

<u>No.:</u>	BH2021/04390	<u>Ward:</u>	St. Peter's And North Laine Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	28A Crescent Road Brighton BN2 3RP		
<u>Proposal:</u>	Variation of condition 12 of application BH2018/00433 (variation of condition 1 of application BH2016/00862 (Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping) to allow amendments to approved drawings) to remove the restriction to Residents Parking Permits.		
<u>Officer:</u>	Joanne Doyle, tel: 292198	<u>Valid Date:</u>	21.12.2021
<u>Con Area:</u>	None	<u>Expiry Date:</u>	15.02.2022
<u>Listed Building Grade:</u>		<u>EOT:</u>	13.04.2022
<u>Agent:</u>	CMK Planning 11 Jew Street Brighton BN1 1UT		
<u>Applicant:</u>	J Coroneo 28 Crescent Road Brighton BN2 3RP		

1. RECOMMENDATION

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

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan	-	-	13 December 2021
Block Plan	D.009		10 February 2022
Existing Drawing	D.001	A	10 February 2022
Existing Drawing	D.002	A	10 February 2022
Existing Drawing	D.003	A	10 February 2022
Existing Drawing	D.004	A	10 February 2022
Existing Drawing	D.008	A	10 February 2022
Existing Drawing	AL06	-	10 February 2022

2. The refuse and recycling storage facilities should be provided in accordance with application BH2016/00862.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with policy QD27 of the Brighton & Hove Local Plan, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan and DM20 of the Proposed Submission City Plan Part 2.

3. The cycle parking facilities shall be retained in accordance with the details approved in application BH2016/00862.
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 & Hove Local Plan and SPD14: Parking Standards.
4. The two new build residential units hereby approved shall achieve 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 & Hove City Plan Part One.
5. The two new build residential units hereby approved shall achieve a water efficiency standard using 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 & Hove City Plan Part One.
6. The development shall be implemented in accordance with the material samples approved by the Local Planning Authority under application BH2017/03844.
Reason: To ensure a satisfactory appearance to the development and to comply with policy CP12 of the Brighton and Hove City Plan Part One
7. Within three months of the decision date a scheme of works to change the redundant double yellow lines on Crescent Road to CPZ bays shall be submitted to the Local Planning Authority.
Reason: To ensure that the development provides for the demand for travel it creates and to comply with policy CP9 of the Brighton & Hove City Plan Part One.
8. The hard landscaping shall be retained in accordance with the details approved in application BH2017/03844.
Reason: To enhance the appearance of the development in the interest of the visual amenities of the area and to protect the amenity of occupiers of adjoining properties and comply with policies CP12 of the Brighton & Hove City Plan Part One and QD27 and QD15 of the Brighton & Hove Local Plan and DM18 and DM20 of the Proposed Submission City Plan Part 2.
9. No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse(s) 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.
Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future

development to comply with policies QD14, HE6 and QD27 of the Brighton & Hove Local Plan and DM20 and DM26 of the Proposed Submission City Plan Part 2.

10. Access to all flat roofs over the residential development hereby approved shall be for maintenance or emergency purposes only and the flat roofs shall not be used as a roof garden, terrace, patio or similar amenity area.
Reason: In order to protect adjoining properties from overlooking and noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan and DM21 and DM20 of the Submission City Plan Part 2.
11. All 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 & CP11 of the Brighton & Hove City Plan Part One.
12. Condition not used.
13. The Timber Access Door shall be maintained in accordance with the details approved in application BH2017/03844.
Reason: To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with policy HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One and DM21 and DM26 of the Submission City Plan Part 2.
14. The External Lighting details should be retained in accordance with the details approved under application BH2017/03844.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies QD25 and QD27 of the Brighton & Hove Local Plan and DM20 of the Submission City Plan Part 2.
15.
 - (i): The development hereby approved shall be carried out in accordance with the Contaminated Land Risk Assessment Phase 2 Environmental Site Investigation Report (Ref: PH2-2017-1133) prepared by STM Environmental Consultants Ltd dated 04th January 2018 as approved by application BH2017/03844.
 - (ii): The development hereby approved shall be carried out in accordance with the Contamination and Remediation Report details and should be retained in accordance with the details approved under application BH2020/01231.
Reason: As this matter is fundamental to the acceptable delivery of the permission to safeguard the health of future residents or occupiers of the site and to comply with policy SU11 of the Brighton & Hove Local Plan and DM40 of the Submission City Plan Part 2.
16. Condition not used.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. Restriction of Parking Permits - existing Controlled Parking Zone/Residents' Parking Scheme: You are advised that details of the development will be passed to B&HCC as Traffic Authority administering the Controlled Parking Zone, of which the development forms part, so they can determine whether occupiers should be eligible for residents' parking permits.

2. SITE LOCATION

- 2.1. The application site relates to land located behind the Victorian properties of Nos. 24 to 66 Crescent Road and 20 to 44 Belton Road.
- 2.2. The site is accessed via a pair of entrance doors beneath 28 Crescent Road, and is bounded by the properties and rear garden spaces of Prince's Road to the north, Belton Road to the west, Crescent Road to the east and Prince's Crescent to the south.
- 2.3. The site previously contained comprised various commercial buildings, including a pair of storey buildings connected by a first-floor link, a single storey building to the north, a garage located to the west, and a workshop building to the south.
- 2.4. The site has now been redeveloped for residential use, following the grant of planning permission in 2019 and now contains two new residential buildings housing 4no. two bedroom houses and landscaped area. (ref. BH2018/00433 - see Relevant History below).
- 2.5. The site is located within the Round Hill Conservation Area.

3. RELEVANT HISTORY

- 3.1. BH2019/00072- Application for removal of conditions 7 and 12 of application BH2018/00433 (Variation of condition 1 of application BH2016/00862 (Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping) to allow amendments to approved drawings (part retrospective). Condition 7 stated that the development permitted shall not be occupied until details of a scheme of works to change the redundant double yellow lines on Crescent Road to CPZ bays has been submitted and approved by the Local Planning Authority. Condition 12 stated that the development shall be implemented in accordance with the scheme for the restriction of residents'

parking permits in accordance with the approved application BH2017/03844. Refused 29.03.2019. The reason for the refusal was:

1. Conditions 7 and 12 of permission BH2016/00862 (as amended by permission BH2018/00433) were applied as they were considered necessary to ensure the acceptability of the proposed scheme. The proposed removal of condition 12 would not provide for the demand for travel it creates and would result in overspill parking. There has been no material change in circumstances since the granting of the earlier permissions. For the reason above, the application would be contrary to policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.

- 3.2. The application was subject to an appeal to the Planning Inspectorate (APP/Q1445/W/19/3231412). The appeal was dismissed on 15.10.2019.
- 3.3. BH2018/00433- Variation of condition 1 of application BH2016/00862 (Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping) to allow amendments to approved drawings (part retrospective). Approved on 24.10.2018.
- 3.4. BH2017/03844- Application for Approval of Details Reserved by Conditions 7, 9, 13, 14, 15 and 16 (i) of BH2016/00862. Approved 24.04.2018.
- 3.5. BH2016/00862- Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping. Approved 12.10.2016.

4. APPLICATION DESCRIPTION

- 4.1. As noted above, planning permission was granted in 2016 for the redevelopment of the site (ref. BH2016/00862), subject to a number of conditions, including condition 13 requiring the submission and approval of a scheme “to provide that the residents of the development, other than those with disabilities who are Blue Badge Holders, have no entitlement to a residents’ parking permit”.
- 4.2. A scheme to discharge this condition was subsequently submitted and approved (ref. BH2017/03844).
- 4.3. In 2019, planning permission was granted for an amended scheme to redevelop the site (ref. BH2018/00433), subject to condition 12 requiring it be implemented in accordance with the approved scheme restricting parking permits for future residents.
- 4.4. The site has now been redeveloped.
- 4.5. This current application seeks a variation of condition 12 of application BH2018/00433 to remove the restriction of the issuing of Residents’ Parking Permits.

- 4.6. The application was initially to go before Planning Committee in April 2022, but was withdrawn from that Committee because it was apparent it was procedurally wrong. The application has subsequently been amended to a minor amendment application (a s73 application) rather than a full, retrospective application (a s73a), and re-consultation was undertaken on that basis.

5. REPRESENTATIONS

- 5.1. Twenty nine (29) letters of representations have been received objecting to the proposal for the following reasons:
- An attempt to overturn decisions already made by the Council and Planning Inspectorate
 - Increase the parking stress in the area
 - Could set a precedent for car free development
 - Contrary to policies
 - The development was approved on the basis that residents' parking permits would not be available
 - Parking would become even more difficult than it is already
 - The double yellow lines have not been removed
 - There are other car free developments near the application site
 - A study by a local resident calculates a high percentage of parking stress
 - The high local parking stress is evidenced by local parking surveys
 - Traffic and road safety issues
 - Gaining financially from the removal of the condition
 - There has been no material change in circumstances
 - At odds with the Council's aim for a car free city centre and the liveable neighbourhoods aim to reduce traffic
 - Objection to the cramming in of extra homes in the first place
 - Harm the conservation area
 - Overlooking
 - The development is not car free
 - The density of development means a restriction of permits is appropriate
 - Not for the benefit of the community
 - The appendices have not been uploaded onto the file
 - Makes a mockery of the planning application process
 - Car club membership is an option for residents
 - The planning statement has misquoted the Planning Policy Guidance Use of planning conditions
 - The offices previously on the site were not allowed parking
 - would impose massive upheaval on the planning authority, highways, and council parking team to re-evaluate every car free development
 - If removed what meaning does any restriction put on a development have
 - These prioritises the new development over existing residents
 - Highway capacity and safety impacts
 - Lack of supporting evidence
 - No on-site parking provisions
 - The condition is necessary, fair, reasonable and practical

- There is car parking available to the residents
 - The site is within a sustainable location with excellent public transport
 - Breach of planning conditions
 - Validation and incorrect information
 - The principle of the whole development must be considered again and could be subject to a Judicial Review if not adhered to
 - The new approach may allow historic consents to be revisited
- 5.2. Thirteen (13) letters of representations have been received in support of the proposal for the following reasons:
- Plenty of parking spaces within the street and CPZ
 - Unfair to allow some residents multiple permits and restrict these
 - If there are available permits they should be provided
 - A car is needed for new residents/families and within a steep area
 - The new owners should be welcomed into the community not harassed
 - New residents should be treated equally to existing residents
 - Public transport is not an option for everyone during the middle of a pandemic
 - Any approval should be based on the capacity of the expansive parking zone not the street which can create a distorted view
 - People should not be denied their human rights
 - There should be equal access to local roads
 - Safe travel
 - The congestion in this street is due to the unlawful swapping and selling of visitor permits
 - In line with the planning department's initiative to remove the car free condition
 - 4 more cars on the road would make minimal difference
- 5.3. **Ward Councillor West** has objected to the proposal and has requested that the application be heard at Planning Committee.
- 5.4. Following readvertisement of the application a further Ten (10) representations have been received objecting to the proposal for the following reasons:
- Conditions have not been discharged and planning enforcement investigation
 - Impact on the environment and in a conservation area
 - No capacity for on-street parking
 - Parking and Highways issues
 - Development was approved as car free
 - Misleading quotes by developer and supporters
 - Success will mean removal of effective local authority control
 - Residents already have permits
 - Undermine Policy
 - TRO not amended
 - Onus on applicant

6. CONSULTATIONS

- 6.1. **Sustainable Transport:** No Comment Received

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
 - Brighton & Hove Local Plan 2005 (retained policies March 2016);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
 - Shoreham Harbour JAAP (adopted October 2019).
- 7.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

8. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP1	Housing delivery
CP2	Sustainable economic development
CP3	Employment land
CP8	Sustainable buildings
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
CP12	Urban design
CP14	Housing density
CP15	Heritage
CP16	Open space

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

TR4	Travel plans
TR7	Safe Development
TR14	Cycle access and parking
SU9	Pollution and nuisance control
SU10	Noise Nuisance

QD14	Extensions and alterations
QD15	Landscape design
QD16	Trees and hedgerows
QD25	External lighting
QD27	Protection of amenity
HO5	Provision of private amenity space in residential development
HO13	Accessible housing and lifetime homes
HO20	Retention of community facilities
HE6	Development within or affecting the setting of conservation areas

Brighton & Hove City Plan Part Two

Policies in this Plan do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. Some policies have gained further weight following the CPP2 examination hearings and publication of the Post Hearing Action points by the Inspector (INSP09) and Main Modifications for consultation March 17th (BHCC44 Schedule of Main Modifications).

DM1	Housing Quality, Choice and Mix
DM9	Community Facilities
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM22	Landscape Design and Trees
DM26	Conservation Areas
DM33	Safe, Sustainable and Active Travel
DM36	Parking and Servicing
DM40	Protection of the Environment and Health - Pollution and Nuisance
DM41	Polluted sites, hazardous substances & land stability

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD09	Architectural Features
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards
SPD11	Nature Conservation & Development
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

Other Documents:

Round Hill Conservation Area Character Statement

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in relation to this application are the principle of the development, and the impact on highway capacity and road safety.

Principle of the Development

- 9.2. Policy CP1 in City Plan Part One sets a minimum housing provision target of 13,200 new homes for the city up to 2030. However, on 24 March 2021 the City Plan Part One reached five years since adoption. National planning policy states that where strategic policies are more than five years old, local housing need calculated using the Government's standard method should be used in place of the local plan housing requirement. The local housing need figure for Brighton & Hove using the standard method is 2,311 homes per year. This includes a 35% uplift applied as one of the top 20 urban centres nationally.
- 9.3. The council's most recent housing land supply position is published in the SHLAA Update 2021 which shows a five-year housing supply shortfall of 6,915 (equivalent to 2.1 years of housing supply).
- 9.4. As the council is currently unable to demonstrate a five year housing land supply, increased weight should be given to housing delivery when considering the planning balance in the determination of planning applications, in line with the presumption in favour of sustainable development set out in the NPPF (paragraph 11).
- 9.5. When considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
- 9.6. Case law has held that the desirability of preserving or enhancing the character or appearance of a conservation area must be given "considerable importance and weight".
- 9.7. The principle of the provision of the part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping on the site has been established by the consent BH2016/00862 which was granted in October 2016. Subsequent planning application BH2018/00433 was then varied in November 2018 to allow amendments to the approved drawings, which included the reconfiguration of the layout of the units and minor external alterations.
- 9.8. The Local Planning Authority considered the scheme to be acceptable in all regards and secured various details and measures by planning conditions and it must be considered whether circumstances policy or practice has changed significantly since the time this decision was taken.
- 9.9. It is important to note that since approval of the earlier application there has been a change of weighting with regards to the policies applied to the determination of the application. Brighton and Hove City Plan Part Two (CPP2) has now proceeded to post hearing stage. Following submission in May 2021, the City Plan Part Two is currently under examination by a government appointed planning Inspector, Ms R Barrett, MRTPI IHBC. Public hearing sessions were held online in November 2021. Following the hearing sessions, the Inspector issued her post hearing action points in December 2021 and has asked the

council to prepare and consult on main modifications which, subject to approval at committee will start in late March.

- 9.10. In this case it is considered that the policy context has not changed substantially in regard to the principle of development, the use proposed and design and amenity issues. Overall, it is considered that there is no justifiable reason to take a decision contrary to that made previously by the Local Planning Authority and therefore no objection is raised to the principle of development.
- 9.11. This being the case, the sole consideration under this application is with regards to the 'restriction of car parking permits' and the impact on highway capacity and road safety.
- 9.12. The main considerations in the determination of this application relate to the acceptability of the removal of condition 12 of BH2018/00433.
- 9.13. Condition 12 states;
*"The development shall be implemented in accordance with the scheme for the restriction of residents' parking permits in accordance with the approved application BH2017/03844.
Reason: This condition is imposed to ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One."*
- 9.14. As part of the original planning application for the scheme (ref. BH2016/00862) the Transport Officer recommended that a condition was attached to the permission to restrict future occupier's rights to parking permits given that the site has no proposed vehicular access and is located in a CPZ. This condition was also applied to the subsequent amendment permission (BH2018/00433).
- 9.15. A further application was submitted (BH2019/00072) for the removal of condition 12 was refused on the basis that the condition was considered necessary to ensure the acceptability of the proposed scheme. The Transport Officer in their assessment considered that the submitted Parking Survey clearly showed that parking stress in the vicinity was unacceptable and would result in overspill parking. The Local Highway Authority considered it was necessary at the time to recommend imposing such a condition to ensure that the increase in car parking within the vicinity could be managed and this was agreed by the Planning Inspector when allowing the scheme at appeal.
- 9.16. Policy DM36 of CPP2 supports and encourages car-free residential developments, subject to consideration of SPD14: Parking Standards for New Development. SPD14 describes car-free parking as "housing developments where occupants do not have access to car parking and are precluded from applying for a residents parking permit within a CPZ."
- 9.17. Planning Officers have reviewed the use of conditions to restrict the entitlement of residents to parking permits and concluded that such conditions are not necessary as they duplicate what can already be achieved through parking regulations. Removing an address's entitlement to a parking permit requires an

amendment to a Traffic Regulation Order, which cannot be achieved through the planning process. Parking Officers and/or Traffic Officers can seek such an amendment, without the need for a planning condition to trigger it, so it is considered to needlessly duplicate and complicate the process.

- 9.18. This was recognised in various recent appeal decisions which confirmed that such conditions were beyond the scope of planning as it is within the power of highways and the parking service to make developments 'car free'. Planning conditions also need to meet the six tests set out in NPPF paragraph 56, namely being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The LPA do not consider that the car-free condition meets these tests because parking in the local area and limiting the issue of parking permits is already covered through the management of the Controlled Parking Zone and the TRO regulation already controls which addresses are entitled to parking permits.
- 9.19. In conclusion, it is no longer considered appropriate to impose the car-free condition because parking in the local area, and limiting the issue of parking permits is already covered through the management of the Controlled Parking Zone and an informative has been attached accordingly. Removing the condition would not, therefore, result in any increase to parking stress or highway capacity/road safety.
- 9.20. However, an informative would be added, as above, highlighting that the details of the permission, if granted, will be passed to the parking authority so they can consider whether residents should be entitled to a parking permit.
- 9.21. Overall, it is therefore considered that condition 12 of application BH2018/00433 can be removed.

Other Matters

- 9.22. Since the original application on the site was approved details to address a number of conditions have been approved under subsequent discharge of conditions applications. Since the development has been built conditions have been updated in order to reflect the current situation.

10. EQUALITIES

- 10.1. The gradient of the site is such that accessible access cannot be easily provided for throughout the development.

11. CLIMATE CHANGE/BIODIVERSITY

- 11.1. The site has good links to facilities including shops, is well served by public transport, and cycle parking is also provided, reducing reliance on cars.