
Appeal Decision

Site visit made on 29 October 2025

by **J Heppell BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Appeal Ref: APP/Q1445/W/25/3370959

Westmorland Court, Goldsmid Road, Hove, Brighton & Hove BN3 1QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Daniel Fyne of Zenith Projects & Developments Limited against the decision of Brighton & Hove City Council.
 - The application Ref BH2025/00883 dated 18 March 2025 was refused by notice dated 23 May 2025.
 - The development proposed is new dwellings formed within an additional two floors (comprising 2 x 2 bed and 2 x 1 bed flat) above Westmorland Court under Sch 2, Part 20 Class A of the GPDO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), planning permission is granted for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, subject to limitations and conditions.
3. Where an application is made for prior approval, paragraph B(3)(a) provides that the local planning authority may refuse the application where it considers that the proposed development does not comply with any conditions, limitations or restrictions that are applicable to the development in question.
4. The appellant has drawn my attention to errors in the Council's decision notice and officer report. The errors consist of references to Part 20 Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which relates to new dwellinghouses on detached buildings in commercial or mixed use, in both the reasons for refusal on the decision notice and the reasoning in the officer report. Furthermore, informatives on the decision notice and material considerations listed in the officer report are erroneous.
5. The appellant considers that these errors nullify the decision notice and that consequently prior approval is deemed to have been granted. However, there is no deemed consent in such circumstances, because Paragraph B(16) of Part 20 Class A the GPDO states that the development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval.

6. Irrespective of the errors, the decision notice correctly identified the site, the description of development and the refusal of prior approval. The appellant clearly understood it as a refusal given that they lodged an appeal. I am satisfied that a reasonable person would understand that the decision related to a refusal of prior approval under Part 20 Class A of the GPDO for new dwellinghouses on a detached block of flats. I have therefore proceeded to determine the appeal.
7. During my site visit, I was able to gain access to all sides of the property, to allow me to assess the appeal site's relationship with its surroundings.

Main Issues

8. The Council considered that the proposal qualifies as permitted development, and I find no reason to reach a different conclusion. However, the Council refused prior approval because it considered that, by reference to Conditions A.2.(1)(e) and A.2.(1)(g) of Part 20 Class A of the GPDO, it would negatively affect the external appearance of the building and adversely impact on the amenity of neighbouring premises including overlooking and privacy.
9. I consider that the main issues in this appeal are:
 - the effect of the proposal on the external appearance of the building, with particular reference to the adjacent Montpelier and Cliftonhill Conservation Area (CA); and
 - the impact of the proposal on the living conditions of Vernon Terrace and Pavillion Court, with particular reference to privacy and outlook.

Reasons

Appearance

10. The appeal site is a three storey block of blocks of flats located near the junction of Goldsmid Road and Windlesham Gardens. The proposal is to add two additional storeys accommodating four flats.
11. The proposal would reflect the design and detailing of the existing building, but would have an unbalanced appearance as a result of the additional storeys being inset from the rear elevation. At five storeys high, it would be a substantial building at odds with the cluster of three storey blocks of flats of which it forms a part, and the three storey terraced houses on the opposite side of Goldsmid Road.
12. The appeal site abuts the CA, whose significance derives from its development as a fashionable spa in the early and middle part of the nineteenth century. The CA is situated on gently undulating downland to the north-west of the Old Town, with Clifton Hill at its summit. It contains outstanding examples of late Regency and Victorian architecture, along with notable public open space and numerous trees. Roman cement, stucco and painted render are the predominant building materials.
13. Vernon Terrace is a notable feature of the CA. Whilst it faces away from the appeal site, it is an imposing building when seen from the appeal site and beyond. Although views of its lower storeys are in many instances obscured by adjacent properties, its upper storeys and roof are visible above Westmorland Court. The appeal site thus forms part of the setting of the CA.

14. The appellant has argued that in terms of height, the proposal would sit at a mid-point between Vernon Terrace and Pavillion Court, and thus represent a contextual response to its surroundings. However, I find that the proposal would intrude into the street scene of Goldsmid Road, an impact which would be exacerbated when trees are not in leaf. It would obscure views of the upper floors of Vernon Terrace, and compete with it for dominance within the immediate area.
15. I find that the proposal would cause harm to elements of the CA's setting that make a positive contribution to its significance, resulting in a moderate degree of less than substantial harm to its significance. Paragraph B(15)(b) of Part 20 of the GPDO requires that regard be had to the Framework so far as relevant to the subject matter of the prior approval, as if the application were a planning application. Paragraph 215 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
16. The appellant has stated that the proposal would provide much needed housing for the city and provide a visual uplift to the block. However, these benefits are not sufficient to outweigh the harm I have identified.
17. I conclude that the proposal would have a harmful effect on the external appearance of the building, resulting in less than substantial harm to the significance of the adjacent CA.

Living conditions

18. The appeal site is located next to the rear gardens of Vernon Crescent, many of whose properties have been subdivided into flats, and adjacent to Pavillion Court, a three storey block of flats abutting Goldsmid Road.
19. The proposed flats would have habitable rooms facing towards Vernon Terrace. Although the extra storeys would be progressively stepped back in relation to Vernon Terrace, the properties in Vernon Terrace have relatively short rear gardens. Whilst the existing flats already have windows facing towards Vernon Terrace, the addition of a fourth and fifth storey to Westmorland Court would markedly increase the height of the building to the extent that the degree of overlooking within rear facing rooms of the lower floors of Vernon Terrace, and especially the associated rear gardens, would become unacceptable. The increase in height would also result in a building that would be overbearing when viewed from these locations. The resulting materially reduced levels of privacy and poor outlook from the rear of Vernon Terrace would be detrimental to the living conditions of its occupiers.
20. The proposal would introduce habitable rooms facing Pavillion Court, but because Pavillion Court is angled away from the appeal site, there would not be a loss of privacy. However, the proposed increase in the height of the building abutting the boundary with Pavillion Court would cause a harmful reduction in the outlook from the nearest flats in that property.
21. I find that the proposal would lead to a loss of privacy and outlook for the nearest occupiers in Vernon Terrace, and a loss of outlook for the nearest occupiers in Pavillion Court, with resultant harm to their living conditions.

Conclusion

22. I have found that the harm to the CA outweighs the public benefits. Even had I found differently on this point, and public benefits existed that outweighed the harm to the significance of the CA, this would not have changed my conclusion that the appeal should be dismissed because of the harm to living conditions that I have identified.

23. For the reasons given above, the appeal should therefore be dismissed.

J Heppell

INSPECTOR