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| <u>No:</u> | BH2018/03780 | <u>Ward:</u> | St. Peter's And North Laine Ward |
| <u>App Type:</u> | Full Planning | | |
| <u>Address:</u> | 38A Upper Gardner Street Brighton BN1 4AN | | |
| <u>Proposal:</u> | Demolition of existing boundary wall and reconstruction of replacement wall. | | |
| <u>Officer:</u> | Laura Hamlyn, tel: 292205 | <u>Valid Date:</u> | 07.12.2018 |
| <u>Con Area:</u> | North Laine | <u>Expiry Date:</u> | 01.02.2019 |
| <u>Listed Building Grade:</u> | N/A | <u>EOT:</u> | |
| <u>Agent:</u> | Dowsett Mayhew Planning 63A Ship Street Brighton BN1 1AE | | |
| <u>Applicant:</u> | Sussex Property Investments Ltd C/o Dowsett Mayhew Planning 63A Ship Street Brighton BN1 1AE | | |

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

| Plan Type | Reference | Version | Date Received |
|-------------------------|------------------|----------------|----------------------|
| Proposed Drawing | 17315 101 | | 7 December 2018 |
| Proposed Drawing | TA 1021 10 | | 7 December 2018 |
| Proposed Drawing | TA 1021 11 | | 7 December 2018 |
| Proposed Drawing | TA 1021 12 | | 7 December 2018 |
| Proposed Drawing | TA 1021 13 | | 7 December 2018 |
| Proposed Drawing | TA 1021 15 | | 7 December 2018 |
| Proposed Drawing | TA 1021 16 | | 7 December 2018 |
| Location and block plan | TA 1021 01 | | 7 December 2018 |
| Report/Statement | 17315 R02 | | 7 December 2018 |

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. A smooth painted render finish shall be applied to both sides of the boundary wall and shall be retained as such thereafter.

Reason: To ensure a satisfactory appearance to the development and to comply with policy HE8 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1. The application site consists of a vacant plot fronting onto Upper Gardner Street between a large flint faced three-storey warehouse and modern two storey terraces. The vacant lot provides access to the large T-shaped lot to the rear.
- 2.2. The subject site lies within the North Laine conservation area. Upper Gardner Street is a varied street consisting of early 19th century two-storey terraces, modern two-storey houses, the 1887 infant's school, a large warehouse and numerous smaller warehouse/light industrial buildings.
- 2.3. The application follows on from an enforcement case and involvement from Building Control regarding a dangerous structure (boundary wall). A section of the subject boundary wall was required to be removed as directed by Building Control due to health and safety concerns. The Building Act 1984 overrides the need for planning permission in such cases.
- 2.4. The application proposes to demolish the remainder of the boundary wall between the application site and neighbouring properties fronting Queen's Gardens, and to erect a replacement hollow brick wall along the same line and to the same height as the existing (pre-existing) wall.

3. RELEVANT HISTORY

- 3.1. **BH2018/03836**- Demolition of existing storage unit (B8) and erection of 4no two storey residential dwellings (C3). Under consideration.
- 3.2. **BH2018/00641**- Part change of use of existing storage building (B8) to office (B1) with extension to existing building and two storey bridged extension between the existing properties fronting Upper Gardner Street. Application recommended for refusal, appeal on non-determination dismissed 13/02/2019.
- 3.3. 39 Upper Gardner Street
BH2014/04276- Change of use at first floor level from cafe (A3) to offices (B1). Approved 31/03/2015.

- 3.4. **BH2012/02173-** Change of use from retail (A1) to café (A3) on lower ground, ground and first floors and retrospective change of use from café (A3) to office (B1) on second floor and replacement of ground floor sliding doors and fenestration above. Approved 30/04/2013.
- 3.5. **BH2011/01127-** Change of use from storage and distribution (B8) to mixed use retail (A1) and café/restaurant (A3) together with installation of new sliding glazed doors to the front elevation behind an existing timber door. Approved 06/07/2011.

4. REPRESENTATIONS

- 4.1. **Nine (9)** representations have been received, objecting to the proposed development on the following grounds:
- loss of privacy
 - the wall is a party wall and no party wall notice has been served on neighbouring properties
 - the wall is of historic interest
 - it is unclear whether the wall to rear of 35 Queens Gardens would be demolished and rebuilt
 - disruption as a result of demolition and building works
 - damage to neighbouring residents' extensions, patio tiles, decking, wall fittings and/or raised bedding
 - the wall is/was made of flint rather than bungaroosh
 - the removal of the roof over the yard destabilised the wall
 - the drawings do not accurately reflect the pre-existing height of the wall
 - the replacement wall should be finished in flint
 - there is a working sewage waste pipe which exists into the base of the party wall
- 4.2. The **North Laine Community Association**, objects to the proposed development on the following grounds:
- the wall is of historic interest, made of bungaroosh and its loss should be resisted
 - attempt to increase the size of the plot by removing kinks in the wall
 - the wall should be repaired with materials to match
- 4.3. **Councillor Lizzie Deane** objects to the proposed development. A copy of the objection is attached to this report.

5. CONSULTATIONS

- 5.1. **Heritage:** Approve subject to conditions.

Whilst the subject boundary wall dates to the development of Queen's Gardens, it is not visible and is considered a neutral element within the North Laine Conservation Area. Nevertheless, it does have some historic significance, identifying the lot sizes and boundaries of the development between Upper Gardner Street and Queen's Gardens. As such, the reconstruction of the wall on

the same axis is welcomed. It is considered onerous to require the boundary wall, which is not visible from the public realm of the conservation area, to be rebuilt in flint or bungaroosh. Furthermore, it is unlikely a bungaroosh or flint wall would meet current building regulations. However, to ensure a suitable finished appearance, a condition should be included on any consent for a painted render finish to both sides of the wall.

- 5.2. The demolition of the existing flint and bungaroosh wall to the west of the subject site is considered to cause less than substantial harm to the North Laine Conservation Area. The reconstruction of the wall on the same alignment and in a painted rendered finish is considered sufficient to partially mitigate this harm. In accordance with HE6, HE8 and the NPPF, the proposal would preserve the character of the North Laine conservation area and remove a dangerous structure.

6. MATERIAL CONSIDERATIONS

- 6.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 6.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
 - Brighton & Hove Local Plan 2005 (retained policies March 2016);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
- 6.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

7. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development
CP15 Heritage

Brighton & Hove Local Plan (retained policies March 2016):

QD27 Protection of amenity
HE6 Development within or affecting the setting of conservation areas
HE8 Demolition in conservation areas

Supplementary Planning Documents:

8. CONSIDERATIONS & ASSESSMENT

- 8.1. The main considerations in the determination of this application relate to the principle of the proposed demolition, the impact of the proposed replacement wall on the character and appearance of North Laine Conservation Area, and the impact on neighbouring amenities.
- 8.2. The agent confirmed by email dated 11 Feb 2019 that the Design and Access Statement stated in error that the wall to the rear of 28-34 Queens Gardens would be replaced. The submitted drawings accurately represent the proposed development with a replacement wall to 28-35 Queens Gardens.
- 8.3. While the drawings state that the wall would be built to the exact same height and location as the existing (or pre-existing) wall, the wall to the boundary with no.35 would be built slightly to the west. This is a matter of a land ownership dispute. Furthermore, the pre-existing wall was bowed in places where it was apparently insufficiently supported. It is proposed to build a straight replacement wall. The appropriate notice on the neighbouring properties has been served for the application to be determined.

8.4. Principle of Development:

As the wall in question is located in a conservation area, its demolition constitutes development which requires permission. The Structural Engineer's Report (Ref: 17315 R02) received 07 Dec 2018 recommends the demolition of the existing wall and its replacement, as the remaining sections of the boundary wall are continuing to deteriorate and are unstable. It is considered that this report provides suitable justification for the demolition of the wall. The proposed demolition is considered to result in less than substantial harm. The public benefit of ensuring the safety of occupiers and visitors to this and neighbouring sites is considered to outweigh the harm to the North Laine Conservation Area.

8.5. Design and Appearance:

The proposed replacement wall would be finished in painted render, which would lack the character of the existing wall. However the demolition of the existing wall is accepted. It would be onerous to require the replacement boundary wall, which is not visible from the public realm of the conservation area, to be built in flint or bungaroosh. The proposed design is accepted. It is recommended that a condition be applied to ensure the proposed painted render finish to both sides of the wall be retained.

8.6. Impact on Amenity:

Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

8.7. It is proposed to erect the replacement wall to the same height as the existing (or pre-existing) wall. Provided the replacement wall is built no higher than the existing (or pre-existing) wall, there would be no appreciable impact on neighbouring amenity.

8.8. Other Considerations:

The neighbour representations raise concerns that no party wall notice has been served. This is a civil matter, separate from the consideration of this planning application. It is not necessary for a party wall notice to be served prior to an application for planning permission.

9. EQUALITIES

9.1. None identified.