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## Appeal Decision

Hearing held on 29 November 2012

Site visit made on the same day

**by Isobel McCretton BA(Hons) MRTPI**

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

**Decision date: 8 February 2013**

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**Appeal Ref: APP/Q1445/A/12/2181318**

**27-31 Church Street, Brighton BN1 1RN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Brockhampton Land Co Ltd against Brighton & Hove City Council.
  - The application Ref. BH2011/02401 is dated 12 August 2011.
  - The proposal is a mixed use development comprising 9 no. dwellings, retail use (341m<sup>2</sup>) and offices, with basement level parking for 25 cars and associated landscaping.
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### Procedural Matters

1. At the Hearing the appellants submitted a s106 Unilateral Undertaking in respect of a financial contribution towards the costs of highway improvements in the vicinity of the property, and in particular improvements to the North Road bus stops in Queens Road. The Council objected to a condition in the Undertaking which required the Council to enter into a deed by which the Council covenanted to use the contribution exclusively for the purposes set out in the Undertaking and to refund any unexpended sum after 5 years. While the Council did not object to the principle of these requirements it was argued that a Unilateral Undertaking could not require the Council to enter into a separate deed. Although the appellants were of the view that such a clause should be acceptable, it was agreed at the Hearing that in place of this Undertaking, the Council and the appellants would sign a S106 Agreement. This was duly submitted after the close of the Hearing.
2. I consider that the submitted S106 Agreement, which would help to secure transport improvements in the vicinity of the appeal site, accords with the tests for planning obligations set out in the National Planning Policy Framework 2012 (the Framework) and the terms of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

### Decision

3. The appeal is allowed and planning permission is granted for a mixed use development comprising 9 no. dwellings, retail use (341m<sup>2</sup>) and offices, with basement level parking for 25 cars and associated landscaping at 27-31 Church Street, Brighton BN1 1RN in accordance with the terms of the application, BH2011/02401 dated 12 August 2011, subject to the conditions in the attached Schedule.

### **Application for costs**

4. At the Hearing an application for costs was made by Brockhampton Land Co Ltd against Brighton and Hove City Council. This application is the subject of a separate Decision.

### **Main Issues**

5. The main issues in this case are whether it is necessary and reasonable to require a car park management plan; and to require the proposed parking spaces to be restricted to occupants and users of the development.

### **Reasons**

6. The appeal site lies within the North Laine Conservation Area on the corner of Church Street and Portland Street and slopes from west to east and north to south. It was previously occupied by industrial buildings which were cleared in 1996. Planning permission for a mixed use development of offices and retail units was granted in 1996 as an amendment to a previous permission approved in 1991. The 1996 permission has been partly implemented and remains extant with design amendments being approved in 2002.
7. During the consideration of the application a number of changes were made to the scheme. The Council considered the amended scheme to be broadly acceptable and in accordance with the adopted Brighton and Hove Local Plan 2005<sup>1</sup>. I have no reason to disagree with this view. The proposal provides a balanced mix of uses and dwelling types appropriate to the central location of the site. It is also broadly in accordance with the designation of the site in Local Plan policies EM9 and EM10. It would improve a site which has been vacant for around 20 years.
8. The contemporary design is of an appropriate scale, design, detailing and materials which relates acceptably to the surrounding buildings so that the character and appearance of the Conservation Area would be preserved. The submitted daylight and sunlight assessment shows that the scheme would not have a materially greater impact on the living conditions of the nearby residents in Windsor Street in terms of outlook and loss of light. As such, the scheme would accord with Local Plan policies QD1 (Design - quality of development), QD3 (Design – efficient and effective use of sites), QD5 (design – street frontages) and SU2 (efficiency of development in the use of energy, water and materials).
9. The Council resolved to approve the application subject to the completion of a S106 Agreement to secure a financial contribution towards improvements to local bus stops and a restriction to ensure that the car parking spaces would be retained for the occupiers/users of the development and that the residential units would be allocated one space/unit. This is the matter in dispute between the main parties.
10. The appellants were of the view that, if it were necessary to restrict/designate the car parking spaces in this way, this should be dealt with by way of a planning condition rather than a S106 Agreement. They requested that the only matter to be covered by the S106 should be the transport contributions.

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<sup>1</sup> The saved policies cited are broadly in accordance with the National Planning Policy Framework 2012 and so, in accordance with para 215 of that document, I accord them considerable weight.

The Council agreed that this could be done but no progress was made on the matter over several months and so this non-determination appeal was lodged.

11. After the appeal had been lodged, but before the Hearing, the Council resolved to approve a duplicate planning application for the proposed development subject to the completion of a S106 Agreement to secure a financial contribution towards transport improvements and to 24 conditions. Conditions nos.11 and 12 concerned the regulation of the parking spaces. The appellants object to the terms of these conditions which are also included in the conditions suggested by the Council in relation to this appeal.
12. Condition 11 requires that the vehicle parking area is made available for the permanent use of the occupants and visitors to the approved residential units and commercial floorspace. Condition 12 requires the approval and implementation of a car park management plan, including details such as parking permits, allocation of spaces, and details of parking enforcement. The reasons given for the conditions are to ensure that adequate parking provision is retained and that there is compliance with policy TR19 of the Local Plan.
13. Policy TR19 advises that planning permission will be granted for new developments and changes of use where parking levels meet the parking standards set out in Supplementary Planning Guidance Note 4 'Parking Standards' (2000) (SPGBH4). SPGBH4 states that the parking standards set out are maximum parking standards (except disabled parking where the figures are minima). It also sets out that the city's aim is to reduce excessive parking provision that encourages the non-essential use of the car, especially for peak time travel. There is no dispute that the overall parking provision shown in the submitted scheme accords with SPGBH4.
14. At the Hearing the Council explained the parking for the commercial units should be only for operational purposes and it was seeking to prevent the spaces being let or sold to users unconnected with the development, thereby encouraging additional commuter parking. The appellant on the other hand maintained that the type of car park management plan required by the Council was unduly inflexible and, moreover, unenforceable.
15. After much discussion it was suggested that, rather than the two conditions suggested by the Council, conditions similar to those imposed on appeal<sup>2</sup> at a nearby site owned and managed by the appellants would be acceptable. It was agreed that appropriate conditions would be to require that the parking spaces should be available only for the use of occupiers of and visitors to the development and for no other purpose, and that the management details would be restricted to details of control of access to the individual spaces and entry to the car park. It seems to me that this would achieve the Council's objectives whilst enabling the appellants to manage the car park according to the operational needs of the development.
16. I conclude that such an arrangement would meet with the objectives of policy TR19 and SPGBH4 and that it is unnecessary to require a detailed management plan with allocation of spaces.

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<sup>2</sup> Ref. T/APP/Q1445/A/99/1020907/P5 & T/APP/Q1445/A/00/1039226/P5 dated 6 June 2000

## Conditions

17. I have considered the need for additional conditions in the light of the advice in Circular 11/95: *The Use of Conditions in Planning Permissions* and those discussed at the Hearing.
18. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.
19. In the interest of the appearance of the development it is necessary to require approval of further details of various features of the buildings (e.g. shop fronts, railings, louvres windows, doors eaves, copings, thresholds etc. Although it was argued that some of the information required by the Council is very detailed, I consider that this is appropriate given the scale of the development within the Conservation Area. For the same reason approval of the details of external lighting, a restriction on external pipework etc. and the provision of additional doors and windows, and implementation of the proposed landscaping scheme are required.
20. To protect the living conditions of nearby residents it is reasonable to require that sections of the flat roof over the commercial properties are not used as balconies/sitting out areas, and that noise from any plant installed is controlled.
21. To accord with national and development plan objectives to secure sustainable development, conditions are necessary to require the residential units to be constructed to Lifetime Homes Standards and Level 3 of the Code for Sustainable Homes. In respect of the commercial units, the Council put forward a condition requiring the units to achieve certain BREEAM ratings. However I accept the appellants' argument that, as fit out would be left to the end user, a Green Lease arrangement would be more appropriate.
22. To ensure adequate provision to meet the needs of the development it is necessary to require provision of the car and cycle parking and the refuse storage facilities shown on the approved drawings. As set out above the parking should be restricted to occupiers and visitors to the development, with details of entry control and access to the individual spaces suited for approval.
23. A Phase I desk top study in respect of contamination was submitted to the Council with the planning application. This identified potential sources of contamination but indicated that a Phase II intrusive investigation may reveal on-site sources of contamination that were not established by the Desk study and Walkover. I therefore consider that a modified version of the condition suggested by the Council is necessary to secure an on-site investigation report and a scheme for any necessary remediation, along with a verification report that this has been carried out effectively. It is also necessary to require that any unexpected contamination found during construction works is notified to the Council and an appropriate scheme for remediation be submitted and implemented.
24. To accord with Local Plan policy and to provide a reasonable opportunity to record the history of the site I agree that a condition requiring the submission of a written scheme of investigation for a programme of archaeological work should be imposed.

25. The Council put forward a condition requiring the hard surface to be of porous material or for rainwater to be directed to a permeable or porous area within the curtilage. The only such hard surface is the access with most of the remainder of the development on a podium over the basement. Thus I consider it more appropriate just to require details of the drainage for the access to be submitted.
26. I do not consider that a condition regarding the provision of disabled parking spaces is necessary as this is already shown on the approved drawings.
27. I also consider a restriction on delivery and refuse collection times is unnecessary as this is a town centre location where such activity already takes place.

### **Conclusion**

28. For the reasons given above I conclude that the appeal should be allowed.

*Isobel McCretton*

INSPECTOR

### **Schedule of Conditions for Appeal Ref. APP/Q1445/A/12/2181318**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Other than as required by other conditions in this decision, the development hereby permitted shall be carried out in accordance with the following approved plans: 0970-P-101-P1, 0970-P-102-P4, 0970-P-103-P3, 0970-P-104-P3, 0970-P-105-P3, 0970-P-106-P3, 0970-P-107-P4, 0970-P-108-P3, 0970-P-109-P4, 0970-P-110-P4, 0970-P-111-P4.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no windows/dormer windows, roof light or door other than those expressly authorised by this permission shall be constructed without planning permission from the local planning authority.
- 4) No development shall take place until the following details have been submitted to and approved in writing by the local planning authority:
  - i) sample elevations and sections at 1:20 scale of the shop fronts, railings, gates, bays, balconies, basement ventilation louvres or grilles, windows, doors, door canopies, steps, parapets, balustrades, copings, eaves, brises soleil, louvres, bin stores, meter cupboards, cycle stores and all other features;
  - ii) Details and sections at 1:5 scale of the eaves, copings, cills, door thresholds and steps;
  - iii) Elevations at 1:10 scale of the railings and the gates;

- iv) Sectional profiles at 1:1 scale of the window frames, door frames and shop front frames showing their relationship to their reveals and cills;
- v) Details and samples of materials and colours including rainwater goods and paving;

And the works shall be carried out and completed in strict accordance with the approved details and retained as such thereafter.

- 5) Before development commences, details of the drainage arrangements for the access shown on the approved drawings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) 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.
- 7) The development shall be carried out in accordance with the landscaping scheme shown on drawing 0970-P-104-P3.
- 8) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following occupation of the building or completion of the development whichever is the sooner; and 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 unless the local planning authority gives written approval to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.
- 9) Notwithstanding the approved plans, details of secure and covered cycle parking facilities for 18 cycles shall be submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved details have been fully implemented.
- 10) No development shall take place until details of external lighting have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed according to the approved details and thereby retained as such unless a variation if subsequently submitted to and approved in writing by the local planning authority.
- 11) Access to the flat roofed areas of the non-residential elements at first and third floor level on the southern and western sides of the building shall be for maintenance or emergency purposes only and shall not be used as a roof garden, terrace patio or similar amenity area.
- 12) Any external plant and machinery shall be attenuated against the transmission of noise and/or vibration in accordance with details which have been submitted to and approved in writing by the local planning authority. The noise from external plant shall not exceed 5dBA below the background noise level.

- 13) No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans) meter boxes or flues shall be fixed to any elevation facing a highway.
- 14) Prior to the commencement of development details of the measures to control access to the individual parking spaces and the form of entry control to the car park shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) The development shall not be occupied until the vehicle parking spaces as shown on approved drawing no.0970-P-103-P3 have been laid out. Thereafter the parking spaces shall be made available only for the use of occupiers of and visitors to the development and for no other purpose.
- 16) The new dwellings hereby approved shall be constructed to Lifetime Homes Standards.
- 17) Unless otherwise agreed in writing with the local planning authority, no residential development shall commence until;
  - i) evidence that the development is registered with an accreditation body under the Code for Sustainable Homes; and
  - ii) a Design Stage Report/Interim Report showing that the development will achieve Code Level 3 for all residential units have been submitted to and approved in writing by the local planning authority (a completed pre-assessment estimator will not be acceptable.
  - iii) None of the residential units hereby approved shall be occupied until a Final/Post Construction Code Certificate issued by an accreditation body confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code Level 3 has been submitted to and approved in writing by the local planning authority.
- 18) Prior to the commencement of development details of a formal binding Green Lease Agreement between the landlord and tenants for the fit out of the non-residential units shall be submitted to and approved in writing by the local planning authority. Thereafter all tenancies shall be subject to the approved agreement.
- 19) No development shall take place until an on-site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved in writing by the local planning authority before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for

the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 20) Unless otherwise agreed in writing, no development shall take place until the applicant has secured a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
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## APPEARANCES

### FOR THE APPELLANT:

Jonathan Clay	of Counsel, instructed by Martin Carpenter, Director, Enplan - Planning, Landscape and Environmental Consultants
Martin Carpenter BA(Hons) MRTPI	Enplan
David Maher	Enplan
Lap Chan BA(Hons) DipArch, ARB, RIBA	Architect, Morgan Carn Partnership
Neville Andrew	Brockhampton Land Co Ltd
Richard Andrew	Brockhampton Land Co Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Anthony Foster BSc(Hons) MA, MRTPI	Planning Officer
Alison Gatherer	Solicitor
Peter Tolson MTD, MICE, BA	Transport Planning Officer

### DOCUMENTS SUBMITTED AT THE HEARING:

Document 1 Appeal decision T/APP/Q1445/A/99/1020907/P5 &  
T/APP/Q1445/A/00/1039226/P5 dated 6 June 2000

Document 2 S106 Agreement for duplicate application

Document 3 Email from B&HCC to Morgan Carn date 29/6/12

Document 4 Unilateral Undertaking from appellants dated 29/11/12

Document 5 S106 Agreement dated 12/12/12

### DRAWINGS:

A1-16 Drawings submitted with the planning application (0970-P-101-P1, 102-P4, 103-P3, 104-P3, 105-P3, 106-P3, 107-P4, 108-P3, 109-P4, 110-P4, 111-P4, 112-P2, 1113-P2, 114-P2, 115-P3, 116-P1)

