

<b><u>No:</u></b>	<b>BH2023/03236</b>	<b><u>Ward:</u></b>	<b>Hollingdean &amp; Fiveways Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Emblem House Home Farm Business Centre Home Farm Road Brighton BN1 9HU</b>		
<b><u>Proposal:</u></b>	<b>Application for the permanent retention of the previously approved temporary extension.</b>		
		<b><u>Valid Date:</u></b>	20.12.2023
<b><u>Con Area:</u></b>	N/A	<b><u>Expiry Date:</u></b>	14.02.2024
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	11.03.2014
<b><u>Agent:</u></b>	Parker Dann Unit 42 Sussex Innovation Centre Science Park Square Falmer Brighton BN1 9SB		
<b><u>Applicant:</u></b>	L3 Harris Home Farm Business Centre Emblem House Home Farm Road Brighton BN1 9HU		

This planning application was initially scheduled to be heard at the Planning Committee meeting on 8 March 2024 but was deferred while further legal advice was sought regarding the potential implications of the scheme. That advice has now been provided and is attached as Appendix 1 to this report, along with an Equalities Impact Assessment (EqIA) at Appendix 2, undertaken by Brighton & Hove City Council (BHCC) as local planning authority, reviewed by BHCC's Equalities, Diversity and Inclusion officers.

The legal advice confirms that, in summary, equalities issues are a material consideration in the determination of planning applications. The weight given to those issues is a matter for the Local Planning Authority as decision maker to determine. The Equalities section at the end of the report has been updated to reflect this and the outcome of the EqIA.

The report has also been updated since the 8 March committee to take account of a response from the South Downs National Park Authority.

## 1. RECOMMENDATION

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:

### Condition:

- 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>
Existing Drawing	18-7040-SK1A		5 December 2023

Existing Drawing	18-7040-SK2A		5 December 2023
Existing Drawing	18-7040-SK3A		5 December 2023
Location and block plan	18-7040-07		20 December 2023

2. No external lighting shall be installed on the extension hereby approved or within the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity and to protect and conserve the International Dark night Skies of the South Downs National Park in accordance with Policy SA5 of City Plan Part 1.

Informatives:

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

**2. SITE LOCATION**

- 2.1 This application relates to a site within Home Farm Business Centre, a small industrial estate located in an elevated position north-west of the Moulsecomb railway station. The site is accessed from Home Farm Road, a cul-de-sac serving only the industrial estate, linking with the A270 to the north via a roundabout. The application site is the largest of one of five industrial buildings within the estate.
- 2.2 The application site contains large industrial-style buildings with a large parking area to the front (south). It is enclosed with a green palisade security fence along the site frontage, with a security barrier across the vehicle access at the south-western end of the site.
- 2.3 As set out below, the application site is within Home Farm, a purpose-built industrial estate for businesses falling within planning use classes B1 (now E(g))(light industrial) and B2 (general industrial). The wider industrial estate has several other large uses, namely a builders' merchants a security systems manufacturer.
- 2.4 Across the road to the south-east, the land banks down to the railway corridor, beyond which are residential properties. To the rear (north-west) of the site is a steep bank, beyond which is land within the Wild Park Local Nature Reserve, which also falls within the South Downs National Park, is a Nature Improvement Area and open space.
- 2.5 Home Farm Industrial Area is protected in Policy CP3 of City Plan Part 1 as one of the "primary industrial estates and business parks for business, manufacturing and warehouse (B1, B2, and B8 use)" [now planning use classes E(g), B2 and B8].

- 2.6 The site is not within or near a conservation area (contrary to statements made in a number of representations) or otherwise subject to any designations.

### 3. RELEVANT HISTORY

BH2018/01868: Erection of temporary building as extension to existing commercial building. Approved 4 September 2018, subject to a condition (condition 2) requiring the removal of the extension within 5 years of the date of the permission and the land reinstated to its former condition.

BH2016/05939: Erection of two storey side extension. Granted 28 March 2017.

BN/88/223OA: B1 and B2 Class Industrial Development and associated new access from Lewes Road. Approved 31 May 1988.

BN/88/2588/RM: Reserved Matters application: Construction of new vehicular access from Lewes Road, erection of 5 two storey buildings (total 10,726 sq. m) for B1 and B2 Class Industrial Purposes. Provision of approx. 252 parking spaces. Approved 21 February 1989.

### 4. APPLICATION DESCRIPTION

- 4.1 Planning permission is sought to retain an extension to an industrial building that was granted a temporary, five year permission in 2018.
- 4.2 The extension is located to the rear of the site in the north-western corner and forms a subservient addition to the main building. It is set back some 21m from its front façade, and measures 15m x 15m with a pitched roof to 7.6m in height and eaves to 5.2m in height. It has a large roller shutter door in the frontage measuring 4.5m in height and 4m in width.
- 4.3 The main building is some 10.4m in height, with eaves sloping down to 7.6m adjacent to the extension the subject of this application.

### 5. REPRESENTATIONS

- 5.1 Publicity on the application and consultation was undertaken in accordance with the requirements of the Town and Country Planning (Development Management Procedure)(England) Order 2015 and the Council's Statement of Community Involvement relating to a minor application.
- 5.2 Responses were received from **602** individuals, objecting to the application (including two objections received since the anticipated Planning Committee on 8 March 2024) and raising the following issues:
- Poor design: low quality materials out of keeping with area;
  - Overdevelopment;
  - Increased noise;
  - Biodiversity/wildlife impacts - will threaten the integrity of the ecosystem at Wild Park;

- Impact on tourist industry, harmful to Brighton and Hove's public image
- Highway impact;
- Impact on other development in vicinity of site including Moulsecoomb Place;
- Impact of protest on police resources and local businesses;
- Weapons produced have an impact on biodiversity and the environment, violate principles of international humanitarian law;
- Immoral, supports war crimes/genocide, weapons made have been used in assault on Gaza, legal implications of knowingly allowing supply of weapons parts destined for use contrary to international law must be considered;
- Conflict with Brighton and Hove City Council's Constitution that states 'All decisions will be made in accordance with respect for human rights'.
- Employment benefit should not be considered as was factored into original, temporary permission;
- Disregard for planning authority by submitting retrospectively, after permission elapsed, breaching condition;
- Environmental impact of the loss of a temporary structure should have been considered with the original application;
- Loss of poor quality structure should not justify scheme as would set precedent for other low quality buildings to never be removed
- Approving the alterations would have a detrimental effect on property value

5.3 In addition a petition has been received with **130** signatures objecting to the application on the following grounds:

- Want to see factory make something socially useful, not destructive;
- BHCC Constitution states that all decisions 'Will be made in accordance with respect for human rights'. This factory can only contribute to more violence.
- Applicant states application will result in improved environmental performance but militaries and arms major contributor to climate emergency.

#### **Objection from Caroline Lucas MP:**

5.4 Businesses who are potentially complicit in human rights violations are not welcome in the city; planning system should not condone large, well-resourced companies failing to adhere to terms of previous planning agreements; disregard for local planning decisions; site backs on to Wild Park. While existing industrial buildings can co-exist with this, important businesses are respectful of this and adhere to obligations and not flout planning rules; agreement was for temporary structure - no evidence that reason for temporary permission have been addressed; no evidence that addition of temporary structure equates to any specific increase in local employment - no business case for temporary structure to be made permanent; applicant linked with US arms supplier so direct impact on local economy, aside from supporting jobs, is limited; recognises that planning processes are not the most appropriate forum for human rights considerations but there are links from weapons produced to human rights violations, assault on Gaza.

#### **Objection from Lloyd Russell-Moyle MP:**

- 5.5 Committee comments when approving the temporary structure - not considered suitable as permanent form of development; evidence some items produced in factor may be complicit in war crimes so offence to support production of these materials; should await decision on ICJ (South Africa V Israel); urge planning committee to take precaution to prevent arms produced in city being used against innocent lives, examine legal implications.
- 5.6 Objections have been received from **Councillors Asaduzzaman, Fowler, Hill, McLeay, Pickett and Bagaen**. Full copies of responses are appended to this report.
- 5.7 **One** representation has been received in support of the application noting the following issues;
- Need to support the arms industry in the UK and need jobs in Brighton.
- 5.8 **Support from Councillor Ivan Lyons**. A copy of their representation is attached to the report.
6. **CONSULTATIONS**
- 6.1 **Planning Policy:** Policy comments not required
- 6.2 **Economic Development:** No comment as does not relate to any loss or gain of commercial floorspace.
- 6.3 **South Downs National Park Authority:** Note need to consider direct and indirect effects upon the National Park designated landscape and its setting as well as its special qualities. The site is located on the boundary of the National Park within the built-up area of Moulsecoomb, an existing industrial area where there are a number of existing large warehouses. No comment on the principle of development but note the application is not supported by evidence in the form of a Landscape and Visual Assessment for example, which is a shortfall of the submission. In this case given the nature of the existing site and built form, and the existing vegetation that visually contains the site along its northern boundary, it is unlikely that the setting of the SDNP would be significantly impacted by the development.
- 6.4 Careful consideration should be given to the International Dark Night Skies Reserve and dark night skies, which are a special quality of the National Park and the avoidance of harmful light spill from the development. Paragraph 191(c) of the NPPF outlines that development should limit the impact of light pollution on intrinsically dark landscapes and nature conservation. The scheme does not appear to be supported by a lighting strategy. If BHCC are minded to recommend approval, the Authority would highlight the need to consider harmful impacts upon the International Dark Skies Reserve arising from light spill from both external and internal lighting sources. Notwithstanding any lighting that currently exists, a sensitive external lighting scheme and measures to prevent internal light spill such as low transmittance glazing which conforms the Institute of Lighting

Professionals for lighting in environmental zones and tries to achieve zero upwards light spill in all respects should be secured by planning condition.

## **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 City Plan Part Two (adopted October 2022)
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- Shoreham Harbour Joint Area Action Plan (adopted October 2019).

## **8. POLICIES**

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One

SA5 The Setting of the South Downs National Park  
SS1 Presumption in Favour of Sustainable Development  
CP2 Sustainable economic development  
CP3 Employment land  
CP8 Sustainable buildings  
CP10 Biodiversity  
CP12 Urban design

#### Brighton & Hove City Plan Part Two

DM11 New Business Floorspace  
DM18 High quality design and places  
DM19 Maximising Development Potential  
DM20 Protection of Amenity  
DM21 Extensions and alterations  
DM40 Protection of the Environment and Health - Pollution and Nuisance

#### Supplementary Planning Documents:

SPD11 Nature Conservation & Development  
SPD12 Design Guide for Extensions and Alterations

## **9. CONSIDERATIONS & ASSESSMENT**

9.1 The main considerations in the determination of this application relate to the principle of the development, the design and impact on the character of the area,

and the impact on the amenity of neighbouring occupiers. Equality issues, as set out in Section 149 of the Equality Act 2010 are also a material consideration, as highlighted in the legal opinion at Appendix 1.

**Principle of Development:**

- 9.2 As noted in the Relevant History section above, planning permission was granted in September 2018 for the extension, for a temporary period of five years which the applicant stated was *"to provide the business with temporary expansion space while a long term decision is taken on whether to proceed with a permanent expansion of the form already approved by the Council."* (ref. BH2018/01868).
- 9.3 The latter reference is to a permanent permission granted in March 2017 for a larger extension in the same location but double the size at 30m in depth (ref. BH2016/05939). The fact that a larger extension was considered acceptable on a permanent basis must be given weight in considering the present application.
- 9.4 Condition 2 of planning permission BH2018/01868 states:
- "2. The temporary side extension hereby permitted shall be permanently removed from the site on or before 5 years from the date of this permission and the land reinstated to its former condition.*
- Reason: The structures hereby approved are not considered suitable as a permanent form of development and permission is granted for a temporary period only and to comply with policies CP9 and CP12 of the Brighton and Hove City Plan Part One and TR7, TR14, TR18 and QD14 of the Brighton and Hove Local Plan."*
- 9.5 Further, the Officer Report for the 2018 permission notes that:
- "it is unlikely that the LPA [Local Planning Authority] would support a continuation of a temporary consent. If a continuation becomes necessary, it is likely that the extension as built would be reassessed on the basis that it would be permanent, in the absence of strong supporting information to the contrary."*
- 9.6 The suitability of the design and appearance of the extension as a permanent feature is assessed below. However, in principle, the extension is considered acceptable in terms of making a more efficient use of an existing, allocated industrial site, without unacceptable impact on the wider area. Home Farm Industrial Area is identified as a primarily industrial estate, with Policy CP3 noting that within these areas: *"The council will support proposals for the upgrade and refurbishment of these estates and premises so that they meet modern standards required by business, are more resource efficient and improve the environment or townscape of the site or premises."*
- 9.7 The extension has allowed the business to expand slightly and ensure their facilities meet modern standards, while making use of the existing site and buildings, which is considered positive, given it is within a site allocated for

industrial/business uses. As set out below, the extension is subservient to the main building so the impact on the surrounding area is considered acceptable.

- 9.8 It is noted that the five year period for the temporary permission expired on 4 September 2023, with the application submitted on 5 December 2023. The extension does not therefore currently have an extant planning permission.
- 9.9 However, the applicant has sought to regularise its planning status with the submission of the present application, so that is not a material consideration in determining it. The planning process is not punitive, so the retrospective nature of the application is not a material consideration.
- 9.10 With regard to the nature of the operation on site, this is considered to fall within the use classes permitted, namely business, manufacturing and warehouse (planning use classes E(g), B2 and B8). Planning permissions run with the site so as long as the operations fall within the authorised use class it is lawful and the nature of the product produced on the site is not a relevant consideration. The character of the use of the land is unlikely to be materially different whatever is manufactured on the site, and in this case, the character of the use, in planning terms, falls within that authorised. The applicant can continue to carry on its activities within the main unit and on the wider site regardless of whether this application for the retention of a temporary extension, is granted. Prior to the extension being in place, streetview imagery indicates that this part of the site was used for open storage, which could be reinstated if the extension was removed.
- 9.11 A large number of the objections to the application relate to the ethics of producing weaponry on the site. Whether activities are seen as unethical or immoral is not, in itself a planning issue, and the use of any weapons and other items produced is strictly controlled through other regulation, including which entities have access to them and whether the operator have or should have an export licence. However, there are associated material considerations relating to the existing use of the site including the potential for a negative effect on people's perception of the city, and the potential for increased protest and the related use of police resources. In this case, this is not given significant weight, given that the extension has been in place for several years, and the site has been used for the same purpose, by the same operator, for more than a decade. Any increased impact resulting from allowing the extension to remain permanently is therefore considered to be minimal, and certainly not so substantial as to warrant refusal of the application.
- 9.12 Comments have been received suggesting that Council public statements and policies and its constitution should be taken into account when considering this application. The Council's policies set out its approach to various issues and as a Council it is entitled to make public statements on issues as long as such statements are not in breach of its statutory duties. The Constitution governs the way the Council is run as a corporate body. The Council as local planning authority can take into account only material planning considerations when considering planning applications as confirmed by case law and as set out in legislation.



- 9.13 On the basis of the above, while the significant number of objections to the scheme is noted and the issues raised taken into account, the principle of the development and the continuing use of the extension is considered acceptable, and to accord particularly with Policy CP3 of City Plan Part 1 which supports the use of the Home Farm Industrial Area as a primary industrial estate for the city.

**Design and Impact on the Character of the Area:**

- 9.14 The extension is a subservient addition to the main building, having a lower roofline and being set back significantly from its frontage. It is therefore considered to be of a scale and siting that means it relates well to the main building, with proportions that do not overwhelm it, and a pitched roof in keeping with the built form in the immediate streetscene, in accordance with Policy DM21 of City Plan Part 2.
- 9.15 The grey cladding of the extension reflects that of the lower portions of the main building so it does not look out of place in the context of the site. It is clearly industrial in character, which is in keeping with the use of the site and area, and does not have what could be considered a 'temporary' appearance, but is so substantial as to not be readily removed from the site, unlike, for example, a modular office building.
- 9.16 Concerns have been raised that the extension results in the overdevelopment of the site. However, Policy DM19 of City Plan Part 2 supports proposals that "maximise opportunities for the development and use of land to ensure the efficient and effective use of available sites", including through the use of building layouts and design, an appropriate mix of uses, and the provision of effective open space, amenity space, access and carparking. The supporting text (paragraph 2.152) notes that given the constraints of the city, the "underdevelopment of sites can compromise the ability of the city to meet land use targets."
- 9.17 In this context, extending an existing industrial site within an allocated industrial area is considered to make more efficient use of land. The use of the site for industrial/business purposes has been accepted. Allowing additional built development within the site for existing site operations is considered appropriate, making more efficient use of an existing site, in this case providing a dedicated area for the delivery and storage of material. It is located immediately along the site boundary but immediately adjacent to another large industrial building on the neighbouring site.
- 9.18 A number of objections have raised concern over the impact of the scheme on the South Downs National Park which abuts the site to the north. However, as already noted, the extension is small in scale, particularly in the context of the large buildings on the wider site and those adjacent. It sits at the bottom of a steep bank, so is not visible in views from the Park and does not therefore affect its setting. The response from the South Downs National Park Authority (SDNPA) notes that "it is unlikely that the setting of the SDNP would be significantly impacted by the development" and they raise no concern in this regard.

- 9.19 SDNPA have also raised concerns over the impact of light spill on the SDNP Dark Skies Reserve, “notwithstanding any lighting that currently exists”. A condition will therefore be attached requiring LPA approval of any additional external lighting in the future in relation to the extension, to ensure it minimises light spill.
- 9.20 On this basis, the proposed retention of the extension is considered acceptable in terms of its design and the impact on the industrial character of the area, and to accord with policies DM19 and DM21 of City Plan Part 2.

### **Other Matters**

- 9.21 The retention of the extension would not result in any increased highway impact in terms of either highway capacity or road safety. It The extension is existing, and is on a part of the site previously used for storage, so has not displaced any parking and no change to operations is proposed. The number of vehicles travelling to/from the site is not restricted by condition, and the site has direct links via Home Farm Road to the A270 so in highway terms, the impact would be limited.
- 9.22 The development is not considered to result in any increased impact on the adjacent local nature reserve, given that any operations are entirely enclosed within a building, reducing the potential for any emissions off site. Further, the extension is located within an existing industrial estate where uses which are commercial/industrial by nature are considered acceptable.
- 9.23 The retention of the extension would not result in any impact on the amenity of neighbouring uses, other than as noted above, through the more general potential for increased protest relating to the wider site use. However as noted above, this is not considered to warrant a reason to refuse the application, particularly given any anti-social behaviour is managed through other legislation, by the police.
- 9.24 The potential environmental harm caused by the items produced is not a material consideration in relation to this application. Only the direct impacts of the use of the site can be considered in deciding this application, not indirect impacts resulting from the items produced at the site. Similarly, a large number of objections raise concerns about breaches under the Human Rights Act 1998 due to the nature of the products being manufactured by the Applicant on the site.. The application of the Schedule 1 to the Human Rights Act 1998 in respect of Article 2 of the European Convention of Human Rights is considered too remote given the nature of the permission sought. The subject of this Application is limited to seeking approval to retain an existing structure on the site. The Local Planning Authority does not have the remit to approve the nature of the products manufactured on site. As with anything manufactured on industrial sites in the city, that is addressed through other legislation.
- 9.25 In respect of local amenity impacts, Article 8 (right to respect for the home and family life) under the European Convention of Human Rights set out in schedule 1 to the Human Rights Act 1988 has been considered and it is concluded that the application is unlikely to give rise to any significant adverse amenity impacts.

9.26 An Equality Impact Assessment (EqIA) has been undertaken and accompanies this application. The conclusion of this states that consideration must be given to the Public Sector Equality Duty set out in Paragraph 149(1) of the Equality Act and that this can be a material consideration in determining planning applications. This also notes that:

*“...there have already been community tensions arising from the existing use as summarised above and it is considered there is potential for those to continue and potentially to worsen. That is a factor relevant to section 149(1)(c) of the Equality Act 2010 (fostering good relations between different groups). There is also considered to be the potential for victimisation and harassment to be exacerbated by a grant of planning permission (section 149(1)(a)). It is also to be noted, however, that a refusal of planning permission may also have consequences of that nature. It is for the planning committee to consider the weight it gives to these factors in the overall planning balance.”*

9.27 It is not considered that the retention of the extension would result in impacts on individuals or groups with protected characteristics to such a degree that it would warrant the refusal of planning permission, particularly noting that the use of the wider site can continue. However, as noted in the legal advice at Appendix 1 and EqIA at Appendix 2, it is for the Planning Committee to determine the weight they give to these matters.

9.28 For the avoidance of doubt, as a matter of public law, international treaties have no direct application under domestic law unless they have been expressly incorporated into UK legislation. Therefore, as has been raised in a number of representations, the UN Arms Trade Treaty and UN Genocide Convention are not therefore material considerations in the determination of this application.

9.29 Section 149 of the Equality Act 2010 provides:

1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

(c) Foster good relations between equalities groups.

9.30 During the determination of this application, due regard has been given to the impact of the scheme in relation to the Equality Act 2010 in terms of the implications for those with protected characteristics, namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation and an Equalities Impact Assessment (EqIA) of the application has been undertaken (see Appendix 2).

9.31 As noted in the EqIA, given the historical impact the operation of the site has had on community tension, and with the increase in anti-Semitic and anti-Islamic incidents since 7 October 2023, there is the potential for increased victimisation

and harassment of these groups should permission be granted. There is however the potential for the refusal of the application to have the same consequences. It is for the Planning Committee to consider what weight this is given in the planning process, and to ensure that the application is considered robustly through the planning process, including in terms of the duty of fairness to the applicant.

### **Conclusion and Planning Balance:**

- 9.32 While the large number of objections to this proposal are noted, it is the material planning issues raised, rather than the number of objections raised, that must be taken into account in determining an application.
- 9.33 In this case, the principle of the extension to an industrial building within an area allocated for industrial use is considered acceptable. The retrospective nature of the application is not a material consideration, and nor are issues relating to the nature and distribution of the products manufactured on site, noting it is for the Planning Committee to determine the weight given to factors regarding the impact on people with protected characteristics, as set out in the legal advice at Appendix 1 and the EqIA at Appendix 2.
- 9.34 The design and appearance of the extension is considered acceptable as it is a small feature relative to the main building and those in the surrounding area, and would be in keeping with the industrial estate in which it is located. It enables a more efficient use of the existing site, so would accord with the development plan which seeks to make use of existing sites to deliver development within the constrained city.
- 9.35 On this basis, the retention of the extension on a permanent basis is considered acceptable, and to accord with the development plan and other material considerations.

## **10. COMMUNITY INFRASTRUCTURE LEVY**

- 10.1 Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. No CIL would be liable from the development as the extension is already in situ so no additional floorspace would be created.