

<b><u>No:</u></b>	<b>BH2018/01894</b>	<b><u>Ward:</u></b>	<b>Wish Ward</b>
<b><u>App Type:</u></b>	<b>Removal or Variation of Condition</b>		
<b><u>Address:</u></b>	<b>1A Marmion Road Hove BN3 5FS</b>		
<b><u>Proposal:</u></b>	<b>Application under S73a for variation of condition 2 of BH2015/01278 (Demolition of existing warehouse (B8) and erection of 4no two/ three storey residential dwellings (C3) and offices (B1).) (allowed on appeal) to allow amendments to the approved drawings.</b>		
<b><u>Officer:</u></b>	<b>Sonia Gillam, tel: 292265</b>	<b><u>Valid Date:</u></b>	<b>12.06.2018</b>
<b><u>Con Area:</u></b>		<b><u>Expiry Date:</u></b>	<b>07.08.2018</b>
<b><u>Listed Building Grade:</u></b>		<b><u>EOT:</u></b>	<b>21.11.2018</b>
<b><u>Agent:</u></b>	<b>ADC Ltd 72A Beaconsfield Road Brighton BN1 6DD</b>		
<b><u>Applicant:</u></b>	<b>Albany Homes Southern Ltd Unit 33 Henfield Business Park Shoreham Road Henfield BN5 9SL</b>		

## 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 be **MINDED TO GRANT** planning permission subject to a s106 agreement and the following Conditions and Informatives:

### S106 Heads of Terms:

- A contribution of £2,690 towards the planting of seven trees within the vicinity.

### 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.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Sections Proposed	ADC855/07		20 June 2016
Material sample/detail	SCHEDULE		20 June 2016
Material sample/detail	BRICK	ATHERSTONE RED	20 June 2016
Material sample/detail	WINDOW DOOR HEAD BRICK	TSTAFFORDSHI RE BLUE	20 June 2016
Material sample/detail	ZINC ROOF	PREPATINA BLUE GREY	20 June 2016
Material sample/detail	BLOCK PAVING	MARSHALLS CHARCOAL	20 June 2016
Material sample/detail	ARTISAN	COLOUR GREY	20 June 2016

	WOODGRAI N BROCHURE		
Floor Plans Proposed	ADC855/13	A	14 November 2018
Floor Plans Proposed	ADC855/14		11 June 2018
Floor Plans Proposed	ADC855/15		11 June 2018
Elevations Proposed	ADC855/16		11 June 2018
Location and block plan	ADC855/17	A	14 November 2018
Site Layout Plan	ADC855/18	A	14 November 2018
Elevations Proposed	TA633/16K		3 July 2015
Sections Proposed	TA633/18K		10 April 2015
Elevations Proposed	TA633/17K		3 July 2015

2. Not used
3. The southernmost building within the development hereby permitted shall be used for B1 (a) offices only and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
4. The first floor windows in the rear/east elevation to all units of the development hereby permitted shall not be glazed otherwise than with obscured glass and thereafter permanently retained as such.
5. No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues (other than those approved under drawings ADC855/16 received on the 11 June 2018) shall be fixed to any elevation facing a highway.
6. The car spaces to be provided shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and offices, and their visitors, and for no other purpose.
7. No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. TA633/11 rev. J for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
8. The hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.

9. The development shall be maintained in accordance with the approved materials samples/ details approved under application BH2016/02324 on 5 October 2016
10. Not used
11. Not used
12. The dwellings shall not be occupied until the Building Regulations Optional Requirements G2(36(2)(b)) (water efficiency) and M4(2) (accessible and adaptable dwellings) have been complied with.
13. The B1 use offices shall not be occupied until the sustainability measures detailed within the Sustainability Checklist received on the 10th April 2015 have been fully implemented, and such measures shall thereafter be retained.
14. Not used
15. The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
16. Prior to the first occupation of the development, details of a scheme of works to raise the existing kerb and footway, including redundant vehicle crossovers, in front of the proposed development, and to realign the western bell mouth kerb to Mainstone Road to be the same radius as the kerb opposite (including tactile paving) shall be submitted to and approved in writing by the Local Planning Authority. The works shall be completed prior to the first occupation of the development hereby permitted and shall thereafter be retained.

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 & APPLICATION DESCRIPTION**

- 2.1 The site comprises a newly built two/ three-storey terrace comprising four two-bedroom houses and a B1 office unit at the junction of Mainstone Road and Marmion Road, Hove.
- 2.2 Application under S73a for variation of condition 2 of BH2015/01278 (Demolition of existing warehouse (B8) and erection of 4no two/ three storey residential dwellings (C3) and offices (B1).) (allowed on appeal) to allow amendments to the approved drawings.

- 2.3 The development has been constructed with various deviations from the approved plans. Amended plans have been received during the course of the application which show the existing situation on site.
- 2.4 Following a Planning Enforcement investigation, the applicant seeks to regularise the following:
- The size/ siting of the building in respect of the approved plans.
  - The size/position/spacing of windows and detailing between windows is incorrect to the western elevation;
  - The 2nd floor doors facing onto the roof terraces are incorrectly positioned;
  - The roof terrace balcony should feature obscure glazed panels but is clear glazed;
  - The parapet roof line is incorrect. The approved elevation shows a stepped parapet detail, with double height glazing in places;
  - Metre boxes shown on Marmion Road and flues on the Mainstone Road elevation in conflict with condition 5;
  - The approved plans show the planting of two trees to the southern end of the site; this has not been undertaken in conflict with condition 14;
  - The main entrance door and bin store door have been switched to western elevation.

### 3. RELEVANT HISTORY

- 3.1 2018/04516/ENFRCE Not in accordance with approval BH2015/01278. The Enforcement team have considered the deviations from the approved plans and do not consider that any of them cause any significant harm to either neighbour amenity or the character of the area.

BH2016/02324 Application for Approval of Details Reserved by Condition (s) 9, 10 and 11 of Application BH2015/01278 (allowed on appeal). **Approved** 05.10.2016.

BH2015/01278 Demolition of existing warehouse (B8) and erection of 4no two/three storey residential dwellings (C3) and offices (B1). **Refused** 05.08.2015 at Planning Committee for the following reasons:

1. The proposed development by reason of its height and scale would represent an incongruous feature in the street scene and would also result in the new development having a dominating relationship with the surrounding houses. The proposed development is therefore contrary to Policies QD1 and QD2 of the Brighton & Hove Local Plan 2005.

Allowed on appeal 08.03.2016. The Inspector gave the following reasons:

- The scale and height of the proposed development would not harm the character and appearance of the area.
- This is a high density area, with houses in close proximity such that there is a degree of mutual overlooking. Given the nature of this accommodation, I am satisfied that the distance to neighbouring dwellings would ensure that the living conditions of neighbouring occupiers would not be unduly harmed.
- No evidence has been provided as to the historic importance of the building and, at present, it is a utilitarian structure that does not make a particular contribution to the character and appearance of the locality.
- Whilst some employment floorspace would be lost, additional offices would be provided and this loss has been considered acceptable by the Council.
- There is no firm evidence that development would have any materially adverse effect on local services and infrastructure, including drainage and sewerage systems.
- The access and parking arrangements would be satisfactory and there is no evidence that highway safety would be compromised.
- Any disturbance during construction would be for a temporary period only.

BH2014/03570 Demolition of warehouse and erection of 4no two bedroom terraced houses and 1no office unit (B1). **Refused** 17/03/2015

BH2014/01571 Demolition of warehouse and erection of 4no two bedroom terraced houses and 1no office unit (B1). **Refused** 18/07/2014

BH2012/03254 Demolition of warehouse and erection of 4no two bedroom terraced houses and 1no office unit (B1). **Refused** 28/02/2013. Appeal dismissed on 18/10/2013.

BH2011/00540 Conversion of existing warehouse into 5no 2 bedroom dwellings. **Refused** 27/04/2011.

#### 4. REPRESENTATIONS

4.1 Nineteen (19) letters have been received objecting to the development. The main grounds for objection are as following:

- Deviation from plans
- Not complied with conditions
- Trees not planted

- Footprint larger
- Balcony glazing not obscure glass
- Tarmac rather than paving
- Metres and pipework facing highway
- Boiler release valves release pressure and steam onto footpath
- Noise
- Poor design
- Too close to the boundary
- Traffic or Highways
- Lack of privacy
- Building out of character
- Impact on property values

- 4.2 Two (2) letters have been received commenting on the development as follows:
- Do not wish to see any more building work, having already endured two years of noise and dust.
  - This site was an eyesore before the development was built, which is a vast improvement, despite the deviations from the plans

## **5. CONSULTATIONS**

- 5.1 Sustainable Transport: No objection
- 5.2 Arboriculture: No objection. In order for two trees to establish successfully and live for many years, large rooting areas need to be available for the trees. There is no room to plant two new trees that will successfully establish and grow to their full potential. Trees would restrict the number of available car parking and result in parked cars overhanging the public footway. This would be the case even if the approved scheme had been implemented.
- 5.3 Building Control: Verbal comment: No objection Plume from flues would not be of danger to public in terms of emissions or heat.
- 5.4 Councillor Nemeth objects to the application and has called to committee. The email is attached to the report.

## **6. MATERIAL CONSIDERATIONS**

- 6.1 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
- 6.2 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);

- 6.3 Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## **7. POLICIES**

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development  
CP1 Housing delivery  
CP3 Employment land  
CP8 Sustainable buildings  
CP9 Sustainable transport  
CP12 Urban design  
CP14 Housing density  
CP19 Housing mix  
CP20 Affordable housing

Brighton & Hove Local Plan (retained policies March 2016):

TR4 Travel plans  
TR7 Safe Development  
TR14 Cycle access and parking  
SU9 Pollution and nuisance control  
SU10 Noise Nuisance  
QD5 Design - street frontages  
QD15 Landscape design  
QD27 Protection of amenity  
HO5 Provision of private amenity space in residential development  
HO13 Accessible housing and lifetime homes

Supplementary Planning Documents:

SPD03 Construction & Demolition Waste  
SPD14 Parking Standards

## **8. CONSIDERATIONS & ASSESSMENT**

- 8.1 This relates to an application under S73a for variation of condition 2 of BH2015/01278 ((Demolition of existing warehouse (B8) and erection of 4no two/three storey residential dwellings (C3) and offices (B1).) (allowed on appeal) to allow amendments to the approved drawings. (part retrospective).
- 8.2 The development has been constructed with various deviations from the approved plans. Following a Planning Enforcement investigation, the applicant seeks to regularise the amendments.

- 8.3 Changes in planning policy are material considerations. The City Plan Part 1 Inspector's Report was received in February 2016 which pre-dated the original application. The Inspector's conclusions on housing were to agree the target of 13,200 new homes for the city until 2030 as a minimum requirement. It is against this minimum housing requirement that the City's five year housing land supply position is assessed annually.
- 8.4 The Council's most recent land supply position was published in the 2017 SHLAA Update (February 2018) which showed a marginal surplus (5.0 years supply). However, the inspector for the recent planning appeal on Land south of Ovingdean Road (APP/Q1445/W/17/3177606) considered that the Council's delivery timescales for two sites were over-optimistic and concluded that there would be a five year supply shortfall of at least 200 dwellings. The Council's five year housing land supply figures are currently being updated as part of the annual monitoring process and an updated five year housing position will be published later this year. In the interim, when considering the planning balance in the determination of planning applications, increased weight should be given to housing delivery in line with the presumption in favour of sustainable development set out in the NPPF (paragraph 14).

- 8.5 The amendments are assessed as follows:

The size/ siting of the building in respect of the approved plans.

There have been concerns raised that the footprint and siting of the building in not in line with the plans. Amended plans have been submitted during the course of the application which shows the situation on site.

Length of site:

Approved plans: 39.3m

Submitted plans: 38.6m

Length of building:

Approved plans: 31.7m

Submitted plans and as implemented: 32m

Distance from building to southern pavement:

Approved plans: 6.1m

Submitted plans and as implemented 5.4m

Width of building:

Approved plans: 9.6m

Submitted plan and as implemented: 9.6m

- 8.6 The submitted plans show the building as 0.3m longer than the approved plans, and the distance from the building to the southern pavement as 0.7m less in length. Officers have re-visited the site and confirmed that the submitted plans align with the existing situation on site. The building is in line with the bay of the property to the east. Cars were parked on the parking area with no overhang.



- 8.7 It is not considered that the deviations from the approved scheme, in terms of siting or size and impact on the acceptability of the scheme in general. The Inspector confirmed that the scale and height of the proposed development would not harm the character and appearance of the area, and these changes are considered minor in that context.
- 8.8 The size/position/spacing of windows and detailing between windows is incorrect to the western elevation. The 2nd floor doors facing onto the roof terraces are incorrectly positioned. The parapet roof line is incorrect. The approved elevation shows a stepped parapet detail, with double height glazing in places. The main entrance door and bin store door have been switched to western elevation
- 8.9 These are relatively minor changes to the elevations which are considered to be acceptable and would not warrant refusal of the application.
- 8.10 The roof terrace balcony should feature obscure glazed panels but is clear glazed.
- 8.11 The obscure glazed panels were shown on the original plans, however clear glazing was accepted when the materials were approved by condition. Given that this is a high density area, with houses in close proximity such that there is a degree of mutual overlooking, the Inspector made it clear he was satisfied that the distance to neighbouring dwellings would ensure that the living conditions of neighbouring occupiers would not be unduly harmed. He did not see fit to insist that the glazing was obscure via condition.
- 8.12 Meter boxes shown on Marmion Road and flues on the Mainstone Road elevation were not shown on the approved plans. This is also in conflict with condition 5: No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
- 8.2 The application explains that, with regard to the meter boxes, there is no other compromise the disabled access to the office. With regard to the flues, as the gas supplies enter from the front elevation, the application states that it was difficult to locate the boilers at the rear. Therefore the boilers are located at the front of the units and thus the flues on the front elevation. The application states that an issue such as this is difficult to anticipate. The flues are dark coloured to match the window door frames.
- 8.3 Although it is acknowledged that these alterations are not considered to enhance the appearance the building, they are minor in nature and would not warrant refusal of the application. The condition can be amended accordingly.
- 8.4 There has been concern raised by a resident regarding emissions from the flues; however the Council's Building Control officer has confirmed that there would be no danger to the public from the emissions and the condensate would not be hot. Given that the flues are above head height and only project marginally from the building, any potential nuisance caused by the plumes is not

considered so significant to warrant refusal of the application. The Council's Highways team has no objections to the application.

- 8.5 The planting of two trees to the southern end of the site; this has not been undertaken
- 8.6 The applicant has advised that it is not possible to plant two trees in the ground to the front of the development, as set out on the approved plans, as this will compromise other conditions such as the provision of car parking spaces and accessible access. The trees were shown on the original plans and, as such, a condition was applied to ensure they were planted to soften the appearance of the development.
- 8.7 The Council's Arboriculture officer has confirmed that, even if the approved scheme had been implemented, in order for two trees to establish successfully and live for many years, large rooting areas need to be available for the trees. It is not considered that there is room to plant two new trees within the locations shown on the plans that will successfully establish and grow to their full potential as per the condition set out within the appeal decision.
- 8.8 Furthermore the planting of two semi-mature trees at this location would restrict the number of available car parking spaces, reducing to a maximum of three, perhaps two spaces. It would also result in parked cars overhanging the public footway.
- 8.9 Additionally it is noted that a highway tree has been in existence to the west of the development within Mainstone Road since 2015 and this is doing well. However, due to services beneath the footway there is no scope for further planting to the north of this tree outside the development to soften views on this aspect.
- 8.10 Therefore, given that: there is no room to plant trees that will successfully establish; there were no trees originally sited here prior to the development; there is a new tree on the public footpath on Mainstone Road, it is not considered that the trees are required to ensure that the development is acceptable. Therefore the amendment to the plans is considered acceptable and it is recommended that condition 14 can be deleted.
- 8.11 However the applicant has agreed to provide seven off-site trees within the vicinity of the site/ Stoneham Park area. The funds can be secured via legal agreement.

#### **8.8 Other Considerations**

Objections have been raised with regard to the tarmacked footpath on Mainstone Road. The application states that the footpath was reinstated in tarmac based on a recommendation from BHCC Highways Engineer. Condition 16 of the planning permission requested details of a scheme of works to raise the existing kerb and footway and other highway works. Although highways works appear to have been undertaken the details of the scheme have not been

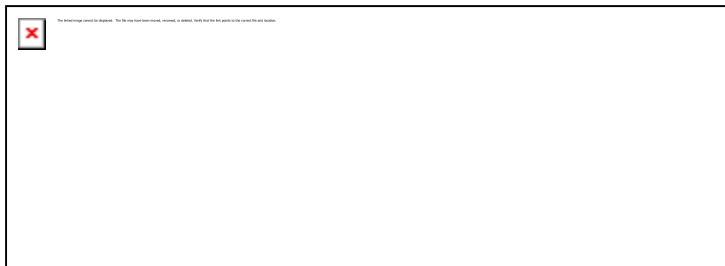
submitted to the LPA for approval; it is therefore recommended that this condition be re-applied to any new permission.

**9. EQUALITIES**

9.1 The dwellings shall comply with Building Regulations Optional Requirements G2(36(2)(b)) (water efficiency) and M4(2) (accessible and adaptable dwellings)

Developer Contributions:

- A contribution of £2,690 towards the planting of seven trees within the vicinity of the site.



Signature of Reviewing Officer: Nicola Hurley  
Dated: 21 November 2018

