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## Appeal Decision

Site visit made on 24 March 2025

by **JJ Packman MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 April 2025

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**Appeal Ref: APP/Q1445/W/24/3354553**

**Flat 2, 83-85 St Aubyns, Hove BN3 2TL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs S. Nash against the decision of Brighton and Hove City Council.
  - The application Ref is BH2024/00455.
  - The development is proposed erection of a part single-storey, part two-storey rear extension, plus insertion of 3no. timber sash windows within southern elevation. Provision of soft landscaping and new wall and fencing treatment to eastern boundary.
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### Decision

1. The appeal is allowed and planning permission is granted for the proposed erection of a part single-storey, part two-storey rear extension, plus insertion of 3no. timber sash windows within southern elevation. Provision of soft landscaping and new wall and fencing treatment to eastern boundary at Flat 2, 83-85 St Aubyns, Hove BN3 2TL in accordance with the terms of the application, Ref BH2024/0045, and the revised plans submitted with this appeal, subject to the conditions in the schedule below.

### Procedural matters

2. Amended plans have been submitted in support of the appeal. These show a modest reduction in the height of the lower ground floor extension, the removal of the obscure glazed window serving the proposed WC, and its replacement with an obscure glazed rooflight.
3. I am mindful that the planning appeal process should not be used to evolve a scheme, so I have considered the submission against the principles set out by the courts in *Holborn Studios Ltd*<sup>1</sup>. Given the limited scope of the proposed changes, I do not consider them substantive. The scheme presented is still essentially the same as that considered by the LPA and interested parties at the application stage.
4. Equally, I am satisfied that due to the nature of the proposed changes, accepting them for consideration would not give rise to procedural unfairness. Accordingly, I have taken the revised plans into account.

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<sup>1</sup> *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

## **Main Issues**

5. The main issues in this case are:

- a) whether the proposal would fail to preserve the character or appearance of the Old Hove and Cliftonville Conservation Areas and so harm their historic significance, and
- b) The effect upon the living conditions of basement flat at no.83-85 St Aubyns

## **Reasons**

### ***Issue (a) Character and Appearance and effect on Conservation Areas***

6. The appeal relates to 83-85 St Aubyns, a substantial town house located within the Old Hove Conservation Area and immediately adjacent to the Cliftonville Conservation Area. The property appears to have accommodation arranged over five floors (including accommodation at basement level and within the roof). This appeal relates to Flat 2, situated on the ground floor.
7. St Aubyns is a tree lined residential road characterised by large, terraced townhouses set back from the street. The houses, including the appeal property, incorporating a number of attractive period features such as prominent bay windows, decorative ironwork and fine panelled doors.
8. These features, combined with the spacious and leafy character of St Aubyns, contribute positively to the character of the Old Hove Conservation Area when viewed from St Aubyns, and also the Cliftonville Conservation Area when viewed from Seafeld Road to the rear.
9. Detracting features include the large modern mansard dormers that sit atop many of the properties and the assortment of flat roof garages and hardstanding to the rear of the properties. The rear of the appeal property also includes some unsympathetic additions, including a uPVC clad lean-to extension and modern replacement windows. Nevertheless, in spite of these alterations over time, the architectural quality and historic character of the area remains well preserved.
10. During my site visit I noticed that, in general, none of the properties facing St Aubyns have been significantly extended to the rear. Notwithstanding this, in many cases, a large proportion of rear gardens have been lost to parking and garaging. In general, the presence of this hardstanding and garaging detracts from the quality of Seafeld Road's residential frontage. The garages and / or boundary treatment also frequently obscure views of the gardens that have been retained. Whilst I accept that there is some inherent value in the retention of these garden spaces, whether visible or not, their contribution to the character of the Conservation Area is limited.
11. The appeal scheme proposes the erection of a split-level rear extension that will provide an additional bedroom at upper ground floor level and a kitchen diner at lower ground floor level, leading out on to the new rear garden to replace the current hardstanding. The architectural style of the proposed extension is contemporary and is clearly not intended to mimic that of the host building. The proposed palette of materials will also include contemporary elements such as

ceramic tiling, aluminium frame openings and sedum roofs. The proposed extension will be large in the context of the relatively small garden; appearing to occupy slightly under half of the total external amenity space available to the property. This, however, is less than some of the hardstanding and garage arrangements that I witnessed during my site visit.

12. I find no harm in the design of the proposal, its size or the proposed use of materials. The design, whilst contemporary, is subservient to the bold architectural proportions and historical features of the host building. The majority of the proposed extension will be below the level of the first floor windows, and the use of glazing and sedum roof will give the structure a recessive appearance, clearly not intended to compete with, or detract from, the primacy of the original town house. Whilst large, the extension will be set back from the Seafield Road frontage; the proposed garden and boundary treatment providing a buffer between the development and the public realm.
13. It should also be noted that the proposal will include the removal of the existing lean-to extension and modern ground floor windows. These windows will be replaced with appropriate timber framed sashes. These are visible from the street and their replacement will provide an enhancement.
14. Whilst the garden area immediately to the rear of the host building will be lost, it will be re-provided in a location where it can make a better contribution to the public realm and both Conservation Areas. The removal of the existing area of hard standing and boundary treatment will also undoubtedly enhance the boundary between the Old Hove and Cliftonville Conservation Areas.
15. For the above reasons, the proposal represents good design that will assist in preserving and enhancing the character and appearance of both the Old Hove and Cliftonville Conservation Areas. It is not considered that the proposal will result in harm to the historical significance of either Conservation Area.
16. The extension therefore accords with policies CP12 and CP15 of the Brighton & Hove City Plan Part One, and DM18, DM21 and DM26 the Brighton & Hove City Plan Part Two.

### ***Issue (b) Living Conditions***

17. The basement flat at 83-85 St Aubyns has a lightwell to the front and a small yard to rear of the property to provide natural light. The rear yard occupies the space between the main building and the rear projection, resulting in the basement flat having side windows in addition to a single rear window; these provide light from different aspects. For a basement flat of its type and age, it is reasonably well served by natural light.
18. Being a basement flat, the property has a close relationship with the flat above and expectations of privacy should reflect this. Under the current arrangement it is likely that the occupiers of the basement flat will be aware of activity in the flat and rear garden above, especially in the summer months when the garden is being used and windows are open.
19. Currently, the basement flat's single rear window which fronts the yard, and the rear garden above, faces a small storage shed which abuts the boundary. The plans on which the LPA based their decision show the proposed rear extension

being only a little higher than the current height of the shed. Given this, I do not consider that the sense of enclosure created by the proposed development would be noticeably greater than at present. For the same reason, I am satisfied that any overshadowing / loss of light would also be marginal. The two Daylight Reports submitted by the appellant appear to support this view. Whilst the issue of overshadowing did not specifically form a reason for refusal, it was mentioned in representations by interested parties.

20. The plans determined by the LPA included a single obscure glazed window serving a WC on the western elevation facing the yard of Flat No.1. When closed, the obscure glazed window would not permit overlooking. Whilst it is accepted that overlooking could occur with the window open, its use as a WC would likely limit instances of this occurring.
21. Nevertheless, the presence of a window in this elevation would likely give the occupants of Flat No.1 a sense of being 'surveyed', whether open or shut. The perception of being overlooked would undoubtedly have an adverse impact on the living conditions of the Flat below; for this reason, I accept the alternative set of plans presented by the appellant that propose the deletion of this window and its replacement with an obscure glazed rooflight. This would remove the potential for overlooking (perceived and actual) entirely from this elevation. Whilst I do not consider the reduction in proposed height necessary, this too would also slightly benefit the living conditions of neighbouring properties.
22. For the above reasons, I consider that the proposed development set out in the revised set of submitted plans, would not have a significant detrimental impact upon the living conditions of the occupants of neighbouring properties. The proposal therefore accords with policy DM20 of the Brighton and Hove City Plan Part Two.

### **Other Matters**

23. Concerns have been raised by an interested party about the potential for light pollution arising from the proposed development. No evidence has been presented detailing these concerns. Consequently, there is no reason to suspect that any light emitted from the proposed extension would have any greater impact than that already emitted from the existing windows of the property.
24. It has also been suggested that the granting of planning permission for the proposed development would be a precedent for other development nearby. However, there is no evidence before me that similar proposals are particularly likely to come forward, or that harm would necessarily result from these other proposals. In any event, each case must be considered on its own merits.
25. The appellant has submitted a 'Biodiversity Net Gain Assessment' and associated Small Sites Metric with the planning appeal. As the original planning application was validated prior to the relevant mandatory BNG requirements coming into effect and, given the proposal is for a householder type development, I do not consider it necessary or appropriate to apply the standard BNG condition in this case. The LPA have highlighted the difficulties in legally securing BNG gains within private gardens, and have instead suggested a condition to secure proposed biodiversity enhancement features. This is considered a reasonable approach in this instance.

### **Conditions**

26. I have accepted the majority of the planning conditions proposed by the LPA, with some wording changes. The exceptions to this are the condition relating to the window that has now been omitted from the scheme and the condition requiring drainage details.
27. The original planning application form indicated the intention to discharge surface and foul water to the existing combined system. This proposal was not objected to by the LLFA in their consultation response. The LLFA also confirmed that the risk of flooding on site was 'very low'. Given this, and taking into account the scale and nature of the proposals, I consider the submission of further drainage details to be unnecessary.

### **Conclusion**

28. For the reasons given above, and taking into account all other matters raised, I conclude that this appeal should be allowed subject to conditions.

*JJ Packman*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall commence within three years of the date of this decision.
2. The development hereby permitted shall be undertaken in accordance with the following approved drawings: 1:1250 scale existing and proposed block plans, 1:500 scale site location plan (ref G001 C); 1:100 scale existing and proposed upper ground floor plans (ref: A100 C); 1:100 scale existing and proposed lower ground floor plans (ref: A101 C); 1:100 scale proposed elevations (ref: A202 C); 1:100 scale proposed sections (ref: A301 C).
3. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees at the rear of the site, in accordance with BS 5837:2012, including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details.
4. No development above ground floor slab level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details / samples.
5. No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the construction of the green roofs have been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, the seed mix, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and shall be retained as such thereafter.
6. Prior to the occupation of the development hereby permitted, and notwithstanding the approved drawings, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
  - a) details of all hard and soft surfacing to include type, position, design, dimensions and materials and any sustainable drainage system used;
  - b) a schedule detailing sizes and numbers/densities of all proposed trees/plants including details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period;
  - c) details of all boundary treatments to include type, position, design, dimensions and materials;

Any trees 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. The approved landscaping shall be implemented in accordance with the approved details in the

first planting season after completion, or prior to first occupation of the development, whichever is the sooner.

7. Notwithstanding the proposal hereby permitted, prior to the first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority.
8. One or more bee bricks shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.
9. The three side windows at upper ground floor level hereby approved shall be painted timber double hung vertical sliding sashes with no trickle vents, and shall match exactly the original sash windows to the building, including their architrave, frame and glazing bar dimensions and mouldings, and subcill, masonry cill and reveal details, and shall have concealed sash boxes recessed within the reveals and set back from the outer face of the building to match the original sash windows to the building, and the windows shall be retained as such thereafter.
10. Access to areas of flat roof over the extension hereby approved shall be for maintenance or emergency purposes only, and no area of flat roof shall be used as a terrace, patio, or similar amenity area.