



# Appeal Decisions

Site visit made on 20 January 2010

by **Mr K L Williams BA MA MRTPI**

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

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**Decision date:**  
**1 February 2010**

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## **Scheme 1. (Appeals: APP/Q1445/E/09/2109243 and APP/Q1445/A/09/2107607)**

### **11a Upper Market Street, Hove, BN3 1AS**

- These appeals are made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent and under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeals are made by Mr Stephen Neiman against the decisions of Brighton & Hove City Council.
- The applications, Ref.BH2009/00415 and BH2009/00414, were dated 20 February 2009 and were refused by notices dated 18 May 2009.
- In both appeals the proposal is described as being "to provide two new penthouse apartments on the roof of the Old Market combined with a new meeting room facility for the Old Market. The existing stair/lift well to the South will be extended for access to the new apartments."

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## **Scheme 2. (Appeals: APP/Q1445/E/09/2115260 and APP/Q1445/A/09/2115259)**

### **11a Upper Market Street, Hove, BN3 1AS**

- The appeals are made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent and under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeals are made by The Old Market Trust against the decisions of Brighton & Hove City Council.
- The applications, Ref.BH2009/02015 and BH2009/02014, dated 19 August 2009, were refused by notice dated 19 October 2009.
- In both appeals the proposal is described as being "To provide two new apartments on the roof of the Old Market Building. The existing stair/lift core to the south block will be extended for access to the new apartments. A new maintenance terrace will be provided at roof level above the existing east entrance lobby; a new glazed entrance canopy is proposed to the north elevation above the existing entrance and it is proposed to reinstate three windows to the north elevation."

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### **Decisions:**

#### **Scheme 1. (APP/Q1445/E/09/2109243 and APP/Q1445/A/09/2107607)**

1. I dismiss the appeals.

#### **Scheme 2. (APP/Q1445/E/09/2115260 and APP/Q1445/A/09/2115259)**

2. I dismiss the appeals.
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## **Background and main issues**

3. The Old Market is a listed building (grade II) and is in the Brunswick Town Conservation Area. The appeals concern the refusal of planning permission and listed building consent for two alternative schemes to extend and alter the building, primarily at second and third storey and roof levels. The first scheme would provide two apartments and a meeting room. The second scheme is a scaled down version of the first. It further amends the design and omits the meeting room. Both schemes would involve extending the lift/stair well in the building's south block to provide access to the proposed apartments. They also contain other elements, of a more minor nature, including the provision of a canopy on the north elevation and alterations to windows.
4. The main issues are:
  - i) The effect of the proposed extension and alterations on the Old Market and its special architectural or historic interest;
  - ii) The effect of the proposed extension and alterations on the setting of listed buildings in the surrounding area;
  - iii) Whether the proposed extension and alterations would preserve or enhance the character or appearance of the Brunswick Town Conservation Area; and,
  - iv) The effect on neighbours with regard to overlooking and light.

### *The effect on the Old Market and its special architectural and historic interest*

5. The original Old Market building was erected in the mid-1820's as part of the first development of the planned urban extension of Brunswick Town. Brunswick Square, to the west of the Old Market, was central to the plan for Brunswick Town. It was framed by the terraces of Landsdowne Place and Waterloo Street, the latter being immediately east of the Old Market. The market, together with a church, hotel and baths, were intended to give a degree of self-sufficiency to the new community. The site is within a grid pattern of streets. Brunswick Street East is immediately west of the Old Market and contains former mews houses to Brunswick Square. The north and south elevations of the building face Old Market Street North and South. The building is now used as a centre for performing arts, for conferences and as offices.
6. The Old Market has undergone extensive change since it was first erected. The market function was succeeded in 1828 by a riding school. Extensions during the 1870's, for a riding academy, resulted in three parallel elements to the building and in the erection of the nearby Waterloo Street Arch, itself a listed building (grade II). Extensions in 1998 raised the roof of the south and central elements of the building. It is now almost square in plan, with walls faced in cream coloured stucco and a varied roofscape, including slate roofs and leaded flat roofs behind parapets. In my opinion, important aspects of the architectural and historic interest of the Old Market include the survival of elements of the original market, the architectural evidence of its evolution, its materials, the ornate and idiosyncratic northern elevation and its role in the wider landscape of Brunswick Town.

7. In Scheme 1 the two apartments would be centrally positioned above the performance area. The proposed structure would be rectangular. It would have a flat roof of sedum and would have fully glazed reflective glass cladding panels to all elevations. The glazed wall panels would be about 3½ metres in height and the structure would extend well above the building's current maximum roof height. It would be supported by steel posts attached to the central roof of the building. Each apartment would have a south facing terrace to provide private amenity space. The meeting room, which would be on the east side, at second floor level, would also have glazed elevations. The west elevation would include a rectangular panel which would be covered in greenery and is described as a "green wall". I have taken into account the changes referred to in an addendum to the Design and Access Statement, including changes to the proposed east elevation, a reduction in the extent of the roof terraces and in the height of the lift/stair well.
8. Policy HE1 of the Brighton and Hove Local Plan, 2005 (LP) protects listed buildings from harm to their architectural and historic character or to their setting. While new development affecting a historic building requires careful consideration, it is consistent with *Planning Policy Guidance Note 15: Planning and the Historic Environment* that new building need not copy what already exists. Guidance from CABE<sup>1</sup> in *Building in Context: New Development in Historic Areas* refers to the importance of achieving high quality design, adding to the quality of what exists. It advises that successful architecture may follow historic precedents closely by adapting them or by contrasting with them. I have taken into account the other examples of development in sensitive locations and affecting listed buildings to which the appellant refers, although my decisions reflect the circumstances of these particular appeals.
9. The Old Market building has changed radically since its inception. I see no reason why it should not continue to evolve if the architectural and historic interest of the building and of its surroundings is not harmed. The central section of the building has been affected by a previous extension which has resulted in bland, shallow pitched, gable ends facing east and west. Both schemes would remove this central roofscape. It is appropriate to focus any remodelling on that part of the building and I regard that as a benefit of both schemes.
10. Notwithstanding the potential benefits, I have some serious concerns about the effect of the proposal, which would appear as a striking and bold addition to the listed building. I appreciate that the choice of materials is intended to give a lightweight quality to the extension in deference to the listed building. The extension would be set well back from the north and south elevations of the building and there would be a degree of setback on the east and west elevations. However, it would project well above the existing prevailing roof height and, having regard to its scale and box like shape, I consider that it would appear as an unduly dominant imposition on the listed building rather than being successfully related and visually subordinate to it.
11. This effect would be apparent from a number of vantage points. Viewed from Western Road, the Old Market is a dominant feature, acting as the terminal

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<sup>1</sup> Commission for the Built Environment

feature in views to the south. It is framed by the properties along Upper Market Street and by the open sky above the parapet of the north elevation. Views of the extension from here would be accentuated by the upward slope of Upper Market Street to the north. The extension would be a prominent feature and its scale, form and height when viewed from this perspective, in combination with the contrasting materials, would compete with and detract from the building's most interesting façade rather than complement it. The box like form of the extension would also be apparent from near the junction of Brunswick Street East and Western Road, from where it would appear as an incongruous addition, giving the building an unacceptable, top-heavy appearance.

12. Views from Market Street South would be reduced by the setback of the apartments from the south elevation. I appreciate that the existing south elevation has a composite appearance. However, the emergence of the lift/stair well from the roofslope would appear as an awkward design feature. The glazed east elevation of the apartments and meeting room would also be excessively dominant elements when seen through the Waterloo Street Arch from the east. Although the green wall on the west elevation would mask part of the undistinguished mid-1990's extension, it would appear as an added element which is not well related to the design as a whole.
13. In Scheme 2 the meeting room and green wall would be replaced by a remodelling of the central east and west elevations of the mid-1990's extension. This would give the appearance of a rendered podium, which would be topped by the glazed element of the scheme. On the east elevation the proposed extension would be drawn back to the line of the mid-1990's extension and there are some more modest changes to the design of the glazed element, including a small reduction in height and a reduction in the front face of the apartments on the east and west elevations. A roof level maintenance terrace above the east entrance would be provided.
14. These changes go some way to reducing the harmful effect of the extension. The revised scheme integrates the extension into the existing building to a greater extent. It would appear as a somewhat less dominant element when viewed from the east, through the Waterloo Street Arch. The revised east elevation also respects the remaining element of the original market to a greater extent, allowing it to remain a focus within that elevation. However, the changes introduced in Scheme 2 do not allay the concerns I set out above about the effect of the development in longer distance views to a sufficient extent for me to find the proposal acceptable.
15. I conclude that both Scheme 1 and Scheme 2 would not preserve the architectural and historic interest of the Old Market. They would conflict with LP policy HE1.

*The effect on the setting of listed buildings in the surrounding area*

16. The area immediately surrounding the Old Market contains a number of other grade II listed buildings. They include Nos.2-9 Upper Market Street, Nos.6-10 Lower Market Street and the Waterloo Street Arch. Having regard to their proximity to the Old Market, the proposed extension in both schemes would fall within the settings of these buildings. In the light of the harm to views from

Western Road towards the Old Market, to which I refer above, I consider that the settings of Nos.2-9 Upper Market Street would not be preserved by either scheme. The south elevation of the Old Market is an important component in the setting of Nos.6-10 Lower Market Street. In view of the harm to the roofscape in that elevation from the extended stairs/lift well, neither scheme would preserve the settings of Nos.6-10.

17. In Scheme 1, the extension would appear as an over-dominant element when seen from the Waterloo Street Arch, so that its setting would not be preserved. I consider that the reduction of this effect in Scheme 2, primarily from the omission of the meeting room, would be sufficient to avoid harm to the setting of the arch in that scheme. Nevertheless, I find that both schemes would conflict with LP policy HE3, which protects the settings of listed buildings.

*The effect on the Conservation Area*

18. The Brunswick Town Conservation Area extends either side of Western Road and contains a fine assembly of Regency and early Victorian architecture. It retains much of the character and appearance of a planned 19<sup>th</sup> century estate, with carefully controlled architecture of a formal and ordered character. Many of the former mews houses in Brunswick Street East are now in various commercial uses, adding to the diversity of the area, whereas Waterloo Street, Lower and Upper Market Street generally comprise Regency terraces.
19. I appreciate that the Old Market is not typical of the buildings which predominate in the Conservation Area. I have referred above to its original role in Brunswick Town and to its evolution, which has resulted in a variety of roof forms. The Conservation Area as a whole is characterised by slate roofs, many of which are concealed behind parapets. While roofs are often not dominant elements of individual buildings, there are extensive views across roofscapes as a result of changing levels within the Conservation Area.
20. Both schemes comprise the addition of a substantial and striking roof extension, which would extend well above existing roof level and would be of markedly different form and materials from their surroundings. I appreciate that there are existing incongruous elements in some views, for example a 1930's block of flats to the south. However, in the above context and having regard to the effect on views to which I refer above, I consider that both schemes would be harmful to the roofscape of this part of the Conservation Area. The harm to the Old Market building and to the settings of other listed buildings, to which I refer above, would also cause to harm to the Conservation Area. I conclude that both schemes would fail to preserve the character or the appearance of the Conservation Area. They would conflict with LP policy HE6 which requires that development should preserve or enhance the character or appearance of Conservation Areas.

*The effect on neighbours*

21. As a result of the set back from the north and south facing walls of the main building, both schemes would avoid undue overlooking of properties on Upper and Lower Market Streets. Although the proposed roof terraces would face south, they would be behind an existing pitched roof, which would also help to avoid overlooking to the south. In both schemes the extension would also be

set back from the west facing wall of the Old Market. In view of the limited height of buildings on Brunswick Street East, they would not be overlooked and there would be sufficient separation from the rear of buildings on Brunswick Square to avoid unacceptable harm to privacy.

22. The rear walls of some properties on Waterloo Street are close to the Old Market. Unacceptable harm to privacy would be avoided in both schemes subject to the provision of obscure glazing on the east facing elevations and to a privacy screen on the east side of one of the proposed terraces. Having regard to the proposed siting of the extension, I am satisfied that there would not be material harm with regard to light reaching neighbouring properties or the Waterloo Street Arch gardens. I find that both Scheme 1 and Scheme 2 would be acceptable with regard to their effect on neighbours.

#### *Other Matters*

23. In respect of both schemes the appellants contend that the development is essential to ensure the continued use of the building as a cultural venue. The venue is run by the Old Market Trust. The Trust has accrued considerable debt, which is said to result from borrowing to fund the restoration of the building in the 1990's. Financial details have been submitted with regard to the extent of that debt. The appellants say that the development should be regarded as a "quasi form of enabling development". In the absence of planning approval, they consider that the Trust will go into receivership and the venue will shut down. A condition is suggested preventing the development until the Local Planning Authority approves details of the use of the proceeds from selling the apartments for the payment of creditors. A second condition would require a Management Plan for future maintenance of the building.
24. The Council does not dispute the value of the Old Market as a cultural facility and I see no reason to take a different view. However, I approach this matter primarily with regard to the effect on the historic building rather than the perpetuation of the Trust. It seems to me that, if development was to proceed, there would be a greater likelihood of the present cultural use of the building continuing. On the other hand, I am not convinced that, if that use ceased, other uses would not emerge which could facilitate the maintenance and care of the building. Offices have recently been introduced into part of the building and other new uses could also replace the jobs which the appellants fear would be lost if development does not proceed.
25. Guidance on enabling development is contained in the English Heritage document *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment, 2008*. Having regard to my conclusions above, neither scheme meets the criterion set out in that document that they would avoid harm to heritage values. Moreover, the building is acknowledged by the appellants to be in good condition. It is not at risk. I appreciate that the Trust's debt is related to previous renovation works to the building. Nevertheless, it seems to me that the need for funding arises more from the circumstances of the present owner than the needs of the heritage asset. In this context, I am not convinced that the public benefit of securing the future of the Trust, with the resulting benefits for the building of continued use as a cultural venue, would outweigh the harm which I have set out above.

In addition, it is not clear to me that the objectives the appellant is seeking to meet by way of condition, which in effect require payments from one party to others, could be addressed other than by means of an obligation under section 106 of the Town and Country Planning 1990. The suggested condition concerning a Management Plan is vague with regard to the often complex arrangements needed to control the future maintenance of a listed building.

26. Both schemes would amount to an efficient use of land. They would provide two new dwellings in a sustainable location and would incorporate aspects of sustainable design. Subject to the provisions of the submitted Unilateral Undertaking regarding parking permits, there would be no harm to parking provision in the area. Subject to the submission of further details the provision of a canopy on the north elevation and the proposed changes to windows would be acceptable. However, these other matters do not outweigh my conclusions on the harm which would result from the proposals.

### **Overall Conclusions**

27. I have concluded, with regard to both Scheme 1 and Scheme 2, that they would not preserve the architectural and historic interest of the Old Market or the settings of nearby listed buildings. I have also concluded that the character and the appearance of the Brunswick Town Conservation Area would not be preserved. These conclusions outweigh my favourable conclusion with regard to the effect on neighbours. In the light of the above and having regard to all other matters raised I conclude that the appeals should be dismissed.

*K Williams*

INSPECTOR