



Appeal Decision

Hearing held on 30 September 2008

Site visit made on 30 September 2008

by **S J Emerson BSc DipTP MRTPI**

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

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

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

**Decision date:
8 October 2008**

Appeal Ref: APP/Q1445/A/08/2070139

124 Church Road, Hove BN3 2EA

- 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 Siade Abdulkhani against the decision of Brighton & Hove City Council.
- The application Ref BH2007/02379, dated 25 June 2007, was refused by notice dated 19 December 2007.
- The development proposed is alterations and extensions to form a part 2, part 3 storey building with roof accommodation to form 4 flats above existing retail.

Procedural matters

1. The application was described on the application form as the development of 9 apartments, but that was because the proposal was originally submitted jointly with a proposal for 5 flats at No 128 Church Road, Hove resulting in 9 new flats overall. However the proposals for the separate sites were subsequently amended to be pursued by separate applications. To avoid possible confusion, I have not used this original description in the heading above, but have adopted the Council's description of development.
2. At the hearing, the appellant submitted an amended plan (drawing D-01B) of the layout of the flats to show the previously proposed bay window at the front of the top floor flat amended to a dormer. This amendment was in response to design concerns previously expressed by the Council. The Council had no objection to the consideration of the appeal on the basis of this amended plan and I consider that it is a minor amendment the acceptance of which would not prejudice the interests of any party. The amended plan does not, however, overcome the Council's concern about the design of the feature. It was agreed that the bay window shown on the roof slope of the western 1st floor flat should also be amended to a similar dormer form and that if I were to allow the appeal this could be achieved by means of a condition.

Decision

3. I dismiss the appeal.

Main issues

4. The main issues are:
 - (a) The effect on the character and appearance of the Cliftonville Conservation Area.

- (b) The effect on the living conditions of the adjoining residents of 22 Medina Villas, with particular reference to daylight/sunlight and outlook.
- (c) The effect on parking and public transport.

Reasons

Conservation Area

5. The appeal site is within the Cliftonville Conservation Area. This encompasses 3 streets to the south of Church Road and 2 streets to the north of Church Road. The Conservation Area is characterised by residential development of the mid 19th century. Along individual streets there is a broad consistency in the siting and design of buildings, but variations between streets. Only a short section of Church Road is included within this conservation area, but there are contiguous conservation areas to the east and west. This part of Church Road has a variety of building styles. Church Road is one of the principal streets in this part of Hove, being the main thoroughfare and having predominantly commercial uses at ground floor level.
6. No 124 is at the junction of Church Road and Medina Villas. That part of the premises on the corner is single storey with a flat roof. The inner part is 2 storey. The proposal is to add 3 floors of residential accommodation above the single storey element and one floor of accommodation within the roof space above the 2 storey part. It is agreed that the existing building has no architectural merit
7. I saw that there are a number of corner sites along Church Road where the corner building is higher than the terrace fronting Church Road of which it forms part. But my impression is that there is no consistency in the design of corner sites along this part of Church Road. Some, like the appeal site, are single storey, others are substantial buildings of 4 storeys. The relationship between the buildings along Church Road and the buildings in the streets to the north and south do not appear to have been particularly well planned when development first took place.
8. As proposed, the short terrace between Medina Villas and Osborne Villas would, visually, consist of 4 units (although the 2 ground floor units of the appeal premises are combined in a single unit). The eastern-most unit would have 4 floors of accommodation, the 2 central units would have 3 floors of accommodation and the western-most unit would have 2 floors of accommodation (with a flat roof). There would be a considerable stepping down in the height of the buildings across the frontage of the terrace.
9. The proposed 4 floors of accommodation on the eastern side would extend for a considerable distance down Medina Villas. Unlike the Church Road frontage, where the 3rd floor accommodation would be within a mansard roof, the elevation to Medina Villas would have 4 full floors of accommodation. The design would give the corner of the building considerable height and bulk which I consider would be out of scale with the short terrace of which it is part and result in an unbalanced, lopsided appearance to the Church Road frontage.
10. The top of the proposed building would be slightly higher than the ridge line of the adjoining semi-detached villas along the western side of Medina Villas and

the eaves line of these villas would be below the top floor accommodation. This difference in height and scale would emphasise the substantial bulk of the building on the corner. The proposed building would also be higher than the proposed development on the opposite corner of Medina Villas permitted by the Council in 2005. That development would have 3 floors of accommodation on the front corner. But this difference would not be untypical of the differences between developments on opposite sides of side streets along Church Road and is not in itself harmful.

11. The appeal premises abut the wide footway at the top end of Medina Villas and are thus much closer to the road than the villas to the south which are set back behind front gardens. Because there is only a single storey element on the corner at present this difference in alignment does not have a substantial impact on the street scene. When looking north along Medina Villas and south along Ventnor Villas, buildings beyond No 128 can be seen over the top of the single storey element.
12. The proposal would result in a 4 storey building projecting forward of the buildings in Medina Villas. Part of the rear (southern) elevation of the new building would be readily noticeable when approaching the site up Medina Villas from the south. This rear elevation would be bland with no visible fenestration. The visual relief provided by the fenestration on the side elevation facing Medina Villas would only become the main feature of the building when the observer was comparatively close to it. I consider that the bulk and blandness of the visible rear part would result in an unsatisfactory contrast with the attractive elevations of the buildings facing Medina Villas. The proposed building would slightly reduce the width of the view northwards across Church Road into Ventnor Villas. Because of the slightly offset alignment between Medina Villas and Ventnor Villas, the proposed development would have a more substantial impact in the view southwards from Ventnor Villas. From parts of Ventnor Villas, the view of the buildings on the western side of Medina Villas (currently visible above the single storey building) would be lost. I consider that this inter-visibility between these streets and the long vistas which are available are an attractive feature of this part of the conservation. The modest but tangible erosion of these views would be harmful.
13. I have already noted the variety of buildings on corners along Church Road and the variety of relationships between the buildings fronting Church Road and those fronting the side streets. On several corners, buildings of more than one storey project forward of the building line of the side street and some of these corner buildings have a bland elevation at the rear facing down the side street. But I do not regard either of these characteristics as important features of the conservations area which might justify repetition on other corners. In my view, the achievement of a satisfactory relationship on corner sites along Church Road needs to be resolved on a site specific basis rather than justified on the basis of any examples nearby. This is the approach that the Council has taken when granting planning permission in 2005 for new development above Otello's on the opposite corner of Medina Villas and for new houses to the south of it along that side of Medina Villas.
14. For the reasons given above, I consider that the appeal proposal is an unsatisfactory form of development on this particular corner site, resulting in a development that would be incongruously bulky and prominent and which

detract from views up and down the side streets. The development would harm the character and appearance of the conservation area. It would be contrary to policies QD1 (design), QD14 (extensions and alterations) and HE6 (conservation areas) of the Brighton and Hove Local Plan 2005.

Living conditions

15. No 22 Medina Villas is the building to the rear of the appeal premises. It is a 3 storey building with a basement with a flat on each of the 4 floors. The appeal site is on the northern side of No 22. That part of the proposed building abutting the side garden boundary of No 22 would be single storey only (with the sloping roof of the stairwell rising above the flat roof). One section of this wall on the boundary already exists. The main rear wall of the 1st, 2nd and 3rd floors would be between 4m-5m from the boundary.
16. On the side of No 22 facing the appeal site there are windows to bathrooms on each floor. These windows have frosted glass. The proposed building would block some early morning sunlight in mid summer from some of the bathroom windows, but I do not regard this impact as adversely affecting living conditions given that the rooms are bathrooms. I consider that there would be sufficient gap between these windows and the rear walls of the proposed building for there to be no material reduction in daylight within the bathrooms.
17. The main rooms at the front of the building are either living rooms or the main bedroom and are served by bay windows. From within the bay, the proposed building would be visible from the northern angled side window, but not generally noticeable from within the room looking out through the main part of the bay. The development would have only a minor impact on the outlook of these rooms and no material impact on sunlight or daylight within them. On the front corner of the building closest to the appeal site are windows serving the kitchens of each flat. These windows are much narrower than the bay windows. The development would be visible only in oblique views when close to the window, would not be overbearing and would not result in any loss of daylight or direct sunlight other than possibly for a short period early on mid summer mornings.
18. The rear garden of No 22 serves the ground floor flat and is an attractive amenity space. For the most part, No 22 blocks morning sunlight, but in mid summer there is currently a brief period of direct sunlight early in the morning. The proposed building would block most of this sunlight, but as the garden has a relatively open aspect to the south over the adjoining gardens and to the south west across Osborne Villas I consider that this brief limited increase in shading would not harm the amenity value of the garden.
19. I thus conclude on this issue that the development would not materially harm the living conditions of the adjoining occupiers and that there is no conflict with policy QD27 (protection of amenity) of the Brighton and Hove Local Plan.

Parking and public transport

20. There is no reason for refusal relating to this issue, but in accordance with advice given at the application stage by the Traffic Manager, the Council consider that the appellant should make a contribution of £2,000 for improvements to public transport (bus stops, pedestrians facilities and cycling

facilities in Church Road) and £2,000 to cover the cost of amending the relevant Traffic Regulation Order (TRO) to preclude future occupiers of these flats from applying for residents' parking permits. The appellant did not resist the need to make these contributions and suggested that they could be the subject of a condition, as suggested by the Council in the hearing statement.

21. In my pre-hearing note sent to the parties about 2 weeks before the hearing, I indicated that it would be unacceptable for me to impose any condition which, explicitly or implicitly, required a section 106 obligation to be provided. This would conflict with advice in Circular 11/95 *The Use of Conditions in planning Permissions*. The Circular (paragraph 13) clearly indicates that: *Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers*. In the absence of a completed section 106 obligation or agreement at the hearing I indicated that I would need to consider whether the contributions sought by the Council were justified.
22. No parking spaces are provided in the development. It is agreed that the site is an accessible location with good public transport connections. It abuts the main town centre of Hove and Church Road is one of the main bus routes into the centre of Brighton and beyond. Policy HO7 indicates that planning permission will be granted for car-free housing in locations with good access to public transport and local services where there are complimentary parking controls and where it can be demonstrated that the proposed development will remain car-free in the long term. The appeal proposal meets the locational criteria of this policy. It was agreed that the requirement to be car-free is normally achieved by an amendment to the relevant TRO to preclude future occupiers applying for permits. This requires some administrative work by the Council and public advertisements which have to be paid for.
23. The appellant understands that there are between 100-200 residents parking permits currently available for zone N. This zone covers a substantial block of streets between Hove Station and the seafront. I consider that this is a small number of available permits, given the size of the zone and the likely scope for changes in demand for permits in the area. To avoid a cumulative adverse impact from increasing car ownership outstripping the available parking spaces in the heavily parked street of this dense urban area I consider that the appeal development should be made car free. The Council could amend the TRO without any funding from the appellant, but is very unlikely to do so, especially for such a small development. It is also important that the amendment to the TRO is made prior to potential occupiers considering the purchase of flats so that they can make an informed choice about possible car ownership. I therefore consider that to meet the requirements of policy HO7 the appellant should pay for the necessary administrative work which can only be secured by a section 106 obligation. In the absence of such an obligation, the conflict with policy HO7 adds a further objection to the development.
24. I accept that the cumulative impact of a number of small scale housing developments within the urban area, especially those which are car-free, must place increasing demands on the public transport system and especially buses. However, there is no evidence of any particular shortcomings in the public transport infrastructure (or that for cyclists and pedestrians) in the locality on which this and other developments would add further demand. Policy TR2

concerns public transport accessibility and parking. Given that the parking standards are maximum, with no minimum, then the absence of any on-site parking does not conflict with the policy and the car-free nature of the development has already been considered under policy HO7. Given the good bus services close by and the absence of any evidence of particular infrastructure problems, I consider that there is no conflict with this policy and insufficient evidence to justify a financial contribution to public transport.

Overall conclusion

25. I have found that the development would harm the character and appearance of the conservation area and does not meet the local plan's requirement for car-free developments. The more favourable aspects of the development, including making better use of this accessible location, do not outweigh this harm. I have therefore dismissed the appeal.

Simon Emerson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Landivar, Architect	Alan Phillips Architects, Brighton.
Mr S Bareham BSc DipTP	Lewis & Co Planning, Hove.

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Hawks BA	Planning Officer, Brighton and Hove City Council.
Ms L Johnston BSc Dip PG IHBC	Conservation Officer, City Council.

INTERESTED PERSONS:

Mr M Sinnock	Local resident, Ground Floor Flat, 22 Medina Villas, Hove, BN3 2RL.
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PLANS

- A Amended layout plan D01 B.
- B North elevation of scheme for 122 Church Road Hove (Drw.no 0/1612/04/D06A)
- C Plan of building lines.

