



Appeal Decision

Site visit made on 15 December 2025

by **C Housden BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th February 2026

Appeal Ref: APP/Q1445/W/25/3374465

Birch Grove Nursing Home, 1-3 Stanford Avenue, Brighton BN1 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Lindsay Shookhye of Hazeldene Project Management against the decision of Brighton & Hove City Council.
 - The application ref is BH2024/01585.
The application sought planning permission for demolition of existing Class C2 building and erection of a four storey building plus basement (car parking level) to provide replacement care (Class C2) facilities without complying with a condition attached to planning permission ref BH2022/00867, dated 8 June 2023.
 - The condition in dispute is No 17 which states that: At least 31 of the bedrooms provided in the development hereby permitted shall be used for elderly nursing care.
 - The reason given for the condition is: To ensure that the development does not result in the loss of any nursing home provision for older persons, in accordance with Policy DM4 of City Plan Part 2.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing Class C2 building and erection of a four storey building plus basement (car parking level) to provide replacement care (Class C2) Facilities at Birch Grove Nursing Home, 1-3 Stanford Avenue, Brighton BN1 6AD in accordance with the application ref BH2024/01585, without compliance with condition number 17 previously imposed on planning permission ref BH2022/00867 dated 8 June 2023 and subject to the conditions set out in the accompanying schedule.

Background and Main Issue

2. Conditional planning permission was granted for a 38 bed care facility following the demolition of the existing facility which is currently used as a nursing home. Condition 17 of the planning permission requires that at least 31 of these bedrooms are used for elderly nursing care. The appellant is seeking to remove this condition to allow other types of residents within Class C2 to reside at the proposed facility. In particular, the appellant sets out that the intended occupiers of the facility would likely be those requiring adult mental health services.
3. The main issue therefore is whether restricting the occupation of 31 bedrooms of the proposed development to elderly nursing care accommodation is reasonable and necessary.

Reasons

4. Policy DM4 of the Brighton & Hove City Plan Part Two (BHCPP2) seeks to ensure there is a sufficient supply and range of housing and accommodation suitable for older people. Part 2 of this policy sets out that where a development results in the loss of residential accommodation for older people, it requires that one of a number of defined criteria is demonstrated. This includes criteria b) which sets out that the existing provision is incapable of meeting contemporary standards for the support and/or care required and appropriate alternative provision is available and has been secured for the occupants. The evidence shows that the Council, in initially granting planning permission considered it necessary to impose condition 17 to meet this criterion. The Council also highlights specifically that there is a projected need for elderly accommodation for patients, particularly those with dementia.
5. The removal of condition 17 and the proposed intended occupiers of the development would mean that the existing elderly accommodation provision at the site would be lost, and replacement beds would not be secured. As no other criteria would apply, the proposal would conflict with Policy DM4 of the BHCPP2 which is a matter of considerable weight against the proposal.
6. However, the evidence shows that changing the accommodation of the existing building from a nursing home to any within the C2 Class would not require planning permission. The appellant therefore contends that they could cease utilising the existing property for elderly nursing accommodation and start using it to accommodate adults requiring mental health services, and then re-apply for planning permission. The Council does not contest the existence of this fallback position, and I am satisfied that it is a material consideration for this appeal.
7. The fallback position would result in the same effect on elderly accommodation provision as the removal of condition 17 and is therefore a matter of significant weight. In these circumstances it would not be reasonable to introduce a more onerous restriction regarding the future occupiers of the proposed development. Therefore, whilst the proposal would result in the loss of the elderly nursing accommodation and conflict with Policy DM4, the fallback position would be of sufficient weight to indicate that planning permission should be granted despite this conflict. It is therefore not necessary to impose condition 17 to make the development acceptable.

Other Matters

8. The appeal site is situated within the Preston Park Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The significance of the CA lies in the predominantly residential layout, character and appearance of the area which contains visual harmony through the architectural merits of the properties and their finishes, usually in facing brick and sometimes with render. In some areas, such as along Stanford Avenue, properties are usually large villa style buildings.
9. The development as a whole, would appear coherent and would retain the appearance as a large building within a defined plot set back from the road. It would respect the existing building line and would be appropriately detailed. The

level of activity generated by the proposed use would not materially alter the movements or activity within the streetscene. As such, the character and appearance of the CA would be preserved. I note that the Council raised no objection in this regard either.

10. Interested parties have raised concerns regarding the operation of the proposed development in relation to the safety of future residents, the noise and disturbance generated by the proposal and the welfare of individuals and residents within the wider area. The Council has not raised any concern in relation to these matters and the evidence before me does not lead me to a different conclusion.
11. The development adversely impacting neighbouring property values has also been raised. However, the PPG¹ is clear that planning is concerned with land use in the public interest. The protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.

Conditions

12. The PPG² sets out that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have little information before me about the status of these other conditions, I shall impose all those that I consider to remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
13. Section 73(5) states that planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. The time limit for commencing the development must therefore run from the date of the original permission and I have therefore adjusted condition 2 to reflect this.

Conclusion

14. The proposed development would conflict with the development plan, but material considerations indicate that a decision should be made other than in accordance with it. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

C Housden

INSPECTOR

¹ Paragraph: 008 Reference ID: 21b-008-20140306

² Paragraph: 04 Reference ID: 21a-040-20190723

-- Schedule of Conditions --

- 1) The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Plan Type	Reference	Version	Date Received
Location and block plan	SKLP		11 March 2022
Block Plan	SKBP		11 March 2022
Proposed Drawing	SKA15a		11 March 2022
Proposed Drawing	SKA16		11 March 2022
Proposed Drawing	SKA17a		11 March 2022
Proposed Drawing	SKA10		11 March 2022
Proposed Drawing	SKA22		11 March 2022
Proposed Drawing	SKA18	A	24 June 2022
Proposed Drawing	SKA19	B	24 June 2022
Proposed Drawing	SKA20	B	24 June 2022
Report/Statement	SGR/BGB/011021	V2	17 March 2023
Proposed Drawing	SKA10	A	17 March 2023
Proposed Drawing	SKA11	A	17 March 2023
Proposed Drawing	SKA12	A	17 March 2023
Proposed Drawing	SKA13	A	17 March 2023
Proposed Drawing	SKA20	C	17 March 2023
Proposed Drawing	SKA21	B	17 March 2023

- 2) The development hereby permitted shall be commenced before the expiration of three years from the date of 8 June 2023.
- 3) Prior to 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. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
- 4) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority, including the demolition stage of the project. The CEMP shall at least include:

- The forecast start and completion dates of the proposed development, including anticipated demolition and construction timelines;
- A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to Commence Development until such consent has been obtained
- A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
- A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site
- Details of hours of construction including all associated vehicular movements
- Details of the construction compound
- A plan showing construction traffic routes

The construction shall be carried out in accordance with the approved CEMP.

- 5) No development shall take place until a detailed design and associated management and maintenance plan for surface water drainage, using sustainable drainage methods as per the recommendations of the Sustainable Drainage Assessment (Ref:15628/01/HOP/SDR/01 by HOP dated February 2020), has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The approved drainage system shall be implemented in accordance with the approved detailed design and maintained for the lifespan of the development.
- 6) No development above ground floor slab level of any part of the development hereby permitted shall take place until a drainage strategy detailing the proposed means of foul water disposal and an implementation timetable, has been submitted to and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable.
- 7) Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - a) Samples/details of all brick, render and tiling (including details of the colour of render/paintwork to be used)
 - b) samples/ details of all cladding to be used including details of their treatment to protect against weathering
 - c) details of all hard surfacing materials
 - d) details of the proposed window, door and balcony treatments
 - e) details of all other materials to be used externally

The Development shall be carried out in accordance with the approved details.

- 8) Prior to first occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
- a) details of all hard and soft surfacing to include the 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 food-bearing plants, and 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 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.

- 9) The development hereby permitted shall not be first occupied 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 accord with the standards described in Annex 6 of SPD 11 and shall be implemented in full prior to the first occupation of the development hereby approved and thereafter retained.
- 10) 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.
- 11) Within 6 months of first occupation of the non-residential development hereby permitted 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 Excellent shall be submitted to, and approved in writing by, the Local Planning Authority.
- 12) Details of any external lighting proposed shall be first submitted and approved in writing by the Local Planning Authority before installation. The details shall include location, appearance and level of illumination. The approved details shall be implemented within the development before it is first occupied.
- 13) The development will be carried out and operated in accordance with the Energy Report submitted on 11 March 2022.
- 14) The vehicle parking areas shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved

and shall be maintained so as to ensure their availability for such use at all times.

- 15) The works of demolition hereby permitted shall not be begun until documentary evidence has been submitted to and approved in writing by the Local Planning Authority to show that contracts have been entered into by the developer to ensure that building work on the site the subject of this consent is commenced within a period of 6 months following commencement of demolition in accordance with a scheme for which planning permission has been granted.
- 16) Noise associated with plant and machinery incorporated within the development 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 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: 2014. In addition, there shall be no significant low frequency tones present.
- 17) The measures set out at Parts 8 - 11 of the approved Travel Plan (Reeves Transport Planning, March 2023) shall be implemented in full, including ongoing monitoring and the submission and approval of a final review report to the local planning authority five years after first occupation, to feed into an updated Travel Plan.
- 18) The development hereby approved should achieve a minimum Energy Performance Certificate (EPC) rating 'B' for new build residential and non-residential development.
- 19) Notwithstanding the plans hereby approved, prior to first occupation of the development hereby permitted, a car park layout plan shall have been submitted to and approved in writing by the Local Planning Authority. This should include details of existing and proposed cycle parking, motorcycle parking, car parking, electric vehicle parking and charging, mobility scooter parking and charging, disabled parking, visitor parking, loading bays, taxi pick-up and drop off, service and delivery areas and signage (markings and signs) for the management (such as numbered spaces and Department for Transport approved names and symbols (eg for a disabled bay) inside and outside of the space) of all forms of parking and stopping as appropriate. This should also include details of how the proposal complies with SPD14 Parking Standards and how vehicles safely and conveniently turn to leave the site in a forward gear, including the provision of any signage and mirrors at the top and bottom of the ramped parking access. The approved scheme shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
- 20) Prior to first occupation, details of any the solar panels and air source heat pumps to be installed shall be submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented in full and maintained as such throughout the lifetime of the development.

-- End of Schedule --