



Appeal Decision

Hearing held on 7 and 8 September 2010

by **Graham C Cundale** BA(Hons) MSc
MRTPI MIEEM

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

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Decision date:
18 October 2010

Appeal Ref: APP/Q1445/A/10/2126978

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Downland Housing Association against the decision of Brighton & Hove City Council.
- The application Ref BH2009/03154, dated 22 December 2009, was refused by notice dated 12 April 2010.
- The development proposed is described as: '*Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1/D2 unit at ground floor and 35 residential units above in part 2, 3, 4 & 5 storey building including 14 affordable unit (40%) surface parking for 18 cars, cycle parking and landscaping*'.

Decision

1. I allow the appeal and grant planning permission for the demolition of the existing building and redevelopment of the site to provide a new GP surgery at part ground and part first floor levels, a new Class D1/D2 unit at ground floor level, and 35 residential units above in a 2, 3, 4 and 5 storey building, including 14 affordable units (40%), surface parking for 18 cars, cycle parking and landscaping, at the Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex BN3 5JB, in accordance with the terms of the application, Ref BH2009/03154, dated 22 December 2009, and the plans submitted with it, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary matters

2. For grammatical reasons and clarity I have, in my above decision, slightly amended the description of the proposed development as entered on the application form.
3. A similar form of development was the subject of an appeal that was dismissed in July 2009 (ref. APP/Q1445/A/09/2097917). I regard that appeal decision as an important material consideration, and I refer to those proceedings as 'the previous' appeal.
4. At the hearing I received from the appellant a unilateral undertaking dated 27 August 2010 and submitted as an executed 'Section 106' planning obligation. The Council had no objections to the undertaking and I take it into account,

being satisfied that, despite a few minor shortcomings raised at the hearing, it would effectively serve its purpose.

5. At the hearing an application for costs was made by Downland Housing Association against Brighton and Hove City Council. That application is the subject of a separate decision.

Main issues

6. I consider that the main issues are as follows.
 - (1) The effect on the character and appearance of the locality.
 - (2) The effects on the amenities of nearby residential properties, particularly in Marmion Road, and especially in terms of overlooking, outlook and light.
 - (3) Whether the scheme, and especially the proposed car parking provision, would have implications for road safety.
 - (4) Whether the proposed housing mix would be acceptable having regard to local needs.

Reasons

Character and appearance

7. I found this part of Portland Road to be characterised by mixed uses and long terraces of mainly 3 stories in height and with various building styles and materials. The height and scale of the proposed building is greater than is typical hereabouts, but I do not find it to be inappropriate having regard to the status of the road and to some other buildings including the existing bingo hall and, for example, some substantial modern development of up to 5 storeys a little further to the west. A prominent landmark building at this junction with School Road would be appropriate. As observed in the previous appeal decision, there is little of distinction to break the relentless east-west progress of Portland Road other than the tower of St Peter's Church and that of the bingo hall.
8. There is particular local concern about the degree of overhang of part of the building facing School Road. I would not see this as having any more than a minor effect on the visual impact of the proposal, and one that would not harm the building's appearance or conflict with good design principles. The overhang would be at first floor level, high enough to avoid any significant obstruction of pedestrian visibility, and well within the width of the footway below. Indeed the change to the previous design has been achieved by drawing back the ground floor and not just by extending the first floor. The glazed balconies would also project, but would do so at second floor level and above. In short, the overall effect on the street-scene would not be oppressive. I come to the same conclusion in considering the Portland Road frontage.
9. At the previous appeal the Inspector found the effect on the character and appearance of the area to be acceptable. With the revised design before me the effect of the proposed building would, I believe, be more favourable, primarily on account of the more emphatic stepping down of its elements and its reduced massing along School Road. There would be a more sympathetic

transition to the height and form of buildings in School Road and to the residential terraced properties in Marmion Road.

10. I conclude that the appeal proposal would not have an unacceptable effect on the character and appearance of the locality. In this respect it would not conflict with policy HO4 of the Brighton and Hove Local Plan 2005. I also find it to be in accordance with other Local Plan design requirements, such as in policies QD1, QD2, QD3 and QD5, and with the Council's references to 'Urban Design Compendium 1'. In particular, the density of the scheme satisfies the requirements of policy QD3 to make efficient and effective use of the site. That policy also indicates that higher development densities will be particularly appropriate in sustainable locations.

Amenities of neighbours

11. Although the amenities of many properties on Marmion Road would benefit from the proposed demolition of the bingo hall, the Inspector found that the previous appeal scheme had an unacceptable impact in respect of the outlooks from the backs of those properties.
12. The scheme before me would successfully reduce the impact on the backs of Nos 80 and 82 by reducing the height of the rear element of the School Road wing by one storey. Together with the change in roof form, the effect would be much closer to what would be considered as normal in this situation: that is, two storeys plus a gable end. Furthermore, the height of the adjoining section of the proposed building has also been reduced by one storey, which would further reduce the impact on outlook. While the proposed 5-storey height of the section on the corner would be retained this would not in my view be overbearing on the occupiers of Nos 80 and 82, taking into account its distance and the presence of the intervening 3 and 4 storey elements.
13. To the east of the School Road wing is the proposed 'block 2'. This would be 4 storeys in height. At the previous appeal this was found to have an unacceptably oppressive effect on the outlooks from the backs of Marmion Road properties owing to the top-heavy appearance of the fourth storey with its metal cladding and windows wider than those below. Again, I find that the proposals before me successfully address this matter by incorporating a sloping roof and dormers, with reduced and more sympathetic window sizes. If necessary the appellant would also be prepared to make changes to external materials – a matter that could be controlled by means of a planning condition. It is not necessary to replicate at the rear the fourth floor front elevation, or incorporate a greater set-back, to achieve adequate mitigation of the harm identified by the Inspector at the previous appeal.
14. Further to the east, the rear of the proposed 3-storey 'block 3' is similar to the previous scheme and, consistent with the previous appeal decision, the effect on the outlook of the Marmion Road properties would be tolerable, even though the building would approach a little nearer than the main rear elevations of the existing adjoining terrace on Portland Road.
15. With regard to overlooking, the previous Inspector found that there would be no unacceptable effects. For the same reasons, and taking into account the proposed mitigation measures, I reach the same conclusion with the proposals

before me. The latter incorporate no changes that would harm the privacy of Marmion Road residents.

16. The Council draws my attention to the **perception** of overlooking by those residents and to the consideration of this matter in appeal decisions in March 2009 at 149-151 Kingsway, Hove. The Council acknowledges that the separation distance is greater in the proposal before me. Also, although the back gardens of the Marmion Road properties are of limited length and adjacent to the appeal site, I saw that there is already a degree of overlooking of these gardens from the upper floors of neighbouring properties in the terrace. In the circumstances I judge that the adversity of any overlooking, or perception of overlooking, would not be sufficient to amount to material harm.
17. Local residents are also understandably concerned about the effects on their natural light. The appellant's assessment shows that the appeal proposals would result in lifting more of the Marmion Road properties above the BRE minimum. Some would remain below this minimum and two of these existing windows would actually suffer a negative effect. However, having examined the vertical sky component evidence, I do not find that this effect would be noticeable so as to be significant. The proposal before me has been reduced in terms of its massing on the Marmion Road side and would have a more favourable effect than the previous scheme. The harmful effect of that scheme was not considered by the Inspector to be a sufficient reason to dismiss the appeal before him, taking account of the effects of the existing bingo hall building. I come to the same conclusion in respect of the revised scheme before me, although I accept that the existing building does not represent an acceptable baseline against which to judge redevelopment schemes.
18. I have also considered the effects on other amenities of nearby occupiers, but as with the previous appeal decision, I do not find that these would be unacceptable. Taking all effects together I conclude that there would be no material nuisance or loss of amenity to adjacent residents and no detriment to human health. Consequently the appeal proposal is in accordance with Local Plan policy QD27 and I conclude that there would be no unacceptable effects on the amenities of nearby residential properties.

Parking and road safety

19. The Inspector did not find the previous appeal scheme to be unacceptable in terms of highway safety. With the provision of a Section 106 transport contribution and with evidence based on the same parking survey as that before me, he concluded that objections to the previous scheme's impact on transport infrastructure would be overcome. The scheme before me is a little smaller than the previous scheme, and the Council accepts that devoting the on-site parking space to the residential use rather than the surgery represents an improvement. It is not evident to me that there have been any changes since the previous appeal decision that are of such significance as to cause me to come to a different conclusion on this issue. My view on this is reinforced by the professional assessments and lack of objections to the scheme from the Council's access and sustainable transport staff.
20. The appellant's parking survey and assessment was professionally prepared and based on worst case conditions. Despite the discovery of an erroneous calculation of parking capacity on one road, it indicates an adequacy of

available on-street parking space for the proposed development. The Council's committee report recognises that it used a standard methodology agreed in advance by the highway authority. Moreover the 5 m length per vehicle falls within the range given for longitudinal marking in the Traffic Signs Regulations and General Directions 2002. The Manual for Streets suggests 6 m and while this may sometimes be observed in actual usage along unmarked bays I do not find 5 m to be inappropriate for the purpose of calculating capacity, taking account of the tendency for vehicles to park closer where there is greater parking pressure. Also I can see that it can be reasonable to take account of 'left over' lengths of less than 5 m in unmarked parking bays, as vehicle lengths will vary in practice.

21. Taking account of the assessment in the Council's committee report I have no good reason to doubt that there would be adequate parking and access opportunities for disabled people. I have considered other detailed criticisms of access arrangements. Some, such as the lack of a designated drop-off point by the surgery entrance, appear to be well founded in terms of convenience, but they do not amount to a sufficient basis for me to conclude that the scheme would cause increased danger to users of the roads and footways. I saw that there is already a good deal of nearby activity, especially by the school at the beginning of the school day, but it does not necessarily follow that an increase in traffic and parking demand would reduce road safety. I am satisfied that the location is sustainable and well served by bus services and facilities that would be enhanced by means of the appellant's sustainable transport contribution. The appeal scheme also involves highway works but again it is not evident that these would result in a danger to road and footway users.
22. All things considered I conclude that the appeal scheme does not conflict with Local Plan policy TR7, and that it would not be prejudicial to road safety.

Housing mix

23. The previous appeal decision does not indicate that housing mix was a significant issue in July 2009. Although combined with other matters in the second reason for refusal, the Council confirmed at the hearing its view that the proposed housing mix would stand on its own as a reason for refusal. Taking the city as a whole, the Council's preferred housing mix for affordable housing schemes is 40%:50%:10% for one, two and three bedroom units, respectively. It is particularly concerned that the appeal scheme's 29%:64%:7% mix would not provide sufficient family housing, and that the same could be said of the market housing provision.
24. As far as affordable housing is concerned I find specific support for the preferred percentage of family (3+ bedroom) units in the Council's 'Housing Strategy 2009 – 2014' (2009). At the hearing the Council confirmed that it allows some flexibility in applying its preferred mix. Some flexibility is also reflected in Local Plan policy HO3, which allows exceptions taking into account such factors as site limitations and location. The policy does not itself go as far as specifying the preferred mix.
25. Given that the appeal scheme provides for 14 affordable housing units, its shortfall of 3% for family units is marginal. Moreover, I note from the committee report that the Council's Housing Strategy team strongly supported

the application, and that, "given the location", it found the mix to be acceptable. The location is on a junction of a busy road. In this context, and not having heard anything that would lead me to support the need to take an inflexible approach in this case, I conclude that the proposed housing provision is adequately consistent with the Local Plan. There is no clear or material conflict with the spirit or letter of policy HO3.

26. The Council's committee report concludes that the scheme would provide a significant amount of residential development and make a valuable contribution to needs within the city. I heard nothing to cause me to doubt that assessment. I conclude that the proposed housing mix would be acceptable having regard to local needs.

Other matters

27. The Council's committee report acknowledges the significant improvement in the size and quality of the proposed outdoor recreation/amenity space. In my view the space would not be unsuitable for family use, and the improved provision overcomes the shortcoming identified in the previous appeal decision. Furthermore, following the production of the Council's Open Space, Sport and Recreation Study there are now identified deficiencies which would be adequately addressed by the related financial contribution proposed in the Section 106 planning obligation.
28. Like the Inspector at the previous appeal I find the standard of other amenities, such as privacy and outlook, to be acceptable for prospective occupiers of the proposed dwellings. There are no differences in the proposals before me that are such as to lead me to a different conclusion.
29. Local businesses are concerned about the effect on traffic congestion and their ability to operate following the additional traffic generated by the appeal scheme. This is backed by a petition. However, I do not find their prognosis to be substantiated in the evidence. This is a sustainable location and the scheme would make adequate provision to meet the resulting transport demand, while maximising the use of public transport, walking and cycling as required by Local Plan policy TR1. I note, in particular, that the reasoned justification of policy TR1 states that it is essential that new development does not encourage unnecessary car journeys that could be made by more sustainable alternatives. The appeal scheme is consistent with policy TR1 as it is with the other Local Plan transport policies.
30. Another, much larger, petition calls for the appeal site to be used as green open space. Beneficial though such a use might be, this is not a sound reason for rejecting a scheme that I find to be practicable and in accordance with the development plan.
31. As with the previous appeal scheme, there is no firm commitment to take up the proposed surgery use. I give little weight to that matter or to the identity of prospective users, bearing in mind that planning permission relates to the use of the land. Also, as the Council has suggested, the surgery use is capable of additional control through a planning condition. It would not be reasonable to add another condition requiring a written commitment by the Primary Care Trust.

32. PPS3 (paragraph 71) states that where local planning authorities cannot demonstrate an up to date 5-year supply of deliverable sites they should consider favourably planning applications for housing, having regard to other policies in PPS3, including paragraph 69. As with the previous appeal, the Council does not demonstrate such a supply. The changes in the scheme before me successfully overcome the shortcomings identified in the previous appeal decision and there are no longer any failures to satisfy the criteria in PPS3.
33. I have considered all the other matters raised in the written representations and at the hearing, including the effects on social cohesion and air quality, but I find nothing to outweigh the considerations that lead me to the overall conclusion that the scheme is in accordance with the development plan and deserves to succeed. Accordingly the appeal is allowed.

Conditions

34. Permission should be subject to conditions along the lines of those suggested by the Council, but with a few small changes for clarity and to meet the tests in Circular 11/95. These conditions are in the Schedule below. In addition I include condition 18 to avoid any doubt about the approved plans, which were agreed at the hearing.
35. Condition 2 is required to protect the privacy of prospective residential occupiers of the development, and similarly condition 3 protects the amenities of the site and its surroundings. Condition 5 is required to meet the changing needs of households and people with disabilities. Conditions 16 and 17 are required to protect the amenities of the wider locality, for example in terms of disturbance, traffic and parking. Condition 10 is included for the same reason, recognising that the constraints of this adjoining residential area provide exceptional circumstances for justifying control over changes of use within Class D1. By giving rise to different patterns of use, such changes could have serious implications.
36. Conditions 4, 8 and 9 are required to protect the character and appearance of the locality.
37. In the interests of sustainability, conditions 6 and 7 are to secure efficient use of energy, water and materials, while condition 11 secures satisfactory drainage. Conditions 13 and 15 are required to secure sustainable travel provision, and 12 and 14 are for highway safety.
38. I omit the Council's suggested conditions 6 and 8, which are unnecessary given their suggested conditions 7 and 9. I also omit their suggested condition 15, being unconvinced of the necessity for further recording of the building. I omit the last sentence of the Council's suggested condition 16 as it is reasonable to allow some flexibility if the supply of parking spaces exceeds the number of users able to use those spaces.

G C Cundale

Inspector

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
2. The first and second floor bedroom windows hereby permitted in the northern elevation of the building and facing the external walkways shall be fitted with obscure glazing up to a minimum height of 1800mm above the walkway level in accordance with the details shown on drawing P21. The obscure glazing shall be fitted prior to the first occupation of those rooms and shall thereafter be retained as such.
3. The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully installed and made available for use. These facilities shall thereafter be retained for that use at all times.
4. No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
5. The dwellings hereby permitted shall be constructed to Lifetime Homes standards.
6. Unless otherwise agreed in writing by the Local Planning Authority, none of the residential units hereby approved shall be occupied until a Final/Post Construction Code Certificate issued by an accreditation body confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code level 3 for standard residential units and Code level 4 for wheelchair units has been submitted to, and approved in writing by, the Local Planning Authority.
7. Unless otherwise agreed in writing by the Local Planning Authority, none of the non-residential development hereby permitted shall be occupied until a BREEAM Design Stage Certificate and a Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a BREEAM rating of 60% in energy and water sections of the relevant BREEAM assessment within an overall rating of 'Excellent' have been submitted to, and approved in writing by, the Local Planning Authority.
8. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping, which shall include hard surfacing, means of enclosure, and planting.
9. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out by the end of the first planting and seeding season following the occupation of the building or the completion of the development, whichever is the sooner; and 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 gives written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.
10. The ground and first floor areas indicated on drawings P07 and P08 as a "surgery" shall only be used for the purposes of providing a medical practice and for no other purpose including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 11. Prior to development commencing, a full report of investigation into the capacity of the existing surface water drainage system, and how the drainage system can accommodate the increase in flows caused by the proposed development of the site, shall be submitted to and approved in writing by the Local Planning Authority. Works shall be carried out in accordance with the approved details and retained thereafter.
 12. The development hereby permitted shall not be occupied until the parking areas have been provided in accordance with the approved plans, and these areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
 13. The development shall not be occupied until the cycle parking facilities have been provided in accordance with the approved plans. These facilities shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
 14. Prior to the commencement of development on site, detailed drawings, including levels, sections and constructional details of the proposed access road, surface water drainage, street lighting and off site highway works to be provided, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until these works have been fully implemented in accordance with the approved details.
 15. Within 6 months of the occupation of the surgery, a travel plan for its staff and visitors shall be submitted to the Local Planning Authority for its written approval. The plan should include a travel survey of staff and patients and include measures to encourage travel by sustainable modes of transport. The travel plan shall be reviewed annually and submitted to the Local Planning Authority for its agreement. The approved plan shall be implemented as agreed.
 16. The surgery hereby permitted shall not be open to patients and clients except between the hours of 0730 and 1930 on Mondays to Fridays, 0900 and 1230 on Saturdays, and not at any time on Sundays, Bank or Public Holidays.
 17. The Class DI/D2 unit hereby permitted shall not be open to users except between the hours of 0730 and 1930 on Mondays to Fridays, 0900 and 12.30 on Saturdays, and not at any time on Sundays, Bank or Public Holidays.
 18. The development hereby permitted shall be carried out in accordance with the following approved plans: P01A, P02A, P03, P04, P05, P06, P07, P08, P09, P10, P11, P12, P13, P14, P15, P16, P17, P18, P20, and P21.

APPEARANCES

FOR THE APPELLANT:

Mr J Escott BA(Hons) DipTP MRTPI	Partner, Robinson Escott Planning, Chartered Town Planning and Development Consultants
Mr B Meekings MIHT IEng	Divisional Manager, Project Centre
Mr P Zara BSc(Hons) DipArch RIBA FRSA	Director, Conran & Partners
Ms J Ferguson MCIH	Regional Development Director, Affinity Sutton Group
Ms D Bowles BSc(Hons) MSc MCIBSE	Sustainability Consultant, John Parker Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Councillor M Caulfield	Member of Planning Committee, Brighton and Hove City Council
Councillor D Cobb	Member of Planning Committee, Brighton and Hove City Council
Miss C Simpson MA MRTPI(licentiate)	Planning Officer, Brighton and Hove City Council

FOR MARMION ROAD RESIDENTS ASSOCIATION:

Mr D Rist	Chairman of Residents Association
Mr M Preston BEng(Hons)	Local resident
Miss J Greig	Local resident and teacher
Ms L Singh MCIH	Local resident

INTERESTED PERSONS:

Mr J Pearson	Local resident and with a business in School Road
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DOCUMENTS

Document	1	Notification of hearing and list of recipients
Document	2	Section 106 Planning Obligation submitted by Appellant
Document	3	E-mails of 16 and 17 August 2010 between Charles Field and Ben Meekings
Document	4	Page 49 of 'Providing for Journeys on Foot' (IHT)
Document	5	E-mails of 6 September 2010 concerning Brighton and Hove housing needs
Document	6	Plans of previous appeal scheme (APP/Q1445/A/09/2097917)
Document	7	Alternative wording for condition 9 suggested by Mr Escott
Document	8	Appellant's application for costs
Document	9	Bundle of 3 documents concerning the need for traffic calming in Marmion Road, submitted by Miss Greig
Document	10	Extracts from the 'Manual for Streets', submitted by Mr Preston
Document	11	Community petition submitted by Ms Singh