

BRIGHTON & HOVE CITY COUNCIL

PLANNING COMMITTEE

2.00pm 17 MARCH 2010

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Hyde (Chairman), Wells (Deputy Chairman), Allen, Carden (Opposition Spokesperson), Cobb, Davey, Fallon-Khan, Hamilton, Kennedy, Smart, Steedman and C Theobald

Co-opted Members Mr J Small (CAG Representative)

Officers in attendance: Jeanette Walsh(Head of Development Control); Paul Vidler (Deputy Head of Development Control); Zachary Ellwood (Interim Area Planning Manager(West)); Kathryn Boggiano (Senior Planning Officer); Anthony Foster (Planning Officer); Pete Tolson (Principal Transport Planning Officer); Hilary Woodward (Senior Lawyer) and Penny Jennings (Senior Democratic Services Officer)

PART ONE

230. PROCEDURAL BUSINESS

230A. Declaration of Substitutes

230.1 Councillor Fallon-Khan was in attendance as substitute Member for Councillor Caulfield. Councillor Allen was in attendance as substitute Member for Councillor McCaffery.

230B. Declarations of Interest

230.2 Councillor Kennedy declared a personal and prejudicial interest in respect of Application BH2010/00143, Former Wholesale Fruit and Vegetable Market, Circus Street stating that as a Trustee of the Phoenix Arts Association she would leave the meeting during consideration of the application and would take no part in the debate and decision making process.

230.3 Councillor Steedman referred to Applications BH2009/03077 and BH2009/03078, Former Thwaites Garage, 33 Mighell Street, Brighton. He explained that these applications had been discussed at meetings at his local ward surgery; he had however taken no part in any discussions, had expressed no opinion in respect of them and remained of a neutral mind. He would therefore remain present during the discussion and debate and intended to vote in respect of these applications.

230.4 Councillor Fallon-Khan referred to Application BH2009/01824, Warren Plantation, Warren Road, Woodingdean stating that he expressed an opinion in respect of the application and would therefore leave the meeting during consideration of the application and would take no part in the debate or decision making thereon.

230C. Exclusion of Press and Public

230.5 In accordance with Section 100A of the Local Government Act 1972 (“The Act”), the Planning Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of (“The Act “).

230.4 **RESOLVED** – That the public be not excluded from the meeting during consideration of any item appearing on the agenda.

231. MINUTES OF THE PREVIOUS MEETING

231.1 **RESOLVED** – That the Chairman be authorised to sign the minutes as a correct record.

232. CHAIRMAN'S COMMUNICATIONS

Web casting

232.1 The Chairman explained that afternoon’s meeting of the Planning Committee was being web cast. Members were reminded to speak directly into the microphones and to switch them off when they had finished speaking in order to ensure that they could be heard clearly.

233. PETITIONS

233.1 There were none.

234. PUBLIC QUESTIONS

234.1 The Committee considered a report of the Director of Strategy and Governance setting out a question received from Miss P Tompkins. Miss Tompkins was present to put her question in person and having received a response from the Chairman was afforded the opportunity to ask a supplementary question.

234.2 Miss Tompkins put the following question:

“Attractive areas surrounding the town are destroyed by developers interested in their cash return, regardless of the destruction to other people’s homes. The impact of close proximity and overshadowing which effects the previous pleasant environment of homes, owners suddenly faced with such a situation, in short home owners would suffer for the gain of the developer. As a member of the public it is relevant to ask if the Planning Committee are fully aware of all developments, and if such a situation existed

would they stand by the public, their public as elected Councillors? As a Councillor do you consider a developers gains should be placed before the public environment and the destruction of their homes?”

234.3 Miss Tompkins then expressed personal opinions which did not form the substance of a question, in order to set them into context the Chairman explained that the specific development to which Miss Tompkins was referring related to a permitted development on which the Council as Local Planning Authority had no locus. This had been the subject of two Ombudsman Enquiries neither of which had found against the Council in any way.

234.4 The Chairman then responded in the following terms explaining that a copy of both Miss Tompkins’ question and the reply would be sent to her as a written response.

“All applications for development in the City are published weekly on the City Council website (the weekly list). In addition and where relevant applications are published in the “Leader” newspaper, by site notice and through neighbour notification. All decisions made on planning applications are reported in the pages of the Planning Committee agenda papers. The most significant or controversial applications are decided by Planning Committee. In that way Councillors are aware of proposed development in the city.

In making decisions on planning applications the duty is to determine them in accordance with the Development Plan unless there are material considerations which would indicate otherwise.

Residential amenity is expressly protected through policy QD27 of the Brighton & Hove Local Plan. That policy, together with other policies in the Development Plan seek to balance the impacts on amenity and environment with the impacts and benefits of development.”

Many householder improvements or developments do not require planning permission and are permitted under planning legislation. The Local Planning Authority do not have any involvement or role where development is permitted.”

234.5 **RESOLVED** - That the position be noted.

235. DEPUTATIONS

235.1 There were none.

236. WRITTEN QUESTIONS FROM COUNCILLORS

236.1 There were none.

237. LETTERS FROM COUNCILLORS

237.1 There were none.

238. NOTICES OF MOTION REFERRED FROM COUNCIL

238.1 There were none.

239. APPEAL DECISIONS

239.1 The Committee noted the content of the letters received from the Planning Inspectorate advising of the results of planning appeals which had been lodged as set out in the agenda.

240. LIST OF NEW APPEALS LODGED WITH THE PLANNING INSPECTORATE

240.1 The Committee noted the list of planning appeals which had been lodged as set out in the agenda.

241. INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

241.1 The Committee noted the information set out in the agenda relating to Informal Hearings and Public Inquiries.

242. TO AGREE THOSE APPLICATIONS TO BE THE SUBJECT OF SITE VISITS

242.1 **RESOLVED** – That the following site visits be undertaken by the Committee prior to determining the applications:

Application:	Site Visit Requested by :
BH2009/02741, 7 Station Road, Brighton	Councillor C Theobald
BH2009/02158, Land R/o 11 Longhill Road, Ovingdean	Councillor Smart
BH2009/03154, Gala Bingo Hall, Portland Road, Hove	Head of Development Control

243. TO CONSIDER AND DETERMINE PLANNING APPLICATIONS ON THE PLANS LIST:17 MARCH 2010

(i) SUBSTANTIAL OR CONTROVERSIAL APPLICATIONS OR APPLICATIONS DEPARTING FROM POLICY

A. Application BH2010/00143, Former Wholesale Fruit & Vegetable Market, Circus Street, Brighton – Change of use of vacant market building for temporary period of two years to Class D1 and D2 cultural and community uses and small scale ancillary Class A1, A3 and B1 uses.

(1) It was noted that this application had formed the subject of a site visit prior to the meeting.

- (2) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposals. She confirmed that the building had been vacant for a number of years, but had been used intermittently as an exhibition space associated with the Brighton Festival and other community events. The proposal would allow reuse of the building prior to comprehensive redevelopment proposals being finalised and approved for the site and would be beneficial to the wider community.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Steedman sought clarification regarding the level of information provided to Members in relation to projects in their wards. The Head of Development Control confirmed that whilst Members were not notified regarding each individual application the Weekly lists of applications were circulated to all Councillors.
- (3) Councillor Smart referred to the close proximity (to the rear) of Milner flats enquiring whether noise attenuation measures could be conditioned to protect neighbouring amenity. Reference was made to the comments of the Environmental Health Officer and to proposed Condition 3. It was confirmed that if amplified music was to be used that details of the noise management arrangements to be put into place would need to be provided to the Council.

Debate and Decision Making Process

- (4) Mr Small, CAG stated that he had visited an exhibition held at the building the previous year and had observed that the interior of the building was in a parlous condition. Large areas of the floor space had been taped off in order to prevent members of the public from walking on them. Given that parts of the building were in such a dangerous condition he queried whether the proposal was practical and whether the applicant had indicated that or conditions could be applied requiring them to carry out remedial works within the building. It was explained that this was a matter for the applicants and could not be conditioned.
- (5) Councillor C Theobald also expressed concern that these health and safety issues needed to be addressed but it was confirmed that they were not a health and safety consideration.
- (6) Councillor Carden stated that he was satisfied that the requirements to contain noise would be sufficient stating that the site would have generated a lot of noise when it had been in daily use as a market.
- (7) Councillor Steedman stated that notwithstanding his concerns that Local Ward Councillors be kept fully apprised regarding longer term development of the site, He welcomed this scheme as it represented a good temporary use of the space.
- (8) Councillor C Theobald also welcomed the temporary use but stated that she would prefer the site to be used to provide housing in the longer term.

- (9) Councillor Smart stated that an application considered the previous year had resulted in the loss of a purpose built theatre, approval of this application would result in a building being used which was in an awful state of repair. He was unable to support it.
- (10) A vote was taken and the 11 Members present when the vote was taken resolved on a vote of 10 to 1 that planning permission be granted.

243.1 **RESOLVED** - That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 9 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report and to the addition of Informative 3 set out below:

Informative 3:

A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact: Atkins Ltd, Ango St James House, 39A Southgate Street, Winchester, S023 9EH (Tel:01962 858688).

Additional Informative 4:

Planning Committee would like to request that prior to implementation of this temporary consent the Local Ward Councillors are advised.

Note 1: Having declared a personal and prejudicial interest Councillor Kennedy withdrew from the meeting and took no part in the debate and decision making process.

Note 2: Councillor Smart voted that the application be refused.

B. Application BH2009/01824, Warren Plantation, Warren Road, Woodingdean – Change of use from agricultural land (SG07) to woodland burial site (SG08) with alterations to existing internal road.

- (1) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the proposed scheme and showing its boundaries by reference to site plans, an ariel photograph and a photograph of the woodland area at Bear Road cemetery indicating what the appearance of the site would be once in use as a burial ground. Existing woodland burial sites were at full capacity and it was considered that the benefits to the City of the proposed site for 1800 graves would outweigh the loss of agricultural land in this instance.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Smart enquired whether it was proposed to add any administrative buildings or structures on site and it was confirmed that it was not.
- (3) Councillor Cobb referred to the comments received from Brighton & Hove Archaeological Society and the County Archaeologist enquiring whether the conditions proposed to be applied addressed their comments regarding potential historic remains. It was explained that the standard conditions had been applied and that these were

considered to be sufficiently robust. Archaeologists would have a watching brief on the site.

Debate and Decision Making Process

- (4) Councillor Steedman stated that whilst regretting loss of agricultural land he considered that the rationale for the proposal following consideration and discounting of other sites was clear, he supported the application.
- (5) Councillor Wells stated that he considered the site was ideally located.
- (6) A vote was taken and the 11 Members present when the vote was taken voted unanimously that planning permission be granted.

243.2 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves that it is minded to grant planning permission subject to the receipt of no further objections raising significant material planning considerations that are not addressed within this report and to the conditions and informatives also set out in the report.

Note: Having declared a personal and prejudicial interest in respect of the above application Councillor Fallon-Khan withdrew from the meeting and took no part in the debate and decision making process.

C. Application BH2009/03155, Unit 1, Fairway Trading Estate, Eastergate Road, Brighton – Change of use from B2 (industrial) to Local Authority Housing Services Repairs and Maintenance Offices and Depot (mix of B1, B2 and B8 uses). Insertion of 15 new windows and a door at ground floor level and 4 new windows at first floor level.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Senior Planning Officer, Ms Boggiano gave a presentation detailing the scheme. She explained that the statutory consultation period was due to expire on 24/03/2010. Therefore it was recommended that the recommendation in the report should be amended as set out below.

Questions/Matters on Which Clarification was Sought

- (3) Councillor Davey sought clarification regarding the number of cycle parking spaces proposed. He was of the view that this appeared to be a low figure. However the Principal Transport Planning Officer confirmed this complied with SPG4 and would be monitored.
- (4) Councillor Smart enquired regarding the current status of the Travel Plan and it was explained that the consultation process would be on going.
- (5) A vote was taken and Members voted unanimously that minded to grant planning permission be given.

243.3 RESOLVED- That the Committee has taken into consideration and agrees with the reasons for the amended recommendation set out in the Late Representations List that it is minded to grant planning permission subject to the receipt of no further objections raising material planning considerations that are not addressed within this report and the following conditions and informatives and those set out in the report where they have not been amended:

Acceptable details have since been submitted to show the 6 disabled parking bays and cycle parking facilities for 16 bicycles. It is therefore agreed that Conditions 5 and 7 be replaced by the following conditions:

Condition 5: the vehicle parking area shown on the approved plan number 32612601-02 revision A submitted on 9 March 2010 shall be carried out in accordance with the approved details prior to first occupation and shall not be used otherwise than for parking of private motor vehicles belonging to the occupants of and visitors the development hereby approved.

Reason: To ensure that adequate parking provision is retained and to comply with policy TR19 of the Brighton & Hove Local Plan.

Condition 7: The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plan number 321612601-01 revision A submitted on 9 March 2010 have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.

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.

Informative 1 should read as follows:

This decision is based on drawing nos. 181 revision P1 - 181/08 revision P1, 181/09 revision P2 submitted on 23 December 2009 and 32612601-02 revision A submitted on 9 March 2010.

In addition a Travel Pack requested by Condition 11 had been submitted to be considered by Officers. A response from Sustainable Transport was awaited.

D. Application BH2009/03077, Former Thwaites Garage, 33 Mighell Street, Brighton – Demolition of existing garage and flint wall. Construction of a flint facing building between 4 and 7 storeys to accommodate 87 student units and reinstatement of flint wall.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Deputy Head of Development Control, Mr Vidler gave a presentation detailing the constituent elements of the scheme. He referred to additional letters of objection received from Councillor Duncan and the Friends of Turner Park and also explained that amended drawings setting out proposed amendments to the scheme had been received from the applicants agent. These had been received very late and contained such significant changes that officers had been unable to assess them in advance of

the meeting. The application would therefore be considered as originally submitted and as set out in the Committee report.

- (3) Mr Lacey spoke on behalf of the applicant in support of their application. He explained that the plans and paperwork recently submitted to the department sought to address the objections raised. The applicant had not been aware of officers' concerns until relatively late in the process. Whilst it was noted that the site was designated for employment use it was not ideally suited for this purpose and had been vacant for two years during which time little/no interest had been shown in an employment use. There was an identified need for student accommodation and provision at this central location would alleviate pressure on rented/ private accommodation elsewhere in the City.
- (4) Councillor Fryer spoke in her capacity as a Local Ward Councillor setting out her objections to the proposed scheme. She explained that local residents had requested a consultation meeting with the applicants, however, this was not due to take place until the following week. The scheme as it stood was considered completely unacceptable as it represented overdevelopment, was out of keeping with the character of the surrounding area and would have a detrimental impact on the surrounding area. It also scored very poorly in terms of meeting sustainability targets. The site needed to be re developed but this was not appropriate.

Questions/Matters on Which Clarification was Sought

- (5) Councillor C Theobald referred to the concerns expressed in the report relating to disposal of waste, lack of on site cycle storage/parking and disabled parking enquiring what measures the applicant had put into place to address these issues. Mr Lacey responded on behalf of the applicant that these issues could be addressed and that further discussions were set to take place with the traffic and transport team.

Debate and Decision Making Process

- (6) Councillor C Theobald stated that she considered that the design was incongruent and out of keeping with the setting of the listed building nearby and the character of the conservation area.
- (7) The Head of Development Control explained that all applicants were invited to engage in pre-application discussions with officers and as part of the current pilot arrangements with Members as well, very little discussion had taken place in respect of this application. As the applicant had put in an application for student accommodation, rather than housing, it failed to meet the appropriate policies and insufficient evidence had been provided to justify a departure from those policies.
- (8) A vote was taken and Members voted unanimously that planning permission be refused.

243.4 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the reasons and subject to the informatives set out in the report.

E. Application BH2009/03078, Former Thwaites Garage, 33 Mighell Street, Brighton – Demolition of existing garage and flint wall.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) A vote was taken and Members agreed unanimously that conservation area consent be refused for the reasons set out in the report.

243.5 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse conservation area consent for the reasons set out in the report.

F. Application BH2009/03038, Saunders Glass, Sussex Place, Brighton - Demolition of existing former glassworks and erection of a 7 storey student halls of residence providing 182 units and ancillary cycle parking.

- (1) It was noted that this application had formed the subject of a site visit prior to the meeting.
- (2) The Planning Officer, Mr Foster, gave a detailed presentation also referring to additional material forwarded by the applicant to Members in support of their application including a letter from the University of Sussex expressing in principle support for the project.
- (3) Mr Bareham spoke on behalf of the applicant in support of their application. He stated that although only part of the site was allocated for housing student housing was still housing. This provision would help to free up other accommodation elsewhere in the City. He explained that small areas of amenity space around the building had been provided and this was commensurate with the University's own policies in order to avoid management concerns and student safety issues.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Mrs Theobald enquired regarding proposed arrangements for dropping off and picking up of students and their belongings at the beginning/end of term given the lack of on-street spaces and tight turning area. The applicant's representative explained that timed arrival "slots" would be in place with all students making the University their first port of call at which time they would be allocated a time for arrival at their accommodation which allowed sufficient time for their belongings to be unloaded. The development would be car free and given the lack of on-street parking nearby, students who owned cars were unlikely to choose to live there.

Debate and Decision Making Process

- (5) Councillor C Theobald stated that she considered the proposed dropping off arrangements were completely impractical. Councillors Carden and Smart concurred in that view stating that any disruption/congestion to traffic would completely invalidate the timing arrangements.

- (6) Councillor Kennedy stated that she fully supported the officer recommendation considering that the existing housing use for the site should be protected, otherwise, the development could easily turn into a giant HMO.
- (7) Councillor C Theobald stated that she considered the proposed development to be too high and harmful to the adjacent conservation area. It represented overdevelopment and should be refused.
- (8) In responding to the matters raised during debate the Head of Development Control confirmed that if minded to grant planning permission Members could include provision within a Section 106 Agreement which would require further permission be sought if the development was subsequently to be used as an HMO.
- (9) A vote was taken and Members voted unanimously that planning permission be refused.

243.6 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to refuse planning permission for the reasons and informatives also set out in the report.

(ii) MINOR APPLICATIONS

G. Application BH2009/03047, 123-124 Western Road, Brighton – Change of use from retail (A1) to retail and café/restaurant (A1/A3) at basement and ground floor levels.

- (1) The Interim Area Planning Manager (West), Mr Ellwood gave a presentation detailing the proposed scheme. The retail element would be carried out at the front of the unit which faced out onto Western Road with the café restaurant use at the rear. The basement was proposed for use as storage/plant rooms, toilets and a kitchen. Construction of a new rendered chimney at roof level was included but no alterations were proposed to the existing shop front. He referred to the suggested condition set out in the “Late Representations List” seeking to ensure that the A3 use was restricted to the raised area to the rear of the premises.

Questions/Matters on Which Clarification was Sought

- (2) Mr Small, CAG referred to the fact that the drawings submitted by the applicant indicated seating in the front retail area of the premises as well as associated with the café use at the rear. It was explained that the drawings were for indicative purposes only.
- (3) Mr Small also enquired whether it was proposed that there would be a physical separation between the front and rear part of the premises. It was explained that the entire premises would be used by one owner but that only the defined raised area at the rear would be permitted for café, A3 use.
- (4) Councillor Davey sought confirmation that as no physical separation of the A1 and A3 uses was proposed that measures would be put into place to restrict the use to the proposed area. The Interim Area Planning Manager confirmed that it was proposed that the amended condition referred to would ensure that there was a clear distinction.

- (5) Councillor Smart asked how the raised café area would be reached. It was explained this would be via by steps which would provide a delineation between the two areas.
- (6) Councillor Kennedy sought clarification of the hours of operation of the premises and confirmation whether the hours during which the café would be use would differ from that of the retail element within the premises.

Debate and Decision Making Process

- (7) Councillor Kennedy stated that she was concerned that the hours of operation of the premises seemed very long. This could lead to nuisance to residents of the flats above the premises and in the neighbouring dwelling in Temple Street, particularly if the side door onto Temple Street was used by customers entering/leaving the premises late at night.
- (8) Councillors C Theobald and Smart expressed concern regarding the lack of a clear distinction (physical barrier) between the two uses.
- (9) Mr Small stated that he was anxious that the seating area shown at the front of the premises, fronting Western Road could be used as a window bar area.
- (10) Councillor C Theobald enquired whether it would be possible to require sound insulation measures to be carried out at the rear to avoid noise nuisance to the flats above and neighbouring house in Temple Street. It was explained that although odour control measures would be required and building control regulations would also need to be met it was not generally considered appropriate to apply noise control conditions to a retail unit.
- (11) Mr Small enquired regarding location of the payment desks for the retail/ café uses. Whilst accepting that the submitted drawings relating to layout were indicative only, he was concerned that once the premises opened it was unlikely that checks would be made to ensure that the uses remained self-contained and separate.
- (12) Councillor Wells echoed the concerns expressed by Mr Small and by Councillors Smart and C Theobald.
- (13) Councillor Davey expressed a wariness regarding the application. He considered that similar problems could arise to those experienced in the North Laines, where in some instances café /restaurant uses existed in close proximity to residential accommodation and gave rise to nuisance as a result of long hours of operation and noise penetration into neighbouring dwellings. He enquired regarding the location of the side door onto Temple Street in relation to the flats above and house next door. He enquired whether a condition could be applied controlling/limiting when the door could be used.
- (14) Councillor C Theobald stated that she was confused regarding the proposed opening hours of the premises. She also sought clarification regarding arrangements for disabled access which in her view appeared to be inadequate, also enquiring whether the access door from Temple Street was suitable for disabled/access/ egress.

- (15) The Chairman picked up on the concerns of the Committee also querying whether use of the door from Temple Street could be limited by condition and whether noise attenuation measures could be sought in relation to the party wall at the back of the premises in association with the A3 use.
- (16) Councillor Davey reiterated his concerns regarding noise penetration to the rear requesting whether in the light of the Chairman's comments such a condition could be added. The Head of Development Control responded that she would investigate whether/ what noise attenuation measures could be applied in relation to the ceiling and party wall at the rear of the premises and the wording which would be most appropriate in that connection.
- (17) The Chairman, Councillor Hyde, sought to determine whether there was a consensus among Members regarding additional/amended conditions they would wish to see applied to any permission granted.
- (18) Councillor Kennedy suggested that the hours of operation of the café were 8.00–8.00 Mon-Sat; 9.00–6.00 Sundays–Bank Holidays. A vote was taken and this proposed amendment was lost.
- (19) Councillor Fallon-Khan proposed that the premises be permitted to open between 8.00-10.00 7 days per week inclusive of bank holidays. This was voted upon and agreed and is included in the conditions set out below including the other substantive changes agreed.
- (20) A vote was taken on each of the substantive amendments/extra conditions discussed and Members voted by 9 to 2 with 1 abstention that planning permission be granted.

243.7 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report. and subject to amended and additional conditions set out below:

Amend Conditions 2 and 7 to read:

Condition 2.

Unless otherwise agreed in writing by the Local Planning Authority, the Class A3 use hereby permitted shall be restricted to the basement and the currently raised section to the northern part of the ground floor only as shown on approved drawing no. 164/08A. Further, notwithstanding the indicative internal layout submitted, no seating or other facilities for customers associated with the A3 use shall be provided within the lower (southern section the ground floor of the unit, which shall be strictly reserved for retail uses falling within Use Class A1 only.

Reason: To retain a retail use and frontage to Western Road in accordance with Policy SR4 of the Brighton & Hove Local Plan.

Condition 7

The use hereby permitted shall not be open to customers except between the hours of 08.00 and 22.00 on any day.

Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Add:

Condition 8

No development shall commence until a scheme for the soundproofing of the building has been submitted to and approved in writing by the by the Local Planning Authority. The soundproofing measures shall be implemented in strict accordance with the approved details prior to the occupation of the A3 element of the development hereby permitted and shall thereafter be retained as such.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Condition 9

The entrance to the unit from Temple Street shall not be used to provide access for customers at any time. Use of this entrance shall be restricted to servicing and staff use only.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

Note: Councillors Cobb and Kennedy voted that the application be refused. Councillor Steedman abstained.

H. Application BH2009/02741, 7 Station Road, Brighton – erection of a two storey outhouse, incorporating double garage and parking bay to ground floor and home office to first floor (roof space) over.

(1) Members agreed that it would be beneficial to carry out a site visit prior to determining the application.

243.8 **RESOLVED** – That consideration of the above application be deferred pending a site visit.

I. Application BH2009/02158, Land to Rear, 11 Longhill Road, Ovingdean – Erection of detached 2 storey, 4 bedroom dwelling house.

(1) Members agreed that it would be beneficial to carry out a site visit prior to determining the application.

243.9 **RESOLVED** – That consideration of the above application be deferred pending a site visit.

J. Application BH2009/03043, Unit 1 Centenary Industrial Estate, Hughes Road, Brighton – Erection of two storey extension to existing factory to provide secure car parking at ground floor and further manufacturing at first floor.

(1) The Senior Planning Officer, Ms Boggiano gave a detailed presentation setting out the proposed scheme by reference to existing and proposed floor plans. The height

location of proposed new windows was also shown. A number of amendments to the conditions and informatives set out in the report were proposed.

Questions/Matters on Which Clarification was Sought

- (2) Councillor Davey enquired regarding the number of cycle parking spaces proposed on site and considered that the figure appeared low. The Principal Transport Planning Officer, Mr Tolson explained that the proposed figure complied with SPG4 but would be monitored as the level of provision required was likely to increase when existing parking standards were revised.
- (3) In answer to questions by Councillor Smart it was explained that the consultation process relating to development of a travel plan would be on-going.
- (4) A vote was taken and Members voted unanimously to grant planning permission.

243.10 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in paragraph 8 of the report and resolves to grant planning permission subject to the conditions and informatives set out in the report and to the additional conditions and informative set out below:

Condition 9:

(i) The development hereby permitted shall not be commenced until there has been submitted to and hereby approved in writing by the local planning authority:

(a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos.2 and 3 and BS10175:2001–Investigation of Potentially Contaminated Sites–Code of Practice; and unless otherwise agreed in writing by the Local Planning Authority,

(b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and unless otherwise agreed in writing by the Local Planning Authority,

(c) 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 and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of works.

(ii) The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:

- (a) As built drawings of the implemented scheme;
- (b) Photographs of the remediation works in progress;

(c) Certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c)

Reason: To safeguard the health of future residents or occupiers of the site, to ensure the protection of controlled waters and to comply with policy SU3 and SU11 of the Brighton & Hove Local Plan and Planning Policy Statement 23-Planning and Pollution Control.

Condition10:

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To safeguard the interests of protection of controlled waters and to ensure compliance with Local Plan Policy SU3 and SU11 of National Policy PPS23.

Informatives:

4. The applicant is advised that the above condition on land contamination has been imposed because the site is known to be or suspected to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. To satisfy the condition a desktop study shall be the minimum standard accepted. Pending the results of the desk top study, the applicant may have to satisfy the requirements of (i) (b) and (i) (c) of the condition.

It is strongly recommended that in submitting details in accordance with this condition the applicant has reference to Contaminated Land Report 11, Model Procedures for the Management of Land Contamination. This is available on both the DEFRA website and the Environment Agency website.

5. The phased risk assessment should be carried out also in accordance with the procedural guidance and UK policy formed under the Environmental Protection Act 1990. The site is known or suspected to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. The Local Planning Authority has determined the application on the basis of the information made available to it. It is strongly recommended that in submitting details in accordance with the above/below conditions that the applicant has reference CLR 11, Model Procedures for the management of land contamination. This is available online on both the DEFRA and Environment Agency websites.

6. The site overlies a principal aquifer and within a Source Protection Zone 1 area for Southern Water's Lewes Road Public water supply. All appropriate pollution prevention measures should be adopted and guidance notes are freely available from the Environment Agency website.

K. Application BH2009/00696, 39 Salisbury Road, Hove – Demolition of existing building and erection of a four storey private residential building containing 9 mixed size units and community area on ground floor.

- (1) The Interim Area Planning Manager (West), Mr Ellwood gave a presentation detailing the scheme. He explained that following the original decision of the Committee on 2 September 2009, a Judicial Review Letter before Claim had been received. It had stated that inaccuracies had been identified in the submitted plans and that as a result the conclusion reached within the Committee report had been based on flawed and incorrect information and that if planning permission had been granted on that basis Judicial Review proceedings would be issued against the Council. In consequence a full daylight/sunlight impact report had been requested and accurate survey plans including level survey of the application site and adjoining properties had been requested and submitted.
- (2) The Committee were requested to re-determine application BH2009/00696 following receipt of this amended/additional information. The existing drawings and cross-sections were shown and the Interim Area Planning Manager explained that the scheme itself had not changed at all. Amended drawings were displayed showing the relationship between the proposed development and 9 and 11 Palmeira Avenue. These drawings took account of accurate levels for daylighting which were based on and complied with BRE guidelines and which had been met. Further objections and observations received including and set out in the "Late Representations List" were referred too. It was noted that 5 further letters of objection had been received following completion of the "Late Representations List"
- (3) It was acknowledged that the originally submitted plans had been inaccurate in so far as they had related to the position and presence of the rearmost window in the basement flat of 9 Palmeira Avenue; a patio door of the basement flat to 11 Palmeira Avenue and associated 25 degree lines drawn from window openings at the rear of Palmeira Avenue to assess the impact of the development on day light to adjoining properties.

Questions/Matters on Which Clarification was Sought

- (4) Councillor Kennedy referred to the joint letter received from the Local Ward Councillors setting out their concerns, particularly regarding the nature of any future community use within the ground floor of the building. She sought clarification whether use as a doctor's or dental surgery would also be considered to fall within a D1 community use. It was confirmed that they would.
- (5) Councillor Smart referred to the raised area in the rear garden. He expressed concern regarding potential overlooking and enquired whether there would be any restrictions to use of the walkways at the rear of the building. He also enquired regarding measures to prevent overlooking from the upper floors of the building. The Interim Area Planning Manager referred to Condition 9 which sought to address these issues.
- (6) Councillor C Theobald referred to the car free status of the development and asked whether it was anticipated that the development would result in an increased demand for on-street parking. It was confirmed that this remained unaltered from the stated position in relation to the earlier consideration of the application.

Debate and Decision Making Process

- (7) The Chairman, Councillor Hyde and Councillor Cobb referred to the earlier decision of the Committee stating that they were of the view that when making their earlier determination Members had had a clear view regarding the form any community use was likely to take i.e. a community hall and had not been aware that a D1 use could result in a wider use as a doctors or dental surgery.
- (8) Councillor Smart stated that there was an existing doctor's surgery nearby which served the area.
- (9) The legal adviser to the Committee stated that it was appropriate for the Committee to determine the application on the basis of the areas which had been identified as requiring further information. It was not good practice to seek to include additional conditions.
- (10) Councillor Kennedy stated that she was concerned regarding the potential; D1 use to which the ground floor of the building could be put. She considered it would be appropriate to secure use as identified by the Chairman and Councillor Cobb by whatever means would be most appropriate, whether that took the form of a Management Plan or formed part of a Section 106 Agreement rather than permitting a broader D1 use.
- (11) Councillor Fallon-Khan referred to the sunlight/daylight testing requested by the Local Ward Councillors and neighbouring residents and to their concerns that these had been carried out to a base line level rather than at a higher level which had been asked for. He asked whether Officers were satisfied that all of the necessary requirements had been met. The Area Planning Manager confirmed that Officers were satisfied that the applicant had provided sufficient data and that further tests were not required.
- (12) The Interim Area Planning Manager explained that any permission as currently framed would give unrestricted D1 use. If Members were minded to narrow the permitted use they would have to give a rationale for that decision and it could be open to challenge. The legal adviser to the Committee confirmed that this was so.
- (13) Councillor Davey stated that he was anxious to tease out how Members intentions in relation to the community use could be made to work in practice. The legal adviser to the Committee confirmed that the restricted D1 use had not been tied down when Members had determined the application in September 2009 and that would need to be agreed in order to seek to ensure that happened.
- (14) The Committee agreed that a recess was in order to consider whether and how restrictions could be placed on the D1 use and how this could be specified. The Chairman, Councillor Cobb and the relevant Officers then left the meeting.
- (15) Following the recess the Head of Development Control explained that Policy HO20 of the Brighton & Hove Local Plan could be applied to protect community facilities but that Members would need to give a clear demonstration as to why they were drawing those boundaries.

- (16) Councillor Fallon-Khan stated that he considered it appropriate for Members to agree and quantify/restrict the definition of a community use in tandem with those matters (amended plans and sunlighting/daylighting) which had resulted in the application being brought back to Committee for re-determination.
- (17) The Chairman, Councillor Hyde, suggested that if Members wished to do so they could require the community use to be as a community hall as there would be a clear understanding of what such a use would entail.
- (18) Councillor Hamilton stated that he considered the permission as originally agreed in September 2009 was acceptable. The existing building had not been in use for 3 years, the neighbouring language school had rooms which could be made available for community use and additionally the Cornerstone facility was also located nearby.
- (19) Councillor C Theobald stated that she had wider concerns than in relation to the community use and did not support the principle of the development or it being car free. She was of the view that it would be overly dominant.
- (20) The Head of Development Control stated that Councillor Theobald's comments had formed part of the earlier debate and it was not appropriate to revisit them. The debate needed to be restricted to those matters which had formed the basis of the application being brought back before the Committee.
- (21) The Chairman stated that she would take a vote on whether the Committee wished to have an unrestricted D1 community use in relation to the proposed development or whether they wished the D1 use to be restricted to use as a community hall.
- (22) A vote was taken and on a vote of 3 to 9 the proposal that any permission granted would allow an unrestricted D1 use was lost.
- (23) A further vote was then taken and on a vote of 6 to 1 with 5 abstentions planning permission was granted in the terms set out below to include the requirement that the D1 use would be restricted to use as a community hall and to the other amendments set out below.

243.11 **RESOLVED** – That the Committee has taken into consideration and agrees with the reasons for the recommendation set out paragraph 5 of the report and resolves that it is minded to grant planning permission subject to the conditions and informatives set out in the report and as amended below:

1. The provision of the Community facility as a community benefit; and
2. A management plan for the community facility to ensure its use as such.

Amend condition 2 to read:

2. Notwithstanding the provisions of the Schedule to the Town and Country Planning (use Classes) Order 1987, as amended, the ground floor of the building (except for the communal cycle, refuse and recycling stores and the access to the upper levels) shall be used solely as a Community Hall with associated ancillary uses, and shall not be

used for any other purposes (including any other purpose falling within Class D1 to the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

Reason: The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the retention of a community hall within the area to serve the local community and to comply with policy H020 of the Brighton & Hove Local Plan.

Add Condition 17

No development shall commence until full details of existing and proposed ground levels within the site and on land adjoining the site to OS Datum, by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved level details.

Reason: to ensure a satisfactory appearance to the development and to protect the amenity of surrounding neighbours in accordance with policies QD1, QD2, and QD27 of the Brighton & Hove Local Plan.

Note: Councillor C Theobald voted that planning permission be refused. Councillors Allen, Carden, Cobb, Fallon-Khan and Hamilton abstained.

244. TO CONSIDER ANY FURTHER APPLICATIONS IT HAS BEEN DECIDED SHOULD BE THE SUBJECT OF SITE VISITS FOLLOWING CONSIDERATION AND DISCUSSION OF ITEMS ON THE PLANS LIST

244.1 **RESOLVED** – That the following site visits will be undertaken by the Committee prior to determining the applications:

Application:	Site Visit Requested by:
BH2009/02741, 7 Station Road, Brighton	Councillor C Theobald
BH2009/02158, Land R/o 11 Longhill Road, Ovingdean	Councillor Smart
BH2009/03154, Gala Bingo Hall, Portland Road, Hove	Head of Development Control

245. TO CONSIDER AND NOTE THE CONTENT OF THE REPORT DETAILING DECISIONS DETERMINED BY OFFICERS UNDER DELEGATED AUTHORITY

245.1 **RESOLVED** – That those details of applications determined by the Director of Environment under delegated powers be noted.

Note 1: All decisions recorded in this list are subject to certain conditions and reasons recorded in the planning register maintained by the Director of Environment. The register complies with legislative requirements.

Note 2: A list of representations received by the Council after the Plans List reports had been submitted for printing was circulated to Members on the Friday preceding the meeting. Where representations are received after that time they should be reported to the Chairman and Deputy Chairman and it would be at their discretion whether they should in exceptional circumstances be reported to the Committee. This is in accordance with resolution 147.2 of the then Sub Committee on 23 February 2006.

The meeting concluded at 5.35pm

Signed

Chair

Dated this

day of