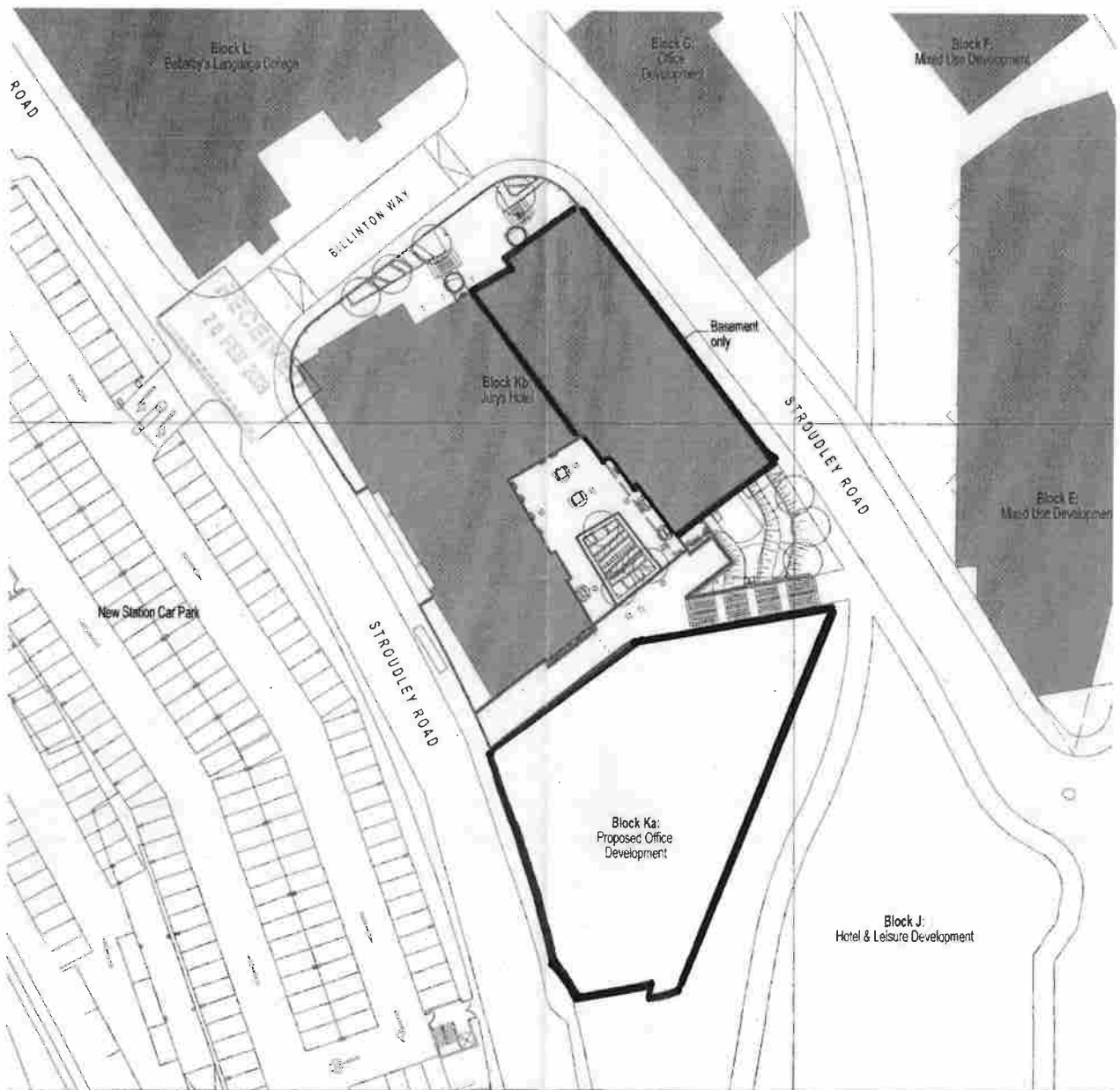


Block K office development, Brighton Station Site

**Request for a Deed of Variation to Section
106 Agreement dated 17/06/10 associated
with planning permission BH2008/01148**

15 JULY 2015

Site Location Plan



PLANNING COMMITTEE LIST- 15 JULY 2015

Subject:	Block K office development, Brighton Station Site Request for a Deed of Variation to Section 106 Agreement dated 17/6/10 associated with planning permission BH2008/01148	
Date of Meeting:	15 th July 2015	
Report of:	Rob Fraser, Acting Head of City Planning & Development	
Contact Officer:	Maria Seale	Tel: 292175
Ward(s) affected:	St Peter's & North Laine	

1. PURPOSE OF REPORT:

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

2. RECOMMENDATION:

- 2.1 That the Committee resolves to allow the completion of a variation to the s106 planning agreement dated 17.6.10 relating to Block K, Brighton Station Site to allow clause 3.18 relating to public disabled access to the car park to be deleted and Schedule 1, Part 1 (4) relating to grey-water provision to be omitted.

3. BACKGROUND INFORMATION:

- 3.1 The site lies within the Brighton Station redevelopment site known as the New England Quarter (NEQ). The NEQ was subject to a development brief (SPG3) and masterplan and permission has been granted for several blocks and uses, the majority of which have been built. The site is north/east of the grade II* listed station and is on sloping land. The site is an office block currently under construction. See appendix 1 for site location plan.
- 3.2 The site forms the part of a larger site known as Block K. The northern part of the site has been developed as the Jurys Inn Hotel. A separate planning permission was subsequently granted for an office block on the southern part of Block K. The planning history of the office block is as follows:
 - BH2008/01148 Block K: Office development including public open space and landscaping. Approved 17/7/10.
 - BH2005/05142 Block K: Mixed use development incorporating a 5/6 storey 3 star hotel to north providing 234 bedroom, ancillary facilities (C1) and a 4 storey office development (B1), public open space, piazza and landscaped garden. Approved 3/4/06 (a further application to vary conditions of this 2005 permission was approved 10/7/07 ref BH2007/01377). The BH2005/05142 permission was only partly implemented (the Jurys Inn hotel).
 - BH2001/01811/OA NEQ Masterplan outline permission given with certain reserved matters determined for mixed use development. Approved 9/9/03.

- 3.3 The Planning Committee was Minded to Grant application BH2008/01148 at the meeting on 24/9/09, and subsequently planning permission was issued after a Section 106 legal Agreement was signed on 17/6/10.
- 3.4 The application included a basement car park under the hotel of 18 spaces, which included a number of disabled parking spaces, which was to serve part of the travel demand created by both the office and hotel developments. The car park was to be used primarily by the office. A financial contribution was also secured towards enhancement of sustainable modes in the area to help meet the total demand created for travel.
- 3.5 The application included a number of sustainable features, and committed to delivering an overall standard of BREEAM 'Excellent'. This was secured through the Section 106 Agreement. This high level of sustainability was in accordance with the SPG3 brief and subsequent masterplan which sought to ensure developments within the NEQ were an exemplar of 21st century sustainable urban development.
- 3.6 The Heads of Terms of the s106 as set out in the committee report of 24/9/09 included, amongst other things, the requirement to provide access for members of the public who are disabled blue badge holders through the lift in the car park located in the basement of the hotel to the hotel plaza, the public open space and the Local Area of Play (LAP). This was to increase accessibility due to the difference in ground levels across the NEQ. The Heads of Terms also included a requirement to provide a grey-water system in the development as part of a wider package of sustainable features. As these 2 requirements were listed as Heads of Terms, committee approval is required to vary or omit them.

4. **THE PROPOSAL:**

- 4.1 The developer (McAleer & Rushe) have made a formal request for a Deed of Variation to the Section 106 Agreement to:
- delete clause 3.18 which seeks to provide access for general members of the public who are disabled blue badge holders through the car park located in the basement of the hotel to access the plaza and open/play space.
 - remove the obligation to provide a grey-water system in the development as stated in in Schedule 1, Part 1 (4).
- 4.2 The reasons why the developer is making this request are discussed in section 6 below.

5. **CONSULTATION:**

- 5.1 **Access comments:** Comment. To ensure a robust management system is in place at all times means that if it is not followed a wheelchair user/s could be left in the stairwell. Egress upwards for a disabled person in a wheelchair is uncommon and poses some manual handling issues. i.e. ensuring that adequately trained staff are available at all times to carry a wheelchair user upwards. Some wheelchair users cannot do a transfer from their chair and BC are not aware of an egress chair that will negotiate a flight of stairs upwards. As such a wheelchair user could be trapped in the stair should a fire take place in the car park that they cannot pass to get to the ramped entrance. The distance of

travel to the ramped exit and to a place of safety outside the building seems reasonable and the difference in levels appears to be around 0.5m which again is not unreasonable for a wheelchair user to negotiate should the need arise. The premise under the Building Regulations is that a person should be able wherever possible to make their escape by their own unaided efforts. The proposed travel distance to a final exit attempts to achieve this premise. It is not reasonable to suggest that training/guidance will be given to members of the public on means of escape protocols. It would probably be better to put better signage up in the basement that is easy to see and understand.

- 5.2 **Sustainability:** The omission of grey-water is agreed. To date the information submitted demonstrates the development is on course to meet the sustainability clauses in the S106 Agreement in terms of carbon reduction, BREEAM etc. Given that the applicant has demonstrated that rainwater harvesting is being taken forward on this site, it is considered that grey-water recycling in addition would be overly onerous. The rainwater system will help achieve the required water credits in BREEAM and further information has been requested in this regard. The applicant has demonstrated that the development is on course to meet BREEAM 'excellent', which is welcomed particularly as it is understood the building, which was submitted for planning in 2008, was not designed to meet the 2011 BREEAM excellent standards and additional improvements have therefore had to be made. These include enhancement of fabric and glazing with low U values to minimise heating demand, glazing with low g values and shading systems employed to reduce cooling demand, lighting installation and VRF plant (variable air conditioning) selected to meet this demand with high efficiency and introduction of roof mounted PV's. A Design Stage BREEAM certificate has been requested as confirmation.
- 5.3 **Transport Planning:** As there is an alternative access to the hotel plaza, open space and play area (via the flat access at Stroudley Road) the Highway Authority has no objections to the proposed variation of this clause to omit public use of the lift in the basement car park. The applicant has demonstrated that there is a large number of available disabled parking which is not time limited in close proximity of the site.

6 COMMENT:

- 6.1 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.
- 6.2 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".

- 6.3 When judging whether a proposed variation to a s106 is acceptable in planning terms, the broader context of planning policies in the Development Plan and other relevant material considerations including the National Planning Policy Framework (NPPF) and the emerging Brighton & Hove City Plan Part One (submission document) have been considered.
- 6.4 Public Disabled Access
The applicant states that the main reasons they are seeking removal of clause 3.18 is for practical reasons relating to security and fire safety.
- 6.5 The basement car park is to be used solely by office workers (who will have pre-approved secure key fobs), and the applicant claims that unrestricted use of this private, secure car park by the general public (who are blue badge users) would be a security risk to the hotel.
- 6.6 The applicant has sought the services of a fire consultant and state that unrestricted public access to the basement car park would also compromise safety as the public would not be able to be trained in the fire protocols for using the space, unlike office workers.
- 6.7 When considering the original planning application for the whole of Block K (2005) the intention was to try and ensure the NEQ masterplan area as a whole was as accessible as possible, given the many changes in ground levels within it. At the time it was felt necessary to secure public access through the hotel car park for people to have a more direct route from the east to the hotel plaza, open space and play area. The possibility of an external stair lift was also considered but discounted at the time.
- 6.8 Both accessibility and the prevention of crime are planning considerations. These issues were considered at the time of the original application. The applicant's concerns regarding safety and security now are, however, recognised. Public use of a lift within a secure private car park is rather unusual and not ideal. Since permission for Site K was granted, further developments have increased the accessibility of the NEQ. The adjacent Site J in particular includes an external lift within the public realm which will be an unadopted public highway which allows direct access from the lower Fleet Street level to the east to the station. The Council's Highways Team confirm that they raise no objection to the proposal as level access can be provided to the hotel plaza, open space and play area from the upper level at Stroudley Road. In addition, the development of Site J incorporates another, equipped, play area at the lower level on Fleet Street with level access.
- 6.9 Fire safety is covered by Building Regulations and is not usually a planning consideration. The practicalities of meeting Building Regulations can however have knock on effects for planning, and in this case it was not possible to anticipate all relevant issues at the planning application stage. The Council's Building Control team confirm that it is reasonable for the applicant to cite the impracticalities of aiding disabled users in the event of fire, particularly if the original stair refuge was to be used. They do, however, note that unaided escape could be satisfactorily made through the main exit provided this is adequately

signed, notwithstanding that the public would not be as aware of the protocols as the office workers would be.

6.10 Access through the NEQ will inevitably involve compromise in certain areas given the significant difference in ground levels across it. The NEQ as a whole is now considered to be more accessible than at the time Block K was first approved as further blocks have been built. On balance, it is considered that the main reason the s106 variation should be agreed is because the wider NEQ is now more accessible, and the security case put forward by the applicant is agreed with to a limited extent. It is considered that the requirement for general public access to the basement car park lift would therefore not meet the 'useful purpose' tests of the S106 and is not necessary to make the development acceptable in planning terms.

6.11 Sustainability

The applicant states, via their sustainability consultant, that a rainwater only harvesting system is a safer option than a combined system with grey-water (which involves reusing hot water) as that introduces unnecessary health risks. They state that in some developments such as hotels the quantity of hot water would be greater than roof water so this additional health and safety risk could be accommodated and be managed by dedicated operational staff, however, in an office the amount of hot water would be far less than that from the roof. They do not consider a grey-water system to be appropriate for this building. The applicant has been in discussion with the council's Sustainability Officer who agrees this position and welcomes the incorporation of rainwater harvesting.

6.12 As can be seen in the comments made by the Sustainability Officer in para 5.2 above, the development incorporates a wide range of sustainable measures and is on course to meet BREEAM 'excellent' standard. This was one of the main aims of the s106 and there is therefore no objection to the required water scores and 'excellent' standard being achieved by means other than the incorporation of grey-water recycling. The Sustainability Officer agrees that to insist upon this in addition to the other measures would be overly onerous. The overall package of measures secured would still ensure the development meets the requirement of the original brief and masterplan for a high sustainable standard.

6.13 It is therefore considered that to insist on the provision of grey-water recycling would not serve a useful purpose and the development is acceptable in planning terms.

7 FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

The legal costs of preparing the Deed of Variation document will be borne by the developer.

7.2 Legal Implications:

Lawyer consulted: Hilary Woodward
Legal implications set out in 6.1-2.

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 in section 4.1 of this report.
- 8.2 The proposed amendments are considered to be acceptable for the reasons detailed above.
- 8.3 Therefore, the recommendation is for the s106 to be varied to allow deletion of the requirements to a) provide access for the general public to the basement car park and b) provide grey-water recycling.

SUPPORTING DOCUMENTATION

Appendix 1: Site Location Plan

Background Documents: Planning permission BH2008/01148 and planning history of surrounding development sites within the NEQ.

Site Location Plan

