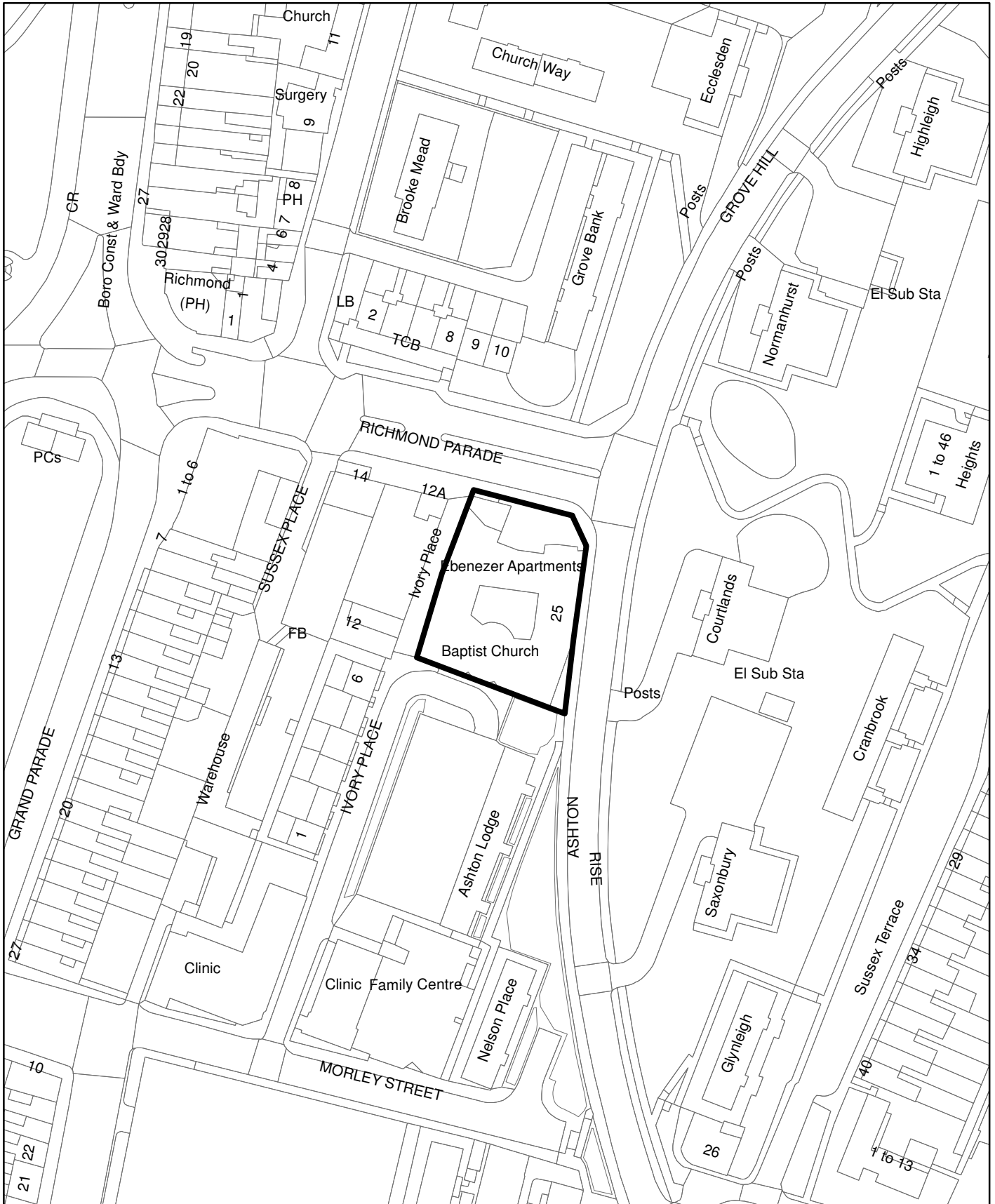


**Ebenezer Chapel, Richmond Parade,  
Brighton**

**Request for a variation of s106 dated 31  
March 2008 signed in association with  
BH2007/01591**

**15 JULY 2015**

# Ebenezer Chapel, Richmond Parade, Brighton



**Brighton & Hove  
City Council**



**Scale: 1:1,250**

## PLANNING COMMITTEE LIST- 15 JULY 2015

<b>Subject:</b>	Ebenezer Chapel, Richmond Parade, Brighton Request for a variation of s106 dated 31 March 2008 signed in association with BH2007/01591.	
<b>Date of Meeting:</b>	15 July 2015	
<b>Report of:</b>	Acting Head of City Planning and Development	
<b>Contact Officer:</b>	Kathryn Boggiano	Tel: 292138
<b>Wards Affected:</b>	Queen's Park, Hanover and Elm Grove, St Peter's and North Laine	

### 1. PURPOSE OF THE REPORT:

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

### 2. RECOMMENDATIONS:

- 2.1 That the Committee resolves to allow the completion of a variation to the s106 planning agreement dated 31 March 2008 relating to Ebenezer Chapel, Richmond Parade, Brighton to allow residents of the development to apply for residents' parking permits.

### 3. BACKGROUND INFORMATION:

- 3.1 Application BH2007/01591 granted planning permission for the redevelopment of the site to provide the following:
  - Six-storey building with basement, forming a new church, 49 self-contained flats (of which 26 are for affordable housing), basement car parking for 5 vehicles, cycle parking, church store and refuse store;
  - The proposed residential accommodation comprised 1 one-bedroom wheelchair flat, 2 two-bedroom wheelchair flats, 22 one-bedroom flats, 21 two-bedroom flats and 3 three-bedroom flats.
- 3.2 Limited parking was provided with the scheme, with 5 vehicular spaces provided for residents on-site, three of which were disabled parking bays in connection with the wheelchair accessible flats. Cycle parking for 64 bikes was approved within the basement and ground floors.
- 3.3 The Council's Transport Sustainable Transport Team had no objections to the development provided it was 'car free'. However, Grove Hill, Ashton Rise and Richmond Parade were not within a Controlled Parking Zone. Ivory Place to the south of the building was however in the CPZ. Therefore, when the original application was presented to Planning Committee, officers were of the view that the Council could not enforce that the development was genuinely 'car free' even if the developer entered into a Section 106 Agreement requiring that none of the flats were eligible for a parking permit. This was because residents could park on other streets immediately adjacent to the building (Richmond Parade, Grove Hill and Ashton Rise) where there were no parking restrictions.
- 3.4 Parking was considered to be congested in the area at the time of the planning application and due to the lack of the controls which were needed in order to

genuinely make the development to be car free, it was considered that the proposal would lead to additional on street parking in the area to the detriment of highway safety. Therefore it was considered that the proposal was contrary to policy TR1 and TR7 of the Local Plan and refusal was recommended (the highway reason being one of five recommended reasons for refusal).

- 3.5 However, the recommendation was overturned at Planning Committee subject to a Section 106 requirement with one of the obligations being that the development was made car free and residents were not eligible for a residents parking permit. Other obligations including the requirement for the developer to fund two years membership of the car club for residents, funding a car club space outside the development and to complete a Travel Plan. The developer also contributed £98,000 towards sustainable transport infrastructure in the area.
- 3.6 As a result of the requirement for the development to be car free, residents in the southern block (21 flats nos 25 to 49) were not eligible for a parking permit for the CPZ. However these residents could park on adjacent streets where there were no restrictions. The remaining flats were (nos 1 to 24) were not made ineligible for a parking permit until September 2012. At this time the CPZ was extended and included Richmond Parade, Grove Hill and Ashton Rise.

#### **4 PROPOSAL**

- 4.1 Prime Architecture on behalf of the residents and the freeholder, The Grace Baptist Charities Limited, have requested a variation of the s106 attached to application BH2007/01591 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 development to have access to a residents parking permit.
- 5.2 At the time of construction CPZ Zone C was considered to cover half of the development, the southern side. This is indicated on the attached plan. Therefore in 2008 flats 25-49 with an address of 24 Ivory Place were included in a TRO to ensure they were car free. The remaining flats (flats 1-24) were not considered to be in a CPZ as there access fronted Richmond Parade, so therefore were not included in the TRO.
- 5.3 In September 2012 Zone C was extended northwards and incorporated the remaining extent of Ebenezer Apartments. Therefore a TRO was advertised in September 2012 that made the remaining flats in Ebenezer Apartments (flats 1-24) car free as well, even though the CPZ was not considered to be operational at the time the CPZ was assessed.

- 5.4 The freeholder has now approached the Council requesting that the TRO is amended so that the residents can obtain parking permits.
- 5.5 The car free requirement within the S106 agreement was applied to the original permission as there were perceived issues in relation to levels of parking stress in the area at the time of the assessment of the application.
- 5.6 Overspill parking from the development, based on 2011 Census data and the existing 5 spaces provided onsite, would likely be 11-15 vehicles. Officers note that the surrounding parking zone (Zone C) does not have a waiting list, with current permits issued at 86% of the limit. As such, the addition of 11-15 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.
- 5.7 It is approximately five years since the completion of the development giving the levels of car parking in the local area to be established. The problems in relation to parking stress envisaged at application stage have not materialised in the local area. Given the degree of separation between the completion of the development and the establishment of the CPZ around the whole of the site, it cannot be reasonably argued that making residents ineligible for parking permits mitigates the impacts of the development as approved in 2008.
- 5.8 Additionally, since assessment of the original application further guidance through the National Planning Policy Framework (NPPF) has been published and advises that development should only be refused on transport grounds where the residual cumulative impacts are severe. In light of this and given the intervening years it is not considered that restricting the residents of the development from obtaining future parking permits is now reasonable or supportable.

## **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 housing units for parking permits. The rationale for the restriction was based on the scheme providing only five on-site parking spaces for the development, and the concerns regarding parking stress in the area.
- 6.2 The development was completed and occupied in 2009/2010. In reality all residents who have a car, have been able to park on the streets immediately outside the building which were not within the CPZ (Richmond Parade, Grove Hill and Ashton Rise). However the CPZ was extended, and the TRO was advertised in September 2012 which required that all residents within the building were ineligible for a parking permit. Therefore all the residents within the building, who had always been able to park their cars outside the development, were no longer able to park near to where they lived.
- 6.3 Prime Architecture 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 areas. They also argue that parking demand in the immediate area is low and there are frequently large numbers of free spaces within resident only bays within 100 metres of the site. Prime Architecture also highlight the confusion over the past few years over whether or not the development is car free with some residents being able to obtain permits until as recently as 2014.

- 6.4 It is recognised that there would have been confusion when residents were purchasing flats within the building, as not all flats had been made car free and therefore residents would not have been aware that they would not be eligible for a parking permit if the CPZ was extended in the future. It is also noted that the initial concerns relating to parking stress in the area have not materialised and that there is capacity within the network for the residents to park. It is also noted that in the first four years all residents were able to park on the non CPZ streets immediately outside the building (with the exception of Ashton Rise) which was within the CPZ.
- 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 forecast that overspill parking from the development, based on 2011 Census data and the existing 5 spaces provided on site, would likely be 11-15 vehicles. Officers note that the surrounding parking zone (Zone C) does not have a waiting list, with current permits issued at 86% of the limit. As such, the addition of 11-15 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 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”.*
- 6.7 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  
Legal implications as above.
- 7.3 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.

