

<u>No:</u>	BH2022/00027	<u>Ward:</u>	Preston Park Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	34 Preston Park Avenue Brighton BN1 6HG		
<u>Proposal:</u>	Erection of 2no dwellings (C3) to the rear of existing building with associated landscaping to address non-compliance with the plans approved in relation to planning permission BH2020/01832, with amendments to the parking allocation and the red line boundary.		
<u>Officer:</u>	Sonia Gillam, tel: 292265	<u>Valid Date:</u>	05.01.2022
<u>Con Area:</u>	Preston Park	<u>Expiry Date:</u>	02.03.2022
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	13.07.2022
<u>Agent:</u>	Mohsin Cooper 7 Hove Manor Parade Hove Street Hove BN3 2DF		
<u>Applicant:</u>	Mr D Frizzell 85 Church Road Hove BN3 2BB		

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
Location and block plan	A.001	D	17 May 2022
Proposed Drawing	D.001	B	3 September 2020
Proposed Drawing	D.002		3 September 2020
Proposed Drawing	D.003	B	3 September 2020
Proposed Drawing	D.004		3 September 2020
Proposed Drawing	D.005	A	3 September 2020
Proposed Drawing	D.006		3 September 2020
Report/Statement	Arbtech EDS	07.04.2020	12 August 2020
Detail	Materials Samples		1 July 2021
Proposed Drawing	C001	A	25 January 2021
Proposed Drawing	C002	A	25 January 2021
Proposed Drawing	C.001	Spot levels	12 August 2020
Proposed Drawing	C.002	Spot levels	12 August 2020

2. Not used

3. No extension, enlargement, alteration of the dwellinghouse or provision of buildings etc incidental to the enjoyment of the dwellinghouse within the curtilage of the of the dwellinghouse(s) as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies QD14, HE6 and QD27 of the Brighton & Hove Local Plan, CP12, CP13 and CP15 of the Brighton & Hove City Plan Part One, and DM20, DM21 and DM26 of the Submission City Plan Part Two.

4. Access to the flat roof areas (annotated as 'green roof' on drawing D.002 received on 3 September 2020) of the development hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
Reason: In order to protect adjoining properties from overlooking and noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan and DM20 and DM21 of the Submission City Plan Part 2.

5. The hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with policies CP8 & CP11 of the Brighton & Hove City Plan Part One.

6. The windows in the western elevation of the development hereby permitted shall be obscure glazed and non-opening, unless the parts of the windows which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such.
Reason: To safeguard the privacy of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan and DM20 and DM21 of the Submission City Plan Part 2.

7. The development pedestrian walkway shown on the approved plans, shall not be used otherwise than as dedicated pedestrian / cyclist access and shall be maintained as such thereafter. The walkway should not be used for the access or parking of motor vehicles and motorcycles.
Reason: In the interested of safety and to ensure that suitable pedestrian access provision is provided to and from the development and to comply with policies TR7 and QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One, and DM20 and DM33 of the Submission City Plan Part 2.

8. No tree shown as retained on the approved drawings shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase and thereafter within 5 years from the date of occupation of the building for its permitted use, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from 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.
Reason: To enhance the appearance of the development in the interest of the visual amenities of the area, to provide ecological, environmental and biodiversity benefits and to maximise the quality and usability of open spaces within the development in compliance with policies QD15 of the Brighton & Hove Local Plan, CP12 of the Brighton & Hove City Plan Part One and DM22 of the Submission City Plan Part 2.
9. Not used
10. All ecological measures and/or works shall be carried out in accordance with the details contained in the Ecological Design Strategy, Artech (dated 07/04/2020) received on the 12/08/2020.
Reason: To ensure that the measures considered necessary as part of the ecological impact assessment are carried out as specified, and to provide a net gain for biodiversity as required by paragraphs 170 and 175 of the National Planning Policy Framework, Section 40 of the Natural Environment and Rural Communities Act 2006, and Policy CP10 of the Brighton & Hove City Plan Part One.
11. Development shall be carried out and maintained in accordance with the materials samples/details approved under application BH2021/02436.
Reason: To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with policies QD14 and HE6 of the Brighton & Hove Local Plan, CP12 and CP15 of the Brighton & Hove City Plan Part One and DM18 and DM26 of the Submission Brighton & Hove City Plan Part Two.
12. Development shall be carried out and maintained in accordance with the landscaping details approved under application BH2020/03352. 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.
Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies QD15, HE6 and QD27 of the Brighton & Hove Local Plan, CP12 of the Brighton & Hove City Plan Part One and DM18, DM21, DM22, DM26 and DM43 of the Submission Brighton & Hove City Plan Part Two, and SPD06, SPD11 and SPD16.
13. The refuse and recycling storage facilities indicated on the approved plans shall be retained for use at all times.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with policy QD27 of the Brighton & Hove Local Plan, Policy DM21 of the Submission City Plan Part 2, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.

14. Within two (2) months of the date of this permission, the cycle parking facilities shown on the approved plans shall have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.

15. Not used

16. Not used

17. 2 no. bee bricks (1 per unit) shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.

Reason: To enhance the biodiversity of the site and to comply with Policy CP10 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.

18. The vehicle parking area shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.

Reason: To ensure that adequate parking provision is retained and to comply with policy CP9 of the Brighton & Hove City Plan Part One and SPD14: Parking Standards.

19. Within two (2) months of the date of this permission, a Scheme of Management of the vehicle and any other forms of parking and stopping in the car park area shall be submitted to and approved in writing by the Local Planning Authority. The scheme must at least include the following measures:

- Details of how each car parking space will be allocated and managed;
- Details of measures to ensure that each car parking space is for the sole use of its allocated owner and/or those they permit to use said space.

The above works must be implemented prior within two (2) months of the details being approved and thereafter be maintained as such.

Reason: To ensure the development maintains a sustainable transport strategy and to comply with policies TR7, TR12, TR14 and TR18 of the Brighton & Hove Local Plan, CP9 of the City Plan Part One, DM33 and DM36 of the Submission Brighton & Hove City Plan Part Two, and SPD14 Parking Standards.

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. The applicant is advised that advice regarding permeable and porous hardsurfaces can be found in the Department of Communities and Local Government document 'Guidance on the permeable surfacing of front gardens'.
3. Where possible, bee bricks should be placed in a south facing wall in a sunny location at least 1 metre above ground level.

2. SITE LOCATION

- 2.1. The application relates to two recently constructed dwellinghouses to the rear, and, in the former garden of no. 34 Preston Park Avenue. It is understood that both the houses are occupied.
- 2.2. The original plot has been sub-divided. There is a large detached Victorian property with two front gables to the front of the site overlooking Preston Park, a grade II registered park and garden. This is a former care home which is now in use as 6no. residential flats.
- 2.3. The site is within the Preston Park Conservation Area.

3. RELEVANT HISTORY

- 3.1. **BH2021/02436** Application for approval of details reserved by condition 11 (external surfaces materials) of application BH2020/01832. Approved 25.07.2021.
- 3.2. **BH2020/03352** Application for approval of details reserved by conditions 11 (material samples) and 12 (landscaping) of BH2020/01832. Approved 27.01.2021.
- 3.3. **BH2020/01832** Erection of 2no dwellings (C3) to the rear of existing building with associated landscaping. Approved 4.9.2020
- 3.4. With regard to the flatted development to the front of the site, the following permissions are relevant:
- 3.5. **BH2022/00026** Application to vary condition 1 of planning permission BH2019/02007 to allow amendments to approved drawings, and remove condition 3 (Vehicle Parking Areas). Under consideration.
- 3.6. **BH2021/03695** Application to vary condition 3 of planning permission BH2019/02007 to amend the wording of the condition to read as follows: The vehicle parking areas shown on the approved plans shall not be used otherwise

than for the parking of private motor vehicles and motorcycles and shall be maintained so as to ensure their availability for such use at all times. Refused 13.12.2021 for the following reasons:

1. *The variation proposed to condition 3 of BH2019/02007 would result in the development failing to provide adequate parking provision on the application site, resulting in overspill parking and impacts on highway capacity, contrary to policy CP9 of Brighton & Hove City Plan Part One and SPD14: Parking Standards.*
2. *The proposed variation to condition 3 of BH2019/02007 would fail to be necessary or relevant to the development permitted, by virtue of allowing use of the parking area for third parties, that are not occupants or visitors to dwellings within the site boundary, and would thereby be contrary to paragraph 56 of the National Planning Policy Framework.*
3. *The proposed variation to condition 3 of BH2019/02007 would result in a change of use of the land in use as parking spaces to that of commercial parking, contrary to Policies CP9 of Brighton & Hove City Plan Part One, Policy QD27 of the Brighton & Hove Local Plan, and Policy DM20 of City Plan Part Two.*

- 3.7. **BH2021/03045** Application for variation of condition 3 of application BH2019/02007 (Conversion of residential care home (C2) to 5no two bedroom and 1no one bedroom flats (C3), incorporating two storey rear extension, revised fenestration and associated alterations (part-retrospective)) to state: The vehicle parking areas shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved, or occupants of and visitors to the development hereby approved under BH2020/01832 and shall be maintained so as to ensure their availability for such use at all times. Refused 12.10.2021.
- 3.8. **BH2021/02150** Application for variation of condition 1 of BH2019/02007 (Conversion of residential care home (C2) to 5no two bedroom and 1no one bedroom flats (C3), incorporating two storey rear extension, revised fenestration and associated alterations (part-retrospective).) to allow amendments to the approved drawings to provide additional car parking space. Refused 04.08.2021.
- 3.9. **BH2020/01330** Application for Approval of Details reserved by Condition 7 (Materials and Window Details) of application BH2019/02007. Approved 08.06.2020
- 3.10. **BH2019/02007** Conversion of residential care home (C2) to 5no two bedroom and 1no one bedroom flats (C3), incorporating two storey rear extension, revised fenestration and associated alterations (part-retrospective). Approved 27.02.2020.

There is an open Planning Enforcement Case:

- 3.11. **ENF2020/00472** Breach of conditions 3 (car parking), 8 (cycle parking) and 9 (refuse and recycling) of BH2019/02007. BCN served re condition 3 on 19/4/22.

4. APPLICATION DESCRIPTION

- 4.1. The application seeks planning permission under Section 73a of The Town and Country Planning Act to vary condition 1 of planning permission BH2020/01832 to allow amendments to approved drawings to amend the red boundary line and parking allocation.
- 4.2. Planning permission (BH2020/01832) was secured in 2020 for the erection of 2no dwellings (C3) to the rear of the existing building. The development is complete and it is understood that both houses are occupied.
- 4.3. There are 3no. existing vehicular parking spaces to the front forecourt of no. 34 Preston Park Avenue which are currently approved and conditioned for the use of the flatted development to the front of the site.
- 4.4. This application seeks to amend the red boundary line on the plans so that 2no. of those parking spaces would be for use by the houses to the rear.
- 4.5. A concurrent application (BH2022/00026) is being considered which proposes to alter the red boundary line so that the flatted development to the front of the site would retain 1no. of the parking spaces.
- 4.6. It should be noted that previous applications designed to achieve the above have been refused by virtue of various planning technicalities relating to sub-division of site. The amendment to the red boundary line proposes to overcome the reasons for refusal.
- 4.7. Amended plans have been received during the life of the application which further amend the red line to ensure that the area allocated for the cycle storage for the flats is retained to the side boundary. The Local Planning Authority re-consulted on this amendment. Additionally, Notice has been served on relevant properties since submission of the application to address issues raised in objections received.

5. REPRESENTATIONS

- 5.1. **Seven (7)** letters have been received objecting to the proposed development for the following reasons:
 - Loss of residential amenity
 - Deny parking to residents and visitors of flat development
 - Loss of cycle storage
 - Commercial use of parking area
 - Neighbouring development to the rear should be 'car free'
 - Developer has sold parking space to rear house
 - False ownership declaration
 - Planning breaches

- 5.2. Following a re-consultation 20/05/22 regarding amended plans **six (6)** further representations have been received. No further grounds of objection are noted to those listed above.
- 5.3. Objections relating to legal complications re freehold/ leasehold, developer profit and detrimental impact on property values are noted, however these are not material planning considerations.

6. CONSULTATIONS

- 6.1. **Sustainable Transport:** No objection subject to condition re car park management plan.

7. MATERIAL CONSIDERATIONS

- 7.1. 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
- 7.2. 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);
 - Shoreham Harbour JAAP (adopted October 2019).
- 7.3. 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.

8. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development

CP1 Housing delivery

CP8 Sustainable buildings

CP9 Sustainable transport

CP10 Biodiversity

CP12 Urban design

CP14 Housing density

CP15 Heritage

CP19 Housing mix

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

TR7 Safe Development
TR12 Helping the independent movement of children
TR14 Cycle access and parking
TR18 Parking for people with a mobility related disability
SU9 Pollution and nuisance control
SU10 Noise Nuisance
QD15 Landscape design
QD16 Trees and hedgerows
QD18 Species protection
QD27 Protection of amenity
HO5 Provision of private amenity space in residential development
HE6 Development within or affecting the setting of conservation areas
HE11 Historic parks and gardens

Brighton & Hove City Plan Part 2

The Inspector published her Final Report into the Examination of the City Plan Part Two 19 July 2022. The Report is a material consideration. The Inspector has concluded that with her recommended changes (the schedule of changes as appended to the Report) that the Plan is sound and can be adopted. The Inspector's report concludes the examination of City Plan Part Two. City Plan Part Two policies, as amended by the Inspector's schedule of Main Modifications, can be afforded significant weight but they will not have full weight until the City Plan Part Two is formally adopted.

DM1 Housing Quality, Choice and Mix
DM18 High quality design and places
DM20 Protection of Amenity
DM22 Landscape Design and Trees
DM26 Conservation Areas
DM29 The Setting of Heritage Assets
DM33 Safe, Sustainable and Active Travel
DM36 Parking and Servicing
DM37 Green Infrastructure and Nature Conservation
DM40 Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

SPD03 Construction & Demolition Waste
SPD06 Trees and Development Sites
SPD11 Nature Conservation & Development
SPD14 Parking Standards
SPD16 Sustainable Drainage
SPD17 Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The merits of the scheme as a whole have been considered as part of the preceding permission (BH2020/01832). The principle of the development was justified. The design, siting and units of the development have not been

significantly altered and the assessment of this application will therefore relate to that aspect of the current scheme that differs from the previous application, namely the change to the red boundary line on the plans and the revised parking allocation.

Sustainable Transport:

- 9.2. There are three car parking spaces in total on the front forecourt of the site which are approved for use by the occupants and visitors to the six flats to the front of the site. The retention of the parking spaces for the occupants of and visitors to the flats is secured by a condition on planning permission BH2019/02007:
The vehicle parking areas shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times. Reason: To ensure that adequate parking provision is retained and to comply with policy CP9 of the Brighton & Hove City Plan Part One and SPD14: Parking Standards.
- 9.3. It is understood that 1no. parking space is in the ownership of a flat occupant and at least 1no. parking space is now in the ownership of a house to the rear of the site. Therefore, a breach of the aforementioned condition has occurred. A breach of condition notice was served by the Council on the 19th April 2022.
- 9.4. The applicant proposes to regularise the position by altering the red site boundary line so that 2 no. parking spaces are for use by the rear dwellinghouses which currently do not have on-site parking (with 1 no. parking space retained for the flats). The Council's Highways Officer has been consulted on the scheme and has no objections as outlined below.
- 9.5. There is no objection in principle to two of the spaces being allocated to the rear dwellinghouses, subject to a car park management plan to ensure the proposed spaces are only accessible to the residential units they are allocated to and managed appropriately. It is recommended that measures include 'permit holder only' signs and removable lockable bollards. This would prevent excessive movements in the area and manoeuvres on site by residents vying for the spaces. The car park management plan can be secured by condition.
- 9.6. With regard to the loss of the spaces for the flatted development, the application refers to parking surveys that have been provided and accepted previously in July 2019 and an updated survey from December 2021 has also been submitted as part of this application. These indicate that there is sufficient available parking on-street in the local area to cover any on-street demand caused by the proposals.
- 9.7. The applicant makes the case that the forecast overspill parking to occur from the flatted development should be comfortably available on-street. Additionally, the rear dwellinghouses would now have access to the parking spaces, therefore the overall demand for on-street parking should not increase as a result of the proposal. It is merely allocated differently across the two sites.

- 9.8. It is noted that the site is within a Controlled Parking Zone therefore residents of the flats would require a permit to park. However, as no harmful impact relating to parking overspill onto the highway is expected from the proposal, the Highways Officer has advised that the proposals overall do not warrant refusal in policy terms.
- 9.9. Given the lack of objection from the Council's Highways Team, it is considered that the alteration to the site boundary and the re-allocation of the parking is acceptable.

10. COMMUNITY INFRASTRUCTURE LEVY

- 10.1. Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. The exact amount will be confirmed in the CIL liability notice which will be issued as soon as it practicable after the issuing of planning permission.

11. EQUALITIES

None identified

12. CLIMATE CHANGE/BIODIVERSITY

- 12.1. The scheme provides residential housing within a sustainable location with good access to public transport links and local facilities. Cycle parking is proposed, reducing reliance on cars. 2x bee brick is secured by condition.

