

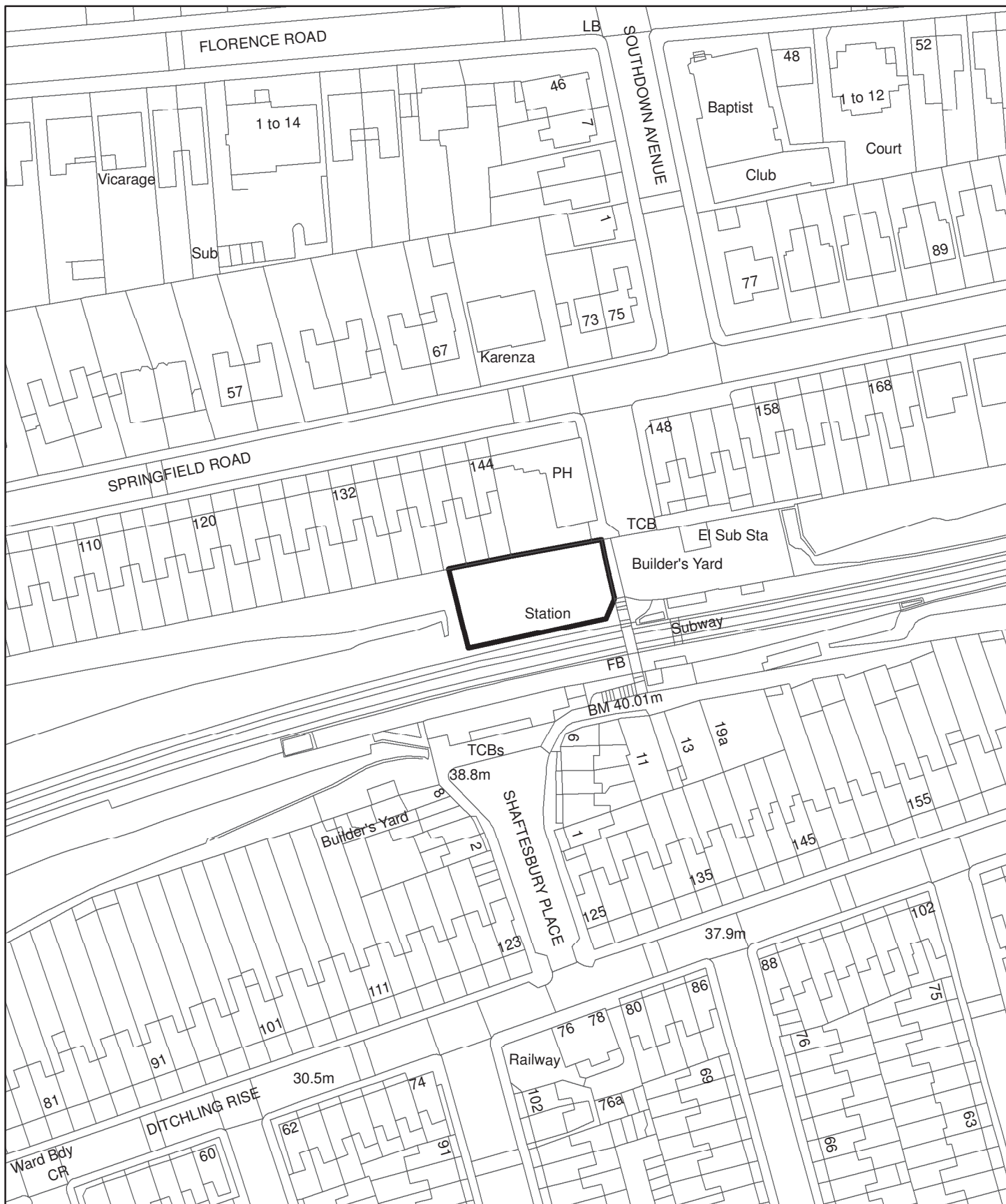
**PLANS LIST
ITEM D**

**Land rear of 140-146 Springfield Road,
Brighton**

**BH2012/03286
Extension to time limit full planning**

13 MARCH 2013

BH2012/03286 Land rear of 140-146 Springfield Road, Brighton



<u>No:</u>	BH2012/03286	<u>Ward:</u>	PRESTON PARK
<u>App Type:</u>	Extension to Time Limit Full Planning		
<u>Address:</u>	Land rear of 140-146 Springfield Road, Brighton		
<u>Proposal:</u>	Application to extend time limit for implementation of previous application BH2008/03194 for the erection of a terrace of 4no three bedroom houses.		
<u>Officer:</u>	Kathryn Boggiano Tel: 292138	<u>Valid Date:</u>	12/10/2012
<u>Con Area:</u>	Preston Park	<u>Expiry Date:</u>	07/12/2012
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Town & Country Planning Solutions, Sandhills Farmhouse, Bodle Street Green, Hailsham		
<u>Applicant:</u>	Kingsbury Estate Ltd, Maria House, 35 Millers Road, Brighton		

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 11 and the policies and guidance in section 7 and resolves it is **MINDED TO GRANT** planning permission subject to a Section 106 Agreement and to the Conditions and Informatives set out in section 11.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application site comprises an 800sqm rectangular open area of land positioned between the rear of three storey residential terrace properties and two storey public house fronting onto Springfield Road and the northern boundary of the London Road rail station. The site is currently overgrown with scrub vegetation and a small number of larger trees. There is currently no public access to the site or any use made of the site.
- 2.2 A pedestrian bridge providing access over the railway tracks is located along the eastern boundary of the site.
- 2.3 The site is located within the Preston Park Conservation Area. A group Tree Preservation Order applies to the site. The site is also subject to an indicative Greenway designation in the Brighton & Hove Local Plan.
- 2.4 A site visit has revealed that there have been no other material changes to the site since the grant of permission in 2009 except for the erection of a boundary fence by Network Rail along the southern boundary. Objections from local residents allege that the site is smaller than that shown on the plans as a result of the erection of this boundary fence. The applicant contents that Network Rail has erected the fence on the applicant's land. The application site boundaries and the footprint of the proposed dwellings have not changed since the previous application BH2008/03194.

- 2.5 Springfield Road is included within the proposed area of the extended London Road Station Controlled Parking Zone (CPZ), which has been approved in principle by the Council.

3 RELEVANT HISTORY

BH2012/02655: Erection of a terrace of 4 no. two bedroom dwellings. Withdrawn 15 November 2012.

BH2008/03194: Erection of a terrace of 4 no. two bedroom dwellings. Refused 05 December 2008 with 9 reasons for refusal. Appeal heard by Public Inquiry was allowed 28 October 2009.

BH2006/02610: Erection of two storey apartment building containing 4 one bedroom and 4 two bedroom flat. Refused 07 December 2006. Appeal dismissed 20 March 2008.

BH1999/01588/FP: Continuation of the temporary use of the application site as a wildlife area, the site to the east as a scaffolding company storage yard (including offices) and the site further to the east as allotments. Approved 29 September 1999. This followed similar temporary permissions granted in 1995 (94/1052/FP), 1995 (95/0516/FP) and 1996 (96/0290/FP).

BH1997/00900/FP: Erection of a three storey building of nine flats with associated communal open space on the current application site, with 15 car parking spaces on the (scaffolders) site to the immediate east. Refused 26 November 1997.

4 THE APPLICATION

- 4.1 Planning permission is sought for the extension of time for the implementation of previous permission BH2008/03194 for the erection of a terrace of 4no. three bedroom houses which were granted on appeal dated 28th October 2009.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours: (16) Sixteen** letters of objection have been received from **Open House Pub 146, 31, 92a, 94a, 132b, 134, ground flat 138, 138b, ground flat 140, 156 Springfield Road, 65 Warleigh Road, 81 Stanford Road, 2 Shaftesbury Place, 48 and 147 (2) Ditchling Rise**. The following grounds of objection are raised:

- The dimensions of the actual plot do not match the plans;
- Noise and vibration from trains, engineering work and pub garden would cause unsuitable living conditions;
- The noise reports are outdated, DEFRA have produced railway noise maps which indicate noisier conditions than those stated within the original noise assessment;
- Loss of open space in an area currently lacking in green open space;
- There has been significant community interest in using unused land around London Road for growing vegetables which is contrary to the Inspector's statement that there is limited community and social activity and interest in the site and it has no recreational or economic value as open land.
- Loss of wildlife corridor;

- Loss of Greenway;
- Additional parking stress and traffic;
- Loss of privacy and overlooking to surrounding residents;
- Reduced sunlight and overshadowing;
- Inadequate access to the site;
- The site was used for railway allotments and not former operational railway land and is not a brownfield site;
- Complaints from residents about noise from the pub and garden may lead to additional conditions and loss of trade to adjoining public house;
- No sufficient access for disabled people;
- Insufficient access to carry out building work;
- Increase in proposed pressure on local services and amenities in the area;
- The size of the dwellings is inappropriate for the space and would be cramped.

Internal:

5.2 **Ecology:** Approve, retaining the conditions previously agreed.

The ecological comments raised four issues which are summarised below:

- *Provision for Slow-worm*
Taken together, the three ecological reports submitted in support of the application describe a mitigation strategy for slow-worm which is acceptable in planning policy terms.
- *Nesting birds*
The application ensures the law is adhered to and the risk of disturbing nesting birds would be minimised by avoiding vegetation clearance during the nesting season. However no attempt is made to compensate for the loss of nesting habitat.
- *Biodiversity enhancement*
The application does not include any proposals to create new nature conservation features.
- *Loss of Natural Semi Natural Open Space*
The emerging Brighton & Hove Open Space Strategy does not identify any surplus 'NSN' space in the city but does identify a substantial shortfall of such space to 2026. It therefore seems reasonable to conclude that this site is important to people for its wildlife value and therefore that it is protected from development in all but exceptional circumstances under policy QD20.

5.3 All of these issues are addressed in the subsequent Inspector's Report dated 28th October 2009 (ref. no. APP/Q1445/A/09/2105969). Specifically, with regards to Slow-worm, since the original application, the site has, if anything deteriorated in the value of the habitats present to Slow-worm and therefore the original mitigation strategy remains adequate. Similarly Conditions 7 and 8 address nesting birds and biodiversity enhancement. The potential loss of semi-natural green space is also addressed in the Inspector's Report.

5.4 **Arboricultural Officer:** Comment. Reiterate comments to the original application. These are summarised below;

- 5.5 A large area of juvenile self-seeded sycamores, buddleia and scrub vegetation will be lost but would appear to be of little arboricultural value. The site is covered by an Area Order Tree Preservation Order - No. 4, 1993. The Arboricultural Section agree with the submitted Arboricultural Report that there is only one tree on this site that is worthy of Tree Preservation Order. The Arboricultural Section would like it made a condition of any planning consent granted that the one tree is protected to BS 5837 (2005) Trees on Development Sites. An arboricultural method statement should also be submitted to and approved by the Arboricultural Section on how the bin area in close proximity to this tree will be constructed. A landscaping plan should also be submitted to retain the "green" element of this area. Some of the self-seeded saplings provide an important screen between the properties in Springfield Road and the proposed development, and their removal may be to the detriment of current householders. The landscaping plan should address this issue if at all practicable.
- 5.6 **Environmental Health:** No objection subject to conditions relating to noise attenuation measures and contaminated land survey and remediation work.
- 5.7 **Heritage:** No objection subject to conditions.
- 5.8 The site is located in the Preston Park Conservation Area. It is a vegetated green space forming part of a green corridor running along the north side of the railway line. It is adjacent to London Road Station, whose station building on the south side of the line is Listed Grade II. It lies on the east side of the station's north access at the rear of Nos. 140 - 146 Springfield Road, which is a two storey late 19th terrace of houses. On the corner of the access from Springfield road is a late 19th C public house.
- 5.9 In October 2009, planning permission was granted on appeal for the erection of a terrace of four 3-bedroom houses on the site. In September 1999 planning permission was granted on the site opposite to retain the present use as allotments (Area 1), retain present use as a wildlife area (Area 2) and retain scaffold racks, storage hut and fitting shed, relocate office and provide new access to east bound platform of London Road Station (Area 3).
- 5.10 The layout plan and design of the proposed development appears to be identical to the one allowed on appeal. Its building line is set well back from the corner and does not respect its building line. It would also result in the loss of an important green space and part of the green corridor.
- 5.11 Its traditional design is loosely based on the mid to late Victorian architecture of the immediate surrounding area, although the position of the chimneys and party wall upstands is odd and does not follow the pattern of traditional terraced houses and the flat roofed projecting porches are not characteristics of the terraced properties in the vicinity. In view of this I consider that the proposal is out of character with this part of the conservation area.
- 5.12 There is insufficient detail in the drawings of the dormers, windows, doors, gates and other architectural details.

- 5.13 However, in view of the appeal decision, the Heritage team do not object, unless there are new material considerations that would justify refusal notwithstanding the previous appeal decision.
- 5.14 A more sympathetic design that respected the building line and design of the terraces in Springfield Road would be preferred. The conditions attached to the permission granted on appeal should be re-instated along with the additional conditions requiring the details large scale details of all architectural features, requirement for windows to be timber sliding sashes, and exact requirements for the type of materials of the dormers and render.
- 5.15 **Planning Policy:** No objection to the proposal. The proposal remains finely balanced, however, in view of the unique circumstances relating to this site, it is considered that whilst there have been changes in the material considerations the changes do not demonstrate the principle of development is no longer acceptable. Subject to the comments from other consultees it is considered an extension in the time limit for implementation should be considered favourably.
- 5.16 This site has been the subject of two planning appeals relating to the development for housing. Whilst the first was dismissed it did not preclude the principle of development. The second was allowed, giving rise to the permission to which this application relates. At the second appeal costs were awarded against the council because it was considered allotments, biodiversity and pedestrian safety should not have formed reasons for refusal (it was considered the former was not applicable and the others could be suitably overcome by condition and planning obligation/unilateral undertaking).
- 5.17 Since the Appeal decision a number of additional background studies, including an Open Space Update Study 2011 and housing studies, have been completed and adopted for planning purposes, the South Downs Way Ahead Nature Improvement Area (NIA) has been designated and, the National Planning Policy Framework (NPPF) and the draft City Plan Part 1 have been published. These are material changes that should be taken into account when considering this application. It is important to note that whilst they are considered to be material a non favourable decision would in effect only be justified if the changes significantly alter the issues considered by the Inspector and sufficiently demonstrate the proposal is no longer acceptable.
- 5.18 The Inspector, having taken into account the Open Space, Sport and Recreation Study, considered the site's value as open space limited in scope to wildlife and amenity considerations (Inspectors report, paragraph 17). He considered that with the suggested conditions and unilateral undertaking in place, the proposal would have no unacceptably adverse effect on wildlife and biodiversity. He also considered the proposal would retain the views of the belt of preserved trees largely unharmed and would preserve the character and appearance of the Conservation Area.
- 5.19 The overarching conclusion in the Inspector's report (paragraph 52) states "In contrast to the previous appeal on this site, the current proposal is for a different form and layout of development which would preserve the character and

appearance of the Preston Park Conservation Area, minimise its impact on parking stress, avoid potential disturbance from railway activity and from the public house, have little or no adverse effect on neighbouring residents and make a small but worthwhile, energy efficient contribution towards housing provision. The small loss of open space would not impair the contribution which the remaining area would continue to make to the visual amenity and wildlife interest of the area. I therefore allow the appeal.”

- 5.20 The Draft City Plan Part One was published in May 2012 and the Proposed Submission version is imminent subject to approval at Full Council (31 January 2013). However the Brighton & Hove Local Plan 2005 remains the adopted development plan and whilst the City Plan is a material consideration it is felt it does not materially alter the issues considered by the Inspector.
- 5.21 The National Planning Policy Framework replaces the national planning policy guidance and statements considered at the Appeal including PPG17 and PPS3. It is a material consideration however the changes are not felt to materially alter the issues considered by the Inspector.
- 5.22 The Open Space Study Update 2011 provides further analysis of open space and indicates in 3.2.1 and 3.2.2 that the ward of Preston Park and its wider sub area are deficient in open space. However it also contains a number of walking distance catchment maps which, similar to those in the 2008 Open Study, do not take account of surrounding population or the size of site and thus can give an impression that provision is acceptable. When assessing the significance of these issues regard must be given to the way the Inspector assessed the open space value of the site and catchment area, his comparison with Natural England’s Accessible Natural Greenspace standard and his statement in paragraph 15 that “there is nothing in the Open Spaces Study to demonstrate that this site could not be surplus to requirements” (The executive summary of the Open Space, Sport and Recreation Study 2008 states “no surplus open space has been identified”).
- 5.23 The site does not form part of the newly designated Nature Improvement Area and, subject to the detailed comments of the Council’s Ecologist, the biodiversity of the site is not considered to have significantly altered to justify the preclusion of development.
- 5.24 The merits of this proposal remain finely balanced, however, in view of the unique circumstances relating to this site, it is considered that whilst there have been changes in the material considerations the changes do not demonstrate the principle of development is no longer acceptable. There remains a high demand for housing and the housing studies completed since the appeal decision are not felt to significantly alter the issues considered by the Inspector. Whilst the loss of this open space to development is disappointing and there remains a concern over the cumulative impact of incremental loss of open space, these matters are not new and do not therefore form a material change since the appeal decision.

- 5.25 **Sustainable Transport:** No objection subject to conditions relating to cycle parking and submission of Construction Method Statement.
- 5.26 Cycle parking: the applicant proposes 2 cycle parking spaces per dwelling; this accords with parking standards SPG4. The Highway Authority does request that the applicant provides a detailed drawing indicating the type of facilities proposed.
- 5.27 Car Parking: the applicant proposes no parking on site. Therefore any such parking would occur on the highway. It is noted that an appeal decision for a previous application at the same site a planning inspector concluded that “although poor parking practise does occur in the area...the impact of the proposal is so small that it would not make any significant difference” (Ref. APP/Q1445/A/09/2105969).
- 5.28 Trip generation/ Financial contributions comment: The size of this development is below the threshold at which financial contributions can be sought due to the temporary recession measures approved by the Council. The Highway Authority acknowledges this and in this instance does not wish to seek financial contributions for any uplift in trips generated by this development.
- 5.29 Construction Method Statement: There is a heavily used footpath to the railway station adjacent to the site. As agreed by the planning inspector in a previous appeal decision for an application at the same site (Ref. APP/Q1445/A/09/2105969) it is requested that a construction method statement is submitted for approval and condition 2 is attached.

6 MATERIAL CONSIDERATIONS

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”
- 6.2 The development plan is:
- The Regional Spatial Strategy, The South East Plan (6 May 2009);
 - East Sussex and Brighton & Hove Minerals Local Plan (November 1999);
 - East Sussex and Brighton & Hove Waste Local Plan (February 2006);
 - Brighton & Hove Local Plan 2005 (saved policies post 2004).
- 6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.
- 6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF. At the heart of the NPPF is a presumption in favour of sustainable development.
- 6.5 All material considerations and any policy conflicts are identified in the considerations and assessment section of the report.

7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove Local Plan:

TR1	Development and the demand for travel
TR2	Public transport accessibility and parking
TR7	Safe Development
TR8	Pedestrian routes
TR9	Pedestrian priority areas
TR14	Cycle access and parking
TR19	Parking standards
SU2	Efficiency of development in the use of energy, water and materials
SU9	Pollution and nuisance control
SU10	Noise nuisance
SU11	Polluted land and buildings
SU13	Minimisation and re-use of construction industry waste
QD1	Design - quality of development and design statements
QD2	Design - key principles for neighbourhoods
QD3	Design - efficient and effective use of sites
QD7	Crime prevention through environmental design
QD15	Landscape design
QD16	Trees and hedgerows
QD17	Protection and integration of nature conservation features
QD18	Species protection
QD19	Greenways
QD20	Urban open space
QD27	Protection of amenity
QD28	Planning Obligations
HO3	Dwelling type and size
HO4	Dwelling densities
HO5	Provision of private amenity space in residential development
HO6	Provision of outdoor recreation space in housing schemes
HO7	Car free housing
HO13	Accessible housing and lifetime homes
HE6	Development within or affecting the setting of conservation areas

Supplementary Planning Guidance:

SPGBH4 Parking Standards

Supplementary Planning Documents:

SPD06	Trees & Development Sites
SPD08	Sustainable Building Design
SPD9	Architectural Features
SPD11	Nature Conservation & Development

Draft City Plan – Part 1

CP1	Housing Delivery
CP8	Sustainable Buildings
CP9	Sustainable Transport
CP10	Biodiversity

CP12	Urban Design
CP14	Housing Density
CP15	Heritage
CP16	Open Space
CP19	Housing Mix

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The application seeks an extension to the time limit for implementation to the previous application reference BH2008/03194 which was allowed at appeal.

Background

- 8.2 Planning permission for the site was granted on appeal in October 2009 for the erection of a terrace 4no three bedroom dwellings. This followed a public inquiry which was held in September and October 2009.
- 8.3 The decision by the Local Planning Authority to refuse the application (BH2008/03194) contained 9 reasons for refusal which were related to the principle of residential development and the loss of open space; impact on the Preston Park Conservation Area; impact on the residential amenity of 144 Springfield Road; failure to demonstrate biodiversity aims; failure to demonstrate how construction material would be moved onto the site and how servicing would occur, failure to demonstrate how the travel demands will be catered for; and 3 reasons for refusal which were related to sustainability.
- 8.4 As part of the appeal process and through the production of the Statement of Common Ground, further details were submitted and agreement was reached on five of the reasons for refusal, which were then withdrawn by the Council. Therefore, the reasons for refusal which were heard at the public inquiry were related to the principle of residential development and the loss of open space; the impact on the Preston Park Conservation Area, the impact on the amenity of residents of 144 Springfield Road; and the failure to demonstrate how the development would be efficient in the use of energy, water or material.
- 8.5 The site falls into the natural/semi natural open space category which is defined within the Council's Open Space, Sport & Recreation Study 2008 (referred to below as Open Space Study). The Inspector found that the site was only a small part of a larger area of natural/semi-natural open space and no evidence had been submitted to show that the loss of this site would reduce the larger area below any threshold for recognition as natural/semi-natural open space. The Inspector found that the Open Space Study had demonstrated that even without this site, all parts of Brighton & Hove would remain within the catchment of natural/semi-natural open space, and that there was nothing within the Open Space Study to demonstrate that this site could not be surplus to requirements within the terms of PPG17.
- 8.6 The Inspector concluded that the site was important to local people for two reasons. Firstly, wildlife conservation and secondly, visual relief in a densely built up area providing a contribution to the character of the conservation area. The site was considered to have no recreation or economic value as open land.

Therefore the site's value as a piece of open space was considered to be limited in scope to its wildlife and amenity considerations. These were considered as issues in their own right by the Inspector.

- 8.7 The Inspector concluded that the site would have no significant adverse impact on biodiversity and as the views of the existing tree belt present to the west of the site would be largely retained, the development would not cause a detrimental impact on the character of the conservation area. Therefore, the Inspector concluded that the loss of part of the open space, as a result of the scheme, was acceptable and would be consistent with the objectives of Policy QD20 of the Local Plan.
- 8.8 The Inspector concluded that the development was unlikely to cause any unacceptable loss of light to number 144 Springfield Road and the effect on the living conditions of the occupier would be acceptable.
- 8.9 The Inspector considered that the method of transportation of construction materials could be controlled via condition. The previous Inspector also came to this conclusion as part of the earlier appeal decision for the site (BH2006/02610).
- 8.10 With regard to sustainability, the Inspector did not consider it necessary to condition that the scheme should meet a relevant Code for Sustainable Homes rating. As the site was Greenfield, the Local Planning Authority made a case for the requirement for the development to achieve a Code Level 5 rating, which is consistent with guidance within SPD08 Sustainable Buildings. The Inspector found that although the site was Greenfield, there was potential for the ground to be contaminated given its proximity to operational railway land. SPD 08 requires a lower rating for brownfield sites due to the higher costs of development which often include contaminated land remediation costs. By applying this logic to the development site, the Inspector felt that a higher rating of Code Level 5 was not justified. However, the Inspector also found that a lower rating of Code Level 3 was also not justified as the Code is currently voluntary and would be applied in due course by Building Regulation. The Inspector concluded that the Energy Efficiency Statement submitted by the applicant complied with policy SU2 of the Local Plan, and the fact that two of the bathrooms would rely on artificial ventilation and lighting would not significantly reduce the energy efficiency of the scheme.
- 8.11 A unilateral undertaking was submitted by the appellant which contained the requirement for a contribution of £1,000 towards sustainable transport infrastructure and contained slow worm mitigation measures and a relocation contribution towards the maintenance of the receptor site.
- 8.12 Costs were awarded against the Council with regard to the reasons for refusal related to 1) biodiversity and 2) failure to demonstrate how construction material would be moved onto the site and how servicing would occur. As part of the previous appeals, both Inspectors had considered it reasonable to control these items by condition and the second Inspector felt that the Council had thereafter acted unreasonably by including the items as reasons for refusal.

Planning policy

- 8.13 The development proposed has already been judged to be acceptable in principle by a Planning Inspector when the appeal relating to BH2008/03194 was allowed. This application has been submitted to extend the time limit for implementation of the permission BH2008/03194.
- 8.14 Guidance from the Department of Communities and Local Government (DCLG) advises that *‘the development proposed in an application for extension will by definition have been judged to be acceptable in principle at an earlier date. While these applications should, of course, be determined in accordance with s.38 (6) of the Planning and Compulsory Act 2004, Local Planning Authorities should, in making their decisions, focus their attention of development plan policies and other materials consideration which may have changed significantly since the original grant of permission.’*
- 8.15 Therefore, the issues to consider relate to whether there have been any material changes to national or local planning policy, and if these material changes would result in a different view to that of the Inspector, to now be taken with regard to any of the material considerations.

National Planning Policy Framework (NPPF)

- 8.16 The (NPPF) was published on 27 March 2012 and came into immediate effect. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF encourages Local Authorities to proactively drive and support sustainable development to deliver homes, business and industrial units, infrastructure and thriving places that the country needs. It is not considered that the NPPF introduces any new material considerations which would outweigh the previous Inspectorate’s decision and which would preclude development on this site.

Local Policy

- 8.17 The Brighton & Hove Local Plan remains the adopted development plan. The Draft City Plan Part One was published in May 2012 and the Proposed Submission version was approved at Full Council on 31 January 2013. The Draft City Plan can therefore be given some weight in the determination of planning applications. Whilst the Draft City Plan is a material consideration its weight is still limited.
- 8.18 There are no development area policies within the Draft City Plan which are related to the application site. Policy CP16 of the Draft City Plan is related to the protection of existing open space and is different to the wording of policy QD20 of the Local Plan.
- 8.19 Policy QD20 of the Local Plan will only permit the development of open spaces where a) there are no alternative open space needs in the area such as deficiencies in outdoor recreation space, accessible natural green space, or allotments; or b) the area of open space is not suitable to meet alternative open space needs. Draft policy CP16 will only permit development resulting in the loss of open space when a) the loss results from a development allocation in the City Plan; b) the site is not a playing field and the loss is necessary to bring

about long term enhancements to the City's wider public space offer; or c) the development is ancillary to the use of the open space and provides enhancements to and better access to the remaining space; or d) the site is physically incapable of meeting the City's wider open space needs; is not a playing field, and in accordance with the Open Space Study Update 2011 is of a poor quality and there is an identified surplus and it has been marketed for one year which reflects its use, condition and local market prices.

- 8.20 Whilst the criteria are different between the two policies, the development plan is still the 2005 Local Plan and not the City Plan and therefore draft policy CP16 has very limited weight at this stage. Therefore, it is not considered that there are any policies within the Draft City Plan which would outweigh the previous Inspectorate's decision and which would preclude development on this site.
- 8.21 A number of background documents have been published since the last appeal, including The Open Space Study Update 2011. The 2011 Study is a background document only which can be used to inform future policy, but is not itself adopted policy.
- 8.22 When the previous application was granted on appeal the most recent Open Space Study was the 2008 Open Space and Recreation Study. The 2008 Study found that the existing level of provision should be maintained and that there was no case for open spaces to be redeveloped for other uses. The 2011 Study contains an assessment of the quality of private open space within the City. The application site forms part of a wider piece of open land to the north of the railway line which was included within the assessment. The 2011 Study assessed the wider site as having a low score of E (score rating is A to G where A is the highest).
- 8.23 As previously mentioned in this report, the Inspector considered that the two main reasons why this open space was important were firstly wildlife conservation and secondly, visual relief in a densely built up area providing a contribution to the character of the conservation area. The Inspector considered that the ecological impacts could be mitigated and the character would still be maintained as the significant trees on the open land to the west of the application site would be unaffected by the development. Therefore, the Inspector found it was the site immediately to the west of the application which made the most visual contribution to the character of the area and the loss of part of the open space as a result of this proposal could be accepted.
- 8.24 It is not considered that there is any new evidence within the 2011 Study which could outweigh the previous Inspector's decision that the loss of part of this open space could be accepted.
- 8.25 Since the appeal decision, the 2011 Update to the Strategic Housing Land Availability Assessment (SHLAA) indicates that the application site along with the wider open space site, has a potential to provide 25 residential units. The SHLAA is also a background paper only and is not adopted planning policy.

- 8.26 With regard to sustainability issues and a Code for Sustainable Homes rating, policy CP8 of the Draft City Plan contains specific guidance and states that for non major development on Greenfield sites a Code Level of 5 should be achieved and on Brownfield sites a Code Level 4 should be achieved. However, as previously mentioned the Draft City has very limited weight, and these standards did not form adopted policy at the time the appeal was determined, as they were contained within SPD08 'Sustainable Buildings'. Therefore, it is considered that the Inspector's decision not to impose a Code for Sustainable Homes, cannot be over turned as part of this application.
- 8.27 It is not considered that there are any new national or local planning policies that would result in the principle of development on this site to now be considered unacceptable in terms of the loss of open space. In addition, there is not considered to be any new national or local planning policies which would alter the previous assessment made by the Inspector with regard to the impact on the character and appearance of the conservation area, residential amenity, wildlife and biodiversity, sustainability and highways.
- 8.28 Springfield Road is included within the proposed area of expansion for the London Road Station CPZ. This was approved in principle by Transport Committee on 15th January 2013. The changes to the Traffic Regulation Order have now been formally advertised. Recommendations regarding the exact layout of the CPZ will be made shortly at Transport Committee. The CPZ extension is likely to be implemented by summer 2013.
- 8.29 The scheme is termed a "car free development" by the applicant. The only method to make the scheme genuinely car free, would be to remove the right for future residents to obtain a parking permit for the London Road Station CPZ. It was not possible to do this when the appeal was allowed as Springfield Road fell outside of the boundary of the CPZ.
- 8.30 The Inspector stated that there are no effective measures to preclude vehicles ownership by occupiers of the proposed development as a proposed CPZ only extends to the streets south of the railway line. The Inspector found that although poor parking practice does occur in the area, as he observed on his site visit, the impact of the proposal is so small that it would not make any significant difference. The Inspector concluded that although the appeal scheme would not comply with all of the provisions of Local Plan policy HO7 which governs car free housing, it would, through the unilateral undertaking, sufficiently provide for the travel demands it would create. However, the previous £1,000 sustainable transport contribution has been removed from the scheme, as the Local Planning Authority does not currently require contributions for schemes of less than 5 dwellings.
- 8.31 Since the previous appeal was determined, the London Road Station CPZ has been implemented to the south of the railway and the introduction of a CPZ for the area north of the railway line is imminent. It is considered that this constitutes a material difference in the site and its surroundings. There is now the opportunity to genuinely make the development car free by removing the right for residents to obtain a resident parking pass. It is recommended to secure this

thought the Section 106 Agreement. It is noted that the Inspector considered that the development would not make any significant difference, however, it is considered that the parking regime and circumstances surrounding the site have changed considerably since the appeal was allowed, and in the absence of any updated parking survey, it is now considered appropriate to use controls to make the development genuinely car free.

Other considerations

- 8.32 It is noted that a fence has now been erected on site by Network Rail and that this fence is on the applicant's land. This is a private matter between the applicant and Network Rail. The boundary of the application site and the footprint of the dwellings are the same as approved previously as part of BH2008/03194.
- 8.33 The Council's Heritage Team have suggested a number of additional conditions as there is insufficient detail on the drawings with regard to the dormers, windows, doors, gates and other architectural features. However, when allowing the appeal, the Inspector specifically stated that it was not necessary to impose conditions to require large scale sample elevations and joinery details, as these were clear enough from the submitted drawings. Therefore, it is not considered appropriate to require additional conditions to those already imposed by the Inspector.
- 8.34 Since the previous appeal was allowed the Local Planning Authority has adopted the temporary recession measures and does not require a contribution towards sustainable transport for schemes of below 5 units. Therefore, the previous contribution of £1,000 is not longer being sought.

9 CONCLUSION

- 9.1 The application seeks to extend the time limit for which the proposed development can be implemented within. The principle of the development has been already established when the appeal was granted. Although there has been a change in national policy with the introduction of the NPPF, it is not considered that this affects the previous judgment or assessment made by the Inspector. In addition, there is no new local policy which would preclude development on this site. The development therefore remains acceptable subject to the Section 106 heads of terms and planning conditions set out in section 11 of this report.

10 EQUALITIES

- 10.1 A condition is recommended requiring the new dwellings to be constructed to Lifetime Homes standards.

11 PLANNING OBLIGATION / CONDITIONS / INFORMATIVES

- 11.1 Section 106 Agreement - Heads of Terms
- Translocation of Slow Worm in accordance with the details of the ecological reports submitted as part of the original application BH2008/03194.

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- A Maintenance Strategy for the approved biodiversity features to be provided as part of the Development.
- Payment of the Slow Worm Habitat Maintenance Contribution (£1,376).
- Car free development. Remove the right of future residents of the development to obtain a residents parking pass for the London Road Station CPZ.

11.2 Regulatory Conditions:

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Site Location Plan	0628 S10		25/09/2008
Existing Site Survey	0628 S11		25/09/2008
Proposed plans and elevations	0628 P13		25/09/2008
Proposed site plan	0628 P12	A	25/09/2008
Proposed Street Elevation	0628 P14		25/09/2008
Proposed Site Plan (Ground Level)	0628 P11	A	25/09/2008
Contextual Site Plan	0628 P10		25/09/2008
Reptile Survey – Refuge Locations	TQ315057		25/09/2008

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no alteration or replacement of any window, door or roof on any elevation, nor the addition of a front porch, nor any change to front boundaries, nor the demolition or alteration of any chimney other than that expressly authorised by this permission shall be carried out.
Reason: The Local Planning Authority considers that further development could cause detriment to the character of the area and for this reason would wish to control any future development to comply with policies QD14 and HE6 of the Brighton & Hove Local Plan.
- 4) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority, including details of its method of construction in proximity to the tree shown to be retained on the approved drawings. The scheme shall be carried out in full as approved prior to the first occupation of any part of the development and the refuse and recycling facilities shall thereafter be retained available
Reason: To ensure the provision of satisfactory facilities for the storage of refuse and to comply with policy QD27 of the Brighton & Hove Local Plan for their intended use.

- 5) The new dwellings shall be constructed to Lifetime Homes standards.
Reason: To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households and to comply with policy HO13 of the Brighton & Hove Local Plan.
- 6) The new dwellings shall be constructed in accordance with the measures described in the energy efficiency statement which accompanied application BH2008/03194 and the subsequent appeal
Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development and to comply with policy SU2 of the Brighton & Hove Local Plan and Supplementary Planning Document SPD08 Sustainable Building Design.
- 7) No site clearance shall take place during the birds nesting season (February to July inclusive).
Reason: To ensure that the development does have a negative impact on nesting bird populations and to comply with policy QD17 of the Brighton & Hove Local Plan.
- 8) In this condition “retained tree” means the tree which is to be retained in accordance with paragraph 6.7 of the appellant’s landscape and biodiversity statement prepared by Owen Saward dated June 2006 which accompanied application BH2008/03194 and the subsequent appeal; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the building for its permitted use.
- i) The retained tree shall not be cut down, uprooted or destroyed, nor topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
- ii) If the retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- iii) The erection of fencing for the protection of the retained tree shall be undertaken in accordance with plans and particulars to be submitted to and approved by the local planning authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
Reason: To protect the trees which are to be retained on the site in the interest of the visual amenities of the area and to comply with policies QD1 and QD16 of the Brighton & Hove Local Plan.
- 9) Notwithstanding the details shown on the approved drawings, no window opening shall be formed in the top floor of the northern flank of the terrace.
Reason: To safeguard the privacy of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.

11.3 Pre-Commencement Conditions:

- 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours; means of enclosure, including the entrance gates; pedestrian access and circulation areas; permeable hard surfacing materials and the provision of no less than ten bird and bat nest boxes (woodcrete type) on the east or west facing walls of the terrace. Soft landscape works shall include the provision of climbing plants on the north and south facing walls of the terrace, the planting of a species-rich hedgerow along the southern boundary of the site, the planting of wildlife-friendly shrubs and wildflowers in the area to the east of the terrace. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority.

Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies QD1 and QD15 of the Brighton & Hove Local Plan.

- 11) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted, including windows and sills, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan.

- 12) No development shall take place until there has been submitted to and approved in writing by the local planning authority:

a) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the appellant's Preliminary Risk Assessment report dated June 2006 which accompanied application BH2008/03194 and the subsequent appeal; and, unless otherwise agreed in writing by the local planning authority,

b) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance or monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works; and no dwelling shall be occupied until there has been submitted to the local planning authority verification by the nominated competent person that any remediation scheme required has been fully implemented. Thereafter the scheme shall be monitored and maintained in accordance with the approved scheme.

Reason: To safeguard the health of future residents or occupiers of the site and to comply with policy SU11 of the Brighton & Hove Local Plan.

- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors.
- ii) loading and unloading of plant and materials.
- iii) storage of plant and materials used in constructing the development.
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- v) wheel washing facilities.
- vi) measures to control the emission of dust and dirt during construction.
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To safeguard the amenity of neighbouring residents and users of the footbridge and to comply with policies TR7 and QD27 of the Brighton & Hove Local Plan.

11.4 Pre-Occupation Conditions:

- 14) No dwelling shall be occupied until its cycle storage has been provided in accordance with the approved drawings. The cycle storage shall thereafter be retained available for its intended purpose.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan.

11.5 Informatives:

1. This decision to grant Planning Permission has been taken:

- (i) having regard to the policies and proposals in the National Planning Policy Framework and the Development Plan, including Supplementary Planning Guidance and Supplementary Planning Documents:
(Please see section 7 of the report for the full list); and

- (ii) for the following reasons:-

The application seeks to extend the time limit for which the proposed development can be implemented within. The principle of the development has been already established when the appeal was granted. Although there has been a change in national policy with the introduction of the NPPF, it is not considered that this affects the previous judgment or assessment made by the Inspector. In addition, there is no new local policy which would preclude development on this site. The development therefore remains acceptable.

2. In accordance with the National Planning Policy Framework the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.