

Report to: Planning Committee
Date: 22 February 2022
Application No: 210647
Location: 20 Upperton Road, Eastbourne
Proposal: Application for variation of conditions 2 (approved plans), 3 (external materials), 4 and 5 (vehicular access) following grant of planning permissions 170868 and 180829 to allow for revised design, layout, access and parking arrangements and external finishing to the approved development.

Applicant: Project Eastbourne Ltd
Ward: Upperton

Recommendation: Approve Conditionally

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Map Location:



1. **Committee Update**

- 1.1 The application was previously considered by members at the planning committee meeting held on 23 November 2021. Members voted to defer making a decision to allow the applicant to make improvements to the external appearance of the building and wider site, with reference to the approved external work which were granted planning permission under 180829.
- 1.2 The applicant has agreed to remove the timber fencing that was erected on the site frontage. Instead, the frontage would remain largely open, with landscaping providing a soft buffer, and two black masonry walls would be erected adjacent to the site access and egress points. These walls would incorporate the development name 'The Upperton' and would be finished in matt black, similar to the walls approved under 180829. It should be noted that the earlier approval for external works, 170868, did not include any walls or boundary treatment to the site frontage.
- 1.3 The applicant has also agreed to provide a flat roof overhanging porch above the main access to the building. This porch would be formed as a continuation of the existing rebate over the doorway, projecting a further 0.7 metres and it is expected that the porch would extend across the full width of the access door and side glazing panels, similar to the porch shown on plans approved under 180829.
- 1.4 Improvements to the accessibility, capacity and security of cycle parking and bin storage facilities would also be incorporated, ensuring they are consistent with ESCC Highways Guidance and Waste and Refuse Best Practice respectively as per the details shown in para 11.4, 11.5 and 11.6. A disabled parking bay would also be incorporated into the parking area to the front of the building.
- 1.5 As the amendments result from ongoing negotiations with the planning department, full plans showing the suggested revisions have not yet been produced but these will be provided prior to the committee meeting and circulated to committee members and occupants of the building.
- 1.6 Discussions among members at the November Committee meeting also referred to the provision of block paved surfacing to the front of the site. Although this surface was shown on application 180829 it is not reasonable for the Council to demand that it is provided. The external works were not a prerequisite to the conversion of the building to residential use, which was approved under 170527 and tarmac surfacing was already in place prior to the building conversion, where its presence did not appear harmful to visual amenity nor cause any issues with surface water draining into the highway. It is noted that channel drains are provided to prevent surface water run-off onto the highway.
- 1.7 Improvements to the screening/enclosure of the electricity substation to the front of the site were also discussed. These matters are ultimately dictated by the Distribution Network Operator (DNO) who install and maintain the substation and, therefore, require suitable access to be available and for necessary clearance from the substation and infrastructure above and below

ground. Screening is currently provided by landscaped planters and this is considered to be an acceptable arrangement.

- 1.8 It is important that members are aware of the remit of the planning authority in regards to this application, given there was no need for the external works to be applied for or carried out in order for the building to be converted. Attention is drawn to comments provided by the Council's legal officer in below (para. 1.9 and 1.10).
- 1.9 Legally, the committee may only consider the application before them and make their decision having regard to the development plan and all relevant material considerations. The fact that the previously approved scheme may be preferred, is not a material consideration the committee can take into account in reaching their decision. The committee are also advised that refusing the current application will not necessarily result in the previously approved scheme being built. This is because the council has no legal power to require the developer to implement or complete the previously approved scheme as on the facts of this case, this part of the development was not necessary to convert the premises into flats.
- 1.10 Equally, approving the current application would not prevent the applicant from implementing the previously approved scheme as the original permissions remain unaffected by the committee's decision. The outcome of a successful application under s.73 TCPA 1990 is the grant of a wholly new planning permission, which the applicant is entitled to implement or to ignore.
- 1.11 It is therefore considered that the applicant has put forward reasonable and effective improvements to the building frontage which are supportable in planning terms given they would enhance the appearance and accessibility of the development.

2. **Executive Summary**

- 2.1 The application has been submitted to regularise elements of the development that have not been built in accordance with the approved plans and also to allow for additional works to provide a suitable quantum of car and cycle parking spaces.
- 2.2 Provided the proposed works are carried out in a timely manner, it is considered that the alterations to the approved development would provide suitable degree of functional infrastructure and would not detract from visual amenities or the character of the surrounding area.
- 2.3 It is therefore recommended that the application is approved subject to additional conditions to secure a time scale for necessary alterations to be made.

3. **Relevant Planning Policies**

- 3.1 National Planning Policy Framework 2021
 2. Achieving sustainable development
 4. Decision making

- 5. Delivering a sufficient supply of homes
- 12. Achieving well-designed places
- 3.2 Eastbourne Core Strategy Local Plan 2006-2027:
 - B1: Spatial Development Strategy and Distribution
 - B2: Creating Sustainable Neighbourhoods
 - C2: Upperton Neighbourhood Policy
 - D1: Sustainable Development
 - D5: Housing
 - D8: Sustainable Transport
 - D10a: Design
- 3.3 Eastbourne Borough Plan 2001-2011:
 - UHT1: Design of New Development
 - UHT4: Visual Amenity
 - UHT5: Protecting Walls/Landscape Features
 - UHT7: Landscaping
 - UHT15: Protection of Conservation Areas
 - HO1: Residential Development Within the Existing Built-up Area
 - HO2: Predominantly Residential Areas
 - HO20: Residential Amenity
 - TR6: Facilities for Cyclists
 - TR7: Provision for Pedestrians
 - TR11: Car Parking

4. **Site Description**

- 4.1 The site is occupied by a free-standing 6-storey building that was constructed as an office block (East Sussex Fire & Rescue) but has recently been converted to residential use, with 73 apartments being formed (35 x 1 bed, 28 x 2 bed) following the granting of prior approval under application 170527.
- 4.2 The building is set back from Upperton Road and a hard-surfaced parking area is positioned to the front, with separate in/out access/egress from Upperton Road. Additional parking is provided to the rear of the building at ground floor level and within a basement level. This parking is accessed via Upperton Lane which runs to the rear of the site.
- 4.3 The conversion of the building has largely been achieved through internal works but planning permission was granted under 170868 to allow for the formation of balconies, replacement of windows, provision of a canopy over the main entrance to the building, provision of bin and cycle stores and tank

room and site landscaping (including a boundary wall to the front of the site). The approved details were then amended under application 180829.

4.4 The completed development is not fully in accordance with the details that were approved. A full list of the divergence from the approved plans (relevant to planning legislation) will be provided in section 5 of this report.

4.5 The site is in a prominent position alongside Upperton Road which provides a main route into the centre of Eastbourne. Surrounding development includes a mix of uses and building designs and scales. There are several multi-storey buildings on the northern side of Upperton Road which are in use as office blocks or flats whilst the southern side is flanked by more domestic scale dwellings that are also typically older.

5. Relevant Planning History

5.1 170527 - Change of use from Office Building, Class use B1(a) to Residential (use class C3). Comprising of 73 apartments (35 x 1 Bedroom units and 38 x 2 Bedroom Units) – Prior Approval Granted 8th May 2017

5.2 170868 - Alterations to elevations to include replacement of windows and conversion of rear walkway to balconies and alterations to external areas to include installation of new sub-station and cycle stores, amendment to car parking, widening of access ways, redesign of the main entrance and relandscaping – Approved Conditionally 14th September 2017

5.3 180829 - Application for variation of a conditions 2 (approved plans), 3 (external materials), 4 and 5 (vehicular access) following grant of planning permission 170868 to allow for revised design, layout, access and parking arrangements and external finishing to the approved development – Approved Conditionally 1st February 2019

6. Proposed Development

6.1 The application seeks to regularise some existing aspects of the development that differ from the details approved by planning permission as well as to provide additional alterations to the scheme that have not yet been constructed. For these alterations to be accepted, conditions 2 (approved plans), 3 (external materials) and 4 and 5 (access arrangements) would need to be varied.

6.2 Front Boundary:- The approved scheme included the provision of two freestanding 2-metre-high black rendered walls along part of the site frontage. These walls have not been constructed and, instead, an approx. 2-metre-high timber hit and miss fence is in place across the full site frontage (with gaps for access/egress). The application seeks permission for the provision of this fencing to be regularised by way of amending the approved plans list (condition 2) and the approved external materials (condition 3).

6.3 Frontage area:- The hardstanding car park area to the front of the building was to be block paved as per the approved planning permissions. The parking area has instead been surfaced in tarmac. The application seeks to regularise this by way of amending the approved plans list (condition 2), the

approved external materials (condition 3) and the approved parking arrangements (condition 4).

- 6.4 Frontage car parking :- Only 7 car parking spaces have been marked out to the front of the building rather than the 8 spaces required by the planning approval. The positioning of the spaces differs from the approved layout and no disabled parking bays are provided. The application seeks to regularise the layout as constructed as well as to allow for a new parking bay to be formed between the site access and egress. This would be achieved by way of amending the approved plans list (condition 2) and the approved parking and access arrangements (condition 4) and approved car and cycle parking arrangements (condition 5).
- 6.5 Front Canopy:- The overhanging flat roof canopy approved for the front of the building has not been constructed. The application seeks to regularise its omission by way of amending the approved plans list (condition 2).
- 6.6 Balcony Colour:- The finish of the balcony railings is not black as per the approved planning permission. The application seeks to regularise this by amending the approved plans list (condition 2) and the approved external materials (condition 3).
- 6.7 The wheelchair lift in the ground floor lobby has not been provided as shown on the approved floor plans. The applicant has stated that this will be installed, and it is shown on the submitted plans.
- 6.8 Cycle Parking:- The designated cycle parking areas have not been provided in accordance with the details approved by planning permission. At present there are cycle parking hoops provided within the ground floor and basement level parking areas, with capacity currently being 10 cycles at ground floor and 25 at basement level. The application seeks to regularise the alternative positioning of the cycle parking and the storage method. In addition, a further 14 spaces would be provided at basement level and an additional 27 at ground floor level bringing the total capacity of cycle parking up to 76 spaces. This requires the amendment of the approved plans (condition 2) and car and cycle parking arrangements (condition 5).
- 6.9 Fencing to substation:- The approved plans showed the electric substation being positioned in a fenced enclosure. The substation has been installed with fencing to the sides and rear but being open to the car parking area (where some planters have been positioned). The application seeks to regularise this by way of amending the approved plans conditions.
- 6.10 Refuse compound details:- The number of bins provided in the refuse store is not as shown on the approved plans and access to the enclosure for bin crews is provided by a single gate rather than the double gate approved. The application seeks to regularise this by way of amending the approved plans list (condition 2).

7. **Consultations**

7.1 ESCC Highways

7.1.1 No objections submitted.

7.2 EBC Waste and Refuse

7.2.1 No objections submitted.

8. **Neighbour Representations**

8.1 25 letters of objection have been received from occupants of the building and neighbouring residents. A summary of relevant content is provided below.

- The finished appearance of the development detracts from the character of the surrounding area.
- Disabled access has not been provided.
- The gate to the refuse store is not self-closing as stated and is not secure.
- Tarmac is not attractive and the justification for its use is poor.
- The boundary treatment should be higher quality.
- Site landscaping has not been completed.
- Cycle parking provided is not secure.
- Fencing is flimsy and will require regular maintenance.

8.2 OFFICER COMMENT: A significant amount of the objections relate to the appearance and quality of workmanship as well as how the development appears in relation to the plans shown when it was sold. Whilst these are undoubtedly significant and important concerns, planning legislation does not cover areas such as internal wiring/piping or finishes. The external works to the building were not integral to the approval for its residential use as this was allowed under prior notification legislation. As such, there is no obligation for the approved permission for external works to be fully implements (other than car and cycle parking which was required as a condition of the prior approval). The revised scheme must therefore be judged on its own merits rather than against any previously approved scheme.

9. **Appraisal**

9.1 Principle of Development

9.1.1 The principle of the development has been established following historic approvals for conversion of the building to residential use and external alterations. The application relates only to matters that either qualify as 'development' as per the definition provided in section 55 of the Town and Country Planning Act 1990 (as amended) or matters that involve non-compliance with relevant planning conditions. As such, internal works are not a relevant consideration.

9.1.2 The key assessment to be made is therefore how the alterations impact upon compliance with relevant planning policy with reference to visual, residential, and environmental amenity and highway safety.

9.2 Impact of the proposed development on amenity of adjoining occupiers and the surrounding area:

9.2.1 The proposed amendments have not resulted in any increase in the size or intensity of the development or the removal of any features put in place to protect the amenities of neighbouring residents. It is therefore considered that there would be no adverse impact upon the amenities of neighbouring residents because of the amendments proposed.

9.3 Design

9.3.1 The proposed amendments result in an altered appearance to the site frontage. Most notable is the presence of hit and miss fencing on the front boundary, flanking the pavement, in place of the approved freestanding rendered walls. Whilst the frontages of neighbouring developments are generally marked by flint and brick walls and, therefore, the materials used on the fence differs from this general character, it is considered that the height of the fencing and its general character is broadly consistent with existing means of enclosure and, as such, the fence does not introduce an unacceptable sense of enclosure. It should be noted that the materials used on the proposed render wall would also have been different to nearby walls and it is considered that a change in materials is reflective of the mixed design and scale of development on the street. The hit and miss design of the fence allows views towards the building to permeate and prevents it from appearing overly oppressive.

9.3.2 An initial inspection of the fence by officers resulted in concerns about the permanence of the fence, particularly its strength. It also appeared to be leaning in places. It is important that the long-term appearance of the fence is considered as, if it deteriorates quickly, this will have a harmful impact upon the character of the wider surrounding area. There is also a danger than a weak fence could collapse onto the neighbouring highway, presenting a significant risk to pedestrians and other highway users. In response to this, the applicant has carried out works to reinforce and straighten the fence. It is considered that this overcomes the concerns initially raised.

9.3.3 The omission of the overhanging canopy to the front of the building means that it largely appears as it did prior to its conversion. It is therefore considered that there has been no detrimental impact on the wider character of the area.

9.3.4 The omission of the fenced enclosure for the substation means that it is slightly more visually prominent although it is screened by fencing to the side and rear and partially screened by planting to the front. To add to this, the substation is of modest size and is recessively positioned. It is therefore considered that the omission of

the fenced enclosure has not detracted from the overall appearance of the site. From a safety and operational perspective, the substation is owned by the Distribution Network Operator (DNO) and they would not allow it to be commissioned if suitable security arrangements were not in place.

- 9.3.5 The tarmac surfacing in the car park is consistent with the appearance of other forecourt parking nearby. The revised finishes to the balcony have a minimal impact upon the overall appearance of the building.
- 9.3.6 It is therefore considered that the 'as built' appearance of the development is visually disruptive or harmful towards the overall character of the surrounding area.

9.4 Living conditions for occupants

- 9.4.1 The permission to convert the building to residential use was awarded through the prior approval process. This allowed for the building to be converted without any external modifications or extensions although the provision of a suitable quantum of car and cycle parking was a condition of the approval. Whilst the overhanging canopy would have afforded a degree of shelter when accessing the building its construction was not a prerequisite for the use of the building for residential purposes and it is not considered that the absence of the canopy has resulted in any unacceptable impact upon the suitability of the residential use of the building.
- 9.4.2 The provision of the wheelchair lift would improve accessibility to the building. It is noted that parts would remain inaccessible but the prior approval legislation which allowed for the conversion to residential use does not include the provision of disabled access in its remit. As such, the provision of the wheelchair lift was not a requirement of the permission. Building accessibility would have been assessed at the building regulations stage and it is noted that building regulations were approved.
- 9.4.3 The provision of adequate facilities for parking and servicing is an important factor and it is noted that the proposed development would ensure the required level of car parking is provided. The original approval included cycle parking with a capacity for 104 cycles, all within a dedicated secure and covered store. Whilst the proposed cycle parking is reduced to 76 spaces, this would meet ESCC Highways standards (1 space per 1 or 2 bed flat) and is therefore considered sufficient. It is noted that some of the cycle parking hoops are not accessible due to being located below a low ceiling and a condition will be used to secure the repositioning of the affected hoops, notwithstanding the details shown on the submitted plans.
- 9.4.4 It is therefore considered that the development, as built, satisfies relevant planning legislation relating to living conditions and facilities provided for occupants of the development.

9.5 Access and Servicing

- 9.5.1 The original planning approval required 8 car parking bays to be provided to the front of the building, with a further 51 spaces to the rear, providing an overall quantum of 59 x car parking bays. The development was built with only 7 car parking spaces to the front. The proposal includes the formation of an additional parking bay to the front of the building, adjacent to the landscaped island formed between the access and egress points. The proposed parking bay meets ESCC Highways recommended dimensions and suitable space would be provided to allow for manoeuvring in and out of the bay. The proposed parking bay would not obstruct existing parking bays.
- 9.5.2 The amount of cycle parking provided exceeds ESCC standards for 1 and 2 bed flats. The parking is provided in a covered area to the rear of the building. A condition will be used to confirm details of how parked cycles would be kept secure. All cycle parking outside of the covered car park area will also need to be provided with adequate coverage to protect parked cycles against the weather and to provide additional security.
- 9.5.3 The 'as built' scheme includes a single self-closing gate to provide access to the bin store rather than the double gates shown on the approved plans. The Council's waste and refuse team have not raised any concerns and the development has been serviced by refuse collection teams since it was first occupied. It is therefore considered that bin store arrangements are acceptable. Residents have raised concerns that an insufficient number of bins have been provided and a condition will be used to require the applicant to confirm the amount of bins available in order to ensure the number meets good practice standards.
- 9.5.4 It is therefore considered that the development, as amended. Incorporates a suitable quantum of car and cycle parking that meets relevant standards and that it can be adequately serviced.

9.6 Flooding and Drainage

- 9.6.1 The use of tarmac to the front of the building may potentially result in lower permeability than the block paving originally proposed. The hard-surfaced area slopes down towards Upperton Road and channel drains have been installed across the site access and egress points to prevent surface water discharge onto the highway. ESCC Highways have not raised any objections regarding surface water runoff. It is therefore considered that the proposed amendments have not resulted in any unacceptable increase in risk of surface water flooding.

10. **Human Rights Implications**

- 10.1 The impacts of the proposal have been assessed as part of the application process. Consultation with the community has been undertaken and the impact on local people is set out above. The human rights considerations

have been considered fully in balancing the planning issues; and furthermore, the proposals will not result in any breach of the Equalities Act 2010.

11. **Recommendation**

11.1 It is noted that the conversion to residential use could have been carried out without any of the additional works applied for by planning permission.

11.2 It is considered that the proposed amendments do not compromise the development in terms of compliance with relevant planning legislation. It is therefore recommended that the application is approved, subject to the conditions originally attached to 170868 and 180829, with necessary modifications made to allow for the amendments and additional conditions attached to secure final details of bin storage arrangements and relocation of cycle hoops that are not currently accessible due to the low ceiling height above them.

11.3 ADDITIONAL CONDITIONS:

11.4 The amount of waste and refuse bins provided shall accord with good practice guidance at all times, this being 2 x 1110 litre bins (one for waste one for recycling) per 12 dwellings unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interest of visual, residential, and environmental amenity in accordance with saved policies HO20, NE28 and UHT1 of the Eastbourne Borough Plan, policies B2 and D1 of the Eastbourne Core Strategy and para. 124 of the National Planning Policy Framework.

11.5 Notwithstanding the plans hereby approved, all cycle storage hoops with less than 2 metres clearance above them shall be repositioned in accordance with details to be submitted to the Local Planning Authority within 1 month of the date of this decision. Details of how parked cycles will be kept secure and covered in all areas shall also be submitted for approval and provided thereafter.

Reason: In order to ensure all cycle storage facilities are accessible and usable in the interest of encouraging the use of more sustainable modes of transport in accordance with policies B2, D1 and D8 of the Eastbourne Core Strategy and para. 106 of the National Planning Policy Framework.

11.6 The additional car parking bay and cycle parking facilities shall be installed within 1 month of the date of this permission.

Reason: In order to ensure suitable facilities are in place to prevent nuisance parking on the surrounding highway network and to encourage the use of more sustainable modes of transport in accordance with policies B2, D1 and D8 of the Eastbourne Borough Plan and para. 106 and 110 of the National Planning Policy Framework.

12. **Appeal**

12.1 Should the applicant appeal the decision the appropriate course of action to be followed, considering the criteria set by the Planning Inspectorate, is written representations.

13. **Background Papers**

13.1 None