

<u>No:</u>	BH2023/01058	<u>Ward:</u>	Hanover & Elm Grove Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	15-26 Lincoln Cottages Brighton BN2 9UJ		
<u>Proposal:</u>	Erection of 8no. three storey dwellings (C3) to replace existing garages/storage units and any associated works to include landscaping, cycle and bin storage.		
<u>Officer:</u>	Sonia Gillam, tel: 292265	<u>Valid Date:</u>	02.05.2023
<u>Con Area:</u>		<u>Expiry Date:</u>	27.06.2023
<u>Listed Building Grade:</u>		<u>EOT:</u>	11.12.2024
<u>Agent:</u>	Savills 33 Margaret Street London W1G0JD		
<u>Applicant:</u>	Burlington Property Group C/o Savills 33 Margaret Street London W1G0JD		

1. RECOMMENDATION

- 1.1. Transport and access: That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to be **MINDED TO GRANT** planning permission subject to a s106 agreement on the Heads of Terms set out below and the following Conditions and Informatives as set out hereunder, SAVE THAT should the s106 Planning Obligation not be completed on or before 26 February 2025 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 12 of this report.

S106 Heads of Terms

Affordable Housing

- Developer contribution of £112,000 towards affordable housing provision in the city as an equivalent financial contribution, with a review mechanism to ensure any uplift in profit is reflected in the amount secured.

Conditions:

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

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

Plan Type	Reference	Version	Date Received
Proposed Drawing	1712-24	15	11 April 2023
Proposed Drawing	1712-28	16	7 November 2024
Proposed Drawing	1712-29	15	11 April 2023
Proposed Drawing	1712-30	15	11 April 2023
Proposed Drawing	1712-31	16	7 November 2024
Block Plan	1712-09	16	7 November 2024
Location Plan	1712-01	15	11 April 2023
Proposed Drawing	1712-23	16	7 November 2024

Proposed Drawing	1712-17	16	22 February 2024
Proposed Drawing	1712-14	16	22 February 2024
Proposed Drawing	1712-18	16	7 November 2024
Proposed Drawing	1712-19	15	11 April 2023
Proposed Drawing	1712-08	16	22 February 2024
Proposed Drawing	1712-10	16	22 February 2024
Proposed Drawing	1712-11	16	22 February 2024
Proposed Drawing	1712-12	16	22 February 2024
Proposed Drawing	1712-13	16	22 February 2024
Proposed Drawing	1712-26	16	7 November 2024
Proposed Drawing	1712-15	15	11 April 2023
Proposed Drawing	1712-16	15	11 April 2023
Proposed Drawing	1728-L90-100		22 February 2024
Report/Statement	Preliminary Ecological Appraisal	Phlorum	11 April 2023

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.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no glazing, windows or doors, other than those expressly authorised by this permission, or that would serve ground floor rooms of the dwellings hereby permitted, shall be constructed or installed.
Reason: To safeguard the amenities of the occupiers of nearby properties and to comply with Policies DM18 and DM20 of Brighton & Hove City Plan Part 2.

4. The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Above 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 Policies DM18 and DM20 of Brighton & Hove City Plan Part 2 and CP12 of the Brighton & Hove City Plan Part One.

5. Prior to the commencement of the development, an ecological design strategy containing measures to enhance the biodiversity value of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include monitoring and maintenance details as well as details of any remedial measures that would be undertaken in the event that any of the

measures were to fail. The development shall subsequently be undertaken and maintained in accordance with the approved strategy.

Reason: To enhance the biodiversity of the site and to comply with Policy DM37 of Brighton & Hove City Plan Part 2, Policy CP10 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.

6.

1. No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the local planning authority:
 - (a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with industry best practice guidance such as BS 10175:2011+A2:2017 - Investigation of Potentially Contaminated Sites - Code of Practice and BS 5930 Code of Practice for Ground Investigations;
And if notified in writing by the local planning authority that the desk top study identifies potentially contaminant linkages that require further investigation then,
 - (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS 10175:2011+A2:2017;
And if notified in writing by the local planning authority that the results of the site investigation are such that site remediation is required then,
 - (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include nomination of a competent person to oversee the implementation of the works.
2. The development hereby permitted shall not be occupied or brought into use until there has been submitted to, and approved in writing by, the local planning authority a written verification report by a competent person approved under the provisions of condition (1)c that any remediation scheme required and approved under the provisions of condition (1)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority the verification report shall comprise:
 - a) built drawings of the implemented scheme;
 - b) photographs of the remediation works in progress;
 - c) certificates demonstrating that imported and/or material left in situ is suitable for use.

Reason: To safeguard the health of future residents or occupiers of the site and to comply with policies DM41 and DM20 of the Brighton & Hove City Plan Part 2.

7. No development, including demolition, 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) Timescales for the Proposed Development including the forecasted completion date;
- (ii) Details 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)
- (iii) Measures to minimise disturbance to neighbours regarding issues such as noise and dust management, vibration, site traffic, and deliveries to and from the site;
- (iv) Measures to prevent mud/dust from tracking onto the highway;
- (v) Details of hours of construction including all associated vehicular movements
- (vi) Details of the construction compound including plant and material storage and manoeuvring areas;
- (vii) A plan showing construction traffic routes

The construction of the development shall be carried out in full compliance 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 DM20, DM33 and DM40 of Brighton & Hove City Plan Part 2, policy CP8 of the Brighton & Hove City Plan Part One, and WMP3d of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013 and Supplementary Planning Document 03 Construction and Demolition Waste.

8. Other than demolition works, no development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. This shall include management and maintenance details. The development shall subsequently be implemented, managed and maintained in accordance with the approved scheme.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to comply with policies DM42 and DM43 of the Brighton & Hove City Plan Part Two and CP11 of the Brighton & Hove City Plan Part One and SPD16: Sustainable Drainage.

9. Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any part of the development hereby permitted shall take place until details 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/details of all brick, render and tiling (including details of the colour of render/paintwork to be used)
- b) samples of all cladding to be used, including details of their treatment to protect against weathering
- c) samples/details of all hard surfacing materials
- d) samples/details of the proposed window, door and balcony treatments
- e) samples/details 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 DM18 and CP12 of the Brighton & Hove City Plan Part One.

10. 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 Policies DM18 and DM21 of Brighton & Hove City Plan Part 2, 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.

11. Prior to occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:

- a. details of all hard and soft surfacing to include the type, position, design, dimensions and materials and any sustainable drainage system used;
- b. a schedule detailing sizes and numbers/densities of all proposed trees/plants including food-bearing plants, and details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period;
- c. details of all boundary treatments to include type, position, design, dimensions and materials;

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 provide ecological and sustainability benefits, to comply with policies DM22 and DM37 of Brighton & Hove City Plan Part 2, and CP8, CP10, CP12 and CP13 of the Brighton & Hove City Plan Part One.

12. 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 DM33 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards.

13. Prior to first occupation of the development hereby approved, details of the proposed photovoltaic array, referred to on drawings 1712.13 rev16 and 1712.19 Rev 15, shall be submitted to and approved in writing by the Local Planning Authority. The photovoltaic array shall then be installed in accordance with the approved details.

Reason: To ensure that the development is sustainable and makes efficient use of energy, water and materials and has an acceptable appearance and to comply with policies CP8 and CP12 of the Brighton & Hove City Plan Part One and DM44 of the Brighton & Hove City Plan Part Two.

14. The residential units hereby approved shall not be occupied until they have 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 & Hove City Plan Part One.

15. The development hereby approved should achieve a minimum Energy Performance Certificate (EPC) rating 'B' for new build residential.

Reason: To improve the energy cost efficiency of existing and new development and help reduce energy costs and enhance sustainability, to comply with policies DM44 of the Brighton & Hove City Plan Part Two and CP8 of the Brighton & Hove City Plan Part One.

16. Other than those shown on the approved plans, no external lighting shall be installed on the site, prior to details of any such lighting being submitted to and agreed in writing by the Local Planning Authority. Any such lighting shall then be installed and retained in accordance with the approved details.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

17. All ecological measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Phlorum, March 2023), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

Reason: To ensure that the measures considered necessary as part of the ecological impact assessment are carried out as specified, as required by paragraphs 174 and 180 of the National Planning Policy Framework, Section 40 of the Natural Environment and Rural Communities Act 2006, Policy CP10 of the Brighton & Hove City Plan Part One and Policy DM37 of the City Plan Part Two.

18. The development hereby permitted shall not be occupied until the dwellings 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 DM1 of Brighton & Hove City Plan.

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. The applicant is advised that advice regarding permeable and porous hardsurfaces can be found in the Department of Communities and Local Government document 'Guidance on the permeable surfacing of front gardens'.
3. The applicant is advised that Part L - Conservation of Fuel and Power of the Building Regulations 2022 now requires each residential unit built to have achieved a 31% reduction in carbon emissions against Part L 2013.
4. The water efficiency standard required by condition is the 'optional requirement' detailed in Building Regulations Part G Approved Document (AD) Building Regulations (2015), at Appendix A paragraph A1. The applicant is advised this standard can be achieved through either: (a) using the 'fittings approach' where water fittings are installed as per the table at 2.2, page 7, with a maximum specification of 4/2.6 litre dual flush WC; 8L/min shower, 17L bath, 5L/min basin taps, 6L/min sink taps, 1.25L/place setting dishwasher, 8.17 L/kg washing machine; or (b) using the water efficiency calculation methodology detailed in the AD Part G Appendix A.5.

Biodiversity Net Gain

Based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply. These can be found in the legislation.

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that, unless an exception or a transitional arrangement applies, the planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan in respect of this permission would be Brighton & Hove City Council.

2. SITE LOCATION

- 2.1. The site is situated within the Hanover area of Brighton and currently contains buildings providing storage, garages and small business use. The existing buildings are a mixture of one and two storey.
- 2.2. The site is constrained, being surrounded by terraced housing on the east, north and west sides, and further housing and the Hanover Community Centre to the south. The only access to the site is via a pathway measuring approximately

2.4m wide at its narrowest point and 21m in length. The access route is situated at the northern end of the site.

- 2.3. The site has a distinct topography which inclines from north-east to south-west. The surrounding houses are predominantly two storeys plus basement (therefore appearing as three storeys from within the site), with many houses also building into the loft space.
- 2.4. The site is circa .012ha and is designated for housing in City Plan Part 2 policy H1 for an indicative quantum of 18 units.

3. RELEVANT HISTORY

- 3.1. **BH2022/03810** Erection of 8no three-bedroom, three storey dwellings (C3) and 1no one bedroom bungalow (C3) to replace existing garages/storage units and any associated works to include landscaping, cycle and bin storage. Appeal for non-determination lodged - Refusal at Planning Committee August 2023 for the following reasons:
 1. *The proposed development would by reason of height, footprint and layout in close proximity to the boundaries would result in overlooking, loss of privacy and loss of light. The proposed development would also result in increased traffic and road issues that would have a detrimental impact on amenity. The proposed development would therefore be contrary to policy CP9 of the Brighton and Hove City Plan Part One and DM18, DM20, DM33 and DM36 of the Brighton and Hove City Plan Part Two.*
 2. *The proposed development by reason of its poor design and appearance, close proximity to neighbouring buildings and height would result in a poor layout and design that doesn't respect the surrounding area. The proposed development would therefore be contrary to policies CP12 and CP14 of the Brighton and Hove City Plan Part One and DM18 and DM21 of the Brighton and Hove City Plan Part Two.*
- 3.2. **Appeal APP/Q1445/W/23/3317868 - Allowed.** The Inspector stated:
"In this case, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits...on the basis of the individual merits of the scheme, the material considerations indicate that planning permission should be granted notwithstanding the conflict with the development plan".

4. APPLICATION DESCRIPTION

- 4.1. The application proposes the erection of 8no. three storey, three-bedroom dwellings (C3) to replace the existing the garages/storage units. Cycle storage and bin storage would be provided on site, as well as landscaping. No car parking would be provided on site.
- 4.2. There is an extant permission (BH2022/03810) at the site for a very similar scheme (though for 9 units) which was allowed at appeal in 2023. The appeal

decision was issued during the life of this current application, and following this and consultation with the local community, amended plans were submitted to more closely align the proposal to the extant scheme.

- 4.3. The amended scheme results in a new proposal that is very similar to the extant appeal scheme. The housing mix has been updated to include 8.no. three-bedroom houses that are three storeys in height, in line with the approved appeal scheme. The changes are outlined as follows:
- The one-bedroom bungalow proposed at the northeast of the site has been deleted, resulting in 8 no. dwellings rather than 9.
 - A more meaningful landscaped communal garden is proposed at the northeast of the site in the place of the deleted bungalow.
 - The location of the bin collection point has been amended to be located further inside the site adjacent to 'house 8' and is no longer positioned along the entrance walkway.

5. REPRESENTATIONS

- 5.1. **Ninety-six (96)** representations were received objecting to the proposed development. The main grounds for objections are as follows:
- Overdevelopment
 - Inappropriate design
 - Loss of employment space
 - Height
 - Noise
 - Overshadowing and loss of light
 - Overlooking and loss of privacy
 - Parking issues
 - Increased traffic
 - Insufficient waste and refuse
 - Light pollution
 - Lack of open space
 - Impact on trees/ biodiversity
 - Lack of affordable housing
- 5.2. A letter from a planning consultancy on behalf of **62** residents has been received objecting to the scheme for the following reasons:
- Overdevelopment
 - Design and Appearance
 - Detrimental Impact on Neighbouring Amenity
 - Loss of Employment Floorspace
 - Traffic & Transport
 - Access
 - Landscaping
 - Bin Storage
- 5.3. **Seven (7)** representations were received supporting the proposed development for the following reasons:

- Significant approval on original plan
 - Improved landscaping
 - Community supportive in principle of amendments
- 5.4. Comments regarding loss of view, impact on property prices and inconvenience from build are noted, however these are not materials planning considerations.
- 5.5. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

Internal:

- 6.1. **Environmental Health:** No objection subject to a condition relating to contaminated land.
- 6.2. **Planning Policy:** No objection
The principle of re-development of the site for residential use has been established through the allocation of the site in CPP2 policy H1 Housing Allocations and the loss of employment uses has been accepted. The applicant is therefore not required to justify the loss of other uses on the site. Residential development on this site is welcomed subject to other matters.
- 6.3. **Sustainable Drainage:** No objection subject to a condition relating to surface water drainage scheme for the site.
- 6.4. **Sustainable Transport:** No objection subject to conditions relating to cycle parking provision and a Demolition/ Construction Environmental Management Plan.
- 6.5. **Urban Designer:** *Verbal comment:* No objection given the appeal decision.

External

- 6.6. **County Ecologist – comments taken from BH2022/03810:** No objection subject to an Ecological Design Strategy by condition.
- 6.7. **East Sussex Fire & Rescue Service:** No objection Access for fire appliances and firefighting appears to be satisfactory.
- 6.8. **Southern Water:** Comment Means of foul sewerage and surface water disposal should be secured.

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; revised October 2024)
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
- Hove Station Neighbourhood Plan (adopted February 2024)
- Rottingdean Neighbourhood Plan (adopted February 2024)
- Shoreham Harbour Joint Area Action Plan (adopted October 2019)

8. **RELEVANT POLICIES & GUIDANCE**

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
- CP7 Infrastructure and developer contributions
- CP8 Sustainable buildings
- CP9 Sustainable transport
- CP10 Biodiversity
- CP11 Flood risk
- CP12 Urban design
- CP13 Public streets and spaces
- CP14 Housing density
- CP16 Open space
- CP18 Healthy city
- CP19 Housing mix
- CP20 Affordable housing

Brighton & Hove City Plan Part Two:

- H1 Housing Sites and Mixed Use Sites
- DM1 Housing Quality, Choice and Mix
- DM18 High quality design and places
- DM19 Maximising Development Potential
- DM20 Protection of Amenity
- DM22 Landscape Design and Trees
- DM33 Safe, sustainable and active travel
- DM36 Parking and servicing
- DM37 Green Infrastructure and Nature Conservation
- DM40 Protection of the Environment and Health - Pollution and Nuisance
- DM42 Protection of the Water Environment
- DM43 Sustainable Drainage
- DM44 Energy Efficiency and Renewables

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD06	Trees & Development Sites
SPD11	Nature Conservation & Development
SPD14	Parking Standards
SPD16	Sustainable Drainage
SPD17	Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The merits of a residential development at the site have been considered as part of the preceding application (BH2022/03810) which was ultimately allowed at appeal. The Planning Inspector noted that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the scheme.
- 9.2. The assessment of this application will therefore relate primarily to those aspects of the current scheme that differ from the approved scheme in terms of design and the impact upon the character and appearance of the surrounding area, impact on neighbouring residential amenity, the standard of accommodation proposed, highways and sustainability implications.

Principle of the Development:

- 9.3. 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 2,333 homes per year. This includes a 35% uplift applied as one of the top 20 urban centres nationally.
- 9.4. The council's most recent housing land supply position is published in the SHLAA Update 2023 which shows a five-year housing supply shortfall of 7,786 (equivalent to 1.7 years of housing supply).
- 9.5. 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).
- 9.6. The site is allocated in CPP2 policy H1 for residential use. The loss of the employment uses, and the principle of residential development has therefore been established. The addition of 8 no. three-bedroom family dwellings is welcomed, would make efficient use of site and would contribute towards the Council's housing target.

Affordable Housing:

- 9.7. CPP1 Policy CP20 Affordable Housing requires affordable housing provision from all sites providing 5 or more units (net). For this development of 8 proposed dwellings, 20% affordable housing as an equivalent financial contribution (545,800) would be required, in accordance with criteria CP20(c).
- 9.8. The applicant has submitted a Financial Viability Assessment (FVA) which concludes that it is not viable to meet the requirement for the full contribution.
- 9.9. The applicant's FVA has been independently assessed by the District Valuation Service (DVS). The DVS agrees that the scheme cannot viably meet the Council's full affordable housing policy requirements. However, it is calculated that a contribution of £112,000 towards affordable housing can be provided. It should be noted that the DVS assessment has taken into account the CIL liability in this case.
- 9.10. Having taken full account of the viability assessment submitted, and the detailed scrutiny of this information by independent assessors, it is accepted that the scheme cannot viably fully meet the Council's affordable housing policy requirements. However, a contribution of £112,000 should be secured by S106 Legal Agreement. The applicant has confirmed that a contribution as such would be acceptable. A review mechanism is recommended to ensure that the actual achieved sales values and construction costs can be reviewed and any uplift in development value is shared with the Council. This is recommended as a Heads of Term and can be secured by S106 Legal Agreement.

Design and Appearance:

- 9.11. The existing building is not of any historic or architectural merit. As such, its demolition to make way for a replacement building is considered acceptable.
- 9.12. The development proposed is a back-land development, surrounded by existing residential property on all sides, which is comprised predominantly of two storey dwellings with basements, appearing as three storeys when standing within the application site. Several of the surrounding properties have been further extended into the loft space. The site is visible from these neighbouring properties.
- 9.13. In terms of the previous appeal scheme, the Planning Inspector stated the development would not be harmful to the character and appearance of the area, noting that in terms of its height, features and materials, it would not appear incongruous in relation to its surroundings. The proposed scheme is the same as the approved scheme in respect of its height, depth and overall design approach. The main difference between the two schemes is the removal of the end bungalow and the use of this space as communal landscaping and as such, the current proposal is considered an improvement overall in design and appearance in comparison to the extant scheme.
- 9.14. Given the similarities to the previous scheme and the prevailing context, the proposal would be a suitable form of development on the site, which would not cause significant harm to visual amenity, consistent with policies CP12, CP14

and DM18 of the City Plan. Material details/ samples can be secured by condition.

Landscaping and Trees:

- 9.15. Policy DM22 of CPP2 states that development proposals are required to retain, improve and, wherever possible, provide, appropriate landscape elements/ landscaping, trees and planting as part of the development. Policies CP10 and DM37 require developments to seek to provide biodiversity enhancements.
- 9.16. The site is currently comprised of hardstanding and buildings and contains no green infrastructure. The re-development therefore provides an opportunity to significantly improve green infrastructure on site. The application sets out the various measures that will be incorporated including green roofs, trees and shrubs, all of which will enhance and improve the site, as required by policy DM22, and are considered to contribute to the existing green infrastructure network, as required by policy DM37.
- 9.17. The planting selected also includes a range of edible species including crab apple trees, blackcurrant bushes and various herbs. This is welcomed and helps meet the requirements of CPP1 policy CP8(p) and CPP2 policy DM22(g). It is noted that the species selected for landscape planting include native and wildlife/pollinator-friendly species, as required by CPP2 policy DM22.

Standard of Accommodation:

- 9.18. Policy DM20 of the CPP2 seeks to ensure a good standard of amenity for future occupiers of the proposed development and this requirement is one of the core planning principles of the NPPF. Indeed, the updated NPPF requires that all developments provide a 'high' standard of amenity for future occupiers, which is a high bar that goes beyond amenity being merely 'adequate' or 'acceptable'. Policy DM1 sets out Nationally Described Space Standards (NDSS) for dwellings.
- 9.19. The proposed dwellings would measure 95m² which would exceed the NDSS (90m² for a three-bed, 4-person unit over 3 storeys) and would provide sufficient space for furniture and circulation, as well as access to natural light, ventilation and outlook.
- 9.20. DM1 states that all new residential development will be required to provide useable private outdoor amenity space appropriate to the scale and character of the development. Each unit has its own private rear garden. Although these gardens are quite small, they are of a similar size to the rear gardens of the neighbouring properties within the immediate vicinity and are considered appropriate in the context of this densely built-up area. Additionally, each unit has access to the communal landscaped areas. Furthermore, the proposed garden sizes are very similar to the appeal scheme which was deemed acceptable.

Impact on Residential Amenity:

- 9.21. Policy DM20 of City Plan states that planning permission for any development or change of use will not be granted where it would cause unacceptable loss of

amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

- 9.22. Regarding the previous scheme, the Planning Inspector stated it would not result in a harmful loss of privacy for the occupiers of neighbouring dwellings. However, it was acknowledged that it would cause some harm to the living conditions of occupiers of nearby properties regarding odour, daylight, sunlight, noise and disturbance. As such, and in respect of these matters, it would conflict with the parts of policies DM18 and DM20 of the City Plan, which seek to ensure that development delivers high-quality places which would not cause unacceptable loss of amenity to nearby users, residents or occupiers.
- 9.23. However, it was considered that only minor harm had been identified and this conflict would only attract limited weight. The Inspector concluded that the adverse impacts of the scheme would not significantly and demonstrably outweigh its benefits and that material considerations indicate that planning permission should be granted notwithstanding the conflict with the development plan.
- 9.24. Given the Planning Inspector's view, which forms a material planning consideration, and that the existing scheme would not result in any increased harm to neighbouring amenity above and beyond the extant appeal scheme, there is no change to the previous conclusion that, overall, the impact on neighbouring residents is acceptable. It is recognised that there are improvements which would benefit neighbours such as the reduction in the footprint of the built form and the greater areas of landscaping. The location of the bin collection point has also been amended to be located further inside the site adjacent to 'house 8' and is no longer positioned along the entrance walkway which was not a popular refuse strategy for local residents who are concerned about odour. The new position of the collection area has been agreed in recent discussions with the local community.
- 9.25. Overall, for the reasons outlined above, it is considered that the proposal would not cause unacceptable harm to the living conditions of the occupiers of neighbouring properties, in compliance with Policy DM20 of the City Plan.

Sustainable Transport:

- 9.26. The proposed development is expected to result in an increase in trips to and from the site, however it is not considered that this would impact significantly on the surrounding highway network.
- 9.27. No car parking is proposed on site for this development. The site is situated within Controlled Parking Zone (CPZ) V, which restricts on-street parking from 9am to 8pm every day, and has an average permit uptake of 90%, indicating there is limited on-street capacity within the zone. The LHA has recommended that the development is made 'car free' by condition. However, it is not considered appropriate to impose the car-free condition requested by the LHA given that parking in the local area and limiting the issue of parking permits is already covered through the management of the Controlled Parking Zone.

- 9.28. Cycle parking is provided for each of the proposed dwellings, which is considered acceptable and can be secured by condition.
- 9.29. In terms of access for emergency vehicles it is proposed that a fire engine would reverse into Lincoln Cottages to park within the cul-de-sac. The development will have a sprinkler system, which allows fire appliance access to extend to 90m. This is considered acceptable by the LHA and East Sussex Fire and Rescue Service.
- 9.30. A DEMP/ CEMP is recommended by the LHA for the construction phases of the development; this can be secured by condition.
- 9.31. The proposals would not conflict with policy CP9 of the city plan part 1, which seeks to promote sustainable travel. Nor would they conflict with policy DM33 of the CPP2, which promotes safe sustainable and active travel.

Sustainability/ Biodiversity

- 9.32. CPP2 Policy DM44 requires a minimum energy Performance Certificate (EPC) rating 'B' for new build residential development. Policy also requires new build development to achieve 31% improvement on the carbon emission targets set by Part L Building Regulations. The development should also meet the optional standard for water consumption. These measures can be secured by condition.
- 9.33. The site is dominated by buildings (garages) and hard standing and is of relatively low biodiversity interest. Various measures are proposed to enhance the biodiversity value of the site, including wildflower green roofs, native trees and shrubs, wildlife/ pollinator friendly planting, hedgehog highways, loggeries and bird and bat boxes. A condition for submission of an Ecological Design Strategy for the site is recommended.
- 9.34. The use of heat pumps and PV panels further reduce reliance on fossil fuels and further improve the environmental credentials of this scheme.
- 9.35. Overall, these measures are welcomed and help to meet requirements of policies CP10, CP8 and DM37 and would improve the biodiversity of the site.

Biodiversity Gain Plan

- 9.36. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because the application was submitted before the 2 April 2024, when BNG became mandatory for non-major developments.

Conclusion:

- 9.37. The site is allocated in CPP2 policy H1 for residential use. The loss of the employment uses, and the principle of residential development has therefore been established. The addition of 8 no. three-bedroom family dwellings would make efficient use of site and would contribute towards the Council's housing target.

- 9.38. The merits of a residential development at the site have also been considered as part of the preceding application (BH2022/03810) which was allowed at appeal and is still extant. The Planning Inspector noted that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the scheme.
- 9.39. The general design, siting and scale of the proposed development are comparable to the extant planning permission and there are not considered to be material considerations that would change the previous conclusion that the principle of a residential development of this design and quantum is acceptable. The application is therefore recommended for approval, subject to the agreed affordable housing contribution, review mechanism and conditions in line with those applied by the Planning Inspector.

10. EQUALITIES

- 10.1. Section 149(1) 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 or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) with regard to potential material impacts on individuals or identifiable groups with protected characteristics.
- 10.3. New dwellings should be accessible and adaptable and in accordance with Building Regulations M4(2) for accessibility as required by Policy DM1 of the City Plan Part Two. This can be secured by condition.
- 10.4. As the site is located on a steep slope, a series of lightly inclined ramps with a level platform to the front of each dwelling is therefore proposed to facilitate wheelchair access.
- 10.5. There are a number of disabled bays in the vicinity and any visitors who are Blue Badge holders would be able to park on double yellow lines for up to 3 hours, as well as in shared use and pay and display bays.

11. COMMUNITY INFRASTRUCTURE LEVY

- 11.1. 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. It is estimated that the amount of CIL liability for this application is £ 25,084. The exact amount will be confirmed in the CIL liability notice which will be issued as soon as it practicable after the issuing of planning permission.

12. S106 AGREEMENT

- 12.1. In the event that the draft S106 agreement has not been signed by all parties by the date set out above, the application shall be refused for the following reasons:
1. The proposed development fails to provide a mechanism by which to secure affordable housing, or a financial contribution towards it in the city, in case of the viability situation changing, contrary to Policies CP7 and CP20 of the Brighton & Hove City Plan Part One and the City Council's Developer Contributions Technical Guidance.