



# Appeal Decision

Hearing held on 7 May 2008

Site visit made on 7 May 2008

by **Martyn Heyes** BSc(ENG), MEng, PhD,  
CEng, FICE, FIHT

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

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Decision date:  
27 June 2008

**Appeal Ref: APP/Q1445/A/08/2065312**

**Former 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 Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/00884, dated 9 March 2007, was refused by notice dated 5 July 2007.
- The development proposed comprises of 54 flats and six office spaces (part new build, part conversion of existing buildings).

## Application for costs

1. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

## Decision

2. I dismiss the appeal.

## Procedural Matters

3. At the opening of the hearing the appellant submitted a Unilateral Undertaking to fund a range of social infrastructure items. The Council accepted that the sums of money involved were acceptable and that this would effectively overcome one of the Council's reasons for refusal.
4. I have noted that there is a dispute between the parties as to the current status of the permitted uses, but as this is not reflected in the Council's reasons for refusal, I have not considered the matter further in reaching my decision.

## Main Issues

5. The main outstanding issues are the effects of the proposed development on the character and appearance of the area, the living conditions of the occupiers of neighbouring properties and future occupiers of the development, with respect to outlook, privacy, natural lighting levels and outside amenity space, as well as on highway safety.

## Reasons

### *Character and appearance*

6. The site lies adjacent to one of the main highway routes into Brighton, outside the town centre in an area described as 'central fringe'. The Lewes Road frontage consists of a terrace of shops which would not be directly affected by the proposals, while the former builders' yard behind them marks a transition between Victorian terraced houses to the south and a range of workshops, together with Enterprise House, a tall former factory building, to the north. Also fronting onto Melbourne Street is a relatively new school, and a Victorian hall, Connaught House, which is part of the re-development site, and sandwiched between the terraced houses.
7. The current character and appearance of the area is difficult to define given the varied mixture of properties and uses, but key to an acceptable scheme must be its ability to integrate satisfactorily with the properties surrounding it. The appearance of the proposed development would be dominated by the 6/7 storey block of flats, and while the site lies in a corridor which can accept tall buildings, I do not consider that this building would sit comfortably so close to the existing terraced houses at the south of the site. Its siting hard against the footway only emphasises the conflict with the adjacent terrace, as would the treatment of the new elevations.
8. Renovating the brick facade of Connaught House as part of the scheme would retain an attractive feature in the street-scene, but the proposed external lift shaft abutting the gable wall remaining after the demolition of the adjoining house would be a somewhat incongruous feature. The harm to the street-scene would be further exacerbated by the appearance of the associated large slatted screen, although I accept that views of it will be limited.
9. I conclude that the proposed development would not accord with Policy QD2 of the Brighton & Hove Local Plan as it fails to emphasise and enhance the positive qualities of the local neighbourhood by taking into account the local characteristics, particularly the height, scale, bulk and design of existing buildings.

### *Living Conditions*

10. The constraints posed by the existing buildings, and the density of the proposed development have led the appellant to resorting to a number of unusual techniques in an attempt to avoid overlooking and safeguard privacy.
11. One of these techniques is the provision of the large slatted screen that would be erected to hide the external walkways and staircases proposed on the eastern elevation of Connaught House, and to limit the overlooking of windows in the rear elevations of nos.32-37 Melbourne Street. The inter-visibility distances involved are below the standards normally regarded as acceptable, and I am not convinced that the proposed scheme would adequately overcome the privacy issue. Moreover the size and position of the screen is such that it would present a dominant outlook to the view from the rear of the terrace. As a result, I conclude that the proposed development would not accord with LP

Policy QD27 which seeks to ensure that new development does not cause material nuisance or loss of amenity to neighbouring occupiers.

12. Another technique considered necessary would be the use of the bay windows which would be partially glazed with etched glass on the eastern elevations of the smaller blocks of flats. This would prevent direct inter-visibility between rooms which are only about 9m apart. While I accept that their use should overcome the privacy issue, it would leave those rooms where these are the only windows without an acceptable outlook. I consider this would result in unsatisfactory living conditions, and conclude that this aspect of the design would also conflict with LP Policy QD27.
13. The form of development would also result in a number of flats having restricted levels of natural light in certain habitable rooms. While the appellant has submitted amendments to the scheme to overcome this issue, it is further evidence that the proposed development fails to demonstrate a high standard of design as required by LP Policy QD1.
14. The size of the site would make it practically impossible to provide a children's play area to the Council's standards, and although this issue arises as a consequence of the appellant's choice of uses for the site, the nearby Turnerland would provide a second best facility for what would probably be a limited number of children. There is also very little private outdoor amenity space which is not overlooked, but this again is somewhat inevitable for this type of development, and I would not reject the scheme on these grounds alone.

#### *Highway Safety*

15. The evidence is that on street parking in the locality is at a premium. While parking restrictions and other traffic regulations have been introduced to improve highway safety and support sustainable transport modes, this area of Brighton is not currently in a controlled parking zone. Under these circumstances, the lack of provision for the demand for car parking which would be generated by the block of 44 flats would be likely to cause considerable conflict with the existing local residents and result in inconsiderate and dangerous parking. I conclude that, in this respect, the proposed development would not accord with LP Policy TR7 which only permits developments that do not increase danger to other road users.
16. I have noted the great strides which the Council have made in promoting sustainable transport, and this is also reflected by the number of car clubs that are now operating. However, like the Council, I consider that any proposal which relies on none of the residents owning a motor vehicle is unrealistic in this location at this point in time.

#### *Conclusions*

17. The proposed development would have much to commend it, particularly its contribution to meeting Brighton's affordable housing needs. I also recognise the effort which the appellant has put into evolving a scheme that has attracted favourable comments from the Council's urban designer. It is a difficult site to redevelop satisfactorily and I accept that some compromises will probably be required. However, in my assessment the density of the development

proposed in this scheme can only be achieved by resorting to a number of features that would conflict with the objectives of the Development Plan. The benefits of the scheme are not such as to outweigh the harm that I have identified, and, having considered all other matters raised, I conclude that the appeal should be dismissed.

*Martyn P Heyes*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Mr S Bareham MRTPI	Lewis & Co Planning, Paxton Business Centre, Portland Road, Hove BN3 5SG.
Mr S Atkins RIBA	DRP Architects, 87-88 Upper Lewes Road, Brighton BN2 3FF.
Mr G Waller CEng MICE MCIWEM	The Civil Engineering Practice, 11 Tungsten Building, George Street, Fishersgate BN41 1RA.
Ms D Dyball	John Packer Associates, 5 Kingfisher Court, Bollbrook Business Park, Uckfield TN22 1QQ.
Ms J Strube	Hyde Housing Association, 2 <sup>nd</sup> Floor, Rayford House, School Road, Portslade BN3 5HX.
Mr G Ings RIBA	DRP Architects

**FOR THE LOCAL PLANNING AUTHORITY:**

Ms K Brocklebank MRTPI	Brighton & Hove City Council
Mr H Walke MRTPI	Brighton & Hove City Council
Mr S Reeves MIHT	Brighton & Hove City Council

**DOCUMENT**

1 . Council's revised schedule of preferred conditions

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## Costs Decision

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Decision date:  
27 June 2008

### **Costs application in relation to Appeal Ref: APP/Q1445/A/08/2065312 Former Covers Yard, Melbourne Street, Brighton BN2 3LH.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Hyde Housing Association Ltd for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for 54 flats and six office spaces (part new build, part conversion of existing buildings).

**Summary of Decision: The application fails and no award of costs is made.**

### **The Submissions for Hyde Housing Association Ltd**

1. The application is for a full award of costs.
2. The decision to refuse planning permission was taken by officers in excess of the powers set out in the scheme of delegation. It was, strictly, an unlawful decision. By taking it in this manner the Council behaved unreasonably in terms of paragraph 1 of Annex 1 of Circular 8/93.
3. The applicant need not, and could not, show that the officers' recommendation would have been overturned if the application had been dealt with by the Planning Committee. However, two recent comparable schemes at Ebenezer Chapel and Travers Perkins were approved by the committee against the officers' recommendation, and showed a willingness to take an independent view on matters of a similar nature to the present proposal. The recommended reasons for refusing the Ebenezer Chapel scheme were similar to those stated in this case, but were rejected by the Council's Planning Committee.
4. Although a similar application for a full award of costs was recently rejected in the case of the appeal on a former Esso garage site, the circumstances here are different. In the Esso appeal the Inspector considered that, although the Council had behaved unreasonably, no wasted expense need have been incurred as a result because it was open to the applicant to resubmit the application without paying an additional fee. In this case however that was not possible because the applicant had already withdrawn the first application in order to seek Counsel's opinion on the status of the existing permitted uses of the site. A new application would have attracted a fee of £14,155 (in 2007); and in order to avoid this additional expense, an appeal was the only alternative.

### **The Response by the Council**

5. The Council accept that the planning application was refused by officers in excess of their designated powers, and since the practice was drawn to their attention, they have dealt with applications differently.
6. In this case it was the applicant's choice to withdraw the first application before it could be determined by the Planning Committee.
7. The applicant is effectively claiming costs associated with a third application which has not yet been incurred.

### **Conclusions**

8. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
9. It is accepted that the Council behaved unreasonably in so far as the officers had no power to act in the way they did, and their action prevented the applicant making their case to the Council's Planning Committee. It is evident from the cases quoted that there was some possibility of a different outcome if they had had that opportunity, however, it was open to the applicant to resubmit the application and have it determined by the Committee.
10. I accept that, in this case, this course of action would have cost the applicant £14,155 because the application had already been withdrawn once. However, the decision to withdraw the application was made by the applicant.
11. In determining whether the Council can be considered to have caused the applicant to incur unnecessary expense, I can see no reason why the applicant needed to withdraw the original application. While I understand that the applicant was attempting to resolve the issue of the existing permitted uses, the additional evidence of the Counsel's opinion could have been made available to the Council before the first decision was made, and, following the refusal, a second, cost free, submission could have been considered by the Council's Planning Committee. I therefore consider that the Council cannot be held responsible for the applicant being faced with the additional expense of another set of planning application fees.
12. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated. An award of costs is not justified.

### **Formal Decision and Costs Order**

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

*Martyn P Heyes*

INSPECTOR