funding. He added that the application was in line with policy. Ms Walsh added the decision notice had not been issued for the application granted in May 2010 and there was no policy support to insist on 100% provision of affordable housing.
- (3) Councillor Rufus asked if the funding grant was needed to facilitate development or could the developers build the scheme without it. Mr Thatcher replied that it was his understanding that the funding was fundamental to the development.
- (4) Councillor Caulfield noted that when applicants applied for a social funding grant they had to be very clear about the amount of affordable housing they would be providing with it. Ms Walsh replied that Registered Social Landlords did not make a profit on housing. Any profits made from private sales were used to fund affordable housing. She added that there was no policy position to support more than 40% affordable housing on the site.

(5) Councillor Hamilton asked whether the applicant would only have 40% affordable housing on site. Ms Walsh replied that the current scheme that had been granted at 100% affordable housing was not financially viable at this time. The applicants had indicated however that they would increase this on site if the financial situation changed whilst the scheme was in progress.

(6) A vote was taken and on a vote of 6 for, 3 against and 3 abstentions minded to grant planning permission was given subject to a Section 106 Agreement, amended Head of Term on affordable housing and the conditions and informatives listed in the report.

97.3 **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 that it is Minded to Grant planning permission subject to the applicant entering into a Section 106 Planning Agreement, with the Head of Term on affordable housing amended as per the report, and the conditions and informatives listed in the report and in the Late List.

C. Application BH2010/00909, 4 Tongdean Road, Hove – Partial demolition and alterations to existing dwelling.

(1) The presentation, discussion and voting of this application was taken together with application BH2010/00908, 4 Tongdean Road, Hove.

(2) A vote was taken and on a vote of 9 for, 1 against and 2 abstentions Conservation Area Consent was refused for the reasons set out in the report.

97.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse Conservation Area Consent for the reason set out in the report.

D. Application BH2010/00908, 4 Tongdean Road, Hove – Partial demolition and alterations to existing dwelling and erection of new detached 3 bedroom dwelling with separate garage, new access road and associated landscaping.

(1) The Area Planning Manager (West), Ms Hurley, introduced applications BH2010/00908 and BH2010/00909 and explained that the presentation would cover both applications. She presented plans and elevational drawings and stated that an application for the site had been refused in April 2008 with three reasons for refusal. The Planning Inspector had upheld the first two reasons that the application would detrimentally impact neighbouring amenity and there would be an unacceptable loss of trees on site. Ms Hurley referred to a similar application at 44 Dyke Road, which had also been refused recently and upheld by the Planning Inspectorate.

The current applications were recommended for refusal on the grounds of unacceptable height, massing and footprint, which would be detrimental to neighbouring amenity. The change in levels on site exacerbated these problems and made the scheme unduly dominant in the area. Although the scheme was lower than the previously refused scheme, it was closer to the neighbouring boundaries. The already existing back land developments were in keeping with the area, but the application site was a smaller plot than surrounding areas and the development would appear cramped because of this.

The scheme would only achieve BREEAM code level 3 and would need significant changes to the design to achieve code level 5.

- (2) The applicant, Mr Liu spoke in favour of the application and noted that he was not a developer but was already living on site. He was an Ophthalmic Surgeon in Brighton and there had been a private clinic on site for 50 years. He was the third generation of his family to live there and needed more room for his extended family. He also took international visitors into his home. The application would give his family more room and the area was already enclosed by neighbouring garden developments. The Planning Inspector had not objected to the loss of trees on site in his decision or the access onto the site, and was only concerned with the relationship with 6 Tongdean Road. The current application addressed these concerns.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Davey asked about the ground levels and Ms Hurley replied that number 6 Tongdean Road was lower than number 4, but the site itself was fairly level. She added that number 2 Tongdean Road was set on slightly higher ground, and number 2 Tongdean Place, which sat to the south of the site, was slightly lower.
- (4) Councillor Steedman asked whether Mr Liu was happy to accept changes to the application to achieve the higher sustainable homes standards. Mr Liu noted that when he first put the application gardens were still considered as developed land and therefore not subject to the higher sustainability standards. He did not think this application should be subject to these changed standards.
- (5) Councillor Caulfield asked why a separate access was needed if the new accommodation was required to accommodate international visitors of the family. She asked why Mr Liu could not use his own access if this was not a separate private dwelling. Mr Liu replied that this could be the case if the application was granted, but felt that it would be inconsistent of the Council to allow demolition of the garage without an access to replace it.

Debate and Decision Making Process

- (6) Councillor Steedman stated he was not adverse to development on this site or the high level of density given the area it was in, but felt that the Council needed to insist on high levels of sustainability for backland developments.
- (7) Councillor McCaffery stated that she was not in favour of garden developments but felt this design was particularly good. As the proposal had been reduced in height from the previous application she felt she would be able to agree to it.
- (8) Councillor Cobb felt it was a lot of development to go on a small site. All garden developments surrounding the site were ancillary and she did not agree with back land development. She added that she would like to see reference to PPS3 in the paperwork on the application.

- (9) Mr Andrews stated that CAG initially did not object to the application as it could not be seen from the public realm. However he felt there were difficulties with the scheme and although the design was reasonable it needed to be more modest and was not sufficiently deferential to neighbouring properties. He added that the scheme should be required to achieve code 5 level of sustainability.
- (10) A vote was taken and on a vote of 9 for, 1 against and 2 abstentions full planning permission was refused for the reasons listed in the report.
- 97.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation and resolves to refuse planning permission for the reasons set out in the report.

E. Application BH2010/01059, 51 Westbourne Villas, Hove – Re-conversion of 3 no existing flats back into 1 no 5 bed dwelling house and conversion of garages to rear into a detached 3 bed house.

- (1) The Area Planning Manager (West) introduced the application and presented plans and elevational drawings. She explained that the site was in the Sackville Gardens Conservation Area and letters of support had been received. A refusal was recommended on the grounds of lack of amenity space for both applications, and issues with the annex development including poor standard of accommodation, lack of light to the basement and ground floor, no outlook, lack of space and overlooking. The development was also contrary to policy HO8 as there would be a net loss of dwelling houses created by the application.
- (2) The agent, Mr Burgess, spoke in favour of the application and stated that the development would create a family dwelling and redevelop the building, which would improve the look of the conservation area. There was no objection in principle to the development, and whilst the levels of amenity for both properties were low, there was the large public amenity space of the seafront very close by, and Mr Burgess felt that policy HO5 should be used pragmatically in this regard. Both developments would provide very high standards of accommodation and the scheme would make a positive contribution to the area. Local residents were also in support of the scheme.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Rufus asked whether a conversion from a flat to a house needed planning permission and how much amenity space was provided. Ms Hurley replied that if two flats were converted into one then this would not need permission, however because this application was changing from 3 dwellings into 1 dwelling then this was considered a material change and contrary to policy. Whilst a new dwelling was being created with the scheme, the standards of accommodation for this were unacceptable and therefore the scheme remained contrary to policy. She added that there was around 1.8 metres of amenity space provided for the annex dwelling.

- (4) Councillor Cobb asked what exceptions there were with policy HO8 and Ms Hurley referred to the policy as set out in the Brighton & Hove Local Plan.
- (5) Councillor Davey asked why the development would need planning permission when it was previously 1 dwelling. Ms Hurley replied that the property had lost its original use and was now considered as 3 dwellings.
- (6) Councillor Alford asked if the property had originally been built as 1 property and when had it been converted into 3 flats. The architect to the scheme replied that he was unsure of when the property had been converted but believed it may have been around the 1960s. The properties had been empty for 3-4 years.
- (7) Councillor Davey asked about the lack of light in the basement and the architect replied that there was a large rooflight that created an inside/outside courtyard space in the annex. There was no traditional garden space but there would be sky views.
- (8) Councillor Alford asked why no garden space was provided for the annex house. The architect replied that it was more analogous to a flat than a house and as it was so close to the beach they did not feel that amenity space was necessary.
- (9) Councillor Smart asked why an extension was being added to the house and the architect replied that this was because the existing extension was dilapidated and it was part of converting the house into a modern dwelling.
- (10) Councillor Older asked if the applicant would agree to removing the concrete blocks at the front of the development and re-instate the railings and the agent agreed that this could happen.

Debate and Decision Making Process

- (11) Ms Hurley addressed the committee and noted that the roof light did not provide an outlook for the annex building.
- (12) Councillor McCaffery liked the application and noted that the main building had been derelict for around 3 years. She was keen to see family sized housing re-instated and as there were no objections from neighbours she did not feel she could object either.
- (13) Councillor Hamilton agreed that he was happy to see 3 flats turned into 1 house but he felt the annex development was very substandard accommodation.
- (14) Councillor Smart also agreed that he would like to see the house returned to its former glory but the annex space was so awful he needed to support the officers in refusal of the application.
- (15) Councillor Rufus felt the annex proposal was adequate but there were serious problem with light for this development. He did not agree that a losing a dwelling was acceptable however.

- (16) Councillor Cobb was keen to see the house restored as parts of the area were very unattractive and dilapidated. She felt the roof light improved the annex development and felt the development offered a lot more as a flat than other flats that were given approval. She was concerned about parking in the area however, but felt the scheme would improve the area.
- (17) Councillor Older agreed that the public amenity space of the seafront was usually well used by residents so close to the beach and she did not think there was much wrong with the application. She felt it was worth bringing the house back into full use.
- (18) Mr Andrews noted the pool area for the house and asked if this was classed as amenity space and Ms Hurley replied it was not.
- (19) Councillor McCaffery agreed that she would like to see the house brought back into use but was unhappy with the annex development, which was very small and lacked light.
- (20) The Chairman agreed that the house should be redeveloped and converted into one dwelling, but did not feel the garage conversion was appropriate. She hoped the applicant would consider redeveloping only the house if they were not able to secure planning permission with the current application.
- (21) A vote was taken and on a vote of 7 for, 3 against and 2 abstentions full planning permission was refused for the reasons given in the report.

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

F. Application BH2010/00630, City Park, Orchard Road, Hove – Erection of part one storey, part two storey building to form 7no one and two bedroom residential units with associated landscaping, car parking and cycle spaces.

- (1) The Area Planning Manager (West), Ms Hurley, introduced the application and presented plans and elevational drawings. She explained that the scheme was of a modern design and that the application site had originally been given planning permission in 2002 as a crèche facility. The current application had been reduced to one storey at the rear and two storeys at the front.

An additional representation had been received from Councillor Bennett in objection to the scheme. Councillor Bennett stated that the height of the land had been increased since 2002, creating more issues of overlooking and privacy concerns and if the application had been new and a crèche had not already been granted there would be more formal objections to the scheme.

The Early Years Team had been consulted and whilst they agreed that the site was suitable for a crèche and there was unmet demand in the area, they felt that they crèche would have to be a lot bigger than the current proposals for it to be cost effective. Therefore the currently agreed application was not viable.

The new scheme proposed 7 residential units with a contemporary design. A curved roof would reduce the impact of the building on neighbouring properties. The new proposals would result in some loss of light, but the crèche had already been approved and was accepted, and therefore this was acceptable. There were 7 car parking spaces provided with the development and it would reach sustainability code level 5.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Cobb asked where the 7 car parking spaces would be sited on site. Ms Hurley replied that the spaces were already in existence.
- (3) Councillor Smart how the bus stops in the area would be improved. Mr Reeves stated that this was a generic phrase and the transport contribution would most likely go on improving cycling routes along the Drove and in the park. Ms Hurley added that it was not a case of providing new bus stops but of improving access to existing ones, possibly by improving cycle routes.
- (4) Councillor Rufus asked if there was an unmet demand in the area for a crèche and whether this was a material planning consideration. Ms Hurley replied that the Early Years Team had commented and stated that the scheme was not viable as a crèche and would not successfully meet demand in the area.
- (5) The Chairman asked how many children the crèche would accommodate and Ms Hurley replied that it would be for 40.
- (6) Councillor Hamilton asked if an accessible bus stop was one where the curb had been raised to ensure that the bus could be lowered to the right level to allow wheelchairs easier access and Mr Reeves confirmed that this was the case.
- (7) Councillor Alford did not think it was helpful to have only general improvements referred to in the report and asked that specific improvements be included for future reports. Mr Reeves replied that a specific list of schemes that might benefit from transport contributions could be included in future reports. Ms Walsh added that a note could be sent around after the committee detailing this and she would address the issue with the Highways Authority.

Debate and Decision Making Process

- (8) Councillor Carden felt there was ample parking on site and did not believe that this was an issue.
- (9) Councillor Smart did not believe there were many improvements that could be made to cycle routes along the Drove and across the park.
- (10) Councillor McCaffery felt it would be hard to improve accessibility without providing a new bus route.
- (11) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to a Section 106 Planning Agreement and the conditions and informatives listed in the report.

97.7 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is Minded to Grant planning Permission subject to the applicant entering into a Section 106 Planning Agreement and to the conditions and informatives listed in the report.

Note: Councillor Caulfield gave her apologies and was not present during the voting of the item or subsequent items on the agenda.

G. Application BH2010/01838, 63 Holland Road, Hove – Application for deferral of pre-commencement conditions 9, 13, 18, 23, 25, 26 and 27 of application BH2009/01856 until supply of all information is available.

(1) The Area Planning Manager (West), Ms Hurley, introduced the application. She stated that the application was to vary pre-commencement conditions for an application that had been approved in 2009. The applicant wished to start work immediately and was asking to defer some of the conditions until a later date when more evidence could be gathered. There was already evidence to suggest the scheme would reach BREEAM very good rating.

Questions/Matters on Which Clarification was Sought

(2) Councillor Steedman asked which scheme would be implemented if both were granted. Ms Hurley replied that the new permission would need a Section 106 Planning Agreement drawn up, and so the applicants would commence work on the 2009 approval to secure their permission, and then switch at a later date to the new approval. She added that this was entirely legal.

(3) Councillor Rufus asked if the business units would be insulated for all classes of business. Ms Hurley replied that the condition would cover all A3 uses and whatever form of business went into the units, they would have to be ventilated and sound proofed appropriately. This condition would also be subject to Environmental Health laws.

Debate and Decision Making Process

(4) A vote was taken and on a unanimous vote minded to grant planning permission was granted subject to an amended Section 106 Planning Agreement and the conditions and informatives listed in the report.

97.8 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that they are Minded to Grant planning permission subject to an amendment to the Section 106 Planning Agreement for the site and the conditions and informatives listed in the report.

H. Application BH2010/02056, Blocks E & F Kingsmere, London Road, Brighton –
Creation of 4no three bedroom penthouse flats with private gardens over blocks E & F.

- (1) The Area Planning Manager (West), Ms Hurley, introduced the application and presented plans and elevational drawings. She explained that planning permission had been refused in 2007 for extensions to the buildings on the grounds of design, the negative impact on residential amenity, loss of trees and sustainability. An appeal was dismissed by the Planning Inspectorate on the grounds of design and loss of trees. A similar application had recently been allowed on appeal at the Priory on London Road and this application raised similar issues.

The scheme proposed new penthouse flats with roof gardens and balustrades. Letters of objection had been received including letters from local ward Councillors Ken Norman and Ann Norman. The scheme would be predominantly glazed and set back from the main elevation, with a high quality design and a reduction in the impact on amenity for local residents. The existing units were sufficiently spaced apart to not impact on privacy or light. There was no further parking provided with the application and the Sustainable Transport Team felt the scheme was acceptable. The application was now recommended “to grant” planning permission.

Questions/Matters on Which Clarification was Sought

- (2) Councillor McCaffery asked if the new proposals were almost entirely glazed on top and Ms Hurley replied it was.
- (3) Councillor Davey noted that Section 106 contributions for transport had been temporarily suspended and were not being requested for this application, and asked for more details on this. Ms Hurley replied that under a scheme of temporary measures the Planning Authority had suspended seeking transport contributions for schemes involving 5 or less residential units. Ms Walsh added that this was part of a range of measures to assist developers in a difficult economic climate and had been agreed by Full Council in May 2010.
- (4) Councillor McCaffery asked if there was any off-site parking near the development and Ms Hurley replied that there were 119 spaces provided on site. There was no parking available on the public highway and so there were no issues of parking that would be exacerbated by this application.
- (5) Councillor Alford asked how the roof gardens would impact on the flats below and Ms Walsh replied that the owners would be responsible for the maintenance and up-keep of their gardens and this would not constitute an amenity issue.
- (6) Councillor Cobb asked if the lifts would be out of order during construction and what provision would be made for elderly residents. Ms Hurley replied that the lifts would be accessible from the new floor but arrangements during construction were beyond the remit of the planning authority.
- (7) Councillor Alford asked how many flats were below the penthouses and Ms Hurley replied there were 10.

Debate and Decision Making Process

- (8) Councillor McCaffery stated that the local area was heavily used as parking by local commuters and there was considerable congestion. The road was extremely busy with a constant stream of traffic and any increase in development would have an impact on transport in the area.
- (9) Councillor Smart did not think the existing buildings and the proposed development related in design terms and felt the new structure looked awful.
- (10) Councillor Alford was aware that current residents had been given historic assurances that there would be no further development above four storeys and did not think this application was satisfactory. Ms Walsh stated that she was not aware of any such assurances on height constraints.
- (11) Councillor Cobb did not think the new development was awful but she appreciated that many people bought top floor flats to be on the top floor and felt that this was unfortunate. She did not think the proposals matched the character of the area and agreed that residents probably had received assurances of no further development. She felt the application would set a precedent for the area.
- (12) Councillor Hamilton felt a precedent had already been set by other applications in the area and did not feel this was an issue.
- (13) The Chairman noted that many local residents were against the proposals, as were the ward councillors and the Patcham Society. She did not think the scheme was acceptable.
- (14) A vote was taken and on a vote of 5 for, 4 against and 2 abstentions minded to grant planning permission was granted subject to no new additional representations from members of the public and the conditions and informatives listed in the report.
- 97.9 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is Minded to Grant planning permission subject to no new additional representations from members of the public and to the conditions and informatives listed in the report.

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

- 98.1 **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.]

99. 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

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

Application:	Requested by:
BH2010/01966, Mitre House, 146 Western Road	Head of Development Control
BH2010/001833, St Mary's Hall, Eastern Road	Head of Development Control

The meeting concluded at 5.15pm

Signed

Chair

Dated this

day of

APPEAL DECISIONS

	Page
A. WITHDEAN	21
Application BH2010/00380, 20 Surrenden Crescent, Brighton. Appeal against refusal to grant planning permission for new roof terrace on existing single storey dining room. APPEAL DISMISSED (Delegated).	
B. HOVE PARK	23
Application BH2010/00848, 34 Elizabeth Avenue, Hove. Appeals against refusal to grant planning permission for a rear conservatory erection. APPEAL ALLOWED (Delegated).	
C. ST PETERS & NORTH LAINE	25
Application BH2010/00226, 51 Church Street, Brighton. Appeal against refusal to grant planning permission for the erection of a dormer over an existing loft stair in order to create sufficient loft clearance. APPEAL DISMISSED (Delegated).	
D. HANGLETON & KNOLL	29
Application BH2009/02315, 200 Poplar Avenue, Hove. Appeal against refusal to grant planning permission for conversion of a loft space into 1x1 bedroom flat. APPEAL ALLOWED (Delegated).	
E. HANOVER & ELM GROVE	33
Application BH2009/02249, Spar Stores, 159 Lewes Road, Brighton. Appeal against refusal to grant planning permission for the erection of 2 internally illuminated, wall mounted, display units. APPEAL ALLOWED (Delegated).	
F. ST PETERS & NORTH LAINE	35
Application BH2006/01115, 13 Cheltenham Place, Brighton. Appeal against issue of an enforcement notice for removal of the angle canted bay window from the front elevation, removal of the uPVC windows from front elevation, reinstatement of round bay as original, and reinstatement of paired curved single glazed painted timber sash windows, to match exactly the original shown in the photograph attached to the enforcement notice at Appendix 1. APPEAL DISMISSED.	

G. ROTTINGDEAN COASTAL **39**

Application BH2010/01043, 17 Shepham Avenue, Saltdean, Brighton. Appeal against refusal to grant planning permission for a proposed rear balcony. **APPEAL DISMISSED (Delegated).**

H. WOODINGDEAN **41**

Application BH2010/00157, 412 Falmer Road, Brighton. Appeal against refusal to grant planning permission for a two storey side and rear extensions. **APPEAL ALLOWED (Delegated).**

I. WITHDEAN **43**

Application BH2010/00377, "Chailey", 61 Valley Drive, Brighton. Appeal against refusal to grant planning permission for demolition of existing garage and erection of a two storey side extension. **WITHDEAN (Delegated).**

J. HANOVER & ELM GROVE **45**

Application BH2009/00655, Covers Yard, Melbourne Street, Brighton. Appeal against refusal to grant planning permission for a residential development of 39 units comprising a 3 storey terrace along the eastern boundary of the site, 4 and 7 storey apartment building along northern boundary of the site, cycle and car parking to the rear. **APPEAL ALLOWED (Committee).**

K. HOLLINGDEAN & STANMER **67**

120 Hawkhurst Road, Brighton. Withdrawal of an appeal against an enforcement notice. **WITHDRAWN.**



Appeal Decision

Site visit made on 3 August 2010

by **R J Perrins MA MCM**

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

The Planning Inspectorate
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Decision date:
17 August 2010

Appeal Ref: APP/Q1445/D/10/2131768

20 Surrenden Crescent, Brighton, East Sussex BN1 6WF.

- 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 & Mrs Duncan against the decision of Brighton & Hove City Council.
- The application Ref BH2010/00380, dated 15 February 2010, was refused by notice dated 19 April 2010.
- The development proposed is a new roof terrace on existing single storey dining room.

Decision

1. I dismiss the appeal.

Main issue

2. I consider the main issue in this case to be the impact of the roof terrace upon the living conditions of occupiers of neighbouring properties.

Reasons

3. The detached appeal property sits to the east of Valley Drive a predominantly residential road with a variety of detached houses of individual styles. To the south-east the rear gardens of properties in Withdean Crescent adjoin the rear gardens of Surrenden Crescent. The proposal would be sited upon a ground floor extension and would face south-east. A number of trees and shrubs, some evergreen, and including a youthfully mature sycamore tree, grow on the mutual boundary between the Crescents. A large multi-stemmed shrub grows on the mutual boundary between Nos 20 and 22 approximately in line with the main rear elevations.
4. I accept that views to No 22 would be screened by the existing vegetation. Views to properties in Withdean Crescent are also screened by trees and shrubs. Whilst that screening may be less in the autumn and winter months the views are, in any event, available from the rear windows of the appeal property. Given that and the distance between those properties I find the proposal would not result in unacceptable harm to the living conditions of occupiers of properties in Withdean Crescent.
5. I also accept that access to the roof currently exists and permission is only sought for the balustrade and low rise wall. In addition the development would restrict access to the area immediately in front of the double doors and the adjoining properties (Nos 18 and 22) have not objected to the proposal.

6. However, I must consider all future occupiers of the properties and I was able to see, by standing on the roof, that there would be clear unrestricted views into the rear habitable rooms of No 18. Furthermore, there is no guarantee that the large shrub, on the boundary with No 22, would be retained. Whilst views may be available in any event the proposal would provide an attractive environment and useable space. That would be unlike the current arrangement which, without any form of balustrade or barrier, and as opined by the appellants, is an unsafe and to my mind unattractive environment.
7. I am in no doubt that the development would increase the desirability, and therefore frequency, of using the terrace. The current or future occupiers of No 20 would be more likely to sit out in a safe environment and take advantage of the views. That in turn would increase the likelihood of views being taken into the adjacent properties. That would, in my opinion, lead to unacceptable harm to the living conditions of occupiers of No 18 and with potential for such views into No 22 in the future also. For these reasons I find that the proposal would be contrary to saved Policies QD14 and QD27 of the Brighton and Hove Local Plan which amongst other things seek developments which do not result in loss of amenity to neighbouring properties.

Richard Perrins

Inspector



Appeal Decision

Site visit made on 3 August 2010

by **R J Perrins MA MCI**

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

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**Decision date:
17 August 2010**

Appeal Ref: APP/Q1445/D/10/2131798

34 Elizabeth Avenue, Hove, East Sussex BN3 6WG.

- 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 Dr & Mrs Ather against the decision of Brighton & Hove City Council.
- The application Ref BH2010/00848, dated 24 March 2010, was refused by notice dated 19 May 2010.
- The development proposed is a rear conservatory erection.

Decision

1. I allow the appeal, and grant planning permission for a rear conservatory erection at 34 Elizabeth Avenue, Hove, East Sussex BN3 6WG in accordance with the terms of the application, Ref BH2010/00848, dated 24 March 2010, and the plans submitted with it, subject to the following conditions:
2. The development hereby permitted shall begin not later than three years from the date of this decision.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: BT03-10-23 A Rev 02, BT03-10-23 B Rev 02, BT03-10-23 C Rev 02, BT03-10-23 D Rev 02, BT03-10-23 E Rev 02, BT03-10-23 F Rev 02.
4. 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.

Main issue

5. I consider the main issue in this case to be the impact of the rear extension upon the living conditions of occupiers of the adjoining property (No 36).

Reasons

6. The semi-detached appeal property sits on the south side of Elizabeth Avenue where rear gardens adjoin those in Cobton Drive. No 36, its semi-detached partner, sits to the west. On the mutual boundary near to the properties is a standard height panel fence with trellis on top, this is followed, going down the garden by a mature Purple plum tree and a number of conifer trees.
7. I accept that consideration should be given to the living conditions of all future occupiers of No 36. In addition the development would present a hard faced feature of greater height than the current boundary treatment. However, the

extension would not replace the current boundary treatment and the side elevation would be set-back from the mutual boundary with the roof of the conservatory sloping away. In my opinion, given the current limited views from No 36 to the south, and the restricted amount of new build that would be viewed above the boundary fence, along with the presence of the trees on the boundary, the proposal would not lead to an unacceptable sense of enclosure, or appear as an overbearing feature, or unacceptably reduce the outlook.

8. For these reasons I find the development would not lead to unacceptable harm to the living conditions of occupiers of the adjoining dwelling. It would not therefore be contrary to saved Policies QD1, QD14 and QD27 of the Brighton and Hove Local Plan which amongst other things seek developments and extensions of a high standard of design with no loss of amenity to neighbouring properties.
9. I have also considered the impact of the proposal upon occupiers of dwellings in Cobton Drive. Whilst I accept views are available to the rear of the appeal property, given the distance between properties in the two roads, the length of the rear gardens and presence of trees and shrubs, I consider it would not have an unacceptable impact upon the outlook from those properties or appear as an overbearing feature.
10. For these reasons and having considered all other matters raised I conclude the appeal should be allowed. I will impose the usual time limit on commencement of development, a condition requiring the development to be carried out in accordance with approved plans is necessary for the avoidance of doubt and in the interests of proper planning. I will also ensure matching materials are used by way of condition to ensure the extensions blend in with the existing.

Richard Perrins

Inspector



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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: BH2010/00226
Our Ref: APP/Q1445/D/10/2129650
Date: 23 August 2010

Dear Sir/Madam

Town and Country Planning Act 1990
Appeal by Mr Michael Lancaster
Site at 51 Church Street, Brighton, BN1 3LF

"CORRECTION NOTICE"

It has been brought to our attention that there is a typographical error in the decision and I am enclosing a copy of the corrected appeal decision, in pursuance of Section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended. This decision corrects that issued on 4 August 2010 by deleting the words 'the proposal' in the second sentence of paragraph 5. Please accept our apologies for this error and for any confusion it may have caused.

Information about the Inspectorate's complaints procedures can be obtained via our web site:-

www.planninginspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm.

The site also gives information on the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

Yours sincerely

James Bunten

211B(BPR)



You can use the Internet to submit and view 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/pcportal/casearch.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



Appeal Decision

Site visit made on 27 July 2010

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

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

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Decision date:
23 August 2010

Appeal Ref: APP/Q1445/D/10/2129650

51 Church Street, Brighton, East Sussex, BN1 3LF

- 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 Mike Lancaster against the decision of Brighton & Hove City Council.
- The application Ref BH2010/00226, dated 26 January 2010, was refused by notice dated 19 March 2010.
- The development proposed is the erection of a dormer over an existing loft stair in order to create sufficient head clearance.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 4 August 2010.

Decision

1. I dismiss the appeal

Main issue

2. I consider that the main issue is the whether the development would preserve or enhance the character or appearance of the Conservation Area and of the existing building.

Reasons

3. The property is part of an older terrace of four storey houses within the Montpelier and Clifton Hill Conservation Area. The front elevations of this block are of most importance, and there is a limited view of the rear roof of No 51. Nonetheless, it is the whole building which contributes to the character of the Conservation Area, rather than just its more visible façades and, despite the diminished significance of the rear elevation, it is still necessary to ensure that any change is not unduly out of keeping.
4. The proposed dormer window is of vertical shape and would fill in the space between a recessed horizontal dormer and the adjoining property, which itself contains a large dormer. The overall effect would produce a cramped and unplanned appearance to the roof, with little regard for its original massing or proportions. Most of the adjoining rear roofs have dormer windows, amounting to box extensions in some cases, and these form part of the character of the terrace. However, I saw nothing in these other examples which would justify the more random appearance of this proposal.

5. I recognise that there is a functional need for the dormer window in order to provide headroom for the staircase serving the upper floor attic bedroom. It is certainly the case that headroom is limited, and would not meet current building standards. However, this appears to be a long standing situation, to which the occupants would have become adjusted, and it is not uncommon for older buildings to fall short of modern levels of access; indeed there are other parts of this house with limited headroom. Nor is there a compelling case to show that the window is essential to provide adequate fire escape from the building.
6. Overall, I consider that the need for the proposal does not outweigh the harm which would be caused to the appearance of the building. Policies QD1, QD14 and HE6 of the Brighton and Hove Local Plan include reference to the requirement for a high standard of design, which takes account of the existing building and its surroundings. This advice is amplified in the Council's publication *Supplementary Planning Guidance Note 1:Roof Alterations and Extensions* which includes the advice that dormers should respect the particular character of the building and be carefully related to it. I consider that the development would not achieve these objectives, and I therefore conclude on the main issue that it would fail to preserve or enhance the character or appearance of the Conservation Area and of the existing building.

John Chase

INSPECTOR



Appeal Decision

Site visit made on 19 July 2010

by Sheila Holden
BSc MSc CEng TPP MICE MRTPI FCIHT

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**Decision date:
13 August 2010**

Appeal Ref: APP/Q1445/A/10/2123651 200 Poplar Avenue, Hove BN3 8PY

- 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 Charlie Hickey against the decision of Brighton & Hove City Council.
- The application Ref BH2009/02315, dated 24 September 2009, was refused by notice dated 11 December 2009.
- The development proposed is conversion of loft space into 1 x 1 bedroom flat.

Decision

1. I allow the appeal and grant planning permission for the conversion of the loft space into 1 x 1 bedroom flat at 200 Poplar Avenue, Hove BN3 8PY in accordance with the application reference BH2009/02315, dated 24 September 2009 subject to the following conditions:
 - 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the layout and details shown on Drawing No 125-03/1 dated 16 January 2009.
 - 3) The external finishes of the dormer windows hereby permitted shall match in colour and texture those of the existing building.
 - 4) No development shall take place until the full details of the refuse, recycling and secure cycle storage have been submitted to and approved in writing by the local planning authority. These facilities shall be implemented as approved prior to occupation of the flat hereby permitted and shall be retained thereafter as approved.
 - 5) No development shall take place until details of "Lifetime Home" measures to be incorporated into the scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter as approved.

Main Issues

2. The main issues are whether the conversion would:
 - a) result in material harm to the Council's policy to retain modest sized family accommodation within the city;
 - b) achieve the "Lifetime Homes" standards.

Reasons

Provision of accommodation

3. Poplar Avenue is characterised by two-storey terraced properties which are purpose built flats. No 200 is a first floor flat comprising of a living room with a study accessed from it and two bedrooms. The proposal seeks to re-arrange the internal layout of the existing flat to enable retention of two bedrooms whilst providing access via a new staircase to the loft space so that this unused space could be converted into a one bedroom flat.
4. Policy HO9 of the Brighton & Hove Local Plan recognises the contribution that the sub-division of larger dwellings can make to meeting local housing needs. The policy supports conversions into smaller dwellings provided that a series of criteria are met. The first of these criteria is that the sub-division of dwellings with a floor area of less than 115 sq. metres or less than 3 bedrooms is not normally permitted. The size of No 200 falls well below these thresholds since it has a floor area of 72 sq. metres and originally only had 2 bedrooms. However, neither of these existing attributes would be fundamentally affected by the appeal proposal. The proposed layout would retain 2 bedrooms, albeit marginally smaller than the existing ones, and would result in about 4 sq. metres of floor space being lost to provide for a new staircase into the loft area. I therefore consider that the proposal cannot be described as a conversion into two smaller units, especially as the loft space is currently unused and would provide new, additional accommodation. The proposal, therefore, does not undermine the thrust of the objectives of criteria (a) or (b) of Policy HO9.
5. The Council has not raised any objection to the proposal in relation to its effect on the living conditions of adjoining properties. In this respect the proposal would meet criteria (c) of Policy HO9. It seems to me that the remaining criteria which are relevant in this case, relating to need to provide adequate refuse and secure cycle storage, could be met through the imposition of conditions which have been suggested by the Council in the event that the appeal was to succeed.
6. I therefore conclude that the proposal would not result in the loss of a small unit of family housing nor would it be contrary to the Council's policy to retain modest sized family accommodation in the City.

"Lifetime Homes" standards

7. The Council is seeking to ensure that new dwellings, wherever practical, comply with "Lifetime Homes" standards to improve the quantity and quality of accommodation that is accessible for those with mobility difficulties. To my mind, however, it would be difficult for a one bedroom flat in a roof space, accessed by two flights of stairs to fully meet these requirements and it should not therefore provide justification for the withholding of planning permission. Nevertheless, the Design and Access Statement indicates an intention to comply with several elements of the standards and these could be achieved through the imposition of an appropriate condition. I therefore conclude that, subject to such a condition, the proposal would comply with the objectives of Policy HO13 of the Local Plan which seeks to promote provision of Lifetime Homes Standards within new development as far as practical.

Other matters

8. I note that the Council consider that the proposal would comply with other local plan policies relating to the quality of the living space and provision of outdoor amenity area and that a number of local residents support the provision of this type of housing to meet the needs of local people. These considerations add weight to my conclusions that the proposal is acceptable.

9. I appreciate that the Council is concerned to avoid the creation of sub-standard and cramped accommodation elsewhere in the City. However, the Council retain the right to consider individual proposals on their merits, as I have done here, taking into consideration all the appropriate policies and circumstances of the particular case.
10. Although lack of provision of any contribution towards sustainable transport infrastructure was not included in the reasons for refusal I am mindful of the Council's request for a condition to secure details of a scheme to support the demand for travel generated by the development. Saved Policies SU15 and QD28 of the Local Plan seek to ensure that new development meets the need for infrastructure either through conditions or planning obligations. I note that a justification relating to the scale of financial contribution that might be secured through a legal agreement was included in the evidence. However, no specific scheme has been identified towards which any contribution would be put and consequently I am not satisfied that the condition suggested would meet the tests of Circular 11/95. Neither could a condition specifically request a financial contribution. Accordingly, I am not convinced that the development would undermine the provision of sustainable transport infrastructure in the area.

Conclusions

11. Having considered these and all other matters raised, I conclude that the appeal should be allowed subject to conditions. In addition to the standard time limit I have imposed a condition specifying the plans for the avoidance of doubt and in the interests of good planning. I have considered the other conditions suggested by the Council and imposed them where they meet the tests set out in Circular 11/95. A materials condition is justified in the interests of the appearance of the building. The provision of satisfactory storage for refuse and recycling is required in the interests of the appearance of the development and to encourage participation in recycling schemes. Provision of secure cycle storage is justified to encourage ownership and use of bikes by residents. I have modified the wording of the condition relating to the provision of Lifetime Homes standards to provide the parties with an opportunity to formally agree the commitments set out in the Design and Access Statement.

Sheila Holden
INSPECTOR



Appeal Decision

Site visit made on 14 July 2010

by **Rob Huntley BSc MRTPI**

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

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Decision date:
16 August 2010

Appeal Ref: APP/Q1445/H/10/2124525

Spar Stores, 159 Lewes Road, Brighton, BN2 3LF

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Primesight Ltd (Mr Matt Swindles) against the decision of Brighton and Hove City Council.
- The application Ref BH2009/02249, dated 18 September 2009, was refused by notice dated 14 January 2010.
- The advertisement proposed is the erection of 2 internally illuminated, wall mounted, display units.

Procedural Matter

1. The Council has indicated that the address of the appeal property would be more correctly referred to as 159–162 Lewes Road, rather than 159 as stated on the application and appeal forms. That is the address used on the Council's decision notice. However, the ordnance survey map extract submitted with the application identifies the property as numbered 159-161. The advertisement display units, which are already in place, are situated on the part of the property which appears to me to be correctly numbered 159 and I have therefore retained that address in my decision. However, I observed during my site inspection that the convenience store does indeed occupy a greater frontage to Lewes Road than No 159 alone.

Decision

2. I allow the appeal, and grant express consent for the display of the 2 internally illuminated, wall mounted, display units at 159 Lewes Road Brighton as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

Main issue

3. The main issue is the effect of the 2 display units on the character and appearance of the area around the junction between Lewis Road and Franklin Road.

Reasons

4. The convenience store occupies a corner position at the junction of Lewes Road and Franklin Road. The main frontage of the store is to Lewes Road which, in the vicinity of the appeal property, has the character of a suburban high street, with retail, commercial, banking and other service units, including food and drink establishments. Although Franklin Road has a predominantly residential

character away from its junction with Lewes Road, this commences past the return frontage of the appeal property and that of the Franklin Tavern public house opposite. These impart a mixed character to the part of Franklin Road close to the appeal property.

5. Angled views of one of the display units are obtainable from some of the residential properties in Franklin Road. However, in these views the display unit is seen against the backdrop of the fascia sign and window graphics of the Co-op retail store on the opposite side of Lewes Road, and in the context of part of the fascia sign of the appeal property, which wraps around the building onto the Franklin Road frontage. The display unit positioned on the corner splay of the appeal property, facing the junction between Lewes Road and Franklin Road, is not visible from residential properties in Franklin Road. In views along Lewes Road, it is seen in the context of predominantly retail and commercial properties, many of which have advertising fascias, projecting signs and window displays typical of such premises. For these reasons I consider that the display units are consistent with the prevailing local character.
6. In its decision notice the Council makes reference to policies of the Brighton and Hove Local Plan and to its Supplementary Planning Document 07 'Advertisements'. Further policy references are also mentioned in the statement provided by the Council. I have not been provided with these documents, so I am unable to take them into account. In any event, in accordance with the 2007 Regulations, my consideration of this appeal is limited to considerations of amenity and public safety, and in view of this the Council's policies alone could not be decisive.
7. The advice in Appendix E to Circular 03/07 is that in areas of commercial and mixed character, appropriately sited advertising panels of suitable size should, in principle, be acceptable. I note that the Council comments that the advertisement display units do not give rise to any safety risk and I agree.
8. I have considered all other matters raised, but I conclude, for the reasons I have given, that the 2 internally illuminated, wall mounted, display units are not harmful to the character and appearance of the area around the junction between Lewis Road and Franklin Road, and that this appeal should be allowed.

Rob Huntley

INSPECTOR



Appeal Decision

Site visit made on 16 August 2010

by **Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State
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**Decision date:
25 August 2010**

Appeal Ref: APP/Q1445/C/09/2118995 13 Cheltenham Place, Brighton BN1 4AB

- 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 Graham Jasper against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2006/0115.
- The notice was issued on 30 November 2009.
- The breach of planning control as alleged in the notice is:
 - a) The removal of the front round bay and replacement with an angled canted bay.
 - b) Installation of uPVC windows to front elevation
- The requirements of the notice are:
 1. Remove the angle canted bay window from the front elevation.
 2. Remove the uPVC windows from front elevation.
 3. Reinstate round bay as original.
 4. Reinstate paired curved single glazed painted timber sash windows, to match exactly the original shown in the photograph attached to the enforcement notice at Appendix 1.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the development is fee exempt, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. Although an appeal has not been made on ground (a), that is that planning permission should be granted for the development, the site lies within the North Laine Conservation Area where there is a Direction in place made under Article 4 of the Town & Country Planning Act 1990 (as amended) (TCPA). This Direction removes permitted development rights for, amongst other things, alterations to a dwellinghouse where the development would front a highway and would otherwise be included within Class A of Part 1 of Schedule 2 of the GPDO. The development that has been carried out at the appeal site falls within this category and for this reason, planning permission would be needed to authorise it.

3. In cases where there is such an Article 4 Direction and the site is within a conservation area, an appeal against an enforcement notice is exempt from the fees normally required to accompany an appeal on ground (a) and the planning application deemed to have been made under S177(5) of the TCPA. Although, in this case, an appeal has not been made under ground (a), the deemed planning application does not require a fee and therefore still remains to be determined. I have, therefore, considered the merits of the deemed planning application as part of this appeal.

Main issues

4. I consider that the main issues in this case are, firstly;

on the deemed planning application, the effect of the development on the character and appearance of the North Laine conservation area and, if this appeal does not succeed:

on ground (f), whether the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control and if they are not:

on ground (g), whether the time for compliance with the enforcement notice is reasonable.

Site and surroundings

5. The appeal property is one of a terrace of houses within the North Laine Conservation Area in the city of Brighton. Most of the properties on the same side of the road have a bay window at the front and the majority of these are two storey. Early photographs of the appeal property show that it originally had unusual curved windows, one above the other on each floor, forming a rounded bay. Each window frame contained a total of four, six over six sashes, divided centrally.
6. The bay has now been altered so that it has a canted profile, similar to some others in the road, and uPVC windows, six on each floor. The new windows each have four panes and include five top hung opening casements.

Reasons

Deemed planning application

7. The uPVC windows that are referred to in the enforcement notice have already been the subject of a refused planning application¹ that sought to retain them, an appeal against which was dismissed in 2007². In his decision, the previous Inspector considered the windows to be unattractive, bulky and inappropriate to the style and period of the building and consequently detrimental to the street scene and the character and appearance of the conservation area. I find no reason to disagree with this assessment.
8. The appellant suggests that the harm to the conservation area could be overcome by replacing the existing windows with timber sliding sashes, whilst retaining the canted profile of the bay. He points to similar bays in the street and submits that it is impossible to reinstate the bay in its original form.

¹ Ref: BH/2006/01433

² Ref: APP/Q1445/A/07/2036341

9. I understand that the original structure needed considerable remedial work to make it structurally stable and this is not disputed by the Council. The appellant has not, however, explained why a curved bay to match the original could not now be constructed. The only practicalities that the appellant addresses relate to cost and the inconvenience to the tenants, which are not matters that carry any significant weight in planning terms. Neither has he submitted details of any proposed replacement timber sashes for consideration. Such details are, in my view, too important to the overall design of the whole bay to be left to a condition requiring their subsequent submission.
10. The appellant also states that he considers the revised design to be more appropriate and that the modern materials are more in keeping with the rest of the street. However, I do not agree with this assessment. It is true that there is a variety of styles of bays and windows, however the bay that is now on the appeal property has different proportions to the other canted bays in the street and therefore has no historical precedent. I also consider the fact that other, inappropriate alterations have already taken place in the street means that it is now all the more important to retain the original designs where at all possible. The demolished bay was the last original survivor of this interesting and unusual design in the street and its loss is precisely the kind of development that the Article 4 Direction is seeking to prevent.
11. Even if the uPVC windows were changed to timber sashes, they would not replicate the curved sashes that have been taken out. I consider that the revised design, even with timber windows, would continue to harm the appearance of the building and the character of the conservation area. Consequently, I find that the bay and uPVC windows fail to preserve the character and appearance of the conservation area and conflict with the aims and objectives of saved policies QD2, QD14 and HE6 of the Brighton and Hove Local Plan 2005 which set design standards for development and seek to protect conservation areas.

Ground (f)

12. S173 (4) of the TCPA provides, amongst other things, that an enforcement notice shall specify the steps which the authority requires to be taken to remedy the breach of planning control either by restoring the land to its condition before the breach took place or by remedying any injury to amenity which has been caused by the breach.
13. The Council's statement makes clear that it is seeking to return the details of the bay to its original design before the works were carried out. It has explained the historic importance of the design and the impact that the loss of the bay has had on the character and appearance of the conservation area. The planning merits of the scheme have already been considered in respect of the deemed application and I have concluded that planning permission should not be granted for the existing alterations.
14. As noted above, I have been given no details of the replacement timber sashes that the appellant suggests could replace the uPVC windows and, in any event, the planning merits of any proposals are not considered under an appeal on ground (f).

15. Consequently, I find that the requirement to restore the bay to its original design is not excessive and the appeal on ground (f) therefore fails.

Ground (g)

16. The appellant asks for a minimum of ten months to comply with the enforcement notice, based on the time needed to re-house the existing tenants, possibly through the need to obtain a court order.

17. I consider that six months would normally be sufficient time to give notice to the tenants and carry out the rebuilding of the bay. The Council has given the assurance that, should difficulties in obtaining vacant possession of the property be demonstrated, it would be willing to use its powers under S173A(b) of the TCPA to vary the time for compliance whether or not the enforcement notice has come into force. In these circumstances, I see no reason to extend the time for compliance at this stage. The appeal on ground (g) consequently fails.

Katie Peerless

Inspector



Appeal Decision

Site visit made on 24 August 2010

by Sheila Holden
BSc MSc CEng TPP MICE MRTPI FCIHT

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Decision date:
1 September 2010

Appeal Ref: APP/Q1445/D/10/2132084
17 Shepham Avenue, Saltdean, Brighton BN2 8LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Emma Fancy against the decision of Brighton & Hove City Council.
- The application Ref BH2010/01043, dated 1 April 2010, was refused by notice dated 1 June 2010.
- The development proposed is a rear balcony.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues are the effect of the proposed balcony firstly, on the living conditions of the occupants of adjoining dwellings in relation to overlooking and loss of privacy and secondly, on the character and appearance of the area.

Reasons

3. Shepham Avenue runs along a ridge and all the properties on its western side have fine rear views over Saltdean and the Downs. The varied appearance of the rear elevations, some of which include decking and balconies, reflect their mid-20th century design, the tastes of property owners and the desire to enjoy the views. The steep slope means that No 17's ground floor at the front is its first floor at the rear. The proposal is to construct a balcony at first floor level across the full width of No 17 with access to it from both the kitchen and the living room via new patio doors.

Living conditions

4. The first floor windows of No 17 already overlook the gardens of Nos. 15 and 19. The intrusive effect of this overlooking is less in relation to No 15 due to the distance between the houses, which are separated by the garage of No 17, and the presence of a high hedge along the shared boundary. By contrast there is direct overlooking of the garden, rear decking and conservatory of No 19, particularly from the kitchen window. No 19 also directly overlooks No 17 and can do so from rear windows, a conservatory and a first floor window in the side elevation. However, the ground level decking of these two properties is separated by a fence which provides some privacy for the occupants of both properties.

5. The proposed first floor balcony would increase the amount of direct overlooking of the decking and rear garden of No 19, particularly given its size, height and proximity to the shared boundary. The current inter-visibility between the gardens occurs from inside the houses. With the proposed balcony it would take place from outside which, in my view, would make it more intrusive and harmful. I consider that the obscure glass screen, which is only proposed to be 1.9m high for part of its depth, would be inadequate to prevent this overlooking. I therefore conclude that the proposed balcony would be harmful to the living conditions of the occupants of No 19 arising from increased overlooking and loss of privacy. The proposal would fail to comply with saved Policies QD14 and QD27 of the Brighton & Hove Local Plan which seek to protect residents from the adverse consequences of development.

Character and appearance

6. On my site visit I saw balconies above ground level from the garden of No 17, notwithstanding the Council's statement that there are no first floor balconies with planning permission in the immediate area. In this context it seems to me that the principle of a first floor balcony cannot be considered incongruous. The proposal would only be visible from the immediately adjoining rear gardens and would not detract from the appearance of the rear elevation of No 17 any more than existing balconies affect others. I conclude that the proposed balcony would not be harmful to the character and appearance of the host property or the surrounding area and in this respect would comply with saved Policy QD14 of the Local Plan which seeks alterations that are well designed and appropriate to their setting.

Conclusions

7. I understand that the appellant wishes to enhance her property by having direct access to an amenity space from the main living areas and I have not found that the proposal would be harmful to the character and appearance of the area. However, these factors do not to overcome the harm I have identified to the living conditions of the occupants of No 19. For this reason and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR



Appeal Decision

Site visit made on 3 August 2010

by **R J Perrins MA MCM**

**an Inspector appointed by the Secretary of State
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**Decision date:
17 August 2010**

Appeal Ref: APP/Q1445/D/10/2131595 412 Falmer Road, Brighton, East Sussex BN2 6LG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Adrienne Madaris NNadi against the decision of Brighton & Hove City Council.
- The application Ref BH2010/00157, dated 4 January 2010, was refused by notice dated 30 April 2010.
- The development proposed is two storey side and rear extensions.

Decision

1. I allow the appeal, and grant planning permission for two storey side and rear extensions at 412 Falmer Road, Brighton, East Sussex BN2 6LG in accordance with the terms of the application, Ref BH2010/00157, dated 4 January 2010, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P09/049/01 and P09/049/02.
 - 3) 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.

Main issue

2. I consider the main issue in this case to be the impact of the rear extension upon the character and appearance of the original dwelling and the surrounding area.

Reasons

3. The detached appeal property sits on the eastern side of Falmer Road. The road is of mixed use, predominantly residential, with dwellings of differing sizes and designs. To the front of the property is a full height white-washed wall with solid double gates.
4. The Council raise no objections to the size and scale of the development and its impact on the property when viewed from the front. Given the variety of dwellings in the locality, the screening afforded to the front, and the fact that

the house is well set-back from the road. I see no reason to disagree with that view.

5. I also accept that there are views through to the property from Millyard Crescent and the proposal would have a large area of flat roof. However, those views are at oblique or right angles and have to be sought between properties. Given the angle of available views, and that the rear extension extends no further into the garden than the current rearmost two-storey element, I do not consider it would draw the eye and the flat-roof element would not be visually intrusive. The view directly to the rear of the property is also broken up by existing trees growing in the rear lawn.
6. For these reasons and given the variety of housing and roof-styles in the locality I find the development would not lead to unacceptable harm to the character and appearance of the locality or the existing dwelling. It would not therefore be contrary to saved Policies QD1, QD2 and QD14 of the Brighton and Hove Local Plan which amongst other things seek developments and extensions of a high standard of design which take into account local characteristics.
7. I have also considered the impact of the proposal upon occupiers of the adjacent dwellings. Although there is a degree of screening offered by the boundary planting it would be viewed from adjacent dwellings. However given its position and current form I do not consider the extensions would result in unacceptable harm to the living conditions by way of loss of sunlight or daylight. Furthermore, the windows proposed would offer similar views to that which currently exists.
8. For these reasons and having considered all other matters raised I conclude the appeal should be allowed. I will impose the usual time limit on commencement of development, a condition requiring the development to be carried out in accordance with approved plans is necessary for the avoidance of doubt and in the interests or proper planning. I will also ensure matching materials are used by way of condition to ensure the extensions blend in with the existing.

Richard Perrins

Inspector



Appeal Decision

Site visit made on 3 August 2010

by **R J Perrins MA MCM**

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

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Decision date:
17 August 2010

Appeal Ref: APP/Q1445/D/10/2131772

"Chailey", 61 Valley Drive, Brighton, East Sussex BN1 5FD.

- 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 Terry Offord against the decision of Brighton & Hove City Council.
- The application Ref BH2010/00377, dated 10 February 2010, was refused by notice dated 4 May 2010.
- The development proposed is the demolition of existing garage, erection of two storey side extension.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this case to be the impact of the extension upon the character and appearance of the original dwelling and the surrounding area and upon the living conditions of occupiers of No 3 Hillside Way.

Reasons

3. The detached appeal property sits to the south of Valley Drive a predominantly residential road with a variety of house styles. To the south No 3 Hillside Way sits higher than the appeal property and views, from the rear of that dwelling, take advantage of the gap in the built form (between Nos 61 and 63) provided by the existing garage.
4. The property has a planning history which includes a recent appeal (dated 12 November 2009) against a decision for; *the erection of a 2-storey side extension* (APP/Q1445 /D/09/2114576). The previous Inspector found primarily that the proposed scheme would be harmful to the living conditions of the occupiers of No 3 Hillside Way.
5. I accept that the current proposal has sought to address the concerns of the previous Inspector it has lowered the roof height of the proposed extension. It would also provide a double fronted elevation in keeping with the properties to either side. I also accept that an individual design would be in keeping with this part of Valley Drive, given the variety of house styles nearby, and high quality materials would be used.
6. However, I was able to see that there are no other properties in this part of Valley Drive with a two-storey element served by a roof which would be

predominantly flat. Moreover, that element does not relate well and would be at odds to the style of the existing roof. It would to my mind be an incongruous addition to the original dwelling and street scene, drawing the eye and leading to unacceptable harm to the character and appearance of the original property and surrounding area.

7. I now turn to the second issue and I accept that a planning condition for obscure glazing to windows to the rear would resolve any overlooking issues. In addition views would remain for the occupiers of No 3 although, from my site visit, I was able to see that those views would be limited. The proposal would not, in my opinion, entirely address the concerns of the previous Inspector who found that the openness above the garage to be important given the particularly small gardens of No 3 and the appeal property.
8. The proposal would extend across much of the present gap and dominate the outlook from the garden, ground and first floor levels of No 3. It seems to me that the amendments have, once again, resulted in improvements to the previous proposals. However, they do not, given the closeness of the two properties, overcome the harm to the living conditions of occupiers of No 3 as previously identified. In my opinion the development would appear as an overbearing feature providing an unacceptable sense of enclosure to occupiers of No 3.
9. For these reasons and having considered all other matters I find that the proposal would be contrary to saved Policies QD1, QD2, QD14, QD27 of the Brighton and Hove Local Plan which, amongst other things, seek developments and extensions of a high standard of design and architectural detailing which take into account local characteristics and do not result in loss of amenity to neighbouring properties.

Richard Perrins

Inspector



Appeal Decision

Inquiry held on 18 and 19 May 2010

Site visit made on 20 May 2010

by **David Prentis BA BPI MRTPI**

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

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Decision date:
18 August 2010

Appeal Ref: APP/Q1445/A/09/2119295

Covers Yard, Melbourne Street, Brighton BN2 3LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hyde Housing Association against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00655, dated 18 March 2009, was refused by notice dated 8 July 2009.
- The development proposed is described as *residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of the site, cycle and car parking to rear.*

Applications for costs

1. At the Inquiry applications for costs were made by Hyde Housing Association against Brighton and Hove City Council and by Brighton and Hove City Council against Hyde Housing Association. These applications are the subject of separate decisions.

Decision

2. I allow the appeal, and grant planning permission for residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of the site, cycle and car parking to rear at Covers Yard, Melbourne Street, Brighton BN2 3LH in accordance with the terms of the application, Ref BH2009/00655, dated 18 March 2009, and the plans listed in the attached Schedule 1 subject to the conditions contained in the attached Schedule 2.

Preliminary matters

3. The appeal was lodged in the names of Hyde Housing Association and Mr Tom Shaw. At the Inquiry the appellant confirmed that the appeal should proceed solely in the name of Hyde Housing Association.
4. Three Section 106 Agreements dated 14 May 2010 were submitted at the Inquiry. The Agreements are the same except insofar as they relate to affordable housing. The affordable housing provisions are contingent upon my findings in relation to the current use of the appeal site. The provisions which would come into effect as a result of my findings on this issue, which are set out below, are such that 16 of the 39 units (approximately 40%) would be affordable housing.

5. The Agreements provide for financial contributions relating to education, recreation, sustainable transport, a traffic order and public safety. There are also covenants relating to public art, a construction environmental management plan and the establishment of a car club. Having regard to the development plan and the evidence before me, I consider that the provisions relating to affordable housing, recreation, sustainable transport, (including the traffic order and car club), public art and the construction environmental management plan are necessary, reasonable, related to the development and generally in accordance with the advice of Circular 05/2005 *Planning Obligations*. I shall therefore take these matters into account in reaching my decision. I shall comment further on the provisions relating to affordable housing, recreation and sustainable transport in the appropriate sections of this decision.
6. There was little information before the Inquiry relating to the need for education facilities. The public safety contribution is intended to provide CCTV equipment, the need for which appears to be unrelated to the scheme. I am not satisfied that these contributions have been shown to be directly related to the appeal proposal and I shall not therefore take them into account.
7. On 6 July 2010 the Secretary of State announced the revocation of Regional Spatial Strategies. The views of the parties were sought and I have taken account of the responses which were received.

Main issues

8. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the proposal would provide satisfactory living conditions for future occupiers; and
 - the effect of the proposal on the supply of employment land.

Reasons

The character and appearance of the area

9. The site, which is currently vacant, comprises a predominantly open yard with two commercial buildings. It lies to the rear of shops, service businesses and community uses fronting Lewes Road, a busy radial route leading into central Brighton. This block of properties includes residential accommodation on some of the upper floors and there is a house at No 130 Lewes Road. The appeal site is bounded on its northern and eastern sides by Melbourne Street which forms a one-way loop leading off Lewes Road.
10. There are vehicle repair workshops and a joinery workshop to the north of the site and to the east is Enterprise Point, a large multi-storey building which has been subdivided to provide business units. This is a rather harsh environment, characterised by utilitarian buildings and quite extensive open areas around Enterprise Point which are generally hard surfaced. By contrast, the southern part of Melbourne Street is a small scale residential enclave characterised by two storey terraced houses. St Martin's Primary School has an access from Melbourne Street although its main entrance is from Hartington Road. Lewes

Road runs along the floor of a valley with the land rising up quite steeply on either side.

11. Policy QD3 of the Brighton and Hove Local Plan 2005 (LP) states that new development should make efficient and effective use of a site and that higher development density will be appropriate where the site has good public transport accessibility and is close to services and facilities. Policy HO4 states that residential development will be permitted at higher densities subject to consideration of design, housing mix, accessibility and the capacity of the area to accommodate additional dwellings. The Council accepted that the proposed housing mix would be appropriate for this locality. The appeal site is close to frequent bus services along Lewes Road. There is a good range of local facilities within walking distance and central Brighton is readily accessible by bus or cycle. In my view this is a location where higher density development would, in principle, accord with the objectives of the LP, subject to design considerations.
12. The 7 storey element of the proposal falls within the definition of a "tall building" in the Council's Supplementary Planning Guidance Note 15: *Tall Buildings* (SPG15). This document has been approved by the Council following public consultation and I therefore take it into account in reaching my decision. SPG15 identifies areas which, at a strategic level, are regarded as suitable for tall buildings. These include the Lewes Road corridor, which is noted as being an academic corridor and a major route into the city with excellent bus and rail services and existing tall buildings along the valley bottom. The Council did not dispute that the site should be regarded as falling within this corridor and I see no reason to take a different view.
13. The scheme would have 3 distinct elements. Flats and maisonettes along the eastern frontage would have the appearance of 3 storey terraced houses. Repeated features such as bay windows and stair enclosures would provide a scale and rhythm which, in my opinion, would be well related to the adjoining terraced housing. There would be a 4 storey building on the northern frontage which would have more restrained detailing and this element would respond to the more commercial nature of its immediate surroundings. The third element would be a 7 storey tower at the north east corner of the site. Whilst the height of the tower would be comparable with Enterprise Point its proportions would be very different. Enterprise Point has a very large footprint and its design has a horizontal emphasis. The design of the tower, which would incorporate features such as contrasting materials and a distinctive glazed stair enclosure, would emphasise the verticality of its proportions.
14. The Council drew attention to the comments of the Inspector who considered a previous appeal relating to Covers Yard¹ and concluded that the 6/7 storey block of flats proposed in that scheme would not sit comfortably so close to the existing terraced houses in Melbourne Street. The massing of the current scheme is however quite different to that of the previous appeal. In particular, the tower would be separated from the existing houses by a new 3 storey building. Whilst there would be a significant contrast between the tower and the lower buildings, this contrast would form an integral part of a coherent

¹ Ref APP/Q1445/A/08/2065312 – that appeal concerned a scheme for 54 flats and 6 offices on a site which incorporated the current appeal site together with additional land which is now in separate ownership.

scheme for the site as a whole. It was suggested that the tower would appear unduly dominant as seen from Melbourne Street. I agree that there is no precedent for a building of this scale so close to the footway of Melbourne Street. Nevertheless, I consider that the scheme would introduce a new focal point in an area which is currently lacking in environmental quality.

15. The Council also expressed concerns regarding the lack of landscaping within the scheme and I note that there would be only limited scope for planting. However, having regard to the urban context of the site, I consider that siting the development close to the footway to Melbourne Street is a valid design approach. The internal courtyard, although predominantly hard surfaced, would be generously proportioned and in my view would not appear unduly cramped. The proposed sedum roof to the disabled parking bays would provide some visual softening in views from upper storey windows and there would be scope for some incidental planting around the parking area and in the small courtyard gardens. Subject to appropriate surfacing materials, boundary treatments and planting details, I consider that the design for the external areas is satisfactory. These matters could be covered by a condition.
16. To conclude on the first main issue, I note that the appeal proposal is for a relatively high density of development. Nevertheless, in my opinion the proposed design is a well considered response to the challenges of developing a higher density scheme on this site. It would represent good quality design which would not be harmful to the character and appearance of the area. Indeed, it would enhance the street scene. I find no conflict with LP Policies QD3 and HO4. Nor do I find any conflict with Policies QD1, QD2, QD5 and QD15 which, together, seek a high quality of design, including the design of the spaces between and around buildings.

Living conditions of future occupiers

17. The Council's main concerns related to the outlook available to some of the ground floor units, the adequacy of private amenity space and the lack of children's play space within the scheme. With regard to outlook, the living rooms and bedrooms of flats 00A-00D would have glazed doors opening onto a small private patio. Whilst the outlook from the living rooms would be restricted by a section of flank wall, longer oblique views could be obtained from these large openings. These rooms would also have high level windows giving natural light and a view of the sky². The kitchen windows to these flats would have obscure glazing but, given that the main living spaces would have an adequate outlook, I do not think this would be harmful to living conditions. The kitchen/living rooms of flats 00E and 00F would have an easterly aspect, over small private terraces, towards Enterprise Point. As that building is set well back within its own site I do not consider that these units would feel unduly enclosed.
18. LP Policy HO5 requires the provision of private amenity space where appropriate to the scale and character of the development. The LP does not contain any quantitative standards for private amenity space but does indicate that balconies will be taken into account. The appeal scheme would include private amenity spaces for all ground floor units. Whilst these would be small,

² In the case of unit 00D the high level window would be obscure glazed.

they would be of sufficient size to accommodate a sitting out area with some incidental planting. The units on the upper floors would have individual terraces or balconies. In addition, a roof terrace on the 4 storey building would provide a larger communal amenity space for all residents. I agree with the Council that there would be considerable inter-visibility between the various terraces/balconies. Nevertheless, in my view this is not unusual for higher density schemes. To my mind the proposal would provide amenity space which would be appropriate to the character of the development, in accordance with Policy HO5.

19. LP Policy HO6 deals with the provision of outdoor recreation space within residential developments, including children's equipped play space, informal play space and youth/adult sports facilities. The policy states that, where it is not practicable or appropriate for all or part of the requirement to be provided on site, contributions to provision elsewhere may be acceptable. The Council has also prepared draft Supplementary Planning Guidance Note 9: *A guide for residential developers on the provision of outdoor recreation space* which states that, ideally, a local area for play (LAP) should be located within a walking time of one minute from home. Whilst I take account of this guidance, the weight to be attached to it is limited because it is in draft. In this case the Council accepted that the need for children's equipped play space and youth/adult provision could be met elsewhere and would be satisfied by the relevant provisions of the S106 Agreements. I see no reason to disagree. However, the Council considers that provision should be made on site for a LAP of around 100sqm.
20. There are two public parks nearby which, in my opinion, would contribute to meeting the recreational needs of future occupiers. Saunders Park appears to have received recent investment and is relatively well equipped. Nevertheless, there is scope for further improvements, including improvements to facilities for younger children. William Clarke Park has more basic facilities and there is scope for improvements to the play equipment and the ball games area. In order to reach Saunders Park from the appeal site it is necessary to cross Lewes Road and a traffic gyratory system and to reach William Clarke Park it is necessary to cross Hartington Road. Safe crossing places are available in both cases although it seems likely that younger children would need to be accompanied in order to make use of these facilities.
21. I consider that the S106 recreation contribution could be used to fund improvements to either, or both, of these spaces which would mitigate the lack of on site provision. Even so, I consider that it would be desirable to make some provision on site for younger children to cater for active play close to home at times when they cannot be taken to the local parks. The appellants argued that it would not be practical to make such provision but, on the available evidence, I am not persuaded on that point. It seems to me that with careful design a space of around 100sqm could be provided. The consequence of this would be to reduce the space available for parking which might, in turn, reduce the number of housing units that could be provided at the site.
22. My conclusion on this matter differs from that of my colleague who considered the previous appeal relating to Covers Yard. In that case the Inspector formed the view that there would be a limited number of children whereas at this Inquiry the appellant accepted that a significant number of children would be

present³. Moreover, I was provided with a diagram showing the effect of providing a LAP at the appeal site which I have taken into account. I have also noted a recent appeal decision elsewhere in Brighton and Hove⁴. However, that was a larger scheme in a different part of the City and, insofar as it relates to this issue, I consider that it has limited relevance to the current appeal.

23. In forming my overall assessment of living conditions for future occupiers I take account of the appellant's daylight analysis which showed that all rooms would achieve a good standard of natural lighting. I also note that all units are designed to achieve lifetime homes standards and that 4 units have been designed as wheelchair accessible units.
24. I conclude that, in general terms, the scheme would provide satisfactory living conditions for future occupiers in accordance with LP Policy HO5 and also in accordance with Policy QD27, which seeks to protect amenity. However, I regard the lack of any on site play provision as a disadvantage of the scheme. To that extent the scheme does not accord with LP Policy HO6 or with Policy QD3, insofar as that policy deals with recreation space.

Employment land

25. LP Policy EM3 states that land in industrial use, or allocated for industrial purposes, will not be released for other uses unless the site is unsuitable for modern employment needs. For the purposes of this policy "industrial use" is defined as Use Classes B1, B2 and B8. The appeal site is not an allocated employment site and there is no planning permission or Certificate of Lawful Use which defines the use of the land. At the Inquiry the Council argued that its use should be regarded as Class B8 whereas the appellant argued that it should be regarded as sui generis.
26. The site was last occupied by Covers, who described their business as "timber importers and builders' merchants". Covers occupied the site from 1988, when they took over from another builders' merchant, until August 2005 when they relocated to another part of Brighton. The company occupied the current appeal site together with additional land including Nos 124, 128 and 129 Lewes Road and Connaught House, Melbourne Street. Various activities took place, including storage and sales, but it appears that these activities all contributed to the single main purpose of supplying construction materials. Consequently, it is my view that the starting point for assessing the use of the land is to identify the relevant planning unit as the whole of the land formerly occupied by Covers.
27. Sales figures for the period January 2004 to August 2005 show that sales collected by customers amounted to around half of total sales. Around 60% of transactions were in cash and the average value of each cash transaction was relatively low. This pattern of trading indicates to me that a large number of customers travelled to the premises to make relatively small purchases. I consider that the business had a significant retail component and cannot be regarded as having been a purely Class B8 (storage) use.

³ The appellant's planning witness estimated that, based on assumed occupancy figures, up to 14 children could be living at the site.

⁴ APP/Q1445/A/09/2111696 – Park House, Old Shoreham Road, Hove BN3 6HU

28. The Council points out that the sales figures relate only to the last 20 months of Covers' occupation of the site. Nevertheless, there is no evidence to suggest that the nature of the business changed in any material way during Covers' period of occupation. Reliance was also placed on a comment, made on behalf of Covers at a meeting in 2006, that only 5% of group sales were retail. That comment, it seems to me, was making a distinction between trade customers and members of the public buying supplies for DIY purposes. In my view that distinction is of little relevance to the nature of the use in planning terms and I attach limited weight to it. I note that Covers accepted limitations on its retail activity when it relocated to another site but that is not relevant to my consideration of the use at Melbourne Street.
29. I conclude that, for the purposes of Policy EM3, the use of the appeal site should be regarded as a sui generis use, including components of both storage and retail use. It follows that it does not fall within the definition of "industrial use" contained within Policy EM3 and the policy is not therefore applicable. There was evidence before the Inquiry regarding the suitability of the site for continued employment use. However, given my conclusion on Policy EM3 it is not necessary for me to comment further on that matter. On the third main issue, I find that there is no development plan policy objection to the redevelopment of the appeal site for housing and that the proposal would not be harmful to the supply of employment land.

Other matters

Affordable housing

30. The appellant gave evidence, which was not disputed, of the pressing need for affordable housing within Brighton and Hove. Current rates of delivery are not keeping pace with the identified need. The S106 Agreement would ensure that about 40% of the units would be affordable. This level of affordable provision would accord with LP Policy HO2 and is the most that could be required at the appeal site by way of a S106 Agreement. Having regard to the level of need, I attach significant weight to this provision. Furthermore, it is the appellant's intention to develop the scheme entirely for affordable housing. Given that the site is within the ownership of the appellant, an established provider of affordable housing, it appears that there is a reasonable prospect that this intention would be realised. This is a further factor weighing in favour of the appeal although the weight to be attached is reduced because affordable housing provision in excess of 40% is not secured by an Agreement.

Housing land supply

31. At the Inquiry the Council accepted that it could not demonstrate an identified 5 year supply in relation to the housing requirements of the South East Plan (SEP). However, as the SEP has now been revoked those requirements are no longer of relevance to the appeal.

Passive surveillance of Melbourne Street

32. The Council argued that the design of the units facing the eastern arm of Melbourne Street would provide insufficient passive surveillance of the public realm. Whilst I note that the ground floor kitchen windows would be obscure glazed, there would be windows at first and second floor levels providing views

over the street. Views would also be available from flats in the corner block. The scheme includes front doors accessed from Melbourne Street which would generate pedestrian traffic along the footway. Overall, I consider that the appeal scheme would be an improvement on the current level of passive surveillance within Melbourne Street, particularly at times when the business premises are not in use.

Sustainable building design

33. LP Policy SU2 states that planning permission will be granted for proposals which demonstrate a high standard of efficiency in the use of energy, water and materials. It does not set specific performance standards. Supplementary Planning Document No 8: *Sustainable building design* (SPD08) has been adopted by the Council following consultation and I shall therefore take it into account. The document sets out various recommended standards for sustainable building design including a recommendation that housing developments of more than 10 units should achieve a minimum Code for Sustainable Homes (CSH) rating of Level 4. The scheme was originally designed to achieve CSH Level 3 although at one stage in discussions with the Council the appellant agreed to meet Level 4. At the Inquiry the appellant's position was that the scheme would meet Level 3 whilst the Council argued that it should meet Level 4. Both parties agreed that this matter should be covered by a condition.
34. The Supplement to Planning Policy Statement 1: *Planning and Climate Change* states that any local requirements for sustainable buildings must be set out in development plan documents. SPD08 has been adopted by the Council but it is not a development plan document. CSH Level 4 is in excess of the requirements of the current Building Regulations and the appellant is not now offering to meet this level. In these circumstances I do not think it would be reasonable to require, by condition, that the scheme should meet Level 4. In my view it would be reasonable to require that the scheme should meet Level 3 because the scheme has been designed to achieve that level and because such a condition would satisfy LP Policy SU2.

Effect on nearby residents and St Martin's Primary School

35. Local residents are concerned about impacts on sunlight and daylight, privacy, noise, traffic and parking. There are also concerns about overshadowing of the school playground and overlooking of classrooms. The tallest element of the scheme would be in the north east corner of the site. The appellant submitted shadow diagrams which show that any shadowing of residential properties and the school playground would be limited. I consider that the size of the courtyard within the scheme would be sufficient to ensure adequate daylight to the rear of the Lewes Road properties.
36. Views toward the Lewes Road properties would be at an oblique angle and would not result in harmful overlooking of windows. Gardens would be overlooked to some extent from the proposed windows and balconies. However, some overlooking of gardens is commonplace in urban areas. Having regard to the distance between the proposed balconies and the affected gardens I do not consider that the degree of overlooking would be so significant as to be harmful to living conditions. The separation distance

between the scheme and the primary school would be sufficient to avoid harmful overlooking of classrooms. I note that some of the proposed parking spaces would be close to the gardens of properties in Lewes Road which would introduce a potential source of noise and disturbance. However, only a few spaces would be close to the boundary so the degree of disturbance would not be great. Subject to appropriate boundary treatment, which could be controlled by a condition, I do not consider that any noise or disturbance would be so significant as to be harmful to living conditions.

37. The application was supported by a transport statement which concluded that the scheme would result in a reduction in the number of vehicle trips to the site as compared with the previous use. It also commented that the site is well served by public transport which has the capacity to accommodate trips generated by the development. The Council accepted these conclusions and I see no reason to disagree. The scheme includes 17 car parking spaces, 52 cycle bays and funding for 2 car club bays. I consider that the proposed level of parking is appropriate to this accessible location and that the S106 provisions relating to sustainable transport would mitigate the travel impacts of the scheme.

Conclusions

38. I have concluded that the proposal would not be harmful to the character and appearance of the area or to the supply of employment land. In general terms it would provide satisfactory living conditions. However, I consider that the lack of an on site area for children's play is a disadvantage of the scheme. In my view that disadvantage is only partially mitigated by the availability of public parks nearby where the S106 contribution could be used to improve play facilities.
39. On the other hand, the proposal would bring a vacant site back into use and would make a significant contribution to the delivery of affordable housing in an area of pressing housing need. Furthermore, it would enhance the street scene and successfully achieve a higher density scheme in an accessible location, in accordance with the objectives of the development plan. I attach significant weight to these benefits which, in my opinion, outweigh the disadvantage I have identified. I conclude that the appeal should be allowed.

Conditions

40. The Council has suggested conditions which I have considered in the light of Circular 11/95 *The use of conditions in planning permissions*. In some cases I have adjusted detailed wording to reflect that advice. I have referred above to the need for conditions relating to landscaping and boundary treatment (paragraphs 15 and 36) and the CSH (paragraph 34). In addition, conditions relating to materials, storage of refuse and external lighting are needed to protect the character and appearance of the area. Car parking should be provided as shown to avoid adding to parking stress in the locality. Cycle parking should be provided as shown in the interests of sustainable transport. Conditions relating to contaminated land and foundation design are needed to minimise the risk of pollution and to protect groundwater sources. A scheme of surface water drainage is required to manage flood risk and to minimise the risk of pollution. Development should be carried out in accordance with the

approved plans to reflect the advice in *Greater flexibility for planning permissions* and also to ensure that the accommodation is built to Lifetime Homes Standards as shown on the plans.

41. In my opinion the suggested conditions relating to the following matters are not needed. It is not necessary to require obscure glazing in windows in the west elevation as these would not cause harmful overlooking of nearby properties. As I have imposed a condition requiring the scheme to meet CSH Level 3, consistent with the evidence before the Inquiry, it is not necessary to require further pre-commencement approvals in relation to this matter. Any works to the footway to Melbourne Street would not be within the appeal site and, in any event, would be controlled by other legislation.

David Prentis

Inspector

Schedule 1 – approved plans

3020.EXG.01
3020.EXG.02 Rev A
3020.EXG.03
3020.EXG.04
3020.PL.001 Rev C
3020.PL.002 Rev D
3020.PL.100 Rev F
3020.PL.101 Rev D
3020.PL.102 Rev D
3020.PL.103 Rev D
3020.PL.104 Rev D
3020.PL.105 Rev D
3020.PL.106 Rev D
3020.PL.200 Rev D
3020.PL.201 Rev B
3020.PL.300 Rev C
3020.PL.301 Rev C
3020.PL.303 Rev B
3020.PL.304
3020.PL.350 Rev A
3020.PL.351 Rev A
3020.PL.400 Rev A
3020.PL.401 Rev A
3020.PL.402 Rev A
3020.PL.700 Rev B
3020.PL.701 Rev B

Schedule 2 – 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 not be occupied until the refuse and recycling storage facilities have been provided in accordance with details shown on submitted plan No 3020.PL.100F. The refuse and recycling storage facilities shall be permanently retained as such thereafter.
- 3) No development shall take place until samples of the materials (including colours of render and paintwork) to be used in the construction of the external surfaces of the buildings 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) The dwellings shall achieve a 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.
- 5) The vehicle parking areas shown on submitted plan No 3020.PL.100F shall be provided before the occupation of the development hereby approved and shall thereafter be permanently kept available for the parking of the vehicles of the occupiers of, and visitors to, the development.
- 6) The cycle parking facilities shown on submitted plan No 3020.PL.100F shall be provided before the occupation of the development hereby approved and shall thereafter be permanently kept available for the parking of the cycles of the occupiers of, and visitors to, the development.
- 7) The development shall be carried out in accordance with the submitted External Lighting Details and Light Pollution Assessment (Reference 3020.ELA.01) and shall thereafter be permanently retained as such.
- 8) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a competent person and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it 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, pets, service lines and pipes
 - adjoining land
 - groundwaters and surface waters
 - ecological systems

- 9) No development shall take place until 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 environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remediation options and proposal of the preferred option(s), and a 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.
- 10) The remediation scheme approved pursuant to Condition 9 shall be implemented in accordance with the approved timetable of works. Within 2 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the local planning authority.
- 11) 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 within 3 days to the local planning authority and once the local planning authority has identified the part of the site affected by the unexpected contamination development must be halted on that part of the site. An assessment must be undertaken in accordance with the requirements of Condition 8 and, where remediation is necessary, a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the local planning authority in accordance with the requirements of Condition 9. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of the measures identified in the approved remediation scheme, a validation report must be submitted to and approved in writing by the local planning authority in accordance with Condition 10.
- 12) No development shall take place until a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 5 years, and the provision of reports on the same, has been submitted to and approved in writing by the local planning authority. The monitoring and maintenance scheme shall be implemented as approved.
- 13) No development shall take place until details of foundation designs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) 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. These details shall include means of enclosure; hard surfacing materials; the proposed sedum roofing and planting plans.
- 15) All hard and soft landscape works shall be carried out in accordance with the approved details. The hard landscaping works and means of enclosure shall be carried out prior to the occupation of any part of the

development and shall be permanently retained thereafter. The planting shall be carried out in the first planting season following completion of the development or in accordance with a programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority has given written consent to any variation.

- 16) No development shall take place until details of surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 1.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Woodward	Solicitor, Brighton and Hove City Council
She called	
Miss K Brocklebank	Senior Planning Officer, Development Control team, Brighton and Hove City Council
BA DipTP MRTPI	
Mrs E Thomas	Senior Planning Officer, Planning Strategy and Projects team, Brighton and Hove City Council
BA MCD	
Ms P Goncalves BA	Senior Planning Officer, Planning Strategy and Projects team, Brighton and Hove City Council
AADip MPhil DPhil MA	

FOR THE APPELLANT:

Mrs H Townsend	of Counsel, instructed by Mr S Bareham, Lewis and Co
She called	
Mr S Atkins	ABIR Architects Ltd
BA(Hons) DipArch RIBA	
Mr C Oakley	Oakley Commercial Estate Agents and Valuers
MRICS	
Mr S Bareham	Lewis and Co Planning South East Ltd
BSc(Hons) DipTP MRTPI	

INTERESTED PERSONS:

Ms C Hubert	Trustee of Fresh Start
Mr J Bebb	Trustee of Fresh Start
Ms J Attwood	Local resident
Mrs P Stokes	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Document list submitted by the appellant
- 2 Roger Tym and Partners Employment Land Study 2006, plus summary, appendices and update report of 2009
- 3 Extracts from the South East Plan
- 4 Extracts from the draft Core Strategy
- 5 Housing land supply tables – December 2009
- 6 Plans relating to Appeal Ref APP/Q1445/A/08/2065312
- 7 DCLG Advice Note on 5 year land supply
- 8 Plans relating to Appeal Ref APP/Q1445/A/09/2111696
- 9 Opening submissions for the appellant
- 10 Opening submissions for the Council
- 11 Extract from PPS1 Supplement *Planning and Climate Change*
- 12 1st S106 Agreement dated 14 May 2010
- 13 2nd S106 Agreement dated 14 May 2010

- 14 3rd S106 Agreement dated 14 May 2010
- 15 Site plan submitted by Mr Atkins
- 16 Conditions suggested by the Council
- 17 Email detailing potential improvements to local parks
- 18 Planning history of No 124 Lewes Road
- 19 Closing submissions for the Council
- 20 Report of *Burdle and Another v Secretary of State for the Environment and Another* [1972]
- 21 Closing submissions for the appellant



Costs Decisions

Inquiry held on 18 and 19 May 2010

Site visit made on 20 May 2010

by **David Prentis BA BPI MRTPI**

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

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Decision date:
18 August 2010

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2119295 Covers Yard, Melbourne Street, Brighton BN2 3LH (Application A)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Hyde Housing Association for a partial award of costs against Brighton & Hove City Council.
- The Inquiry was in connection with an appeal against the refusal of planning permission for *residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of site, cycle and car parking to rear.*

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2119295 Covers Yard, Melbourne Street, Brighton BN2 3LH (Application B)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Brighton & Hove City Council for a full award of costs against Hyde Housing Association.
- The Inquiry was in connection with an appeal against the refusal of planning permission for *residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of site, cycle and car parking to rear.*

Application A

Decision

1. I allow the application in the terms set out below.

The submissions for Hyde Housing Association

2. The costs application was submitted in writing. At the Inquiry the applicant confirmed that the application related to Paragraph A12 of Circular 03/2009. The application was for a partial award in respect of the Council's stance on each of 4 matters: (1) the current use of the site; (2) the Code for Sustainable Homes; (3) children's play space; and (4) overlooking.

Response by Brighton & Hove City Council

3. The response was submitted in writing.

Reasons

4. 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.

The current use of the site

5. It was not disputed that the site has been used as a Builders' Merchant for many years. To my mind the ordinary meaning of Builders' Merchant is a place where construction materials can be bought. Whilst not definitive, in planning terms, I consider that the term is indicative of a use which includes a retail component. The appellant had provided the Council with a copy of Counsel's opinion together with the instructions and evidence on which that opinion was based. The opinion set out clear reasoning as to why the use of the site should be regarded as sui generis.
6. The Council did not provide any contrary evidence or convincing argument as to why a different view should be taken. Indeed, at the Inquiry it emerged that the Council had obtained its own Counsel's opinion which had confirmed the appellant's view, at least in respect of the period for which detailed sales figures were available. The Council's case depended on the possibility that the nature of the business had changed in some material way prior to the period for which sales figures were available. However, there was no evidence that such a change had taken place.
7. Furthermore, the Council's approach to this matter was to place a substantial burden of proof on the appellant. I find no basis in development plan policy for that approach. The effect of Policy EM3 is that the decision maker must first form a view as to whether or not the subject site is to be regarded as "industrial land" for the purposes of the policy. I consider that there was sufficient evidence for the Council to conclude that the use should be regarded as sui generis and that, in the absence of any contrary evidence, it was unreasonable not to do so.
8. The Council's unreasonable behaviour on this point resulted in the unnecessary expense of preparing evidence in response to the 3rd refusal reason and also to additional Inquiry time, which I estimate to be about 2.5 hours, spent discussing the issue of employment land.

Code for Sustainable Homes (CSH)

9. The scheme was originally designed to meet CSH Level 3. Whilst the appellant subsequently agreed to meet Level 4, this offer was conditional on the scheme as a whole being approved by the Council. Consequently, the appellant's position at the Inquiry, which was to accept a condition requiring the achievement of Level 3, should have come as no surprise. In my appeal decision I have commented that there was no development plan policy support for the Council's stance. The Supplement to Planning Policy Statement 1: *Planning and Climate Change* is clear that local requirements for sustainable buildings must be set out in development plan documents.
10. At the Inquiry the Council asserted that it had always accepted that the recommendations contained in its Supplementary Planning Guidance did not have the status of adopted development plan policy. However, the Council argued that the appellant had failed to justify an "exception" from the recommendations. It appears to me that, for all practical purposes, the Council

treated the recommendations as if they were adopted policy. That approach was unreasonable. It should have been possible for the Council and the appellant to agree on a planning condition requiring the achievement of CSH Level 3. Failure to agree on this point caused the appellant to incur the unnecessary expense of preparing to deal with this issue at the Inquiry. Additional Inquiry time, which I estimate to be about 30 minutes, was taken in discussing the matter.

Children's play space

11. In my appeal decision I have commented that, whilst I have taken account of the views of the Inspector who considered the previous appeal on this site, based on the evidence before the Inquiry I have come to a different view. I have agreed with the Council that the lack of on site play space is a disadvantage of the scheme, albeit that I have found this to be outweighed by other considerations. I do not consider that the Council was unreasonable to pursue this concern.

Overlooking

12. The appellant relies on the comments of the Inspector who considered the previous appeal on this site. However, the design of that scheme was quite different to the scheme before the Inquiry and in my view the Council was entitled to revisit this issue. Whilst I have not found in the Council's favour on this point, I consider that its stance was a reasonable exercise of planning judgement.

Conclusions – Application A

13. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated in relation to the Council's approach to the current use of the site and the Code for Sustainable Homes. A partial award of costs is therefore justified.

Formal Decision and Costs Order (Application A)

14. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Hyde Housing Association the costs of the appeal proceedings, so far as they relate to reason for refusal No 3 and to the matter of the Code for Sustainable Homes, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision
15. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Application B

Decision

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

The submissions for Brighton & Hove City Council

17. The costs application was submitted in writing. At the Inquiry the Council confirmed that it was seeking a full award on the basis that it was unreasonable to have made the appeal. It was submitted that the scheme had not overcome the reasons why the previous appeal had been dismissed. Alternatively, it was argued that a partial award should be made in respect of each of two matters: (1) the late submission of evidence regarding the suitability of the site for modern employment needs; and (2) the appellant's action in agreeing to achieve CSH Level 4 only if the Council granted planning permission.
18. Whilst the Council drew attention to Paragraph B4 of Circular 03/2009, in response to my question it was confirmed that there was no allegation of any procedural failing by the appellant. It was argued that, had information about the suitability of the site for employment been available sooner, this may have led to further discussions which may in turn have removed the need to address Policy EM3 at the Inquiry.

Response by Hyde Housing Association

19. With regard to the merits of the appeal as a whole, the appellant had provided substantial evidence in response to every matter raised by the Council.
20. The appellant had made clear in its statement of case that evidence would be called regarding the suitability of the site for continued employment use. If the Council had wanted further information it could have been requested at any stage. Whilst the costs application held out the prospect that agreement might have been reached, in fact the Council had dug its heels in on this issue and maintained its stance that the use of the site should be regarded as Class B8.
21. With regard to the CSH, it could not be wrong for an applicant to offer, as part of a discussion, a scheme enhancement over and above what was strictly required by policy. Overall, there was no basis for any award of costs.

Reasons

22. 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.

Merits of the appeal as a whole

23. For the reasons given in my decision, I have decided to allow the appeal. It follows that the making of the appeal was not unreasonable.

Late submission of information

24. There is no suggestion of any procedural failing by the appellant. The appellant's intention to call evidence on this issue was identified in its statement of case and the Council therefore had the opportunity to seek further information or enter into further discussions at that stage. In any event, for the reasons given in my appeal decision, I do not consider that further information on this issue was necessary because Local Plan Policy EM3 was not applicable.

Code for Sustainable Homes (CSH)

25. The scheme was originally designed to meet CSH Level 3. As noted above, whilst the appellant subsequently agreed to meet Level 4, this offer was conditional on the scheme as a whole being approved by the Council. In effect the applicant offered an enhancement to the scheme with a view to "tipping the balance" of the Council's overall assessment. It was a matter for the Council to decide how much weight to attach to that offer. In my opinion making the offer was not in itself unreasonable behaviour. For the reasons given in my appeal decision, I have agreed with the appellant's position at the Inquiry which was that a condition should be imposed requiring the achievement of CSH Level 3.

Conclusions – Application B

26. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

David Prentis

Inspector



The Planning Inspectorate

Room: 3/26a
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

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<http://www.planning-inspectorate.gov.uk>

Mr Lee Mcdavitt
120 Hawkhurst Road
BRIGHTON
BN1 9EA

Your Ref:

Our Ref:

APP/Q1445/C/09/2119024

Further appeal references at foot of letter

Date:

17 May 2010

Dear Mr Mcdavitt

Town and Country Planning Act 1990
Appeals by Mr Lee Mcdavitt and Mrs Sonia Mcdavitt
Site at 120 Hawkhurst Road, Brighton, BN1 9EA

I refer to the above appeals against an enforcement notice served by Brighton and Hove City Council.

In exercise of the power in s173A(1)(a) of the Act, the Council have withdrawn the enforcement notice and I understand that they have notified you.

We will take no further action on these appeals.

Please try to bring this cancellation to the notice of anyone who may have taken note of the arrangements.

A copy of this letter has been sent to the council.

Yours sincerely

Przemek Szczodry

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



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

BH2010/00954

186 Western Road, Brighton

Display of 1no internally illuminated fascia sign, 1no internally illuminated box banner sign, 1no internally illuminated projecting sign and application of self adhesive frosted film lettering to windows above

APPEAL LODGED

12/08/2010

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****HANGLETON & KNOLL**

BH2010/01328

29 Honey Croft, Hove

Erection of 2no dormers to front roof slope

APPEAL LODGED

16/08/2010

WARD**APPLICATION NUMBER****ADDRESS****DEVELOPMENT DESCRIPTION****APPEAL STATUS****APPEAL RECEIVED DATE****EAST BRIGHTON**

BH2009/02899

6 The Broadway, Whitehawk Road, Brighton

Change of use from retail (A1) to betting office (A2) as extension of existing betting office.

APPEAL LODGED

13/08/2010

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

BH2010/00346

7 Victoria Road, Brighton

Alterations to roof to form a hidden sunken external roof space incorporating removal and replacement of external features.

APPEAL LODGED

16/08/2010

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

BH2010/00347

7 Victoria Road, Brighton

Alterations to roof to form a hidden sunken external roof space incorporating removal and replacement of external features.

APPEAL LODGED

16/08/2010

NEW APPEALS RECEIVED

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

SOUTH PORTSLADE

BH2010/00629

41 Church Road, Brighton

Extension of existing rear conservatory
(Retrospective).

APPEAL LODGED

25/08/2010

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

HANGLETON & KNOLL

BH2010/00972

20 Olive Road, Hove

Erection of 3no two bedroom houses replace
existing disused community centre.

APPEAL LODGED

31/08/2010

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

PRESTON PARK

BH2010/01275

22 Southdown Road, Brighton

Erection of single storey extension to rear
(retrospective).

APPEAL LODGED

27/08/2010

WARD

APPLICATION NUMBER

ADDRESS

DEVELOPMENT DESCRIPTION

APPEAL STATUS

APPEAL RECEIVED DATE

CENTRAL HOVE

BH2010/00749

1a Brooker Street, Hove

Conversion of existing shop/store to form 2 No.
one bed self-contained flats.

APPEAL LODGED

27/08/2010



**Brighton & Hove
City Council**

INFORMATION ON HEARINGS / PUBLIC INQUIRIES 22nd September 2010

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

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

28 Marine Drive, Rottingdean

Planning application no: BH2009/02228

Description: Demolition of existing dwelling and erection of a block of six flats and two town houses (8 units in total) together with associated parking and bin store.

Decision: Committee

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

7 Victoria Road, Brighton

Planning application no: BH2010/00346 (householder consent)

BH2010/00347 (listed building consent)

Description: Alterations to roof to form a hidden sunken external roof space incorporating removal and replacement of external features (householder consent).

Decision: Delegated

Type of appeal: Informal Hearing

Date: TBC

Location: TBC

Information on Pre-application Presentations and Requests

Date	Address	Ward	Proposal
17 March 2010	Former Nurses Accommodation, Brighton General Hospital	Hanover & Elm Grove	Demolition of the former nurses accommodation buildings and the construction of three residential apartment blocks comprising 95 units and a 105 square metre community facility with associated car parking and landscaping.
27 April 2010	N/A	N/A	N/A
18 May 2010	N/A	N/A	N/A
8 June 2010	N/A	N/A	N/A
29 June 2010	Former Royal Alexandra Children's Hospital, Dyke Road, Brighton	Regency	<i>A) Conversion scheme</i> Conversion of a retained main building to provide 118 units. The scheme is 100% private housing and does not include provision of a GP surgery. <i>B) New building scheme</i> Demolition of all existing buildings with a new development comprising 136 units with 54 affordable units (40%) and a GP surgery.
20 July 2010	The Keep, Wollards Field, Lewes Road, Brighton	St Peter's & North Laine	A new historical resource centre for East Sussex, Brighton & Hove.
10 August 2010	Former Sackville Hotel, Kingsway, Hove	Westbourne	Construction of 47 flats (mix of 1, 2, 3, & 4 bed units) within 6 to 9 floor building, and to incorporate basement parking of 49 spaces, and 2 spaces at ground floor level.

NOTE: The Pre Application Presentations are not public meetings and as such are not open to members of the public. All Presentations will be held in Hove Town Hall on the date give after scheduled site visits unless otherwise stated.

Date	Address	Ward	Proposal
31 August 2010	N/A	N/A	N/A
21 September 2010	3Ts	East Brighton	3T's (teaching, tertiary & trauma). Comprehensive redevelopment of southern half of RSCH on Eastern Road to provide replacement modern clinical facilities over three phases.
12 October 2010	Astoria	St Peter's & North Laine	Demolition of existing listed building and proposed erection of part 6 and part 2 storey building. The 2 storey element will contain smaller starter units whilst the 6 storey element will provide flexible B1 office floorspace with a café on the ground floor. The scheme also proposes to make improvements to Blenheim Place.
2 November 2010	Park House	Hove Park Ward	Demolition of former residential language school buildings and the residential redevelopment of the site by way of flats in buildings of between 4 and 5 storeys
23 November 2010			
14 December 2010			
11 January 2011			
1 February 2011			
22 February 2011			

Date	Address	Ward	Proposal
15 March 2011			
26 April 2011			
17 May 2011			

Subject:	<i>Land at and adjacent to West Pier and 62-73 Kings Road Arches, Kings Road, Brighton</i> Request to vary S106 Agreement signed in connection with planning permission BH2006/02369 for partial demolition of existing West Pier structure and construction of 183 metre high observation spire and heritage centre (use class D2).
Date of Meeting:	22 September 2010
Report of:	<i>Director of Environment</i>
Contact Officer:	Name: Katherine Rawlins Tel: 29-2232 E-mail: katherine.rawlins@brighton-hove.gov.uk
Wards Affected:	Regency

1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the Section 106 Agreement dated 16 October 2006 in connection with planning permission BH2006/02369, in order to defer the payment of financial contributions required under clauses 4.2, 4.4, 4.5 and 4.6 of the Section 106 Agreement.

2. RECOMMENDATION:

- 2.1 That the proposed variation be agreed and the payment of financial contributions in respect of public transport, pedestrian and vehicular signage and a Traffic Regulation Order is rephased until six months after the resumption of construction work on site.

3. BACKGROUND INFORMATION:

- 3.1 Members were minded to grant full planning permission and listed building consent in October 2006 for the partial demolition of the existing West Pier structure and the construction of a 183 metre high observation spire, known as i360, and heritage centre (use class D2).
- 3.2 Approval was subject to a Section 106 Obligation to secure the following financial contributions:
 - A contribution of £10,000 towards public transport improvements to be spent on transport initiatives, including real time bus information and accessible kerbs on Western Road;
 - A contribution of £50,000 towards traffic signage to be spent on directing motorists to appropriate routes to access i360;
 - A contribution of £5000 towards pedestrian signage;
 - A contribution of £2,000 towards a Traffic Regulation Order to prohibit coach parking on Kings Road, immediately outside the site

and to secure additional disabled persons' car parking spaces in the vicinity;

- A contribution of £10,000 towards enhancement of lighting in the Regency Square car park subway.

- 3.3 The Agreement was completed on 16 October 2006 and planning permission and listed building consent granted on 25 and 24 October 2006 respectively.
- 3.4 Since planning and listed building consent was granted, the majority of pre-commencement planning and listed building consent conditions and planning obligations have been discharged, to the satisfaction of the Local Planning Authority. The Local Planning Authority received written notification of the developer's intention to commence advanced piling works, to comply with condition 7 of the listed building consent and clause 3.1 of the Section 106 Agreement, in September 2009. The advanced piling works duly commenced on 14 October 2009 at the foot of the stairs to the West of the Pier, within the curtilage of i360. The piling foundations are accepted as comprising a material operation, as defined under Section 56(4) of the Town and Country Planning Act. The Local Planning Authority is satisfied that the development may be treated as having lawfully commenced and the permission has been implemented.
- 3.5 The above financial contributions are to be paid to the Local Planning Authority 180 working days after the commencement of development. The developer has paid the subway lighting contribution for the Regency Square subway.

4. PROPOSAL:

- 4.1 The developer has written to the Council to request that payment of the above financial contributions, other than the Subway Lighting Contribution, be re-phased in order to complete the funding package for the development. The contributions would fund public transport improvements and enhance access to the attraction when complete. The construction period for the project is approximately 22 months.

5. COMMENT:

- 5.1 The Local Planning Authority is satisfied that the development may be treated as having lawfully commenced. The substantive works for i360 (including site establishment, demolition and site clearance, main outfall sewer diversion, groundworks, tower and cladding, and passenger pod and drive control mechanisms) will proceed, pending finalisation of the funding package for the development.
- 5.2 All the contributions, with the exception of the subway lighting contribution, are intended to be implemented and are associated with the completed Development. These include signage directing motorists on appropriate routes through the City to the attraction; a Traffic Regulation Order to prohibit coach parking on Kings Road immediately outside the i360 site; public transport improvements to be spent on

transport initiatives, including real time bus information and accessible kerbs on Western Road. All of the improvements relate directly to the completed development and are intended to assist public access to i360. It would not be practical to implement these amenities at this stage of the project.

- 5.3 At the time of writing, there is no definitive date for the resumption of construction work on site. However, the developer is currently in discussions to secure the additional funding required in order to proceed with the substantive construction works on site and complete the project.

6. FINANCIAL & OTHER IMPLICATIONS:

6.1 Financial Implications:

There are no direct financial implications in agreeing to the variation. The payments being deferred relate to the implementation of amenities associated with the completed development and therefore the deferral on the terms proposed does not present a financial risk for the council.

Finance Officer Consulted: James Hengeveld

Date: 28.07.2010

6.2 Legal Implications:

S.106A Town and Country Planning Act 1990 provides that a s.106 obligation may be modified by agreement between the authority by whom the obligation is enforceable and the persons against whom the obligation is enforceable. This mechanism enables the Agreement to be modified to accommodate the rephrasing of some payments due under the Agreement. The modification gives rise to no human rights implications.

Lawyer Consulted: Alison Gatherer

Date: 20.08.2010

6.3 Equalities Implications:

None identified.

6.4 Sustainability Implications:

None identified.

6.5 Crime & Disorder Implications:

None identified.

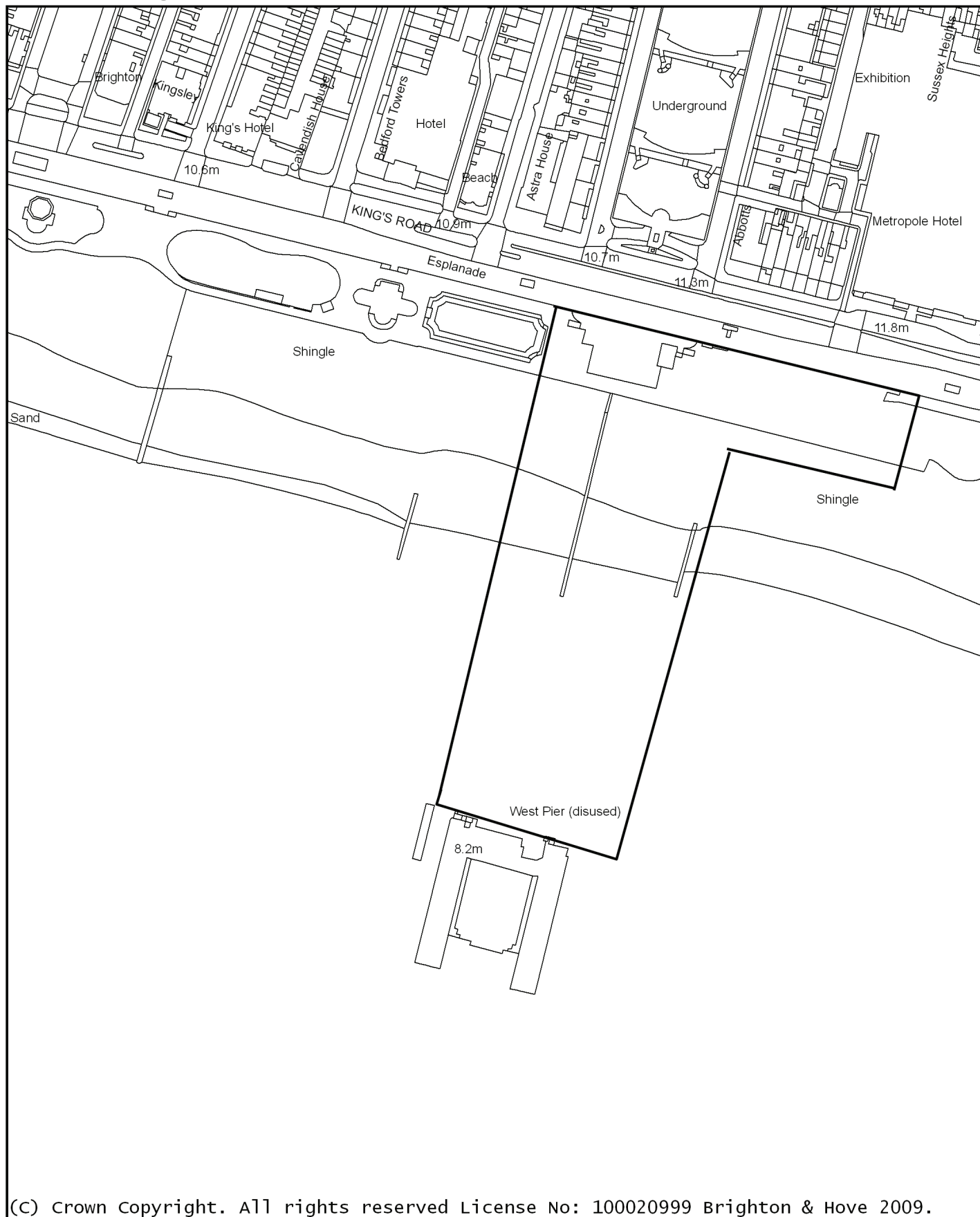
6.6 Risk and Opportunity Management Implications:

None identified.

6.7 Corporate / Citywide Implications:

None identified.

BH2006/02369 Land at and adjacent to West Pier and 62-73 Kings Road Arches, Kings Road



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