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## Appeal Decision

Hearing held on 13 December 2016

Site visit made on 13 and 14 December 2016

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 11 January 2017**

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**Appeal Ref: APP/Q1445/W/16/3152980**

**The Astoria, 10-14 Gloucester Place, Brighton BN1 4AA**

- 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 OCM KSH Resi Brighton SARL against the decision of Brighton & Hove City Council.
  - The application Ref BH2015/01471, dated 24 April 2015, was refused by notice dated 28 January 2016.
  - The development proposed is demolition of existing Grade II listed building (approved under BH2013/03927) and construction of a new part 3/part 7 storey building (plus basement) to form 70 one, two three and four bedroom self-contained residential units (C3) and incorporating commercial units (A1/A2/B1) on the ground floor fronting Gloucester Place, a community room (D1) on the ground floor fronting Blenheim Place together with refuse/recycling facilities, cycle storage and other associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing Grade II listed building (approved under BH2013/03927) and construction of a new part 3/part 7 storey building (plus basement) to form 70 one, two three and four bedroom self-contained residential units (C3) and incorporating commercial units (A1/A2/B1) on the ground floor fronting Gloucester Place, a community room (D1) on the ground floor fronting Blenheim Place together with refuse/recycling facilities, cycle storage and other associated works at The Astoria, 10-14 Gloucester Place, Brighton BN1 4AA in accordance with the terms of the application, Ref BH2015/01471, dated 24 April 2015, subject to the conditions set out in Schedule 1 of this Decision.

### Preliminary Matters

2. The Council refused the application due to the alleged standard of residential accommodation proposed. Since then, discussions have taken place and the scheme has been amended such that the Council's concerns are now met. Additionally, agreement between the Council and the appellant has been reached in relation to contributions that the scheme can support. These and other considerations are set out in Statements of Common Ground in which the Council confirms that it no longer opposes the scheme, subject to the conditions and obligations referred to.

3. The Council has previously granted planning permission and listed building consent for redevelopment of the site. The listed building consent remains extant and is not the subject of consideration within this appeal.

### **Main Issue**

4. Based on the evidence before me, the main issue in this appeal is the effects of the proposal on the living conditions of neighbouring residents, as raised by residents in writing and at the hearing

### **Reasons**

#### ***Background***

5. The existing building is vacant and in a run-down state. It has evidently been vacant for some time and is a matter of concern locally. It is described as a blight on the Valley Gardens Conservation Area. The principal of its loss has been accepted by the Council.
6. The extant planning permission and listed building consent represent a fall-back which the appellant could implement if this appeal were to fail. This is a material consideration in the determination of the appeal.

#### ***Noise and Disturbance***

7. The proposal includes the main entrance to the residential units at the corner of the proposed building, next to the junction of Gloucester Place with Blenheim Place. Within the proposed Blenheim Place frontage, the proposal would contain a Community Room and residential bin stores for the proposed development. Local residents, particularly some within properties on Blenheim Place, are concerned that the location of the entrance and the use of the Community Room and the bin stores would give rise to unacceptable levels of noise and disturbance, close to their homes.
8. The appeal site is within a busy urban environment wherein additional new homes are encouraged. I accept that the proposed building will generate greater foot-fall locally and some along Blenheim Place. Account must be taken also of the former use of the building as a cinema and a bingo hall, as well as the extant permission. The precise location of the entrance to the building was contested by residents and it was suggested that moving it further along the Gloucester Place frontage would have the effect of reducing the likely pedestrian movements along Blenheim Place. Whilst it is not for me to consider revisions of this nature and my decision must be based on what is proposed, I do not consider that moving the entrance would have any effects on the use of Blenheim Place by pedestrians. In any event, I do not consider that residents of the proposal would be likely to generate noise and disturbance that would have an unacceptable effect on neighbours. On the basis of what I saw, I do not find that the greater number of people passing through the area to get to the appeal site would inevitably give rise to any unreasonable noise or disturbance.
9. Blenheim Place is a narrow road which contains residential properties to the side and directly opposite the appeal site. Some of these neighbouring properties would be a short distance from the appeal site. The proposed Community Room would be located within this section of the proposal and neighbours fear that its use would generate unacceptable levels of disturbance.

I note that the completed S106 Agreement obliges the developer to submit, gain the agreement of the Council and adhere to a Community Room Management Plan which would cover details relating to lettings, hours of use and targeted marketing. In addition, an agreed suggested condition would limit its use to hours between 10:00hrs to 18:00hrs on Mondays to Saturdays. I am satisfied that, with such an agreement and condition in place, the living conditions of neighbours would not be unreasonably affected. In this respect also I note that the extant planning permission contains a similar facility and I consider the proposal to be no worse, and in any event, acceptable.

10. The proposed residential bin store is also to be located in this section of the building. It would be similar to the extant permission in this respect also. I have carefully considered the effects of this and the movement of bins along Blenheim Place. I consider that the movement of bins along the short stretch of Blenheim Place once a week would not give rise to significant noise or disturbance, and would be insufficient to warrant the refusal of planning permission. Based on its normal use for domestic waste storage and collection, I do not consider that it would give rise to disturbance to neighbours. Importantly, it is very similar to the approved scheme in this respect and I conclude that the appeal scheme would be no more likely to lead to disturbance.

### ***Privacy, Outlook and Loss of Light***

11. Residents on the opposite side of Blenheim Place expressed concerns at the effects of the proposal on light, privacy and outlook. I was able to take the time at the site visit to enter those properties and to view the appeal site and the surroundings from within these and other properties.
12. In terms of light and outlook it is clear to me that there would be a benefit to those residents because the rear section of the proposed building would be significantly lower than the existing substantial structure. Both outlook and daylight would be enhanced as a result of the scheme, with respect to these residents.
13. With regard to privacy, there was much discussion at the Hearing regarding the use of obscure glass in certain windows within the proposal. I am satisfied that with such measures in place, there would be little likelihood of overlooking from the proposal into neighbouring properties. This is true of those flats on the opposite side of Blenheim Place and also of the houses and their rear terraces on Blenheim Place as it was suggested that the windows in the western elevation could be of obscure glass. I was also able to judge the likely effects on properties and residents at Cheltenham Place and my view is that there would be no unacceptable effects in relation to this issue.

### ***Other Matters***

14. In relation to security, discussion at the Hearing concluded with the suggestion that the side access way between the appeal site and properties on Blenheim Place could be fitted with a suitable security gate. The gate could be designed so that it could be used and operated in an emergency and I am satisfied that it would offer an acceptable level of security here. It appeared that residents were satisfied with the suggested measures.

15. The proposal contains provisions for wheelchair accessible units which would be secured by condition. Again, this appeared to satisfy the concerns of residents in this respect.
16. A number of local residents were critical of the level and manner of public consultation undertaken by the Council. Whilst it is not for me to comment on the Council's actions specifically, I am satisfied that the revisions which were undertaken within the life of the appeal were the subject of proper consultation and that, ultimately, sufficient opportunity was given for interested parties to comment on those revisions.

### **Planning Agreement**

17. The Council and the appellants have submitted a completed agreement in relation to the proposed development. The appellants have willingly entered into the Agreement and have offered no specific evidence to counter or cast doubt on the Council's requests and their supporting documents and evidence.
18. In relation to Affordable Housing, I am satisfied that the agreed evidence before me indicates that the scheme can support the sum specified and that this is justified in order to meet the Council's requirements. Therefore, I shall take this into account for this appeal.
19. The proposal would be likely to give rise to additional demand for school places which cannot be accommodated locally, according to the evidence and in accordance with the Council's CIL Regulations compliance statement. The Council's evidence is not specific about which individual school(s) would be targeted by the contribution but they include a small number of possible candidates. The Council points out that decisions on additional provisions would be taken by the Council's education department at a time when the funds become available and so cannot be precise at this point in time. Although the S106 Agreement defines "education contribution" widely (and so attracts criticism from the appellant) Schedule 7 of the Agreement obliges the Council to use the education contribution in relation to a small number of specifically named schools which are closest to the appeal site. In these circumstances I consider that the agreed financial contribution is necessary to mitigate the effects of the scheme and complies with the CIL Regulations and I shall take account of it in determining this appeal.
20. In order to comply with the Council's Developer Contributions Technical Guidance (June 2016) (DCTG) and so that local employment opportunities in the construction industry are promoted, the contribution and strategy are justified and I shall take account of it in this appeal.
21. Local recreation facilities will be in greater demand as a result of the additional residents generated by the proposal. The justification for the recreational facilities contribution is given in the DCTG and the Agreement, at Schedule 7, specifies that the sum would be allocated to facilities within the locality. In order to ensure that these facilities can cater for the additional pressure of use placed on them by the proposed development, the contribution is justified and I have taken account of it for this appeal.
22. In order to encourage better use of alternative modes of transport to the private car, and so that such alternatives are available and used by future residents of the scheme, the Sustainable Transport Contribution is also

justified. The DCTG sets out the justification and scale of the contribution which I consider to be appropriate and necessary, on the basis of the evidence before me and from my examination of the scheme. Therefore, I take this contribution into account in determining this appeal.

23. The proposed off-site highways works set out in the Agreement are necessary as a direct result of the proposal and should be completed prior to occupation of the development. In addition, I note that they were previously approved as part of the extant scheme. I have taken account of this in relation to this appeal. The Agreement also includes the provision for the planting of trees in the vicinity of the site which are to be lost as a result of the highways works. This is also necessary and justified and I have taken account of it.
24. Due to the characteristics of the scheme, the appeal site and its surroundings a Construction Environmental Management Plan is necessary in order to minimise disruption in the area during the construction process. As set out above, a Community Room Management Plan is necessary in order to ensure that this facility does not give rise to disturbance to existing and future residents. In view of the loss of the listed building, I agree that it is necessary to include suitable provision for recording the existing building and, if practicable, the retention and incorporation of original features within the proposed development. These matters are all necessary and justified and I have taken them into account for this appeal.
25. The Council has produced a CIL compliance statement which states amongst other things, that the pooling restrictions within Regulation 123 have not been breached for any of those relevant matters within the Agreement. When specifically challenged by the appellant, the Council confirmed that the statement had been prepared by the Council's Principal Planning Officer responsible for compiling and monitoring information in this respect. On the basis of the evidence submitted, I am satisfied that the Council's evidence can be relied upon.
26. Therefore, overall in relation to the Agreement, I conclude that its provisions are necessary in order to make the scheme acceptable, directly relate to the development and are fairly and reasonably related in scale and kind to the development. As a result, it complies with Regulations 122 and 123 of the CIL Regulations and I shall have regard to all of its provisions in determining this appeal.

### **Conditions**

27. I have taken account of the advice in the PPG in considering the need for conditions in relation to this appeal. I have included the standard commencement condition and also a condition requiring compliance with the approved plans so that there is certainty in relation to the approved form of the proposal. As the appeal site is within a prominent position within the Conservation Area and considerable thought is given to its design, I have included a condition which requires the Council's approval for external cables, wires, aerials, pipework (except rainwater pipes as maybe shown on the approved drawings) meter boxes or flues, which would be on elevations facing the highways. So that the scheme has an acceptable appearance and effect on the locality I have also included conditions relating to external materials, the submission and approval of additional sample elevations including architectural

- details, landscaping, enhancement of the nature conservation interest of the site, approval of photovoltaic panels.
28. So that adequate provision for refuse, recycling and cycle storage for the residents and businesses of the proposal is provided in a timely manner, I have attached suitable conditions. In order to protect the living conditions of neighbours, conditions relating to not using the flat roofs as amenity areas/gardens, obscure glazing of facing windows, the hours of loading and unloading for the businesses, noise levels from any plant or machinery, exact details of the privacy screens and the hours of use of the community room are necessary and justified. I have widened the use of obscure glazing in rooms in the southern elevation as a result of what I saw at the site visit and the potential to look down through the roof-lights of the bedroom on the opposite side of Blenheim Place. I have also included a condition which would have the effect of preventing the commercial units from being the subject of changes of use outside the permitted A1, A2 and B1(a) uses referred to in the permission, as other uses may give rise to unacceptable effects on residents.
29. Concern had been expressed at the likely effects of using the inner courtyard as communal gardens on the living conditions of future residents; I accept those concerns and include a condition to prevent its use other than for access. Due to noise from the main road frontage, a condition to require the implementation of an agreed scheme to protect residents of the proposal from that noise is required. In order to enhance security conditions relating to a security gate and associated lighting on the west and south elevations are necessary. I have also included a condition which would require the Council's agreement of any other external lighting for the scheme.
30. I agree that a condition to agree provisions to deal with any unexpected contamination is justified. So that the scheme provides a suitable level of accessible accommodation a condition requiring 4 units to be wheelchair accessible is justified. In order to promote sustainable transport choices and to prevent parking congestion conditions requiring a travel plan and a scheme to exclude residents from residents' permit schemes have been included. In order that suitable surface and foul drainage is provided it is necessary to require the implementation of agreed schemes in these respects. So that the Council's sustainability aims are met I have included conditions relating to BREEAM certification, energy efficiency and water consumption.

## **Conclusions**

31. Subject to the conditions and obligations referred to, I am satisfied that the proposal would have no unacceptable effects on neighbouring residents nor on the locality generally. I have agreed that the existing building represents a considerable detraction within the conservation area and its loss has already been accepted by the Council. In my consideration the scheme before me would bring about a considerable enhancement of the area, bringing substantial public benefits; these are sufficient to outweigh the loss of the existing listed building. In these circumstances, the appeal is successful.

*S T Wood*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

H Townsend  
C Sutton  
S Bareham  
C Davis

### FOR THE LOCAL PLANNING AUTHORITY:

G Giles  
S Stammers

### INTERESTED PERSONS:

M Horn  
F Chipchase  
E Volant  
S Johnston  
I Prest  
A Colvin  
H Nichols  
C and C Hocken  
F McNeilage  
D Stefill

### DOCUMENTS SUBMITTED AT THE HEARING

1. Certified copy of S106 Agreement
2. CIL Compliance Statement
3. Copy of statement made by M Horn

### **Schedule 1 Conditions**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: A(PL)300A; A(PL)301A; A(PL)302A; A(PL)303B; A(PL)304B; A(PL)05B; A(PL)306A; A(PL)307A; A(PL)308A; A(PL)309A; A(PL)019; A(PL)311A; A(PL)312D; A(PL)313C; A(PL)314A; A(PL)315A; A(PL)316B; A(PL)036A.
3. Unless otherwise agreed in writing by the Local Planning Authority, no cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
4. The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
5. The flat roofs shall not be used as a roof garden, terrace, patio or similar amenity area.
6. The south facing windows to the living room to Unit 21, Bedroom 1 to Units 38, 47, 56, 64 and 70, the west facing first and second floor windows to Units 23, and the second floor west facing windows of Units 24, 25, 26, 27, 28 and 29 shall be obscure glazed up to 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such. The west facing windows serving the corridors to the rear of units 10 to 12 and 24 to 29 shall be obscure glazed in their entirety and thereafter permanently retained as such.
7. The inner courtyard shall be used only for the purposes of gaining access to the communal TV room and Gymnasium, Units 01-06 (inclusive), and for maintenance or emergency purposes. The inner courtyard shall not be used as a communal garden, patio or similar amenity area.
8. No loading or unloading of vehicles shall take place to the commercial premises except between the hours of 07.00 and 19.00 Mondays to Saturdays and 08.00 and 18.00 on Sundays.
9. Any noise from all plant or machinery shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB(A) below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:1997.
10. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer

has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

11. A minimum of four wheelchair accessible dwellings shall be provided to be completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) prior to first occupation and shall be retained as such thereafter. All other dwelling(s) hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
12. The development hereby permitted shall not be first occupied until the secure cycle parking facilities have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use at all times.
13. The development hereby permitted shall not be occupied until such time as a scheme has been submitted to and approved in writing by the Local Planning Authority to provide that the residents of the development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit.
14. No development other than demolition shall commence until a scheme to protect the residential dwellings from noise disturbance has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of glazing and ventilation systems in accordance with the recommendations set out in the 7<sup>th</sup> Wave Acoustics Planning Noise Assessment dated 13 April 2015, and be implemented in full prior to the first occupation of the residential properties and retained as such thereafter.
15. No external lighting shall be installed without the prior approval of details that shall be submitted to the Local Planning Authority. The external lighting shall be installed in accordance with the approved details and be retained as such thereafter.
16. No development other than demolition shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for the landscaping of the courtyard which shall include details of materials, hard surfacing, means of enclosure, and all planting.
17. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and 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, unless the Local Planning Authority gives written consent to

any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.

18. No development other than demolition shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
19. No development other than demolition shall take place until sample elevations at 1:20 scale showing all the architectural elements of each elevation of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details.
20. No development other than demolition shall commence until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include the provision of sparrow, swift and bat boxes and be implemented in full prior to the occupation of the development hereby approved.
21. No development approved by this permission other than demolition shall be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority. The drainage and sewerage works shall be completed in accordance with the details and timetable agreed.
22. Prior to first occupation of the development a Travel Plan (a document setting out a package of measures tailored to the needs of the site and aimed at promoting sustainable travel choices and reduce reliance on the car) for the development shall be submitted to and approved by the Local Planning Authority. The Travel Plan shall be approved in writing prior to first occupation of the development and shall be implemented as approved thereafter. The Travel Plan must be reviewed on an annual basis by undertaking a travel survey and updating the travel plan where appropriate.
23. No photovoltaic panels shall be installed until full details have been submitted to and approved in writing by the Local Planning Authority. The installation shall be carried out in accordance with the approved details and thereafter retained as such.
24. Unless otherwise agreed in writing by the Local Planning Authority, the non-residential development hereby approved shall not be occupied until a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Very Good' has been submitted to, and approved in writing by, the Local Planning Authority.
25. None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of

19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).

26. None of the residential units hereby approved shall be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
27. Notwithstanding the details shown on the approved drawings, none of the residential units hereby approved shall be first occupied until details of the privacy screens on the southern elevation have been submitted to and approved in writing by the local planning authority and implemented. The scheme shall be implemented in accordance with the approved details and thereafter retained in that form.
28. No part of the development shall be first occupied until details of a security gate and any associated fencing/railings which shall be constructed between the proposed building and No 4 Blenheim Place, have been submitted to and approved in writing by the local planning authority and implemented. The details shall include the mechanism for operating/locking/releasing the gate in normal use and in the case of an emergency. The scheme shall be implemented in full accordance with the agreed details and thereafter retained in that form.
29. No part of the proposal shall be first occupied until details of external lighting for the southern and western elevations have been submitted to and approved in writing by the local planning authority and implemented. The scheme shall be implemented in accordance with the agreed details and thereafter retained in that form.
30. The Community Room hereby approved shall not be used except between the hours of 10:00hrs to 18:00hrs Mondays to Saturdays
31. The ground floor commercial units fronting Gloucester Place shall be used for purposes within Classes A1, A2 and B1(a) only.

