



# Appeal Decision

Hearing held and Site visit made on  
21 October 2008

by **Lynne Evans BA MA MRTPI MRICS**

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

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**Decision date:**  
**11 November 2008**

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## Appeal Ref: APP/Q1445/A/08/2069697

### Albany Towers, St Catherine's Terrace, Kingsway, Hove, BN3 2RQ

- 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 Anstone Properties Ltd against the decision of Brighton & Hove City Council.
- The application Ref: BH2007/03305 dated 30 August 2007, was refused by notice dated 25 October 2007.
- The development proposed is roof extension to provide 2 No. penthouse flats (1 x 2 bed and 1 x 3 bed) with 2 no. reserved parking spaces (Nos. 41 and 42) and a new secure cycle store.

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## Decision

1. I dismiss the appeal.

## Preliminary Matters

2. In its hearing statement, the Council withdrew its ground for refusal No.6 and indicated that issues relating to sustainability, with particular regard to efficiency and the use of energy could be addressed by way of conditions. Given the scale of the development proposal and in the light of the Council's guidance in its adopted Supplementary Planning Guidance Notes 16 (Renewable Energy and Energy Efficiency in New Developments) and 21 (Sustainability Checklist), I agree that were there no other matters of concern, and planning permission were to be granted, the imposition of conditions would be an appropriate approach to address these matters.

## Main issues

3. I consider that the main issues raised in this appeal are:
  - a) the effect of the proposal on the appearance and character of the Cliftonville Conservation Area and the setting of adjoining listed buildings;
  - b) the effect of the proposal on the living conditions of adjoining neighbours with particular regard to overshadowing, overlooking and loss of privacy, noise and disturbance, and
  - c) the effect of the proposed car parking arrangements on the availability of on-street car parking.

## Reasons

*a) the effect on the proposal on the appearance and character of the Cliftonville Conservation Area and the setting of adjoining listed buildings.*

4. The appeal building is an eight storey block of residential flats on the corner of St. Catherine's Terrace, Kingsway with Albany Villas. Adjoining the appeal site fronting onto Kingsway is another residential block, The Priory, of similar height and architectural style, with a further tall residential building broadly opposite, Flag Court, rising to nine storeys. There is a marked change in scale between these taller buildings and the predominantly three and four storey residential dwellings in Albany Villas and Medina Villas and the surrounding area. The appeal site lies towards the southern end of the Cliftonville Conservation Area, the appearance and character of which is dominated by the residential villas dating from the mid nineteenth century. There are a number of Grade II listed buildings adjoining and within close proximity of the appeal site, including Nos. 1 – 5 Albany Villas; Nos. 2 – 5 St. Catherine's Terrace, Nos. 2- 8, 42 and 43 Medina Villas and properties in Courtenay Terrace on the southern side of Kingsway opposite the appeal site.
5. There was no consensus at the hearing between the main parties as to whether Albany Towers falls within or adjacent one of the corridors (Western Seafront/Kingsway) identified in the Council's adopted Supplementary Planning Guidance No.15: *Tall Buildings* (SPG) as being suitable for taller development. Given the limited information before me and as the SPG does not contain a plan of the areas regarded as suitable for taller development, it is difficult to be conclusive as to the intended extent of this particular corridor. However, I note that the guidance at 7.3.3 and at 8.14.1 is quite specific that conservations areas are not generally regarded as appropriate locations for tall buildings. Notwithstanding the above, I am in agreement with both the main parties that the building, as existing, falls to be defined as a tall building under the SPG and that the guidance in the SPG is therefore a material consideration in my assessment of this appeal.
6. The existing lift motor room is visible from a number of viewpoints and in particular when approaching from the north, along Albany Villas. However given its small size and design which relates to the rest of the building, I do not share the Appellant's view that it strikes a discordant feature in the street scene. By comparison, the proposed roof extension would extend almost fully across the building. The size of the proposal, taken together with the proposed design approach and use of different materials to the rest of the building would draw the eye upwards. Whilst I accept that the actual physical addition to the height of the building would be relatively small, the combined effect of the extent of the extension as well as the design approach would, in my view, accentuate the roof addition and exacerbate the scale and height of the building. There is already a marked contrast between the scale of the existing building and the adjoining buildings of more domestic scale but the size of the extension taken together with the design and materials would make this difference more acute. This would result in the building becoming a more dominant, and in my view, a discordant feature in the street scene. It would, as a result, detract from the appearance and character of the Conservation

Area, including views southwards along Albany Villas and harm the setting of the adjoining listed buildings. Furthermore, and contrary to the Appellant's assessment, I consider that Albany Towers, as existing, appears to be of similar height to the adjoining development, The Priory, particularly in views from the southern side of Kingsway. The additional storey to the appeal building would result in this building becoming more prominent. This would unbalance the existing relationship and would, in my view, be to the detriment of the street scene.

7. I therefore conclude that the proposal would not preserve the appearance or character of the Conservation Area and would harm the setting of the adjoining listed buildings. This would conflict with Policies QD1, QD2, QD4, QD14, HE3 and HE6 of the adopted Brighton & Hove Local Plan 2005 as well as the guidance in the adopted SPG Note 15. These policies and the SPG guidance seek a high quality of design, which respects the setting of listed buildings, preserves or enhances the appearance or character of conservation areas and protects important views.

*b) the effect on the living conditions of adjoining neighbours*

8. There is already a complex pattern of overshadowing of surrounding properties as a result of the existing building on the site, as well as from adjoining buildings. The overshadowing effect from the existing building on the appeal site is partly due to its scale and partly because of its siting to the south and east of adjoining properties. The Appellant submitted a Rights to Light and Overshadowing study as part of its appeal statement and although the diagrams extend over a wider area, it was specifically undertaken to assess the impact of the development only on No 2 Albany Villas. Several local residents, including those further to the north in Albany Villas and Medina Villas, as well as those with east facing flats in The Priory were concerned about increased overshadowing from the proposed extension but the only additional information before me was in the form of an informal, non technical assessment undertaken by a resident of Albany Towers, based on photographs of the existing shadow patterns and projecting these to take account of the proposed additional floor.
9. No. 2 Albany Villas is already heavily overshadowed at times by the existing built development, but the Appellant's report demonstrated that the proposed roof extension would result in a worsening of the position, particularly for the rear amenity space at certain times of the year. I consider that the extent of the additional overshadowing from the proposed extension would be clearly noticeable. This would exacerbate the existing position, and the living conditions of the neighbours at No. 2 Albany Villas would as a result, in my view, be harmed.
10. With regard to overlooking and loss of privacy, I consider that most of the additional windows facing northwards would be at a sufficient distance from the residential properties to the north so as not to cause a material increase in overlooking and loss of privacy for adjoining neighbours. The two windows in the northern elevation closest to No 2 Albany Villas (serving an en-suite bathroom and secondary bedroom window in the two bedroom flat) could be

required by condition to be in obscure glazing to protect the living conditions of those neighbours to the north of the appeal site.

11. There would be a much closer relationship between the neighbours in The Priory with flats facing towards the east and the new roof extension, but again I consider that the use of obscure glazing to the windows along the west elevation to the kitchen/diner and garden conservatory would protect the adjoining neighbours from overlooking and loss of privacy without compromising the living conditions of future residents of the proposed three bedroom flat.
  12. I have considered the relationship between the windows in the flats in Albany Towers facing north, particularly on the upper floors, with the proposed windows in the flat at the eastern end of the extension facing west, and in particular the proposed bedroom window for the two bedroom flat. However given the angle of vision, I do not consider that there would be a material effect on the living conditions of residents of the existing flats, as a result of overlooking and loss of privacy.
  13. I agree with the Appellant that concerns relating to noise and disturbance, resulting from the proposed layout, to those neighbours directly below the proposed flats would be satisfactorily addressed under other legislation. I have sympathy with the concerns of the residents in Albany Towers about noise and disturbance during the construction period, including as a result of works to the lift, but the impact would be for a limited period and could be minimised through good working practices, including in respect of the hours of working.
  14. However, my conclusions that the development would neither lead to a material increase in overlooking and loss of privacy for adjoining residents, nor unacceptable levels of noise and disturbance, do not override the harm I have found to the living conditions of the adjoining neighbours at No 2 Albany Villas as a result of increased overshadowing. Furthermore I am not satisfied that the impact of the development, in terms of overshadowing, has been rigorously tested in respect of other properties which would potentially be affected by the development. This would conflict with Policies QD14 and QD27 of the adopted Local Plan as well as guidance in the Council's adopted SPG on Tall Buildings, all of which indicate that new developments should protect the amenities of neighbours.
- c) *the effect of the proposed car parking arrangements on the availability of on-street car parking.*
15. The overall number of car parking spaces on the site to serve the residential flats would not be changed, but two of the existing visitor spaces have been remarked for use by the two additional flats. In addition the scheme would provide secure covered cycle parking for ten bicycles. Although no evidence, such as parking surveys, has been provided, I recognise from representations from residents of Albany Towers as well as from residents in the surrounding area, and also from my site visit that on-street parking in the surrounding area is heavily used and that some residents may be inconvenienced by the reduction in visitor spaces.
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16. However, the site is well located in terms of access to alternative means of transport as well as local services and facilities, and in this respect the cycle store would be a welcome addition. No evidence has been produced to suggest that there would be an increased danger to highway safety as a result of the development. I am not therefore persuaded that, were there no other matters of concern and planning permission were to be granted, that the amendment to the car parking arrangements within the site would materially affect the availability of on-street parking sufficient to justify withholding planning permission. The proposal would not therefore conflict with Policy TR1 of the adopted Local Plan.
17. The Appellants have promoted the offer of setting up a car share scheme through a local car club, but in view of my findings above I do not consider that this would be necessary in planning terms under the tests set out under Circular 05/2005 on Planning Obligations. I have therefore accorded this offer little weight in my decision.
18. My conclusion in respect of car parking issues does not outweigh the harm I have concluded in respect of the other two main issues. This harm is, in my view, compelling and justifies refusing planning permission. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should fail.

*L J Evans*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Miss C Bartlett – D H Stallard  
P. Rainier – DH Stallard

### FOR THE LOCAL PLANNING AUTHORITY:

G. Everest – Brighton & Hove City Council

### INTERESTED PERSONS:

G. Jenkins – 38 Albany Towers, Hove  
L. Graham – 44 The Priory, Hove  
D.Miranda – 6 Albany Villas, Hove  
H. Rahimi – 8 Albany Towers, Hove  
Ms L. Cobb – on behalf of 8 Albany Towers  
C. Milward – 2 Albany Villas, Hove  
Ms F. Ponikwer – 12 The Priory, Hove  
Mrs L Korn- Bernstock -7 Albany Towers, Hove  
A. Ebison – 32 Albany Towers, Hove  
Mrs T. Cardiff – 39 Albany Towers  
R. Blaney – 36 Albany Towers  
Ms Z Hodges – 23 Albany Towers  
Mrs P Ainsworth – 23 Albany Towers, Hove  
Mrs L. Municchi – 25 Albany Towers, Hove  
Ms J Baxter – 17 The Priory, Hove  
Mr and Mrs J Coley – 38 Albany Towers, Hove  
C Strube – 4 Albany Villas, Hove  
Ms S. Pafford -28 Albany Towers, Hove  
G. Gordon – 9 Albany Towers, Hove  
Col. H Jeffes -35 Albany Towers, Hove  
Mrs R Baxendale – 62 Woodruff Avenue, Hove  
H Robertson – 8 Albert Road, Hove  
C Highfield – 1 Green Meadows, Danbury Essex  
L Stoner -42 St Stephens Close, Avenue Road, London NW8

## DOCUMENTS

1 Notification of appeal dated 10 September 2008

## PHOTOGRAPHS

1 5 Photographs of the appeal site showing car parking spaces, aerial view and early morning shadow across east elevation of The Priory (08.09.07)