

<u>No:</u>	BH2022/03066	<u>Ward:</u>	Rottingdean Coastal Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	Land To The East Of The Vale Brighton		
<u>Proposal:</u>	Application to vary condition 4 of planning permission BH2015/01890 (allowed on appeal) to permit works to the trees which were listed as to be retained in the Arboricultural Impact Assessment and Tree Constraints Plan but which have subsequently been authorised under applications BH2021/01696 and BH2022/00435 to be felled and replaced by standard red maple trees and field maple trees. And vary condition 4 of planning permission BH2015/01890 (allowed on appeal) to allow six further trees to be felled and replaced with standard red maple trees and field maple trees.		
<u>Officer:</u>	Steven Dover, tel:	<u>Valid Date:</u>	11.10.2022
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	06.12.2022
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	15.03.2023
<u>Agent:</u>	The Sussex Tree Company 2 Nursery Cottage Titnore Way Worthing BN13 3RT		
<u>Applicant:</u>	Boran Investments Field End Greenways Brighton BN2 7BA		

1. RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Proposed Drawing	LLD783/ 01		26 September 2022
Proposed Drawing	LLD783/ 02		26 September 2022
Proposed Drawing	Development site tree works		1 December 2022
Proposed Drawing	Revised planting/tree installation scheme		4 January 2023
Location and block plan	01B		22 June 2015
Block Plan	02D		22 June 2015
Proposed Drawing	04D		22 June 2015
Proposed Drawing	05C		22 June 2015
Proposed Drawing	06C		22 June 2015
Proposed Drawing	07C		22 June 2015

Proposed Drawing	08B		22 June 2015
Proposed Drawing	09C		22 June 2015
Proposed Drawing	12B		22 June 2015
Report/Statement	Arboricultural Evidential Report		4 January 2023

2. Not used - development commenced
3. The sample of materials details should be retained in accordance with the details approved under application BH2021/02832.
Reason: To ensure a satisfactory appearance to the development and to comply with policies DM18 of Brighton & Hove City Plan Part 2 and CP12 of the Brighton & Hove City Plan Part One.
4. The proposed landscaping shall be implemented and retained in accordance with the details approved under BH2021/02832, except those trees which were listed as to be retained in the Arboricultural Impact Assessment and Tree Constraints Plan as approved under application BH2021/02832, but which have subsequently been felled or are due to be felled due to the risk of failure presented by Ash Dieback or the removal of significant sections of their roots, (numbered T15, T16, T17, T18, T19, T20, T21, T23, T24, T25, T26, T27, T28, T29, T30, T31, T32, T33, T34, T38, T36, and T37) as detailed in the Arboricultural Evidential Report produced by The Sussex Tree Company dated January 2023, shall be replaced by eleven (11) Red Maple trees and eleven (11) Field Maple trees with a minimum nursery stock size of 20-25cm diameter. Full details of these replacement trees, including soil decompaction methods, tree pit details and maintenance proposal with a minimum of 3 year watering schedule shall be submitted to and approved in writing by the local planning authority prior to first occupation of any dwelling. Development shall be carried out in accordance with the approved details prior to first occupation of any dwelling, or otherwise in accordance with a programme agreed with the local planning authority.
Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed, become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies DM22 of Brighton & Hove City Plan Part 2, and CP12 and CP13 of the Brighton & Hove City Plan Part One.
5. The ecological mitigation strategy shall be implemented and retained in accordance with the details approved under BH2021/02832.
Reason: To enhance the biodiversity of the site and to comply with Policy CP10 of the Brighton & Hove City Plan Part One and DM37 of the Brighton & Hove City Plan Part Two, as well as SPD11.
6. Secure bicycle parking facilities shall be provided and retained in accordance with the details approved under BH2021/02832.
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 DM33 of the Brighton & Hove City Plan Part 2 and SPD14: Parking Standards.

7. The outbuildings hereby approved shall only be used for purposes incidental to their respective main dwellings.
Reason: To ensure the use of the development hereby permitted it appropriate for its location and does not unduly impact on the amenity of neighbours, in accordance with policy DM20 of Brighton & Hove City Plan Part 2.
8. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no extensions or alterations to the dwellings hereby approved, which would otherwise be permitted by Schedule 2, Part 1, Classes A, B, C, D and E of that Order, shall be carried out.
Reason: The Local Planning Authority considers that further development could cause detriment to the character of the area and for this reason would wish to control any future development to comply with policies DM18 of Brighton & Hove City Plan Part 2 and policies CP12 of the Brighton & Hove City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. SITE LOCATION

- 2.1 The application relates to a strip of land on the eastern side of The Vale. The site is designated as a Nature Improvement Area (NIA) through City Plan Part 1 (CPP1) Policy CP10, and a Local Wildlife Site (LWS) through City Plan Part 2 (CPP2) Policy DM37.
- 2.2 The site lies outside of the 'built up area boundary' but forms part of an Urban Fringe site (CPP2 Policy H2 and CPP1 Policy SA4) identified as 'Site 42' in the 2015 and 2016 Urban Fringe Assessments.
- 2.3 There is a group Tree Preservation Order (TPO) which protects all trees on the site.
- 2.4 The site has planning permission for the erection of 6no. three-bed dwellings with detached garages, and two detached single storey outbuildings. This was initially refused, but allowed on appeal and has now been implemented (ref. BH2015/01890 - see Relevant History below).
- 2.5 The Vale is a private cul-de-sac with Ovingdean Road to its northern end and Falmer Road to the southern end, and an access to Longhill School taken from the road. The western side of the road, to the north of the school, consists of detached dwellinghouses with long rear gardens, some of which extend up the side of 'Long Hill'.

3. RELEVANT HISTORY

BH2021/02832 - Application for Approval of Details reserved by conditions 3 (External Materials), 4 (Landscape Works), 5 (Ecological Mitigation Strategy) and 6 (Cycle Storage) of application BH2015/01890. Details Agreed 25/10/2021.

BH2015/01890 - Erection of 6no three bedroom dwellings (C3), detached garages and 2no detached single storey out buildings. Refused due to insufficient ecological survey information, and a lack of legal agreements securing affordable housing and transport contributions. Allowed on appeal on 8 November 2018.

Condition 4 attached to the permission stated:

No development shall take place until details of both hard and soft landscape works, including hard-surfacing materials and boundary treatments, have been submitted to and approved in writing by the local planning authority. Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedule of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and details of the existing trees to be retained, including their spread, girth and species. Development shall be carried out in accordance with the approved details prior to first occupation of any dwelling, or otherwise in accordance with a programme agreed with the local planning authority. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed, become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

The appeal decision did not include any tree protection measures for those trees to be retained.

Treeworks on Preserved Trees (Felling):

BH2022/00435 - T17/tag no0032, T19/tag no0033, T20/tag no0034, T21/tag no0035, T23/tag no0036, T24/tag no0037, T26/tag no0038, T30/tag no0039, T34/tag no0040, T38/tag no0041, T41/tag no0042, T43/tag no0043 - Fraxinus excelsior (Ash) - Fell to as near to ground level as is possible, (trees display signs of Hymenoscyphus fraxineus or Ash Dieback in upper crown). Replant with Acer rubrum (Red Maple). T20/tag no0034 - Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays signs of Hymenoscyphus fraxineus or Ash Dieback in upper crown and has significant basal cavity at root / stem junction). Replant with Acer rubrum, (Red Maple). Approved

BH2021/01696 - T22, Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays signs of Hymenoscyphus fraxineus or Ash Dieback in upper crown).

T24, Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays signs of Hymenoscyphus fraxineus or Ash Dieback in upper crown).

T32, Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays advanced signs of Hymenoscyphus fraxineus or Ash Dieback in crown and is heavily suppressed by adjacent trees).

T41, Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays advanced signs of Hymenoscyphus fraxineus or Ash Dieback in crown).

T42, Fraxinus excelsior, (Ash) - Fell to as near to ground level as is possible, (tree displays signs of Hymenoscyphus fraxineus or Ash Dieback in upper crown).

Approved

BH2020/03491 - The verges either side of the northern entrance to The Vale, and land to the east of The Vale - currently a paddock, which is also a permitted development site.

Refusal - T4 - Poplar - the applicant has not provided corroborating evidence of defects, proximity to the property is insufficient justification. Removal of the canopy by 10m would have a detrimental impact on both tree health and visual amenity.

Refusal - T22, 24, 32, 41, 42, Ash - identified within the application, Section 15 Forestry Act 1967 prevents local authorities from considering applications to fell trees protected by a TPO when the felling activity would normally require a felling licence. A formal submission must be made to the Forestry Commission.

4. APPLICATION DESCRIPTION

- 4.1 Planning permission is sought to vary condition 4 of planning permission BH2015/01890 (allowed on appeal) to reflect that 16 trees, listed to be retained in the Arboricultural Impact Assessment and Tree Constraints Plan of the original application, which have already been removed under tree works permissions BH2022/00435 and BH2021/01696 and to approve a further 6 with replacement planting identified for the 22 trees. The application as originally submitted was for the removal of 23 trees in total, but one tree has not had sufficient evidence provided to support its removal at this stage (Tree T22), as assessed by the Councils Arboriculturalist.
- 4.2 Whilst 16 trees have already been removed the 6 identified to be removed are protected by a blanket Tree Preservation Order (TPO)
- 4.3 In total the variation of the condition applied involves the removal and replacement of twenty two (22) trees on the site. Some of these trees (16 in total) have already been approved for removal under the Treeworks on Preserved Trees (Felling) applications detailed in the 'Relevant History' section above. Condition 4 as it currently stands requires development to be carried out in accordance with the approved details prior to first occupation of any dwelling, or otherwise in accordance with a programme agreed with the local planning authority.
- 4.4 The treeworks permission allowed the developer to remove 16 diseased trees from the development site. The removed trees were not considered to be in breach of condition, as these were granted under the treeworks permission, they remained to be shown on approved plans. The six (6) new trees are proposed to

be included for approval to be felled and have been subject to damage through the construction process or felled prior to development. The lack of tree protection measures during construction was considered to be a breach. Whilst the lack of protection measures is the breach, an application for their removal through a variation of condition has been sought. The application also consolidates the measures required to mitigate the loss of all trees.

- 4.5 The loss of trees owing to disease and the subsequent treeworks applications are a material consideration in the determination of the application
- 4.6 The elements of the application covered under the Treeworks on Preserved Trees (Felling) applications would not normally need to be included in a S73 application as the works are already approved, but due to the quantum of felling which has now been carried out, in conjunction with the new felling proposed, the LPA, as advised by the County Arboriculturalist, are of the opinion that a comprehensive replacement and maintenance scheme which covers all trees felled or to be felled is now required.
- 4.7 The variation of the condition would encompass all of the approved and proposed felling works in one application with amendments to the approved landscaping plan, and conditions to secure maintenance of the replacement trees. The amendment to condition 4, would include the obligations for replacement planting for all the felled trees (22 in total) with Red Maple Trees (11 in number) and Field Maple trees (11 in number).

5. REPRESENTATIONS

Twenty two (22) letters have been received objecting to the proposed development on the following grounds:

- Adversely affects conservation area
- Residential amenity harm
- Effects on local wildlife from tree loss
- Overdevelopment
- What legal measures will be taken against the developer for damage caused to the TPO protected trees
- Poor design
- Cynical ploy to remove healthy trees by the developer
- Adverse impact on environment from loss of trees
- Detrimental effect on property values
- Investigation and prosecution of the developer should take place for damage to TPO trees
- Appeal Inspector stated that the existing trees should remain
- All the trees that have been removed already are not identified
- Doubt the veracity of the degree of damage to the trees and need for removal that the agent has submitted.
- Detrimental to the character of area

Councillor Fishleigh has commented on the application requesting the application to be determined by members at Planning Committee should officers be minded to approve. Although in making this request, Councillor Fishleigh did not advise of any reasons and the application is before committee due to the number of representations received. A copy of this correspondence is attached to this report.

6. CONSULTATIONS

Arboriculturalist: Recommend approval subject to conditions.

It is considered probable these trees will fail and therefore indefensible in a court of law, BHCC Arboriculture expect, irrespective of failure all will decline to the point of removal post development.

The inclusion of Acer Campestre along with the proposed Acer rubrum is acceptable, BHCC Arboriculture recommend that due to the nature of the loss, instant impact specimens are required.

Tree pit dimensions, construction and materials to be submitted and approved along with the applicant's maintenance proposal, in particular their three year watering schedule.

7. MATERIAL CONSIDERATIONS

- 7.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report

The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour Joint Area Action Plan (adopted October 2019);

8. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Rottingdean Neighbourhood Plan

The policies in Rottingdean Neighbourhood Plan carry limited weight at present but will gain weight as the Plan proceeds through its stages.

The draft Neighbourhood Plan (NP) was submitted to the Council in early 2023. The draft NP reflects previous local community and stakeholder engagement undertaken across the Neighbourhood Area by the Parish Council including a period of public consultation under Regulation 14 of the NP Regulations in 2021. The Council published the draft Plan for pre-submission (Regulation 16) consultation in February 2023. The next steps for the plan are for it to be submitted for examination by an independent examiner. The NP examination is likely to commence in the summer/autumn of 2023.

The policies relevant to the present application are:

- S1: Development Within and Beyond the Settlement Boundary;
- GOS3: Wildlife and Biodiversity;
- H1: Balancing the Housing Mix
- H2: Design

Brighton & Hove City Plan Part One

- SA6 Sustainable Neighbourhoods
- SS1 Presumption in Favour of Sustainable Development
- CP10 Biodiversity
- CP12 Urban design

Brighton & Hove City Plan Part Two

- DM18 High quality design and places
- DM20 Protection of Amenity
- DM22 Landscape Design and Trees
- DM37 Green Infrastructure and Nature Conservation

Supplementary Planning Documents:

- SPD06 Trees and Development Sites
- SPD11 Nature Conservation & Development

9. CONSIDERATIONS & ASSESSMENT

- 9.1 The main considerations in the determination of this application relate to the principle of the development; the loss of the trees; and the impact of the tree removal on the landscape, visual amenity and biodiversity.

Principle of Development

- 9.2 The principle of development has already been established through approval of application BH2015/01890 at appeal dated 08/11/2018, which has now been implemented by the applicant. The Planning Inspector considered the development to be acceptable in all regards and secured various measures by planning condition.
- 9.3 It is noted that the City Plan Part Two has been formally adopted since the original application was approved. The City Plan Part Two policies replace the now

superseded Local Plan and the policies hold full weight. There are no new considerations raised by the adoption of CPP2 that would alter the conclusion that the development is acceptable in principle.

Loss of Trees

- 9.4 As already noted, the removal of sixteen (16) of the protected trees that form part of this application has already been approved under "Treeworks on Preserved Trees (Felling)" applications BH2021/01696 and BH2022/00435. Six (6) additional trees are proposed to be approved for felling and replacement under this application by variation of condition 4 and seeks to encompass the previously approved felling, unapproved felling and proposed felling under one application with suitable mitigation measures.
- 9.5 Of these additional trees, T16, T26, T28, T31 and T33 have all suffered significant damage to the rooting structures from the development work which the applicant has carried out onsite in relation to BH2015/01890. It is important to note that the appeal decision did not include any measures to protect the trees during construction works. T30 was felled prior to development commencing as it was assessed as 'standing deadwood' by the applicant's agent. No evidence of T30 as standing deadwood has been submitted to the LPA or the felling previously approved.
- 9.6 The submitted plans and evidence in respect of T16, T26, T28, T31 and T33 have been assessed by Council's Arboriculturist who agrees with their removal due to the level of damage which has been caused to the tree roots, risk of failure in the future and/or Ash Die Back.
- 9.7 The felled trees would be replaced with suitably sized Red Maple Trees (11 in number) and Holm Oak/Holly Oak trees (11 in number), which the Arboriculturist also agrees with, subject to the final details and a maintenance scheme being agreed by condition.
- 9.8 On this basis, the proposed removal and replacement of the trees is considered acceptable, given their poor health.

Impact on Landscape and Visual Amenity

- 9.9 The removal of trees from the site and the proposed removal is due to a combination of Ash Die Back (16 Trees), Naturel Death (1 Tree) and damage which has been caused by the applicant's development of the site (5 Trees). This has caused a significant diminishment of the site's impact on biodiversity and visual amenity, and on the landscape which formed part of the character and appearance of The Vale. This is regrettable, but in planning terms, given that the felling for diseased/dead trees and the damage to roots has already taken place, it cannot be mitigated other than through replacement planting.
- 9.10 The proposed replacement trees, in conjunction with the previously approved landscaping under BH2021/02832 will go some way to restore the biodiversity and landscape/visual impacts in the short term, and the longer term as they grow

into more mature specimens. While there will be short term impacts as mature specimens are replaced with newer planting, in the long term, the appearance of the area and its biodiversity will be restored to a level agreed through the grant of permission for the development of the site. On this basis the impact on the landscape of the area, and visual amenity is considered acceptable, subject to conditions to secure replacement planting and maintenance.

Other Matters

- 9.11 The majority of objections to the proposed works have stated that the applicant caused damage to trees without having first gained permission to fell them. They state that permission should not be given to fell the trees as they are the subject of TPOs, that doing so would undermine the protection given to TPOs, and embolden others to carry out unauthorised works, which could lead to the failure of protected trees. A number of objectors state that the trees should be retained, and the applicant investigated and if applicable prosecuted.
- 9.12 However, in planning terms, only the acceptability or otherwise of the tree removal and replacement can be considered. In this case, the retention of the five (5) identified trees (T16, T26, T28, T31 and T33) is not considered sustainable or beneficial in the long term, given their poor health. Their removal and replacement is considered the best course of action for delivering trees on the site.
- 9.13 In this regard, it should be noted that support for the application does not indicate support for damage to TPO trees or their unauthorised removal, both of which are contrary to Tree Preservation Orders and planning policy. This application seeks only to consolidate and resolve the best course of action for restoring trees to the site, and the associated benefits this brings to the surrounding area.

Conclusion:

- 9.14 The proposed development is considered to consolidate historic and proposed felling works to trees which benefit from a tree preservation order, with replacement planting which would ameliorate the loss, improving the landscape of the site and area, visual amenity, and biodiversity. Whilst the loss of trees is regrettable, it is considered that suitable mitigation would be secured. The proposal would be compliant with Policies SA6, CP10 and CP12 of the City Plan Part One and DM18, DM20, DM22 and DM37 of the City Plan Part Two. As such, this application is recommended for approval.

10. EQUALITIES

- 10.1 None identified

11 CLIMATE CHANGE/BIODIVERSITY

- 11.1 The harm to biodiversity through the felling of 22 trees in total is to be offset by the planting of 22 new trees.