

50-52 New Church Road, Hove

**Request for a variation of s106 dated 11
March 2008 signed in association with
BH2007/02930**

1 APRIL 2015

BH2007/02930 50-52 New Church Road, Hove.



PLANNING COMMITTEE LIST- 1 APRIL 2015

Subject:	50-52 New Church Road, Hove Request for a variation of s106 dated 11 March 2008 signed in association with BH2007/02930	
Date of Meeting:	1 st April 2015	
Report of:	Head of City Planning and Development	
Contact Officer:	Name: Adrian Smith	Tel: 290478
Wards Affected:	Westbourne	

1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the s106 Planning Obligation Agreement.

2. RECOMMENDATIONS:

- 2.1 That the Committee resolves to allow the completion of a variation to the s106 planning agreement dated 11th March 2008 relating to 50-52 New Church Road, Hove to allow residents of the development to apply for residents' parking permits

3. BACKGROUND INFORMATION:

- 3.1 Application BH2007/02930 granted planning permission for the redevelopment of the site to provide the following:
- A three storey building with fourteen bedrooms for short break accommodation;
 - A three storey building to form a house and five flats for people with learning disabilities; and
 - Two five-storey buildings providing a total of 25 affordable flats.
- 3.2 Limited parking was provided with the scheme, with 4 visitor spaces allocated to the 25 affordable units, and 2 parking spaces for the learning disability accommodation. The applicants offered the site as being car-free at the time of application and the proposal was considered on this basis.
- 3.3 Planning permission was granted subject to conditions and a Section 106 Obligation. The Obligation required an amendment the Traffic Regulation Order to ensure that residents of the affordable housing units would not be eligible for parking permits. It also required that the applicants provide two years free Car Club membership to all occupiers and associated space for two car club vehicles. A 'Green Travel Pack' was also included in the Obligation which required the applicants to advise the first residents of the development that they would be ineligible for parking permits.

4. PROPOSAL

- 4.1 The managing agents for 50-52 New Church Road have requested a variation of the s106 attached to application BH2007/02930 to remove the requirement for occupants of the development to be ineligible for parking permits.

5. CONSULTATION:

5.1 **Sustainable Transport:** No objection.

The Highway Authority has no objections to the proposed variation to the S106 agreement for the above development to allow residents of the 25 affordable units to have access to CPZ permits. The car free development was originally put forward by the developer and now the applicant has changed their mind and wishes to remove this requirement in the S106. The Highway Authority does not wish to object to this.

- 5.2 The original development was for 14 bedrooms short break accommodation; 1 house and five flats for people with learning disabilities; and 25 affordable flats. Six on-site car parking spaces are provided. It is understood that 2 of the spaces are associated with the flats for people with learning disabilities and 4 spaces were intended for the visitors of the 25 affordable flats.

- 5.3 The site is within Controlled Parking Zone R (Westbourne). As stated in the 2013/14 Parking Annual Report there are currently 693 permits available in this zone and only 83% of the available permits have been taken up. There has never been a waiting list in this CPZ. While the site does benefit from being in a sustainable location with good access to bus public transport, the site is out of the central area of the city and a short walk away from the Hove local centre.

- 5.4 When assessing the transport impact of the proposals to allow the residents to have access to CPZ permits the Highway Authority have taken 2011 Census car ownership data to forecast the likely car ownership associated with the site and therefore the likely increase in demand for on-street permits. By varying the S106 to allow residents CPZ permits is likely to result in between 13 and 17 additional cars parking on-street. Given the current level of on-street parking in the local area (as observed during site visits) the proposals are not considered to have a significantly negative impact upon on-street parking.

6. COMMENT:

- 6.1 The application was granted on 31 March 2008 following completion of a Section 106 agreement that, amongst other provisions, restricted the eligibility of residents of the affordable housing units for parking permits. This restriction was offered up by the applicants and supported by the Traffic Manager. The rationale for the restriction was based on the scheme providing only 6 parking spaces for the development, with four of these visitor spaces for the 25 affordable housing units.

- 6.2 The development was completed and occupied in 2009.

- 6.3 The managing agents for the development have requested the car-free restriction be dropped on the basis that it is inconveniencing residents who have to walk a considerable distance from their vehicles to their homes. This is particularly troublesome for residents who work outside of the city and/or have

child care commitments that require car ownership. They further argue that the restriction is causing more car journeys and increasing parking demand outside the CPZ in neighbouring Wish ward, and restricting the types of jobs residents can have. The managing agents state that 25 requests to vary the Obligation have been received, equating to one per resident.

- 6.4 Given that the site was offered and developed as a car-free development, and that occupiers would have been aware of this restriction at the time of purchase through the measures set out in the Obligation, it is not considered that the majority of the justifications put forward by the managing agents provide sufficient reason to relax the car-free restriction. However, matters relating to overspill parking are noted, with the nearest unrestricted roads at Wish Park approximately a 10 minute walk to the west. The Wish Park area is subject to heavy parking pressure.
- 6.5 The Councils' Sustainable Transport Team have re-examined the case for the site to be made car-free and concluded that such a restriction is no longer necessary to make the development acceptable. Sustainable Transport officers have identified that overspill parking from the development, based on 2011 Census data and the existing 6 spaces provided onsite, would likely be 10-11 vehicles. Officers note that the surrounding parking zone (zone R) has never had a waiting list in the 12 years it has been in place with current permits issued at 83% of capacity, whilst parking levels in surrounding streets are significantly below capacity. As such, the addition of 10 vehicles into surrounding streets would not result in appreciable or harmful increased parking pressure. Indeed it would likely reduce parking pressure in the nearby streets that sit outside the city's parking zones.
- 6.6 It is also noted that the site, whilst located on main bus routes along New Church Road, is not a highly sustainable location, with the city centre and mainline train routes are set a considerable distance to the north and east. As such, alternative modes of transport are not as readily accessible as in more central parts of the city.
- 6.7 Advice has been sought from the Head of Law on the proposed variation and the Senior Planning Solicitor has advised as follows:
- *“Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.*
 - *Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to*

being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.

- 6.8 For these reasons it is not considered necessary for the car-free restriction to remain and a variation to the s106 Obligation is therefore recommended.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

None identified.

7.2 Legal Implications:

Lawyer Consulted: Hilary Woodward

Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.

- 7.3 Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.

7.4 Equalities Implications:

None identified.

7.5 Sustainability Implications:

None identified.

7.6 Crime & Disorder Implications:

None identified.

7.7 Risk and Opportunity Management Implications:

None identified.

7.8 Corporate / Citywide Implications:

None identified.

8. CONCLUSION

- 8.1 The applicant has applied to vary the signed s106 agreement as set out at 4.1 of this report.

- 8.2 The proposed amendments are considered to be acceptable for the reasons as detailed above.

- 8.3 Therefore, the recommendation is for the s106 agreement be varied to allow residents of the development to apply for residents' parking permits.

