

ENVIRONMENT CABINET MEMBER MEETING

Agenda Item 79

Brighton & Hove City Council

Subject:	Brunswick Estate Repainting- Non-compliance with the Hove Borough Council Act 1976		
Date of Meeting:	23 December 2010		
Report of:	Strategic Director, Place		
Contact Officer:	Name:	Roger Dowty	Tel: 29-2103
	E-mail:	roger.dowty@brighton-hove.gov.uk	
Key Decision:	No		
Wards Affected:	Brunswick & Adelaide		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Hove Borough Council Act 1976 (the Act) seeks to preserve the uniform appearance of Brunswick Square and Terrace and part of Brunswick Place. Toward this aim it requires the council to enforce the painting of the facades every five years, more particularly this year (2010). This report advises on the current state of compliance with the Act and seeks authorisation for enforcement action in respect of those properties within the Brunswick Estate that have not been repainted.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member authorises the issue and service of notices under Section 3 of the Hove Borough Council Act 1976 on the owners and occupiers of those properties in Brunswick Terrace, Brunswick Square and that part of Brunswick Place south of Western Road, where external decoration of the street fronts has yet to commence.
- 2.2 That the Cabinet Member gives approval for prosecution proceedings against owners in the event of non-compliance with the requirements of any notice served.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 This Act places a statutory duty on the owners of the listed properties that fall within the original Brunswick Estate to comply with the requirements of the Act. Its purpose is to preserve the uniformity of appearance throughout the estate and its requirements include repainting the street fronts (including iron railings and balcony) every fifth year ie 2000, 2005, 2010 etc. The Estate comprises 1-58 Brunswick Square, 1-42 Brunswick Terrace and 1-8 Brunswick Place. Regular repainting is an essential part of their maintenance, the enforcement of which is supported by the residents, and seen to be in their collective interest.
- 3.2 The paint system used for the stucco remains the water based, smooth semi gloss masonry paint 'Sandtex Classic Stone Gloss' as previously approved.

- 3.3 **Publicity:** Owners and managing agents of properties within the Estate were reminded of the requirement to redecorate the fronts of their properties by letter in May 2009. They were sent copies of the paint specification, and advised that the specification could also be downloaded from the council's web site.
- 3.4 Further advisory letters and specifications were sent out during the intervening period on receipt of details regarding changes in ownership or managing agents, and more recently on receipt of advice from the paint manufacturer that the regulations regarding paints will change next year. The paint already produced contains more Volatile Organic Compounds, than the new regulations will permit. The paint manufacturer feels it has met its obligation, and produced sufficient paint to complete the 2010 repainting, and will not produce new stock that is legally compliant ahead of the next paint cycle. Producing small batches of a non standard paint is uneconomic. The consequence is that the exterior gloss paint specified for the windows cannot be made available in the New Year and owners have been alerted to the need to purchase sufficient stock this year to complete the 2010 redecoration work, and any necessary intervening maintenance, before the next repainting year.
- 3.5 **Compliance to date:** at the time of writing this report, redecoration has still to commence at 28 properties (25%). The rate of progress is similar to that in 2005, but it remains disappointing that starts on many properties continue to run into the winter months, despite officer's encouragement in providing planning and conservation advice, and the production and publicity of a detailed paint specification. In October, out of the 109 properties within the Estate, only 39 had been redecorated with work in progress on a further 40. The figures will be updated verbally at the meeting. Residents that have painted their properties have expressed disappointment that others have still to paint, and have asked that the council take appropriate action for reasons of fairness.
- 3.6 All owners, agents, and residents have been made aware that failure to repaint this year will lead to notices being served requiring prompt redecoration in spring 2011. Of the properties that have yet to be painted, 3 owners have confirmed that they will be commencing work imminently, and 10 have confirmed a spring 2011 start date. A further 6 owners have advised that there are matters still to be resolved before a painting contract can be let, and a further 9 have failed to respond at all.
- 3.7 Enforcement provided by the Act consists of the service of a notice requiring the redecoration works to be carried out within a set compliance period. Owners have the right of appeal. The council does not have the power to waive the requirement to repaint in the case of individual properties, and in order to maintain the uniform appearance of the estate, it is recommended that notices are now served on the owners of those properties that have still to paint.
- 3.8 Notices served must allow a reasonable period of time in which to complete the required redecoration, having regard to, for example, weather conditions, the condition of the property and extent of works proposed, and the time required to arrange the works and appoint a builder. It is anticipated that 4-6 months will be judged a reasonable period in which to complete the works. In order to achieve prompt redecoration, it is proposed to serve notices in January 2011, giving first priority to those properties where owners have set no dates for commencement.

In those cases where spring start dates have been set and confirmed in writing and where there are no known exceptional circumstances, notices will be served and the compliance period will be set at start date plus one month.

- 3.9 The council will assist any property owner, who has difficulty in complying with the requirement, to overcome any delay as quickly as possible. But where necessary it is the intention that non compliance should lead to prosecution proceedings.

4. CONSULTATION

- 4.1 The ward councilors have been consulted, and have advised that they wish to make no comment.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Any enforcement action arising from this report will be covered from within the Design & Conservation team's revenue budget.

Finance Officer Consulted: Derek Mansfield

Date: 16/11/10

Legal Implications:

- 5.2 Failure to repaint a building in the prescribed repainting year is not in itself an offence. However where the redecoration works are not carried out, the Act makes provision for the service of a notice on the owner or occupier to remedy the contravention. Notices must allow a reasonable period of time in which to complete the required redecoration. It is only in the event of failure to comply with the notice that an offence has been committed and a liability to prosecution arises.

- 5.3 With regard to Human Rights Act implications, the proposed actions of the Council are within its legal powers, and pursue the legitimate aim of preserving a uniformity of appearance of important local buildings. Although there will be some disadvantages to individuals, there will also be benefits to the community as a whole. In exercising its powers under the Hove Borough Council Act 1976 the Council needs to consider whether the disadvantages will be outweighed by the benefits.

Lawyer Consulted:

Alison Gatherer

Date: 16/11/10

Equalities Implications:

- 5.4 There will be no significant impact on any of the equality strands. An Equalities Impact Assessment is not considered necessary because the report does not concern matters of new policy.

Sustainability Implications:

- 5.5 The proposals in this report have no substantial impact upon the four priorities of the UK's Sustainable Development Strategy. But in terms of Sustainable

Consumption and Production, the retention and timely redecoration of existing buildings reduces construction and demolition waste.

Crime & Disorder Implications:

- 5.6 The good maintenance of publicly visible buildings can help to discourage anti-social behaviour and graffiti.

Risk and Opportunity Management Implications:

- 5.7 The failure to enforce the Act could lead to significant adverse publicity for the council.

Corporate / Citywide Implications:

- 5.8 The recommendations accord with the Corporate Plan priority to protect the environment whilst growing the economy and also accord with the priority of fair enforcement of the law, by ensuring that any formal action is based upon open and transparent criteria and priorities.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 None considered.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendations accord with the requirements of the Hove Borough Council Act 1976, which the council has a responsibility to enforce.

SUPPORTING DOCUMENTATION

Appendices:

1. Hove Borough Council Act 1976 Extract.

Documents in Members' Rooms

None

Background Documents

1. Correspondence held on file by the Design & Conservation Team.

Hove Borough Council Act 1976

CHAPTER xv

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Preserving uniformity in exterior of buildings in Brunswick Square, etc.
4. Application of provisions of Act of 1936.
5. Repeal.

SCHEDULES—

- Schedule 1—Sections of Act of 1936 applied.
Schedule 2—Enactments repealed.

An Act to make further provision for preserving uniformity in the exterior of buildings in Brunswick Square, Brunswick Terrace and part of Brunswick Place in the borough of Hove; and for purposes incidental thereto. [22nd July 1976]

WHEREAS—

(1) By section CXII of the Act 11 George 4 & 1 William 4 cap. xvi intituled "An Act for paving, lighting, watching, cleansing, and otherwise improving Brunswick Square and Brunswick Terrace, and certain Streets and other public Places upon certain Grounds late Part of a Farm called the Wick Farm, in the Parish of Hove in the County of Sussex," provision is

made for preserving uniformity in the exterior of the houses in Brunswick Square, Brunswick Place and Brunswick Terrace in the borough of Hove within the limits described in the said Act:

(2) It is expedient to repeal the said section and to enact corresponding provisions in a modified form to meet the need of the present day:

(3) It is expedient that the other provisions contained in this Act be enacted:

(4) The purposes of this Act cannot be effected without the authority of Parliament:

1972 c. 70.

(5) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Hove Borough Council Act 1976.

Interpretation.

2.—(1) In this Act, unless the subject or context otherwise requires—

1936 c. 49.

- “the Act of 1936” means the Public Health Act 1936;
- “approved” means approved by the Council;
- “the borough” means the borough of Hove;
- “building” includes part of a building;
- “contravention” includes a failure to comply and “contravene” shall be construed accordingly;
- “the Council” means the Hove Borough Council;
- “front” in relation to a building includes any elevation of the building fronting on to a street;
- “owner” has the same meaning as in section 343 of the Act of 1936.

(2) Any reference in this Act to a section of the Act of 1936 shall be construed as a reference to that section as extended, amended, replaced or varied by, or by virtue of, any subsequent enactment.

Preserving
uniformity in
exterior of
buildings in
Brunswick
Square, etc.

3.—(1) For the purpose of preserving a uniformity of appearance in the fronts of buildings to which this section applies the

following provisions shall (except so far as the Council may otherwise permit) apply in respect thereof and shall be complied with at the expense of the owner or occupier of the building concerned—

- (a) the area in front of the building shall be kept enclosed with open iron railings of approved pattern, dimensions and materials;
- (b) a balcony shall be maintained in front of each window in the front of the first floor of the building of an approved pattern and dimensions and no other projection shall be erected in the front of the building;

Provided that balconies shall not be required to be so maintained in the front of those parts of Nos. 29 and 30 Brunswick Square which front Brunswick Place;

- (c) the front of the building shall be maintained unaltered;
- (d) so much of the exterior of the front of the building (including the iron railings and balcony) as the Council may require shall be painted once in 1980 and once in every fifth year thereafter (or such longer period as the Council may determine after consultation with a person appointed for the purpose by the President of the Royal Institute of British Architects) with two coats of approved paint and of approved colour as directed by the Council;

Provided that—

- (i) the Council may if they so determine require the use of some other suitable form of treatment instead of painting;
 - (ii) such paint or other treatment shall be applied with a smooth finish;
- (e) in the event of the building being damaged or destroyed it shall be repaired or rebuilt;

Provided that any repair or rebuilding to the front thereof shall be in accordance with the original plan and elevation.

(2) The Council shall pay the reasonable fee and expenses of a person appointed under paragraph (d) of subsection (1) of this section for the purpose of consultation in accordance with the requirements of that paragraph.

(3) (a) If the provisions of subsection (1) of this section are contravened in respect of any building the Council may by notice in writing to the owner or occupier of the building require him to remedy the contravention.

