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## Appeal Decision

Hearing held on 15 April & 20 May 2014

Site visit made on 20 May 2014

**by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI**

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

**Decision date: 6 June 2014**

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**Appeal Ref: APP/Q1445/A/13/2210775**

**Richmond House, Richmond Road, Brighton BN2 3FT**

- 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 Mr A Lambor (Matsim Properties Limited) against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02838, dated 12 August 2013, was refused by notice dated 21 November 2013.
  - The development proposed is the demolition of the existing redundant 2 storey office building and construction of part 3, part 5 storey student accommodation containing 138 rooms with associated ancillary space and cycle parking. Removal of existing trees and associated new landscaping works.
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### Decision

1. I dismiss the appeal.

### Main Issues

2. The main issues in this appeal are the effects of the proposals on:
  - the character and appearance of the area and the setting of Round Hill Conservation Area (RHCA) in particular;
  - the aims of employment policies;
  - the supply of student accommodation and general purpose housing.

### Procedural matters

3. As part of the appeal documentation the appellant submitted amendments to the plans subject of these decisions. These comprised plans ref 13856/PA/202 Rev A, (proposed ground floor plan-level 00), 13856/PA/208 Rev A (proposed elevations 1, north/east and south/east), 13856/PA/209 Rev A (proposed elevations 2, north/west and south/west), 13856/PA/210 Rev A (bay studies [materials] 1), 13856/PA/211 Rev A (part of bay studies [materials] 2) and 13856/PA/212 Rev A (proposed sections). It is only appropriate to take these into account if no party would be disadvantaged. In *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37, it was held that the main criterion is whether the development is so changed by such amendments that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation.

4. The alterations to the proposals include amended arrangement for bicycle storage and refuse storage, an additional window adjacent to the entrance and alterations to the design of the D'Aubigny Road bay windows. These amendments sought to overcome concerns expressed by the Council and reduce the bulk of the proposed building. At the Hearing the Council withdrew its objection to the substitution of the amended plans, and had the opportunity to comment as part of the appeal process. The appellant notified neighbours about the amended plans prior to the Hearing and interested parties who attended the Hearing also had an opportunity to respond to the proposed alterations. Thus all parties were aware of the proposed changes and for this reason and because these would reduce the mass of the proposed building, no party would be disadvantaged. Accordingly, my decision takes these amended plans into account.
5. The replacement development plan, *Brighton and Hove City Plan Part One* (emerging CP), is the subject of an ongoing Examination which has identified a significant shortage of housing in the City. The emerging CP Policies are relied upon by both parties but are subject to possible amendment and thus have lesser weight.
6. A completed unilateral undertaking was submitted on the first day of the Hearing. The provisions of this met the Council's adopted guidance in terms of mitigating the impact of the proposed development on public open space and the local highway network and would provide opportunities for public art and local employment. The Council demonstrated that the tests of Section 122 of the *Community Infrastructure Regulations 2010* have been met<sup>1</sup>. I am satisfied that the submitted unilateral undertaking would address the effects of the development on the infrastructure of the Borough.

## **Background**

7. Richmond House was constructed in about 1957 and used initially for industrial purposes before being converted to office use about 20 years ago. The site is located at the junction of D'Aubigny Road and Richmond Road, which are otherwise lined by 2 storey Victorian/Edwardian houses. The latter are within the RHCA but the boundary excludes the appeal site. The site drops sharply (the equivalent of about 2 storeys) to the curving service road providing access to a large superstore and this roadway forms the north-east boundary. Hughes Road, to the north and west and is also at the lower level, is the sole access to a modern industrial estate.
8. The appeal site is described in the Design and Access Statement as a buffer between the residential conservation area on one side and an industrial estate on the other<sup>2</sup>. Thus it is common ground that the embankment separates the residential development at the higher level from the larger scale, primarily commercial, buildings below accessed from Hughes Road. There is no access between Richmond Road and Hughes Road other than via an informal scramble up the steep embankment. This lack of connectivity is likely to have been longstanding because of the former railway line and goods yard on what is now Hughes Road.

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<sup>1</sup> Paragraph 204 of the *National Planning Policy Framework* also refers.

<sup>2</sup> Page 8 Design and Access Statement

## Reasons

### *Character and appearance*

9. The RHCA appraisal says that the special interest of the area lies in its hilly siting with long terraces of houses framing distant views of the sea to the south and of the Downs to the east. Richmond Road and D'Aubigny Road are typical of this pattern with housing stepping down the hill and framing the view to the Downs beyond. Owing to the combination of the hilly setting and the steep cutting or drop to Hughes Road, views of the RHCA can be found from other parts of Brighton, particularly from Bear Road to the east which I visited and the Downs beyond. The embankment including the appeal site is considered to be a positive part of the character of the RHCA. Although it is located beyond the designated boundary its contribution to the setting is identified as a green ribbon which relieves the densely developed, primarily terraced, housing.
10. An exception to the prevailing character of the street scene of Richmond Road and D'Aubigny Road is the existing building on the appeal site. The building has a triangular plan form with the main elevation set slightly farther back than the housing from the pavement edge. In contrast to the rich decoration of the housing, including two storey canted bays, string courses, pediments, brackets and chimneys, the lines of Richmond House are simple and unassuming and provide a clear indication of the different function of the building. To the north and east of the building the entrance to the car park allows long reaching vistas to the Downs beyond. This vista provides a focal point to both Richmond Road and Daubigny Road because of its position on the outside of the sharp bend which forms the junction of these two roads. Consequently the existing building also differs from the housing because of the space around it. It seems to me that the existing building, Richmond House has a neutral effect on the RCHA, but that the space around it is a positive benefit.
11. The character of the housing has been identified by the appellant who has sought to replicate the pattern of bay windows and to respect the height of the existing building and the adjacent housing, whilst creating a crescent that turns the corner of the intersecting residential streets. Moreover it has been recognised that the character of the area is quiet and peaceful which is also identified by the RHCA appraisal and in representations made by residents. Accordingly the existing access route and arrangements would be relocated to Hughes Road to reduce traffic flows within the RHCA and these would be benefits of the appeal proposals.
12. I acknowledge the design ethos that underlies the design of the proposed building. But it seems to me the proposed bays, which would extend to nearly the full height of the building would be overwhelming in comparison to the scale of the bays in the existing housing which are balanced by the recessive roof lines. Moreover, whilst I accept that the reasoning behind the design seeks to imitate a crescent of terraced houses, thereby continuing the appearance of residential terraces, the result is incongruous because of the lack of interaction with the street. The appellant conceded that the absence of doors onto D'Aubigny Road would undermine the visual impression of individual houses. Whilst Richmond House clearly demonstrates its function, the proposed building is uncomfortable because it seeks to imitate terraced housing but has a different use. Consequently, notwithstanding the articulation of the proposed building, the bulk and mass of the development would read as

- a single building out of scale with the intimate detailing of the housing within the RHCA.
13. This harm to the setting of the RHCA would be compounded by the increased footprint of the building and the closing of the vista from D'Aubigny Road and the lower part of Richmond Road. These views out of the densely developed streets are a recognised and positive part of the character of Round Hill so that their loss is particularly serious.
  14. However I accept that in close views from Hughes Road the scale of the building would not be overwhelming and is similar to the new apartment block at Diamond Court and the commercial buildings in the industrial estate on the one side and the superstore on the other. But in longer views from Bear Road the loss of the embankment would blur the distinction between the larger scale buildings around Hughes Road and the hill top terraces. I therefore find that the partial loss of the embankment, much of which would be subsumed by the development, would harm the setting of the RHCA.
  15. Consequently on this first issue I find that the proposal would seriously harm the character and appearance of the area and the setting of Round Hill Conservation Area, a designated heritage asset, in particular. Hence the development would conflict with the aim of Policy HE6 of the *Brighton and Hove Local Plan* (LP)<sup>3</sup>, which seeks to ensure development affecting the setting of a conservation area reflects the scale, character and appearance of the area and retains spaces between buildings which make a positive contribution. I also find conflict with the aims of LP policies QD1, QD2, QD3, QD4, which collectively, amongst other matters, seek to retain important vistas to and from the Downs, ensure development is of an appropriate scale and height and that there is visual interest at street level.
  16. Therefore and in the light of guidance in the National Planning Policy Framework (the Framework) which says that heritage assets, including their setting are an irreplaceable resource which should be accorded great weight, these conclusions weigh heavily against permission.

### *Employment*

17. The aims of the employment policies in the LP (Policies EM3 and EM5) seek to ensure that land already in employment use is not released for other uses except where it is found unsuitable for modern employment needs. Such an assessment is subject to testing against various criteria including adequate marketing. These need to be considered in the context of guidance in the Framework which says policies should avoid the long term protection of sites allocated for employment use where there is not a reasonable prospect of a site being used for that purpose<sup>4</sup>. But, in respect of the proposal before me, I do not find that the policies and guidance are incompatible.
18. The appellant says that Richmond House has been marketed for 2 years and there has been no interest expressed. I accept that at least part of the building has been on the books of a commercial agent for a considerable period and it

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<sup>3</sup> The Local Plan policies to which I refer in this decision predate the National Planning Policy Framework (the Framework), Having regard to paragraph 215 of Annex 1 to the Framework, I consider that these policies, in so far as they relate to the development before me, are broadly consistent with the Framework. As such, full development plan weight has been afforded to them.

<sup>4</sup> Paragraph 22: The National Planning Policy Framework

has been vacant for most of that time. I also accept that the condition of the building, which has been almost completely stripped out, together with the existing access through residential streets may not be attractive to future commercial users.

19. But I heard contrary evidence at the Hearing, where a commercial developer provided evidence of her expression of interest in the building. This was confirmed by the appellant and no cogent reason was given as to why this was not progressed. I also saw that other buildings in the vicinity in what appeared to be similar condition had been converted into start-up units and are said to be fully occupied. Similarly I do not doubt the evidence given that Brighton has a particular need for similar units because of the number of students who choose to stay and work in Brighton after completing their academic studies.
20. But even if I am wrong, the aims of adopted employment policy say that if employment use is no longer feasible, such sites should be re-used for live-work units or affordable housing. There is no evidence before me to indicate that either of these alternatives has been fully investigated and discounted.
21. Consequently, in the absence of a justification to set aside adopted employment policy, I conclude on this second main issue that the proposed development would seriously undermine the aims of employment strategy in Borough. Moreover for the reasons I have given I am not satisfied that there is no reasonable prospect of the site being re-used for employment purposes. Accordingly this issue also weighs against permission.

*The supply of student accommodation and general purpose housing*

22. It is common ground that there is a significant shortage of both student accommodation and general purpose housing sites in the Borough.
23. In respect of the former, the *Brighton and Hove City Council Student Housing and HMO Concentration Assessment (December 2011)* (SH Assessment) demonstrated that at that time there were 5183 purpose built student bed spaces in the city but over 37,000 students attending the two universities, Brighton and Sussex. Thus there is insufficient specialised housing to accommodate, as a minimum, all first year students. Moreover the University of Sussex is expanding rapidly which could exacerbate the shortage.
24. There are no policies in the adopted development plan concerned with student accommodation but the emerging plan actively supports increased provision subject to various criteria (emerging CP Policy CP21). Moreover the appeal site lies within the Lewes Road corridor (emerging CP Policy DA3) where the main thrust of the strategy is to promote and enhance the role of the area for higher education, including the delivery of accommodation for students. The Council says that there has been significant progress in addressing the shortage since the SH Assessment, but accepts that there is still an overall shortage of suitable student accommodation. For these reasons many students are accommodated in Houses in Multiple Occupation (HMOs). This shortage weighs in favour of permission.
25. In terms of general purpose housing, a very significant shortage of housing land has been identified as part of the ongoing Brighton and Hove City Plan Examination, which had a target of 11,300 dwellings. In a letter dated 13 December 2013 the Examining Inspector says that her initial conclusion is

that the need for housing (including affordable housing) is about 20,000 new dwellings. Thus she needed to be satisfied that the Council had left no stone unturned in seeking to meet as much of this need as possible.

26. The appeal site has been identified as a suitable site for a mixed use development for employment and housing in the emerging plan. Whilst this allocation does not have the weight of adopted policy, this needs to be considered in the context of a serious under-provision of housing sites. This tempers the weight to be given to the shortage of student housing.
27. The appellant said that the National Planning Practice Guidance (PG) says that student housing can be included in the overall housing figures, and thus implicitly would contribute towards addressing the serious shortage of housing land. But this is only in the circumstances of the amount of general purpose housing that would be released back into the housing market. There is no evidence or mechanism before me which indicates that the proposed development would result in the conversion of student HMOs to family housing. Moreover, because student numbers are rising, such a scenario seems to me unlikely and improbable.
28. In such circumstances I do not agree that the serious shortfall in general purpose housing would be reduced by the appeal scheme. Consequently, in terms of this third main issue, I find that there are conflicting tensions between the provision of student housing and retaining the proposed allocation for general housing. In policy terms these are matters that may only be reconciled by the emerging development plan and in the interim adopted policies support the retention of employment or, failing that, live-work units or affordable housing on the site. Thus this main issue neither weighs for nor against the proposal.

#### *Other matters*

29. The amendments to the scheme which relocated the bicycle storage underground have to a large extent resolved concerns about the living conditions for future occupiers. In terms of the potential impact on Diamond Court, the evidence was inconclusive as the parties agreed that not all physical factors had been taken account of in the daylight analysis. In respect of refuse and recycling storage the amended plans have increased the proposed storage area and I consider that a condition could have ensured appropriate provision and arrangements.
30. Considerable concern was expressed by residents about the potential for noise and disturbance emanating from the proposed development, particularly because the student accommodation would not be under the control of an educational establishment. I heard conflicting evidence at the Hearing and also that no acoustic analysis had been undertaken. It may be that these matters could be the subject of a Student Management Condition.
31. But none of these matters, nor concerns about access and construction arrangement are determinative in this appeal because of the harm I have found in respect of the RHCA and aims of employment policies.

#### **Balance and conclusion**

32. I accept that the appeal site is in a highly sustainable location with good links to the city centre and the universities. Moreover the proposal would result in

the erection of a car-free development built to high environmental standards and which would reduce traffic in Richmond and D'Aubigny Roads enhancing the peaceful character of the RHCA. It would also provide 138 student units which would contribute towards addressing the significant shortage of this type of accommodation. All these are benefits of the scheme.

33. But the Framework says that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
34. For the reasons I have given I conclude that the development would seriously harm the environment and the setting of the RHCA in particular and would fail to improve the quality of the historic environment. Whilst this harm is less than substantial the benefits I have acknowledged, tempered by the currently irreconcilable demands for general housing and student housing, do not outweigh the harm to the heritage asset which is irreplaceable.
35. Moreover I have also found that the economic re-use of the site, or policy compliant alternatives have not been fully explored. Thus I do not agree that the proposed development is sustainable development as defined by the Framework.
36. Consequently, having taken account of all other matters raised, including the deteriorating condition of the building and the currently vacant site, I will dismiss the appeal.

*Sukie Tamplin*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Sasha White QC	Landmark Chambers
Andrew Lambor	Appellant in person
Paul Burgess BA (Hons) BPL MRTPI	Director, Lewis & Co Planning Consultants
Nick Lomax, B.Arch (Hons) Dip Arch, RIBA	LCE Architects
Andrew Halfacree BSc MRICS	Flude Commercial Chartered Surveyors
Dianne Bowles MSc BSc (Hons)	Delta Green Environmental Design
Charles Fish	Mortar Developments

### FOR THE LOCAL PLANNING AUTHORITY:

Liz Arnold	Senior Planning Officer Brighton and Hove City Council
Sanne Roberts IHBC	Conservation Officer, Brighton and Hove City Council
Steve Tremlett	Senior Planning Officer Brighton and Hove City Council
Hilary Woodward	Senior Solicitor, Brighton and Hove City Council

### INTERESTED PERSONS:

Annie Rimington	Chair, Round Hill Society
Alex Holding-Parsons	Resident
Jessica Hartley	Resident
Steve Rimington	Resident
Carol Hall	Resident
Mark Yelland	Resident
Antoni Emchowicz	Resident
Jane Short	Resident
Sandy Hawkins	Resident
Alan King	Resident
Jill Francis	Resident
Barbara Harris	Resident
Ruth Kershaw	Resident
Sandra Thomas	Resident
Maude Casey	Resident
Henry Thomas	Resident
Gina Citroni	Commercial developer/CEO Amplicon
Robin Morley	Resident
Douglas Saunders	Centenary Industrial Estate

### DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Unilateral Undertaking submitted by the Appellant
- 2 Bundle of correspondence regarding proposed conditions and itinerary dated 22 April, 22 April, 28 April, 9 May, 13 May and 15 May 2014 submitted by the Appellant and the Council



3. Email from Henry Thomas re management condition
4. Email from Maude Casey
5. Email from Annie Rimington re boundary condition and request to view from property
6. Email from Steve Rimington re noise conditions
7. Email from Mark Yelland and Antoni Emchowicz re construction conditions
8. Email from Jane Short re access condition
9. Email from Sandra Thomas re student management/staff flat condition
10. Statement on behalf of Ted Power re access, and educational justification
11. Statement on behalf of Mrs Margaret Ward re outlook
12. Statement by Gina Citroni
13. Letter from Stephen Elliott re noise and management conditions
14. Letter from Professor Bobbie Farsides, re access and management
15. Additional noise condition submitted by the Council
16. Closing statement by the Council
17. Closing submissions for the Appellant
18. Construction Environmental Management Plan condition submitted by the Council after the close of the hearing as agreed by the Appellant