

<b><u>No:</u></b>	<b>BH2018/01336</b>	<b><u>Ward:</u></b>	<b>Rottingdean Coastal Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Land At Rear Of 1-45 Wanderdown Road Brighton</b>		
<b><u>Proposal:</u></b>	<b>Erection of 3no residential dwellings comprising of 2no four bedroom dwellings and 1no three bedroom dwelling incorporating parking, landscaping and associated works.</b>		
<b><u>Officer:</u></b>	Jonathan Puplett, tel: 292525	<b><u>Valid Date:</u></b>	26.04.2018
<b><u>Con Area:</u></b>	N/A	<b><u>Expiry Date:</u></b>	21.06.2018
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	<b>TBC</b>
<b><u>Agent:</u></b>	ECE Planning Limited Worthing BN12 4AP	Brooklyn Chambers	11 Goring Road
<b><u>Applicant:</u></b>	Mr Peter McDonnell Goring Road Worthing BN12 4AP	C/O ECE Planning Brooklyn Chambers	11 Goring Road

## 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 the Conditions and Informatives as set out hereunder, SAVE THAT should the s106 Planning Obligation not be completed on or before the 29<sup>th</sup> May 2019 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 10 of this report:

### 1.2. S106 Heads of Terms

A contribution of £6000 towards sustainable transport infrastructure in the vicinity of the site.

#### 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>
Site Location Plan	6512 PL01	Rev B	14/12/2018
Proposed Site Plan	6512 PL02	Rev F	14/12/2018
Proposed Site Plan Upper Floor	6512 PL03	Rev E	14/12/2018
Proposed Site Plan Roof Plan	6512 PL04	Rev D	14/12/2018
Proposed Floor Plans	6512 PL05	Rev D	14/12/2018
Proposed Floor Plans	6512 PL06	Rev D	14/12/2018
Proposed Street and Garden Elevations	6512 PL07	Rev B	14/12/2018
Proposed Sections	6512 PL08	Rev A	14/12/2018

Proposed Elevations	6512 PL10	Rev A	14/12/2018
Proposed Elevations	6512 PL11	Rev A	14/12/2018
Proposed Elevations	6512 PL12	Rev A	14/12/2018
Proposed Access Road	141102- TK03		14/12/2018

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

### **Materials / Permitted development**

3. No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):

- a) Samples of cladding and wall finishes;
- b) Details of all hard surfacing materials
- c) Details of the proposed window, door and balcony treatments
- d) Samples of all other materials to be used externally

Development shall be carried out in accordance with the approved details.

**Reason:** To ensure a satisfactory appearance to the development and to comply with policies QD14/HE6 of the Brighton and Hove Local Plan and CP12/CP15 of the Brighton and Hove City Plan Part One.

4. No extension, enlargement, alteration of the dwellinghouses or provision of buildings etc incidental to the enjoyment of the dwellinghouse within the curtilage of the of the dwellinghouses as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority. No gate, fence, wall or other means of enclosure shall be constructed other than those which form part of the approved scheme of landscaping, without planning permission obtained from the Local Planning Authority.

**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 policy QD14 of the Brighton and Hove Local Plan and policies CP12 and SA5 of the Brighton and Hove City Plan Part One.

### **Transport**

5. The vehicle parking areas shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles

belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.

**Reason:** To ensure that adequate parking provision is retained and to comply with policy CP9 of the Brighton and Hove City Plan Part One and SPD14: Parking Standards.

6. No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
- (i) The phases of the Proposed Development including the forecasted completion date(s)
  - (ii) A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to Commence Development until such consent has been obtained
  - (iii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
  - (iv) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site
  - (v) Details of hours of construction including all associated vehicular movements
  - (vi) Details of the construction compound
  - (vii) A plan showing construction traffic routes

The construction shall be carried out in accordance with the approved CEMP.

**Reason:** As this matter is fundamental to the protection of amenity, highway safety and managing waste throughout development works and to comply with policies QD27, SU9, SU10 and TR7 of the Brighton and Hove Local Plan, policy CP8 of the Brighton and Hove City Plan Part One, and WMP3d of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan 2013 and Supplementary Planning Document 03 Construction and Demolition Waste.

7. Notwithstanding the submitted details, no development above ground floor slab level of any part of the development hereby permitted shall take place until full details of the access road including pedestrian footway, shall have been submitted to and approved in writing by the Local Planning Authority. The approved works shall be completed prior to the occupation of the development, from which point the access road shall be available for use at all times by all vehicles accessing and servicing the site and the footway retained for pedestrian use.

**Reason:** To provide safe and inclusive access in accordance with Brighton and Hove City Plan Part One policies CP9 and CP12 and Local Plan policy TR7. The pre-commencement condition is required in order to ensure that construction is not progressed to a stage where adequate footway provision cannot be retrospectively incorporated.

8. No development above ground floor slab level of any part of the development hereby permitted shall take place until a scheme for landscaping and highway works at the site access shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of all proposed vegetation clearance and regrading of the bank either side of the access from Ovingdean Road that is required to achieve visibility splays as per guidance in DfT's Manual for Streets. The scheme shall also include full details of the junction design and pedestrian crossing treatment, including dropped kerbs and tactile paving. No part of the development hereby approved shall be occupied until the approved highway works have been carried out in accordance with the approved scheme.  
**Reason:** In the interests of highway safety and to comply with policies TR7 of the Brighton and Hove Local Plan and CP9 of the City Plan Part One. The pre-commencement condition is necessary as further details are required to ensure that the access and associated earthworks can be constructed as shown.
9. The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans 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 and Hove Local Plan and SPD14: Parking Standards.

### **Sustainability / access standards**

10. None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).  
**Reason:** To ensure that the development is sustainable and makes efficient use of energy to comply with policy CP8 of the Brighton and Hove City Plan Part One.
11. None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.  
**Reason:** To ensure that the development is sustainable and makes efficient use of water to comply with policy CP8 of the Brighton and Hove City Plan Part One.
12. The development hereby permitted shall not be occupied until the dwelling(s) hereby permitted have been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

**Reason:** To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households and to comply with policy HO13 of the Brighton and Hove Local Plan.

13. 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.

**Reason:** To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with policy QD27 of the Brighton and Hove Local Plan, policy CP8 of the Brighton and Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan Waste and Minerals Plan.

### **Landscaping / Ecology / Trees**

14. The hard surfaces 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.

**Reason:** To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with policies CP8 and CP11 of the Brighton and Hove City Plan Part One.

15. The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site and on land and buildings adjoining the site 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 then be implemented in accordance with the approved level details.

**Reason:** As this matter is fundamental to the acceptable delivery of the permission to safeguard the amenities of nearby properties and to safeguard the character and appearance of the area, in addition to comply with policy QD27 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One.

16. Prior to the first occupation of the development hereby approved, details of landscaping treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:

- a) A scaled plan showing vegetation to be retained and trees and plants to be planted. Trees to be planted will include driveway, plots 1-3 and woodland areas;
- b) The additional screening tree planting to be planted to the north of plot;

- c) Proposed hard landscaping and boundary treatments;
- d) a schedule detailing sizes and numbers of all proposed trees/plants;
- e) Sufficient specification to ensure successful establishment and survival of new planting.

No gate, fence, wall or other means of enclosure shall be constructed other than those which form part of the approved scheme of landscaping, without planning permission obtained from the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or 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 QD15 of the Brighton and Hove Local Plan and CP12 and CP13 of the Brighton and Hove City Plan Part One.

- 17. There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority. Any new tree(s) that die(s), are/is removed, become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Replacement planting shall be in accordance with the approved details (unless the Local Planning Authority gives its written consent to any variation).  
**Reason:** Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and bio-diversity benefits and to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality in accordance with SPD 06, QD 16 (Trees and Hedgerows).
- 18. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details.  
**Reason:** As this matter is fundamental to protecting the trees which are to be retained on the site during construction works in the interest of the visual amenities of the area and to comply with policies QD16 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One and SPD06:Trees and Development Sites.
- 19. Prior to the commencement of the development hereby approved (including any ground clearance, tree works, demolition or construction), details of all tree protection monitoring and site supervision by a suitably qualified tree specialist (where arboricultural expertise is required) shall be submitted to and approved

in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details.

**Reason:** As this matter is fundamental to protecting the trees which are to be retained on the site during construction works in the interest of the visual amenities of the area and to comply with policies QD16 of the Brighton and Hove Local Plan and CP12/ CP13 of the Brighton and Hove City Plan Part One and SPD06:Trees and Development Sites.

20. Prior to the commencement of the development hereby approved (including any ground clearance, tree works, demolition or construction), a pre-commencement meeting shall be held on site and attended by the developers' appointed arboricultural consultant, the site manager/foreman and a representative from the Local Planning Authority to discuss details of the working procedures and agree either the precise position of the approved tree protection measures to be installed OR that all tree protection measures have been installed in accordance with the approved tree protection plan. The development shall thereafter be carried out in accordance with the approved details or any variation as may subsequently be agreed in writing by the Local Planning Authority.

**Reason:** As this matter is fundamental to protecting the trees which are to be retained on the site during construction works in the interest of the visual amenities of the area and to comply with policies QD16 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One and SPD06:Trees and Development Sites.

21. Prior to the occupation of the development hereby approved details of the proposed Access Facilitation Pruning (see BS5837:2012) shall be submitted to and approved in writing by the Local Planning Authority. The approved tree pruning works shall be carried out in accordance with BS3998:2010. Due to the importance of elm trees to the City of Brighton and Hove (Brighton and Hove City Plan - Policy QD16 3.70) and home to the National Elm Collection, and to help elm disease management in the City, elm trees must be pruned between the dates 1st October to 31st May.

**Reason:** To avoid any irreversible damage to retained trees pursuant to section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality, in accordance with policy QD16 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One and SPD06: Trees and Development Sites.

22. Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat shall be carried out within the period of 6 months leading up to the commencement of development, the result of this survey and updated associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority in consultation with specialist advisors. Site works shall be carried out in complete accordance with the survey unless otherwise agreed in writing by the local planning authority.

**Reason:** To appropriate protection and mitigation/compensation measures associated with badgers and to comply with policy QD18 of the Brighton and Hove Local Plan and policy CP10 of the Brighton and Hove City Plan Part One.

23. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations are/or pipe and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include:
- a) Creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using plans placed into them at the end of each working day; and
  - b) Open pipeworks greater than 150 mm outside diameter being blanked off at the end of each working day.

**Reason:** To ensure badgers are not trapped or harmed on site and to prevent delays to site operation and to comply with policy QD18 of the Brighton and Hove Local Plan and policy CP10 of the Brighton and Hove City Plan Part One.

24. Prior to the first occupation of the development hereby approved, a “lighting design strategy for biodiversity” shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) identify those areas/features on site that are particularly sensitive for bats and badgers and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.
- c) Confirm internal lighting proposals and measures to reduce spillage from internal lighting sources. Internal light spill should be designed out wherever possible.

All lighting and mitigations shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Regard should be had to the Institute of Lighting Professionals Guidance Note 8 ‘Bats and Artificial Lighting’ (September 2018).

Under no circumstances should any external lighting other than that which forms part of the approved scheme be installed without prior consent from the Local Planning Authority.

**Reason:** Many species active at night (e.g. bats and badgers) are sensitive to light pollution. The introduction of artificial light might mean such species are disturbed and /or discouraged from using their breeding and resting places, established flyways or foraging areas. Such disturbance can constitute an offence under relevant wildlife legislation. To comply with policy QD18 of the Brighton and Hove Local Plan and policy CP10 of the Brighton and Hove City Plan Part One.

25. The development hereby permitted shall not commence until an ecological design strategy (EDS) addressing retention and protection of existing habitats



during construction, habitat removal and reinstatement, provision for wildlife corridors and habitat connectivity, reptile rescue and translocation, and creation of new wildlife features (including green roofs, bird and bat boxes) has been submitted to and approved in writing by the local planning authority. The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works;
- b) Review of site potential and constraints;
- c) Detailed design(s) and/or working method(s) to achieve stated objectives;
- d) Extent and location /area of proposed works on appropriate scale maps and plans;
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- g) Persons responsible for implementing the works;
- h) Details of initial aftercare and long-term maintenance;
- i) Details for monitoring and remedial measures;
- j) details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

**Reason:** To ensure that any adverse environmental impacts of development activities can be mitigated, compensated and restored and that the proposed design, specification and implementation can demonstrate this and to comply with policy QD18 of the Brighton and Hove Local Plan and policy CP10 of the Brighton and Hove City Plan Part One.

26. The development hereby permitted shall not commence until a landscape and ecological management plan (LEMP) covering the long term management of the Wanderdown Road Open Space Local Wildlife Site, including the long term management of retained scrub and woodland and the road bank, has been submitted to, and approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;

- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions, together with a plan of management compartments;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) Details of the body or organisation responsible for implementation of the plan;
- h) Ongoing monitoring and remedial measures. The LEMP shall also include details of the legal and funding mechanism(s) by which the longterm implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plans shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

**Reason:** Biological communities are constantly changing and require positive management to maintain their conservation value. The implementation of a LEMP will ensure the long term management of habitats, species and other biodiversity features and to comply with policy QD18 of the Brighton and Hove Local Plan and policy CP10 of the Brighton and Hove City Plan Part One.

27. Notwithstanding the approved details and any references to sedum roofs, no development above ground floor slab level of any part of the development hereby permitted shall take place until details of the construction of chalk grassland roofs to the dwellings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, the seed mix, and an ongoing maintenance and irrigation programme. The chalk grassland roofs shall then be constructed in accordance with the approved details and shall be maintained in accordance with the approved details thereafter.

**Reason:** To ensure that the development contributes to ecological enhancement on the site and in accordance with policy CP10 of the Brighton and Hove City Plan Part One.

### **Archaeology**

28. The development hereby permitted shall not commence until a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority. A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any

archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.

**Reason:** To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with policy HE12 of the Brighton and Hove Local Plan and CP15 of the Brighton and Hove City Plan Part One.

### **Drainage / Water Source Protection**

29. No development shall commence until full details of a Surface Water Drainage Strategy as detailed in the Sustainable Drainage and Flood Risk Assessment (December 2018), has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:

- Full details of how the surface water arrangements will be maintained for the life of the development i.e. a Maintenance Plan.
- Full details of adequate treatment of surface water runoff prior to infiltration to prevent pollution of the underlying aquifer;
- Full details of all Microdrainage calculations.

**Reason:** As this matter is fundamental to the acceptable delivery of the permission to prevent the increased risk of flooding and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal and to comply with policy SU3 of the Brighton and Hove Local Plan.

#### **Informatives:**

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton and 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. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees and scrub are likely to contain nesting birds between 01 March and 31 August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity during this period and has shown that it is absolutely certain that nesting birds are not present.

## **2. SITE LOCATION AND APPLICATION DESCRIPTION**

- 2.1. The application relates to an area of land referred to as 'Long Hill', between Wanderdown Road to the West and The Vale to the East. To the north of the site is Ovingdean Road with the land beyond forming part of the South Downs

National Park. To the west of the site is the Ovingdean conservation Area. In distanced views from the west, north and east the site appears as an undeveloped ridge and a break between the houses to either side of the hill.

- 2.2. Alongside the site to the east are two detached dwellings; 'Monterey' and 'Badgers Walk'. Badgers Walk has an access to the rear of its garden through to the site; two stable buildings are sited in this area along with a manege set on raised land. The manege does not have planning permission but may have been in situ for more than four years.
- 2.3. The site is designated as a Site of Nature Conservation Interest (SNCI). There are live badger setts within the site. There are two Tree Preservation Orders on the site; one dates from 1990 and covers a number of individual trees on the site. A Woodland TPO was adopted in April 2015 following site clearances which were carried out at the end of 2014.
- 2.4. Permission is sought for the residential development of the site; a group of dwellings would be sited in the southern part of the site, with the remainder of the site retained as chalk grassland / woodland.
- 2.5. The application follows a pre-application submission where five dwellings were proposed. The application as originally submitted proposed four dwellings. Following discussions with the applicant, the scheme has been amended to omit the northern-most dwelling which has been replaced with proposed tree planting to screen the development now proposed which comprises three dwellings and an access road.

### **3. RELEVANT HISTORY**

- 3.1. **BH2015/04273:** Outline application with some matters reserved for 9 detached houses and access with maintenance and protection of the existing chalk grassland meadow to the north. Appeal lodged against non-determination; appeal dismissed 4<sup>th</sup> January 2017. This appeal was dismissed as the Inspector considered that the landscape impact / visual impact of the proposed development would have been harmful and this harm warranted the refusal of planning permission.
- 3.2. **BH2012/02414:** Application for Approval of Details Reserved by Conditions 1 and 3 of application BH2011/03586. Approved 27/09/2012.
- 3.3. **BH2011/03587:** Change of Use of grazing land to domestic manège. (Retrospective). Refused 14/05/2012 for the following reason:

*The change of use from grazing land to a domestic manège, as a result of the loss of important habitat, has had an adverse impact upon the nature conservation features of the Wanderdown Road Open Space Site of Nature Conservation Importance contrary to policy NC4 of the Brighton and Hove Local Plan.*

Notwithstanding this refusal the manège remains in situ.

- 3.4. **BH2011/03586:** Erection of buildings to provide two loose boxes, a hay store and a tack room with enclosing fence and yard. (Retrospective). Approved 14/05/2012 subject to the following conditions:
1. *Notwithstanding the Chalk Grassland Management Plan received on the 22nd November 2011, an amended Management Plan shall be submitted to and approved in writing by the Local Planning Authority within 2 months of the date of the permission, demonstrating how the grassland will be maintained at a height of no less than 5cm at any time to ensure overgrazing is avoided. The amended plan should not include the use of fertilizers or cultivation at any time. The maintenance of the Wanderdown Road Open Space Site of Nature Conservation Importance shall be carried out in strict accordance with the approved plan.*  
**Reason:** To ensure an adverse impact on the Site of Nature Conservation Importance is avoided in accordance with policy NC4 of the Brighton and Hove Local Plan.
  2. *No vehicular access to the development hereby approved shall be permitted through the Site of Nature Conservation Importance at any time. All vehicle access to and from the buildings shall be via the garden area of Badgers Walk.*  
**Reason:** To ensure an adverse impact on the Site of Nature Conservation Importance is avoided in accordance with policy NC4 of the Brighton and Hove Local Plan.
  3. *Details of no less than 5 bat boxes and a plan showing their proposed location shall be submitted to and approved in writing by the Local Planning Authority within 2 months of the date of permission. The boxes shall be installed in strict accordance with the details submitted within 3 months of the approval of the details.*  
**Reason:** In the interests of nature conservation and to comply with policy QD17 of the Brighton and Hove Local Plan.
- 3.5. **BH2009/01186:** Erection of buildings to provide 2 loose boxes, a hay store and a tack room, with enclosing fence and yard. Approved 01/12/2009.
- 3.6. **BH2005/02352/FP:** Mower shed (Retrospective). Refused 21/09/2005, appeal allowed 06/10/2006.
- 3.7. **BH2004/00097/OA:** Detached dwelling. Refused 06/02/2004, appeal dismissed 07/12/2004.

#### 4. REPRESENTATIONS

- 4.1. **Sixty-seven (67)** letters have been received objecting to the scheme of four dwellings originally proposed **for the following reasons:**
- The proposed development would cause additional overlooking of neighbouring properties.

- The proposed development will cause additional noise, disturbance, and pedestrian and vehicular comings and goings to/from the site.
- Use of the proposed vehicular access would cause an increased highway safety risk.
- If this scheme is granted, further applications will follow for more dwellings on the site.
- The site is an open space of nature conservation importance; SNCI, wildlife corridor.
- The site provides a green gap between housing and the development of the site would harm the landscape character of the area.
- The site supports wildlife including numerous bird species, butterflies and dragonflies, bats, badgers, pheasants, foxes and peacocks and the development of the site would be harmful to this wildlife.
- There are other sites which could be developed for housing which would be less harmful.
- The development would cause additional traffic harming the character of the area.
- The development would cause increased flood risk.
- The increased access into the site could create an increased security risk for adjoining properties.
- The site contains rare chalk grassland and protected trees.
- Local Doctors, Dentists and schools are full to capacity already.
- The proposed houses will not be affordable.
- The proposal represents urban sprawl.
- Ovingdean has a rural character and this development would have an urbanising impact.
- The bus services in the area are very poor.
- A housing scheme has already been dismissed at appeal at the site.
- The sewer and drainage system in the area are inadequate.
- The development would cause additional air and light pollution.
- The proposed construction works could damage trees and their roots.
- Any new trees planted will take many years to mature and provide screening.
- Development should be on brownfield sites first not greenfield sites like this.
- The new City Plan does not designate the site for housing.
- The proposed dwelling designs are out of character with the area.

4.2. Following the submission of an amended scheme of three dwellings, neighbouring residents were consulted and a further **fifty-three (53) letters** were received objecting to the revised scheme of three dwellings originally proposed for the following reasons:

- The amended scheme does not address the objections raised previously.
- Overdevelopment
- Impact upon neighbouring amenity; overshadowing, loss of privacy, light pollution
- Traffic / highways issues / additional traffic and pollution; in addition to the traffic associated with other approved schemes in the vicinity of the site.

- This section of Ovingdean Road is very busy with pedestrians and horses, and dog walkers crossing the road, on a 'blind bend'; the proposed access would be an accident waiting to happen.
- Adverse impact upon a Site of Nature Conservation Importance / wildlife corridor / the wildlife and biodiversity within the site including protected species, bats and badger setts.
- Adverse impact upon landscape character / setting of / views from the South Downs National Park
- Much of the site is covered by Tree Protection Orders; removal of trees should not be permitted.
- The development is about greed; the area doesn't need more luxury homes.
- Brownfield sites should always be considered as a first option rather than developing greenfield sites.
- The proposed development should be considered in conjunction with other developments approved in the area. Additional traffic and any loss of trees will add to traffic and air quality issues in the area.
- The proposed houses will be very expensive and unaffordable to most residents of Brighton and Hove. The proposed development will not alleviate housing pressures amongst those who already live in the city.
- Construction works associated with the development would generate traffic and noise.
- Destroying more green space will impact our health and the health of our children.
- The site is no longer listed in the city plan for development
- The site is exposed therefore any new tree planting may fail or may take a significant period to establish and in the meantime the visual impact of the proposed houses would not be mitigated.
- The site should be designated as an open access site for the benefit of the local community and sheep should be allowed to graze on the site to help it be restored to its natural beauty.
- Adverse impact on the Ovingdean Conservation Area
- Detrimental effect on property value
- Inappropriate height of development
- Too close to the boundary
- All the reasons the council and the Government Inspector rejected the planning application remain the same and I cannot see that any buildings would be allowed on this conspicuous hill.
- The local Doctors, Dentists and schools are already full.
- The proposed development would introduce a rural character.
- Impact on archaeology
- The approval of the proposed development could lead to further applications for more dwellings on the site.
- The potential negative impact on tourism as the area loses some of its appeal and the traffic issues become more acute.
- Increased flood risk
- The development will add to the problems of the Air Quality Management Area (AQMA) and does not mitigate from the additional harm which would be caused.

- The proposed houses are hideous and completely out of character with other housing designs in the area.
- The Badger surveys which have been carried out are not sufficient as they do not consider connectivity to other setts in the hillside adjacent to the site.

4.3. **Councillor Mary Mears** has written two letters in objection to the application, copies of these letters are attached.

## 5. **CONSULTATIONS** External Consultees

5.1. **Brighton and Hove Archaeological Society:** Comment.

The proposed development is close to the location of several important archaeological finds spots dating to the Bronze Age and the Anglo-Saxon period. There have also been a number of Anglo-Saxon burials found in this location. It is recommended that the County Archaeologist be consulted.

5.2. **County Archaeologist:** Comment.

The proposed development is partially situated within an Archaeological Notification Area defining evidence for late Neolithic/Early Bronze Age burials following the discovery of one burial along the northern edge of the site during roadworks in the 1930s and a further burial during the evaluation excavation assessment of this site in relation to application BH2015/04273. In the light of the potential for impacts to heritage assets with archaeological interest resulting from the proposed development, the area affected by the proposals should be the subject of a programme of archaeological works which should be secured by planning condition.

5.3. **Natural England:** No comment.

5.4. **South Downs National Park Authority:** Comment.

### **Landscape and visual impact**

The site is located to the south of the National Park boundary which runs along the Ovingdean Road. The topography of the land rises to the north to a peak at Mount Pleasant which is roughly 500m north of the site. The site is highly visible in views from a number of viewpoints within the SDNP. These include close range views from the bridleway immediately to the north of the access point, and also in longer distance views of the rest of the site from the higher parts of the bridleway further to the north and from the trig point at Mount Pleasant which is on permissive access land, and also from land around The Bostle to the north east.

The SDNPA have reviewed the comments provided by the ESCC Landscape Officer (dated 08.01.19) and would generally agree with the conclusions reached in terms of the impact on views from the National Park and its setting.



If the Council were minded to recommend approval, the SDNPA would request that the recommendations of the ESCC Landscape Officer and ESCC Ecology Officer are secured by condition or s106 as appropriate. Conditions to secure the following details are recommended: final level details; full soft and hard landscaping details including a comprehensive and detailed landscaping scheme and an appropriate long term management/biodiversity enhancement plan for the site including the chalk grassland, site boundaries, road bank and green roofs. Material samples should be secured to ensure they are of a high quality. The SDNPA would welcome the opportunity to comment on any of these details at the appropriate stage.

The SDNPA would recommend that consideration is given to the removal of permitted development rights from the new residential units in order to ensure the design/landscaping objectives are not undermined and to prevent the proliferation of further built form, roof alterations, outbuildings, enclosures and hardstanding on the site. The removal of permitted development rights for fencing and other enclosures across whole the site is also recommended, especially in the northern section of the site which should remain as open chalk grassland as proposed.

The submitted indicative sketch of the access on to Ovingdean Road (drawing PL017, published 9th Jan) shows a reasonably low key entrance which maintains the existing land levels and avoids hard engineering features or excavation and re-profiling of the land. The Council should ensure their Highways Team are fully satisfied that this style of entrance will be acceptable from a highways safety perspective in order to ensure that the entrance design is not significantly amended further down the line as this could have an adverse impact on the local character at the edge of the National Park and therefore fail to be acceptable. The SDNPA would recommend that the detailed design of the access point (including cross and longitudinal sections, full soft and hard landscaping details, material samples etc) are secured by condition and the SDNPA would welcome the opportunity to comment on these details.

### **Lighting**

The South Downs National Park is a designated International Dark Sky Reserve and dark skies and tranquillity are a special quality of the National Park which need to be protected. Paragraph 180(c) of the NPPF 2018 outlines that development should limit the impact of light pollution on intrinsically dark landscapes and nature conservation.

Full details on external lighting have not been provided at this stage. The SDNPA would request that full details for any external lighting across the site are secured and controlled by condition. The SDNPA would welcome the opportunity to comment on these details as and when they are submitted. The SDNPA would prefer to see no street/bollard lighting and any domestic light fittings should be kept to a minimum and should ideally be no more than 500 lumens, be angled downwards, have a colour temperature of less than 3000K and use proximity sensors or timers.

Further information/advice on sensitive lighting can be found in the SDNPA's Dark Skies Technical Advice Note TLL 10 (2018).

Light trespass from glazed openings and rooflights can potentially have a significant impact on dark skies and also have a visual impact in terms of visibility of light sources in the landscape. The SDNPA would recommend consideration is given to the removal of permitted development rights for further glazed openings and rooflights in order to ensure the design objectives are not undermined and that light trespass from the development can be appropriately controlled by the Council in the future.

#### **Access to National Park**

The access point at Ovingdean Road would involve alterations to the existing footway/pavement which currently forms a point where local residents cross the road to access the National Park. The Council need to ensure that any access alterations and additional traffic associated with the development will not compromise the safety of public rights of way users, or affect the legibility of layout for members of the public trying to cross the road and access the National Park. Opportunities to enhance the experience of public rights of way users should be explored and secured if possible.

#### **5.5. Sussex Wildlife Trust: Object.**

Thank you for re-consulting the Sussex Wildlife Trust on the above amended application. We recognise that the applicants have reduced the number of dwellings by one and have now submitted further ecological information. However we still object to this proposal.

The application site is a Local Wildlife Site (LWS) and part of the South Downs Way Ahead Nature Improvement Area and as such there should be a presumption against development as per paragraph 170a of the National Planning Policy Framework (NPPF) and policy CP10 of the City Plan Part 1 (CPP1). The CPP1 is clear that BHCC wants to ensure that the city's natural environment is protected and enhanced, with the vision stating that 'The downland countryside will be conserved and its links to urban green spaces strengthened via a green network across the city where biodiversity is enhanced and equality of access to natural open space is achieved'. Similarly Policy CP10 requires BHCC to link and repair habitats and nature conservation sites within the South Downs Way Ahead NIA, whilst conserving, restoring, recreating and managing priority habitats.

This site functions as a green corridor which brings the downland countryside into the City as per the aims of the Living Coast Biosphere, of which Brighton and Hove City Council (BHCC) is a lead partner. The Sussex Wildlife Trust cannot see how developing this LWS complies with these commitments to the natural environment.

We are very concerned that BHCC are allowing the countryside to be slowly degraded and nibbled away at. LWS are an integral component of the City's Ecological Network and we have no confidence that BHCC understand the true

impact the continued loss of LWSs is having on this network and the functions that network provides for the City.

We note that the County Ecologist has recommended a condition on the lighting scheme as this has still not been agreed. We support the condition, however the Sussex Wildlife Trust is concerned that there has been no reference in the application to the internal lighting scheme which, given the large areas of glazing in the designs, may spill out from the dwellings onto the adjacent habitat. We note from Table 7 and Map 4 of the Amended Ecological Report that some of the areas with the most records of foraging and commuting bats are adjacent to the area of the site designated for the dwellings and access road. Whilst we still strongly object to the proposal, if the Council is minded to approve the application, this needs to be rectified.

BHCC has a duty under the NERC Act 2006 to have regard for biodiversity, but this does not seem to be influencing the decisions being made in relation to the buffering area between existing housing and the wider countryside. We urge the Council to demonstrate their commitment to the environment by counteracting the view of some, that a degraded LWS is suitable for development. Instead working to ensure these sites deliver the ecosystem services the City so desperately needs for a sustainable future.

#### Internal Consultees

##### 5.6. **Planning Policy Team:** Comment

The application site lies outside the built up area boundary and was included in the 2014 and 2015 Urban Fringe Assessments (UFA). The site has been subject to a previous outline planning application (BH2015/04273) for 9 dwellings which was dismissed on appeal in January 2017 due to the harm to the landscape character and setting of the South Downs National Park and negative visual impact. The current application proposes a reduced scheme of 4 dwellings, with amendments to the proposed location and design of development aimed at reducing the potential visual impact.

The UFA studies identified some potential to deliver a small amount of development at the northern tip of the site, subject to measures to mitigate landscape and ecological impacts. The site has not been included as a potential site allocation in the draft CPP2 because the development potential falls below 10 dwellings (which was the site threshold used for proposed site allocations in CPP2), however the UFA studies should be treated as a material consideration.

The current application is proposing development within the central part of the site which lies outside the area identified in the UFA as a 'Potential Development Area' and is more visible from within the SDNP to the north. However, following the approach taken by the inspectors at the previous outline planning appeal for this site, and the appeal involving another 'urban fringe' site at Falmer Avenue, Saltdean (BH2014/03394), it is necessary to consider the current application on its planning merits to determine whether it would deliver

sustainable development when assessed against development plan policies (in particular policies SA4 and SA5) and the NPPF.

In addition, following the South of Ovingdean Road appeal inspector's conclusion that the Council cannot demonstrate a five year housing supply, it is necessary to give increased planning weight to the potential for housing delivery in line with the presumption in favour of sustainable development set out in the NPPF. Effectively this means that the application should be permitted unless it is considered that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against development plan policies and the NPPF.

Determination of the application will require specialist input from the County Landscape Architect regarding the degree of potential development impact and harm to the landscape setting of the city and the SDNP, and extent to which any adverse impacts of development can be minimised and adequately mitigated. The views of the County Ecologist and Council Heritage officers will also be important.

5.7. **Arboriculturalist:** Comment based upon the original proposal of four houses:

The proposal is for four dwellings and this is on a smaller footprint than the previous application for nine houses that was refused and later lost at appeal. There are two TPO's at the site and these protect a large number of trees. The proposal recommends the removal of eleven trees, three groups and parts of some groups and some of these are protected by the woodland and area tree preservation orders. However, the majority of these are c grade trees and the proposal has attempted to limit the removal of these and has retained the important boundary trees. In view of this the arboricultural team do not object to this proposal subject to conditions to secure:

- A full landscaping scheme including replacement tree planting;
- A Tree Protection Plan and an Arboricultural Method Statement;
- Supervision of tree protection measures;
- Details of any required tree pruning.

Updated comment based upon the amended proposal of three houses:

Again no objection is raised subject to the above conditions.

5.8. **County Ecologist:** Comment 11/07/2018 based upon the original proposal of four houses:

The Ecological Appraisal Report submitted sets out that a number of updated surveys are required (for bats, reptiles, vascular plants and invertebrates). These surveys must be carried out before full comments can be provided.

Given the proximity of the proposed development to a main badger sett, if permission is granted, the sett will need to be closed under licence, and an artificial sett will need to be provided. As the artificial sett will need to be

constructed prior and proof of its use demonstrated before the main sett is closed, this may take some time. The impacts of the construction of an artificial sett should be included in the assessment of impacts on habitats and other protected species

Further comments 26/11/2018 following the submission of an updated Ecological Appraisal Report:

**Potential impacts on biodiversity**

The site lies within Wanderdown Road Open Space Local Wildlife Site (LWS or Site of Nature Conservation Importance). The LWS is designated for its relict chalk grassland, rough grassland and scattered scrub and associated species. The site includes the existing access strip which, despite disturbance, retains patches of chalk grassland, and chalk scrub and deciduous woodland to the south. Following a review of LWS in 2013, a revised boundary and citation has been proposed through the City Plan Part Two which includes the road verge.

The proposed development would lead to the direct loss of approximately a third of the LWS, although it is recognised that this area may be slightly reduced by the proposals to remove one house and to amend the access route. The loss includes buildings and hard standing (stables and manege). Approximately 0.37ha of semi-improved grassland at the north western end of the site will be retained and protected. In my opinion, the harm to the LWS remains significant, even with the proposed mitigation and compensation.

However, in light of the Inspector's comments in relation to a previous scheme with a similar overall footprint, given the proposed mitigation and proposals for future management, the loss is acceptable.

The mitigation and compensation for the chalk grassland outlined in the EclA, including protection and sensitive management of the retained grassland, removal of invasive species from the road bank, natural recolonisation of the road bank and the provision of chalk grassland green roofs, is acceptable and should be designed and implemented through an Ecological Design Strategy (EDS) and Landscape and Environmental Management Plan (LEMP). The funding for the latter should be secured through a S106 agreement. The LEMP should include long term management of the remaining scrub and woodland within the LWS. In addition to the proposed mitigation and compensation within the EclA, it is recommended that seed is collected from the Sussex Scarce Catmint that is found in the southern part of the site, and that consideration is given to translocating the species to a suitable location within the site. Advice on seed collection and propagation should be sought from the UK Native Seed Hub based at the Millennium Seedbank at Wakehurst.

The revised site layout shows indicative screening planting between the access road and the northernmost house. Whilst it is recognised that screening may be required for landscape purposes, tree planting within the retained grassland should be avoided, and species should be native, appropriate to the local area and of local provenance. The revised route of the proposed access track is

preferred to the original proposal. To minimise the impact on the retained grassland, the footprint should be kept as small as possible.

### **Badgers**

Badgers are protected under the Protection of Badgers Act 1992. A main badger sett is present on site. The proposed development will require the closure of the sett under licence, for which an alternative artificial sett will be required. As closure cannot take place before the artificial sett has been constructed and there is evidence that badgers are using it, this process should be clearly programmed into the timetable for works. There will be a net loss of foraging and commuting habitat. Any boundaries within the site should be made permeable to badgers. Best practice working methods should be employed during construction.

### **Bats**

All species of bats are fully protected under the Wildlife and Countryside Act 1981, as amended, and the Conservation of Habitats and Species Regulations 2010, making them European Protected Species. The site offers moderate potential for foraging and commuting bats. Artificial light can negatively impact on bats through e.g. causing disturbance at the roost, affecting feeding behaviour, avoidance of lit areas and increasing the chances of bats being preyed upon. All lighting design should therefore take account of national best practice guidance. Bat boxes should be provided on retained mature trees within the site, the maintenance of which should be included within the LEMP.

### **Breeding Birds**

The site has the potential to support breeding birds. Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. To avoid disturbance to nesting birds, any demolition of buildings or removal of scrub/trees that could provide nesting habitat should be carried out outside the breeding season (generally March to August). If this is not reasonably practicable within the timescales, a nesting bird check should be carried out prior to any demolition/clearance works by an appropriately trained, qualified and experienced ecologist, and if any nesting birds are found, advice should be sought on appropriate mitigation. Bird boxes should be provided as recommended in the EclA.

### **Reptiles**

Slow worms, grass snakes, common lizards and adders are protected against intentional killing or injuring under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. The site supports low populations of slow worms and common lizards. The proposal is to retain the population on site within the retained grassland, with log piles to be created within the retained woodland. In addition to log piles, a hibernaculum such as that recommended in the Great Crested Newt Mitigation Guidelines 2001. A method statement for the rescue and translocation of reptiles within the site, which should accord with best practice guidance, should be included in the EDS. The EclA proposes trapping for a minimum of 20 days, continuing until there have been five clear days

without capture. The recommended minimum capture effort for low populations of slow worms and common lizards is 60 suitable days.

### **Other species**

The site should be managed in the long term to enhance it for invertebrates, including those species listed within the LWS citation.

The site has the potential to support hedgehogs. The hedgehog is listed as a Species of Principal Importance under Section 41 of the NERC Act. Care should be taken during site clearance to avoid harm to hedgehogs and any boundaries within the site should be made permeable for wildlife.

The site is unlikely to support any other protected species. If protected species are encountered during development, work should stop and advice should be sought on how to proceed from a suitably qualified and experienced ecologist.

### **Conditions are recommended to secure:**

- Badger protection measures
- External lighting strategy
- Ecology Design Strategy
- Landscape and Ecological Management Plan

Updated comment based upon the amended proposal of three houses:

The updated ecological report (Ecological Impact Assessment, Ecosa Ltd, 13/12/18) notes that with the reduction to three houses, there will be a small reduction in the amount of semi-improved chalk grassland and broadleaved woodland to be lost. The updated report has also taken account of my comments with respect of the minimum effort required for translocation of reptiles to the area of retained grassland. I reiterate that in relation to reptiles, in addition to the proposed log piles, a hibernaculum such as that recommended in the Great Crested Newt Mitigation Guidelines should also be provided.

The majority of the comments provided on 26/11/18 in relation to the original application for four houses remain valid, as do the recommended conditions. In addition to the management of the retained grassland on site for biodiversity, the Landscape and Ecological Management Plan should include the long term management of retained scrub and woodland, and the road bank. In light of reports from neighbours of active badger setts close to the western boundary of the site, and given the highly mobile nature of badgers, it is also recommended that a pre-construction badger survey is carried out to assess use of the site by badgers at that time and to inform appropriate mitigation, compensation and enhancement.

The EclA recommends the provision of chalk grassland roofs in compensation for the loss of chalk grassland within the Local Wildlife Site. This is an essential component of the scheme. However, the Design and Access Statement refers to sedum roofs. Sedum roofs would not be acceptable.

- 5.9. **County Landscape Architect:** Comment based upon the original proposal of four houses:

**Potential impacts and mitigation**

The wooded character of land between the Vale and the edge of the Wanderdown development is characteristic of this part of the valley. The area of open meadow within the development site and on the crest of the ridge is also a feature which contributes to the character of the area. The loss of this elevated open area would have an adverse impact on local landscape character. The open meadow of the application site is a fragile gap between the existing housing developments which helps to give them separate identity and avoid the perception of coalescence. The sensitivity of this open character was highlighted by the previous refusal of the application BH/2015/04273 and the subsequent unsuccessful appeal (APP/Q1445/W/16/3147419).

The key conclusions of the Inspector that are relevant to this application were as follows:

*‘The LVIA identifies moderate or substantial negative effects as a result of the development as seen from Mount Pleasant. These effects would be greater when trees are not in leaf. At least the first four or five houses would be visible from Mount Pleasant. Even with the housing cut into the ridgeline the houses would be a dominant feature from this position and also at distance from views within The Bostle area to the north east.*

*I conclude that there would be a significant adverse effect on the landscape character and the proposal would be harmful to the setting of the SDNP. There would also be a negative effect in terms of the immediate visual impact relating to the access road.’*

The proposed detailed design for the individual units in this proposal would address some of the concerns raised by the previous application. The houses would be cut into the slope to form terraces and the flat green roofs would be less intrusive than pitched tiled roofs. However the northern house would be visible from the key viewpoint at Mount Pleasant and would present a built façade which would intrude into the open character of the gap between the settlements. The most significant views into the application site from the SDNP are from the bridleway and open access land between Mount Pleasant and Ovingdean Road. The LVIA does acknowledge that the proposed development would have a negative effect on these views with a major to moderate degree of significance. It is acknowledged that the proposed design and selection of materials to be used for the development would help to mitigate the potential impacts on local views. Whilst the development would not break the wooded skyline from this viewpoint the most northern house façade would be prominent and the access road would cut across the open green field in front of this house. The roofs and chimneys of the other houses would also be seen beyond the first house.



Tree and shrub planting at the north end of the development would help to mitigate the visual impact in views from the wider downland to the north. However, planting would conflict with the ecological sensitivities on the site. Any proposed tree planting within the meadow area would conflict with the ecological priority to conserve chalk grassland.

If the northern unit was omitted a belt of native tree and understorey planting could be used to mitigate housing located deeper into the site. This planting would be located on the existing ménage and therefore would not conflict with the chalk grassland habitat.

The proposed access road would impact on open downland character of the northern part of the site as it would cut across this area, which is also sensitive as chalk grassland habitat. An access road which hugs the eastern boundary of the site aligned with the existing site access track would be less intrusive and would have less of an impact on the open character which was considered to be sensitive by the Inspector. The access road would also require the removal of some small trees which provide an existing screen to the southern part of the site.

The access onto Ovingdean Road would also have an adverse impact on local character as with the previous application.

### **Conclusion**

The application is not supported due to the adverse impact on local landscape character and views.

Updated comment based upon the amended proposal of three houses:

The detailed design for the individual units in this proposal would address some of the concerns raised by the previous application. The houses would be cut into the slope to form terraces and the flat green roofs would be less intrusive than pitched tiled roofs. The most significant views into the application site from the SDNP are from the bridleway and open access land between Mount Pleasant and Ovingdean Road. The LVIA does acknowledge that the proposed development would have a negative effect on these views with a major to moderate degree of significance. It is acknowledged that the proposed design and selection of materials to be used for the development would help to mitigate the potential impacts on local views. The roofs and chimneys of the proposed houses would be seen in views from the north.

Tree and shrub planting at the north end of the development would help to mitigate the visual impact in views from the wider downland to the north. However tree planting within the meadow area would conflict with the ecological priority to conserve chalk grassland.

The revised layout omits the most northerly unit and reduces the number of houses to three. This would allow for a belt of native tree and understorey planting which would mitigate the impact of the development. This planting

would be located on the existing ménage and therefore should not conflict with the chalk grassland habitat. The planting would need to be of locally characteristic downland species with some holly and yew to provide evergreen cover.

The omission of the northern house would allow the access road to swing to the west further into the site. This would help to reduce the impact of the road in views from the north. This would also allow for the retention of the group if existing trees on the north side of this road.

The access onto Ovingdean Road would have potential to have an adverse impact on local character and the streetscape. A sketch perspective, drawing PL017, has been provided to indicate that there would be little change to the entrance from the existing situation. The detailed design for the access road would need to ensure that it would have a minimum impact on the character of the area.

If the Local Planning Authority is minded to approve the development it would need to be supported by a comprehensive and detailed planting scheme to ensure that it can be fully integrated into the local landscape.

It is recommended that the proposed development can be supported subject to the implementation of a detailed landscape mitigation strategy as outlined above.

**5.10. Transport:** Comment based upon the original proposal of four houses:

No objections subject to full details of the access road and an updated Road Safety Audit (RSA) being secured by condition, and the following requirements to be secured by s106 Agreement / condition:

A contribution of £6,000 is requested that will be allocated towards:

- Bus stop improvements (to include accessible kerbs and/or shelters and/or real time passenger information) at the 'Wanderdown Road' north and southbound bus stops on Ovingdean Road and/or
- Crossing improvements (dropped kerbs and tactile paving) to the northbound Wanderdown Road bus stop on Ovingdean Road.
- A scheme of highway/landscaping works including full details of all proposed vegetation clearance and regrading of the bank either side of the access from Ovingdean Road that is required to achieve visibility splays;
- Implementation of cycle parking provision;
- Construction Environmental Management Plan (CEMP).

Updated comment based upon the amended proposal of three houses:

Again no objection is raised subject to the above conditions and s106 requirements.

#### 5.11. **Sustainable Drainage:** Comment

Prior to any construction the applicant should supply the following information:

- The SuDS Maintenance Plan submitted with this application should be expanded upon as it does not demonstrate that maintenance can be carried out for the lifetime of the development. It does not, for example, depict exactly what maintenance or regularity for the SuDS specific to the proposed site.
- Since the soakaways appear to be situated within Source Protection Zone 3, the applicant must ensure measures are in place to prevent pollution of the underlying aquifer. Adequate treatment to surface water runoff prior to infiltration is required.
- The applicant should provide their MicroDrainage calculations that accompany their runoff values for checking.

#### 5.12. **Heritage:** No comment:

In view of the Inspector's conclusion re the appeal scheme and that it would not cause harm to the setting of the Ovingdean Conservation Area; no comment.

### 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 and Hove City Plan Part One (adopted March 2016);
- Brighton and Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton and Hove Waste and Minerals Sites Plan (adopted February 2017);

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

### 7. **POLICIES**

The National Planning Policy Framework (NPPF)

**Brighton and Hove City Plan Part One (2016) (BHCPP1)**

SS1 Presumption in Favour of Sustainable Development

SA4 Urban Fringe

SA5 The South Downs

CP1 Housing Delivery

CP8 Sustainable Buildings  
CP9 Sustainable Transport  
CP10 Biodiversity  
CP11 Flood Risk  
CP12 Urban Design  
CP14 Housing Density  
CP15 Heritage  
CP16 Open Space  
CP18 Healthy City  
CP19 Housing Mix  
CP20 Affordable Housing

### **City Plan Background Studies**

Urban Fringe Assessment 2015  
Urban Fringe Assessment 2014

### **Brighton and Hove Local Plan (2005) (BHLP) Retained Policies**

TR7 Safe development  
TR14 Cycle access and parking  
TR19 Parking standards  
SU5 Surface water and foul sewage disposal infrastructure  
QD15 Landscape design  
QD16 Trees and hedgerows  
QD18 Species Protection  
QD27 Protection of Amenity  
HO5 Provision of private amenity space in housing schemes  
NC4 Sites of Nature Conservation Importance (SNCl)s and Regionally Important Geological Sites (RIGS)  
HE6 Development within or affecting the setting of conservation areas

### **Supplementary Planning Documents**

SPD06 Trees and Development Sites  
SPD11 Nature Conservation and Development

### **Supplementary Planning Guidance**

SPGBH4 Parking Standards

## **8. CONSIDERATIONS and ASSESSMENT**

8.1. The main considerations in the determination of this application relate to the principle of development, landscape impacts, ecology, transport and highway safety, neighbouring amenity, standard of accommodation, flooding and sustainability.

### **8.2. Background**

The City Plan Part 1 Inspector's Report was received in February 2016. 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.

- 8.3. 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 in due course. 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 11).
- 8.4. The Council's housing delivery identifies that an estimated 1180 new dwellings could be delivered on urban fringe sites across the city. Policy SA4 of the BHCPP1 states that:

*“Where appropriate, the council will promote and support the careful use and management of land within the urban fringe to achieve the following objectives:*

- 1. The protection and enhancement of the wider landscape role of land within the urban fringe, the setting of the South Downs National Park and the protection of strategic views into and out of the city.*
- 2. Securing better management of the urban fringe, environmental improvements and safe public access to the countryside through sustainable means.*
- 3. The promotion of urban fringe land as part of the city's green network and, where appropriate, encouraging opportunities for multi-functional uses such as, appropriate recreation and cultural experience, new allotments and local food production and biodiversity conservation and enhancements (see CP10 Biodiversity).*
- 4. The protection of sensitive groundwater source protection zones from pollution and encouraging land management practices that reduce rapid surface water runoff and soil erosion.*
- 5. The creation of 'gateway' facilities and interpretative facilities in connection with the South Downs National Park to support sustainable tourism.*

*Development within the urban fringe will not be permitted except where:*

- a) a site has been allocated for development in a development plan document; or*
- b) a countryside location can be justified; and where it can be clearly demonstrated that:*

- c) *the proposal has had regard to the downland landscape setting of the city;*
- d) *any adverse impacts of development are minimised and appropriately mitigated and/or compensated for; and*
- e) *where appropriate, the proposal helps to achieve the policy objectives set out above.*

8.5. The application site is a challenging one as it is designated as a Site of Nature Conservation Importance (SNCI) / Local Wildlife Site (LWS), and furthermore the site forms the ridge of a hill which is highly prominent in immediate and more distant strategic views, including views from the South Downs National Park to the north of the site, Ovingdean Conservation Area to the west of the site, and Falmer Road to the east of the site.

8.6. In this context, the acceptability or otherwise of any residential development on the site is dependant primarily on an assessment of the impact of the development on the biodiversity and ecology of the SNCI, and an assessment of the landscape / visual impact of the proposed development. Developments which would cause harm in either respect are unlikely to be supported.

8.7. The Council commissioned two Urban Fringe Assessment (UFA) studies, one in 2014 and one in 2015. These are high level studies which have the objective of identifying the development potential of a number of urban fringe sites. The studies are not definitive and do not constitute site allocations. In the case of the application site, referred to as Site 41, the 2014 study concluded:

*“The site is considered suitable for a small amount of low density residential development at the northern tip of the site. The site occupies the crest of a ridge which runs down from Mount Pleasant, separating the built area of northern Ovingdean into two. The northern end is largely open greenspace and the remainder is wooded. Both areas are prominent in SDNP views descending from Mount Pleasant, in which the village appears as houses surrounding a wooded ridge and development on the hill top would be uncharacteristic, detracting from the historic valley settlement form. However, a few new houses within the pony paddocks at the northern end of the site would retain the woodland on the hill top and have the least adverse impact on landscape character. Any impacts on archaeology and heritage would need to be satisfactorily addressed. 95% of the site is recognised as a Site of Nature Conservation Importance. Although the value of the site has been challenged by the landowner, the 2013 Review of SNCIs concluded that the designation should remain pending further independent survey work to verify objections from the landowner.”*

8.8. The 2015 study provides a more detailed assessment, particularly of potential landscape and ecological impacts. This study recommends that the potential developable area to the northern end of the site be reduced and the potential yield of 5 dwellings also be reduced:

*“In conclusion, it is considered that development across the potential development area identified in the 2014 UFA would be likely to result in*

*significant adverse landscape and ecological effects. There is, however, some potential to deliver development within Study Area L15/E12 without significant impacts on landscape and ecology, on the assumption that:*

- The yield and density of development are reduced, and restricted to the lower, northern fringe of the Study Area, with a slight reduction in the potential development area indicated on the below figure.”*
- Planting is located on the northern boundary, to filter/reduce views from the SDNP.*
- Incorporation of robust mitigation measures to address any impacts on protected species.*
- Long-term enhancement of adjacent habitats within the SNCI is provided, in particular retention and management of calcareous grassland (including avoidance of screening planting in these areas).”*

- 8.9. The study concluded that the principle of some residential development on the site may be acceptable, subject to detailed assessments of impacts and appropriate mitigation, provided that development is restricted to the northern tip of the site.
- 8.10. Following this study the draft City Plan Part 2 has been published, the site has not been included as a potential site allocation in the draft CPP2 because the development potential falls below 10 dwellings (which was the site threshold used for proposed site allocations in CPP2), in this context the UFA studies should still be treated as a material consideration.
- 8.11. In assessing the potential of the site to accommodate residential development it is of key importance to consider the findings of the Inspector in determining Appeal ref. BH2015/04273. This was an outline scheme of nine dwellings, the appeal was dismissed and the Inspector reached the following conclusions:
- The Council could demonstrate a 5 year housing supply (N.B. This is no longer the case.)
  - A contribution towards affordable housing was required (N.B. the current scheme is below the threshold above which such contributions are required).
  - The proposed vehicular access would not result in an increased highway safety risk.
  - The ecological impacts of the proposed development could be appropriately mitigated.
  - The development would not harm the setting of the Ovingdean Conservation Area.
  - A contribution towards sustainable transport infrastructure was required.
  - The proposed development would cause harm to the landscape character of the surrounding area and setting of the South Downs National Park, and the proposed access to the site would result in a significant change in the street scene and it would have a more suburban appearance in contrast to the rural quality of this particular part of Ovingdean Road. This harm warranted the refusal of planning permission.

- 8.12. Having regard to this appeal decision, whilst the Inspector did not rule out the principle of residential development on the site, for a proposed scheme to be considered acceptable it will need to overcome the concerns sets out by the Inspector in regard to landscape / visual impact. These matters are considered below.
- 8.13. Landscape / Visual Impact:**  
The previous Outline application (dismissed at appeal) proposed nine houses; an indicative layout showed the dwellings arranged along the ridge of the site. At pre-application stage prior to the current application, five large dwellings were proposed. The application as originally submitted proposed four houses. The County Landscape Architect considered that this scheme did not overcome the concerns raised by the Appeal Inspector and that the scheme would still have a harmful impact upon the character of the area.
- 8.14. Following negotiations with the Applicant the scheme was amended as follows:
- The northernmost dwelling has been omitted; the scheme has been reduced to three dwellings.
  - Additional tree planting is now proposed to the north of the northernmost house now proposed to screen the appearance of the proposed dwellings.
  - The proposed access road runs further down the western side of the site before sweeping over to the eastern side of the proposed houses.
- 8.15. These amendments have reduced the visual impact of the scheme; the houses would be set further back into the site than previously proposed. The existing manege (which causes visual harm) and stables would be demolished and tree planting is proposed in the location of the manege. The access road would be less prominent running further down the western boundary of the site before cutting across the site. The proposed dwellings, set back into the site with green roofs would have a significantly reduced impact in comparison to the nine houses previously proposed.
- 8.16. The dwelling designs proposed are of a contemporary nature with green flat roof forms and a staggered arrangement between the ground and first floors of the dwellings which are partially set into the slope of the site. Terraced garden areas are proposed. These dwelling designs would contrast with the traditional dwelling designs and forms in the surrounding area, they are however considered to be appropriate for this site and the Council's design policies do in general support contemporary / innovative design.
- 8.17. The Appeal Inspector raised concern that the proposed vehicular access would alter the rural character of this section of Ovingdean Road. These concerns are noted; it is however considered that an appropriate appearance in terms of landscaping and any boundary treatment / gates can be secured through the application of appropriate planning conditions.
- 8.18. Overall, subject to appropriate details and landscaping being secured by planning conditions, it is considered that the proposed development would result in an acceptable visual impact and the concerns raised by the Appeal Inspector



have been overcome. The County Landscape Architect does not object to the amended scheme.

#### **8.19. Ecology**

The site is designated as a Site of Nature Conservation Importance (SNCI) / Local Wildlife Site (LWS), there is a 1990 Tree Preservation Order (TPO) protecting a number of trees on the site and there is a Woodland TPO (2015) covering a large area of the site. This Woodland TPO was adopted following a large scale site clearance which was carried out at the end of 2014.

8.20. At the time of the previous appeal, the Appeal Inspector concluded that the harm which would have been caused by the nine dwelling scheme could have been appropriately mitigated through the application of planning conditions.

8.21. The current application as originally submitted lacked a number of essential ecological surveys. During the course of the application an updated Ecological Report was submitted with the results from the necessary surveys included. The County Ecologist has commented on the amended scheme and considers that, in light of the Appeal Inspector's comments; the harm which the scheme would cause could be appropriately mitigated provided that conditions are applied to secure:

- Badger protection measures
- Lighting strategy
- Ecology Design Strategy
- Landscape and Ecological Management Plan

Subject to these conditions it is considered that the proposed development would result in an acceptable ecological impact.

#### **8.22. Trees:**

The trees on the site are of particular concern as many of the trees are covered by protection orders. The comments of the Council's Arboriculturalist set out that the development would have an acceptable impact subject to a number of other requirements which could be secured by planning condition:

- A full landscaping scheme including replacement tree planting;
- A Tree Protection Plan and an Arboricultural Method Statement;
- Supervision of tree protection measures;
- Details of any required tree pruning.

Subject to these conditions it is considered that the proposed development would result in an acceptable impact upon trees, appropriate new planting would be secured, and the protection afforded by the existing TPOs on the site would remain.

#### **8.23. Transport:**

As at the time of the previous application / appeal, many of the representations received raised concerns regarding the proposed vehicular access as it is sited at the top of a hill on a bend in the road with access to a layby opposite. There

is vehicular and pedestrian activity on the road and riding school in close proximity.

8.24. At the time of the appeal the proposed access was considered to have been demonstrated as acceptable and that a highway safety risk would not result. In response to the current application as originally submitted the Transport Officer raised a number of queries and sought further details of the pedestrian access way along the side of the access road. Further details have been provided and the Transport Officer considers that the scheme is acceptable subject to securing a contribution towards sustainable transport Infrastructure in the vicinity of the site, and conditions to secure:

- A scheme of highway/landscaping works including full details of all proposed vegetation clearance and regrading of the bank either side of the access from Ovingdean Road that is required to achieve visibility splays;
- Implementation of cycle parking provision;
- Construction Environmental Management Plan (CEMP).

8.25. The Transport Officer has indicated that street lighting may be sought along the access road; this would however conflict with the South Downs National Park Authority's objectives regarding dark skies and could impact upon wildlife. It is therefore recommended that any proposals for external lighting, including any street lighting, be secured by condition and the County Ecologist be consulted at this stage to ensure that harm would not result.

**8.26. The proposed dwellings**

The proposed dwellings comprise two four-bedroom houses and one three-bedroom house. All of the dwellings would provide a good standard of internal accommodation and outdoor space. Planning Policy requires that a mix of housing types and sizes be delivered across the city; however as a small scheme of only three houses it is not necessary for smaller units to be delivered. Many smaller units are delivered across the city, for example in the flatted developments commonly proposed in the city centre. The proposed dwellings are considered to be acceptable. It is recommended that Optional Access Standards be secured by condition.

**8.27. Neighbouring amenity:**

The Appeal proposal of nine dwellings was considered to have an acceptable impact upon neighbouring amenity. The current amended scheme of three dwellings would have a reduced impact in comparison to the Appeal scheme. The potential impacts of the proposed development are as follows:

8.28. The proposed vehicular access would cause some noise and disturbance however use of such an access would be intermittent and the rear gardens of the properties on Wanderdown Road would provide a division between the access and the dwellings on Wanderdown Road. The trees along the boundary would also to some extent mitigate noise impact.

- 8.29. Activity associated with the occupation of the proposed dwellings and gardens would create some noise, this level of noise would not be beyond a level expected in a residential area.
- 8.30. Overlooking of neighbouring dwellings is unlikely to cause harm as on the western side of the dwellings they would appear as single storey in nature and there is substantial screening along the western boundary of the site. To the eastern side of the site there is significant screening in place and the land slopes down steeply with neighbouring dwellings on The Vale set further down the slope.
- 8.31. Some additional light pollution would be caused by the proposed development as light would emit from the proposed dwellings this would not however be of a magnitude which would cause significant harm. It is recommended that details of appropriate external lighting be secured by condition.
- 8.32. Overall, it is considered that subject to appropriate details and conditions, the proposed development would have an acceptable level of impact upon neighbouring amenity.

**8.33. Flood Risk / Ground Water Source Protection:**

Neighbouring occupiers have objected to the application on the ground that the application site is prone to surface water flooding and landslips and flood run offs have impacted upon neighbouring properties in the past. The Council's Flood Risk Management Officer has considered the proposed development and has advised that such concerns can be addressed through an appropriate drainage scheme which can be secured by planning condition. This scheme should include full details of drainage and soakaways to prevent pollution of controlled waters.

**8.34. Sustainability:**

It is recommended that optional energy and water usage standards be secured by planning condition.

**8.35. Archaeology:**

Trial trenches were dug at the time of the Appeal scheme and the results were passed to the County Archaeologist. The County Archaeologist has no objection to the proposed development subject to a programme of archaeological works being secured by planning condition.

**8.36. Other matters:**

Objections received from neighbouring occupiers raise concerns regarding the capacity of local infrastructure in the form of road, sewers, school, doctors and dentists. Neighbouring occupiers feel that any additional dwellings in the area will worsen the existing situation where such infrastructure is perceived to be already overstretched. The potential additional burden of three dwellings and households in this regard is not considered to be of a magnitude which would warrant the refusal of planning permission. It is considered that local infrastructure does have the potential to accommodate a development of this scale without significant harm being caused.

- 8.37. Objections received from neighbouring occupiers raise concerns that the proposed development will worsen air quality in the Rottingdean Air Quality Management Area (AQMA). Having regard to the size and scale of the development proposed (i.e. three dwellings) it is considered that the contribution of vehicles associated with the proposed development would be very small compared to existing traffic levels in the surrounding area. Therefore it is considered that the impact on the AQMA in Rottingdean would be negligible.

## **9. CONCLUSION**

- 9.1. The proposed development would provide three dwellings suitable for family occupation. The grounds for the dismissal of the previous appeal related to landscape / visual impact and it is considered that these concerns have been overcome. The residential development of a greenfield site will cause harm to ecology / biodiversity however the County Ecologist, having regard to the comments of the Appeal Inspector, considers that the harm which would be caused can be appropriately mitigated and conditions are recommended in this regard. The proposed vehicular access is considered acceptable; the Transport Officer considers that an increased highway safety risk would not result as did the Appeal Inspector previously. All other matters are considered acceptable subject to securing a contribution towards sustainable transport infrastructure and the application of conditions as set out in Section 1 and 10 of this report. Approval is therefore recommended.

## **10. EQUALITIES**

- 10.1. It is recommended that the dwellings be required to comply with optional access standards by condition.

## **11. DEVELOPER CONTRIBUTIONS**

### **S.106 Agreement**

**The contributions required would be allocated and spent as follows:**

Public transport improvements to include:

- Bus stop improvements (to include accessible kerbs and/or shelters and/or real time passenger information) at the 'Wanderdown Road' north and southbound bus stops on Ovingdean Road and/or
- Crossing improvements (dropped kerbs and tactile paving) to the northbound Wanderdown Road bus stop on Ovingdean Road.

In the event that the draft S106 agreement has not been signed by all parties, the application shall be refused for the following reasons:

1. The proposed development fails to provide necessary sustainable transport

infrastructure improvements in the vicinity of the site and therefore fails to address the requirements of Policies CP7 and CP9 of the Brighton and Hove City Plan Part One.

