

<u>No:</u>	BH2025/01627	<u>Ward:</u>	West Hill & North Laine Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	Royal Pavilion Gardens Pavilion Buildings Brighton BN1 1EE		
<u>Proposal:</u>	Application to vary condition 4 of planning permission BH2023/02835 that required an Ecological Design, Management and Monitoring Strategy (EDMMS) including to remove the provision of a minimum 10% biodiversity net gain within a 30-year period.		
<u>Officer:</u>	Steven Dover, tel: 01273 291380	<u>Valid Date:</u>	30.06.2025
<u>Con Area:</u>	Valley Gardens Conservation Area	<u>Expiry Date:</u>	29.09.2025
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Allen Scott Landscape Architects 44 Newton Road Tunbridge Wells TN1 1RU		
<u>Applicant:</u>	Brighton And Hove Museums Royal Pavilion Pavilion Buildings Brighton BN1 1EE		

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
Report/Statement	LETTER FROM CITY OPERATIONS		03-Sep-25
Report/Statement	GREENSPACE ECOLOGICAL SOLUTIONS LETTER		03-Sep-25
Report/Statement	Preliminary Ecological Assessment	J21177_R EV B	23-Oct-23
Report/Statement	Arboricultural Impact Assessment	J21177_Ar b_B Rev. B	01-Aug-24
Report/Statement	DEVELOPMENT STAGE DESIGN REPORT	725-501	24-Jun-24
Proposed Drawing	725-101		24-Jun-24

Proposed Drawing	725-102		24-Jun-24
Proposed Drawing	725-103		24-Jun-24
Proposed Drawing	725-104		24-Jun-24
Proposed Drawing	725-100	B	24-Jun-24
Proposed Drawing	725-202		24-Jun-24
Proposed Drawing	725-205		24-Jun-24
Proposed Drawing	725-204		24-Jun-24
Proposed Drawing	725-207		24-Jun-24
Proposed Drawing	725-350		24-Jun-24
Proposed Drawing	725-213		23-Oct-23
Proposed Drawing	725-211		23-Oct-23
Proposed Drawing	725-214		23-Oct-23
Proposed Drawing	725-212		23-Oct-23
Proposed Drawing	725-354		23-Oct-23
Proposed Drawing	725-209		24-Jun-24
Proposed Drawing	P1154-RHP-TB-XX-DR-A-2000 P1		23-Oct-23
Proposed Drawing	725-357		24-Jun-24
Proposed Drawing	725-210		24-Jun-24
Proposed Drawing	725-367	B	18-Mar-25
Proposed Drawing	725-358		24-Jun-24
Proposed Drawing	725-351		24-Jun-24
Proposed Drawing	725-359		24-Jun-24
Proposed Drawing	725-352		23-Oct-23
Proposed Drawing	725-360		24-Jun-24
Proposed Drawing	725-353		23-Oct-23
Proposed Drawing	P1154-RHP-TB-XX-DR-A-2001 P1		23-Oct-23
Proposed Drawing	725-361		23-Oct-23
Proposed Drawing	P1154-RHP-TB-XX-DR-A-2004 P1		23-Oct-23
Proposed Drawing	P1154-RHP-TB-XX-DR-A-2100 P1		23-Oct-23
Proposed Drawing	P1154-RHP-TB-XX-DR-A-2200 P1		23-Oct-23
Proposed Drawing	P1154-RHP-TB-XX-DR-A-4000 P1		23-Oct-23
Location Plan	725-001		23-Oct-23
Proposed Drawing	Tree Works Summary	Rev. B	01-Aug-24
Proposed Drawing	725-105		24-Jun-24

2. The development hereby permitted shall be commenced on or before 09.08.2027.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
3. All ecological measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Greenspace Ecological Solutions, October 2023, ref. J21177_RevB).

Reason: To ensure that the measures considered necessary as part of the ecological impact assessment are carried out as specified, and as required by paragraphs 180 and 186 of the National Planning Policy Framework 2023, Section 40 of the Natural Environment and Rural Communities Act 2006, as amended, Policy CP10 of the Brighton and Hove City Plan Part One and Policy DM37 of the City Plan Part Two.

4. No development shall take place until an Ecological Design, Management and Monitoring Strategy (EDMMS), to include the measures in the Preliminary Ecological Appraisal (Greenspace Ecological Solutions, October 2023, ref. J21177_Rev B) has been submitted to and approved in writing by the Local Planning Authority. The EDMMS shall include the following parts:
- a) Description and evaluation of habitat/features proposed;
 - b) Identification of adequate baseline conditions (for management and monitoring purposes) prior to the start of works;
 - c) Aims and objectives for the proposed works;
 - d) Site specific and wider ecological trends and constraints that might influence works;
 - e) Details of the body/organisation/person/s responsible for undertaking the works and lines of communication;
 - f) Details of the legal and funding mechanism(s) by which the implementation of the EDMMS will be secured by the developer with those responsible for its delivery;
 - g) Detailed design(s) and/or working method(s) to achieve stated objectives including type/source of materials, disposal of any wastes arising from works and appropriate scale plans showing location/area of proposed works;
 - h) Works Schedule aligned with any proposed phasing and including an annual work plan capable of being rolled forward over a five-year period;
 - i) Prescriptions for initial aftercare and long-term management that will ensure the aims/objectives are met;
 - j) Details for on-going monitoring of habitats and other ecological features (where present) and remedial measures.

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

Reason: In the interests of biodiversity and ensure that the development contributes to ecological enhancement and sustainability on the site in accordance with policy DM37 of Brighton & Hove City Plan Part 2, and CP10 of the Brighton & Hove City Plan Part One.

5. No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

The archaeological work shall be carried out in accordance with the approved written scheme of investigation and a written record of all archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is agreed in writing with the Local Planning Authority.

Reason: To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with the National Planning Policy Framework and in accordance with Policy DM31 of the City Plan Part 2.

6. Notwithstanding the approved plans, submitted Arboricultural reports and statements, no works shall take place to the tree annotated T42 on the approved proposed masterplan (ref:725-100 B received on the 24 June 2024), without written confirmation from the LPA prior to any works commencing.

Reason: To ensure a satisfactory appearance to the development and to comply with policies DM22 and DM30 of Brighton & Hove City Plan Part 2, and CP15 of the Brighton & Hove City Plan Part One.

7. No tree shown as retained on the approved drawings shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase and thereafter within 5 years from the date of occupation of the building for its permitted use, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To enhance the appearance of the development in the interest of the visual amenities of the area, to provide ecological, environmental and bio-diversity benefits and to maximise the quality and usability of open spaces within the development in compliance 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.

8. Prior to commencement 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 first use of the approved buildings. 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; and
- d) details of all mitigation/replacement trees for those removed.

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.

9. Notwithstanding the approved plans, prior to first use of the renovated toilet building, details of secure cycle parking facilities for the users of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first use of the approved buildings and shall thereafter be retained for use 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.

10. Notwithstanding the plans hereby permitted, the applicant is required to enter into a Section 278 agreement with the council as the Local Highway Authority and therefore no development shall commence until the scheme of all works on the public highway has been submitted to and approved in writing by the local planning authority. The works on Palace Place will include:

- New vehicular access and associated crossover
- Redesign of the footway

This scheme of works shall then form the basis for the detailed design to be included within the Section 278 agreement.

Reason: To ensure safe pedestrian, cyclist and vehicular access into, out of and passing by the site and road safety for all road users and to comply with CP7, CP9, CP11 and CP18 of the City Plan Part One and DM33 of City Plan Part 2.

11. Prior to the commencement of the development hereby approved, a Delivery & Service Management Plan, which includes details of:

- hours of access (restrictions),
- types of vehicles. This must include a swept path analysis, to ensure that any proposed vehicles can safely manoeuvre and access and egress the site in a forward gear, on
- Princes Place,
- Palace Place (including the right turn in and left turn out from Castle Square).
- frequency of use
- how deliveries will take place

shall be submitted to and approved in writing by the Local Planning Authority. All deliveries shall thereafter be carried out in accordance with the approved plan.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with policy DM33 and DM36 of the Brighton & Hove City Plan Two.

12. No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
- the anticipated number, frequency and types of vehicles used during construction,
 - the method of access and routing of vehicles during construction,
 - the parking of vehicles by site operatives and visitors,
 - the loading and unloading of plant, materials and waste,
 - the storage of plant and materials used in construction of the development,
 - the erection and maintenance of security hoarding,
 - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
 - details of public engagement both prior to and during construction works.
- The approved details shall thereafter be implemented in full throughout the construction of the development.
- Reason:** In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with policy DM33 and DM36 of the Brighton & Hove City Plan Two.
13. The development hereby permitted shall not be commenced (including demolition and all preparatory work) until a full construction method statement for all ground works within Root Protection Areas (RPA's) of retained trees, including materials and proposed protection measures in line with the submitted Arboricultural Impact Assessment and Method Statement received on the 17/04/2024 ref:J21177_Arb_B produced by Greenspace Ecological Solutions has been submitted to and agreed in writing. The approved methods shall be fully implemented for all works in the RPA's onsite during the proposed development.
- Reason:** As this matter is fundamental to protecting the trees which are to be retained on the site during construction works in the interest of the visual amenities of the area and to provide ecological and sustainability benefits, to comply with policies DM22 and DM37 of Brighton & Hove City Plan Part Two
14. Prior to installation of any railings or gates drawings at a scale of 1:5 with section details of all junctions at 1:1 of all railings and gates with full details of the proposed colour shall be submitted to and approved by the local planning authority. All railings and gates shall be painted the approved colour within one month of installation and shall be retained as such thereafter.
- Reason:** To ensure the satisfactory preservation of this listed building and to comply with policies DM27 of Brighton & Hove City Plan Part 2, and CP15 of the Brighton & Hove City Plan Part One.
15. Notwithstanding the approved plans, the development hereby permitted shall not be commenced until the following details of the development hereby

permitted have been submitted to and approved in writing by the Local Planning Authority:

- a) samples/details of brick, render and tiling (including details of the colour of render/paintwork to be used);
- b) samples/details of all cladding and roof finishes to be used, including details of their treatment to protect against weathering;
- c) samples/details of all hard surfacing materials;
- d) samples/details of stone plinth and walls to be used in boundary treatments;
- e) a schedule of all features to be removed, moved, replaced or reinstated, including photos/drawings/sections recording the features to be replicated along with 1:1 and/or 1:20 scale drawings of existing and proposed items;
- f) a method statement for the works of repair to the existing lampposts and masonry balustrades;
- g) full details, including 1:20 scale elevational drawings and sections of the proposed South Gate (India gate) and existing boundary walls and railings between 1-3 Pavilion Buildings and the Royal Pavilion building;
- h) full details, including 1:20 scale elevational drawings and sections of the proposed bin store structure, materials and finishes;
- i) full details, including 1:20 scale elevational drawings and sections of the proposed shed structures, materials and finishes; and
- j) full details, including 1:20 scale elevational drawings and sections and 1:2 scale sections of the new internal estate railings detailed as F7 and F8 on the approved plans.

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

Reason: To ensure a satisfactory appearance to the development and to comply with policies DM27 and DM30 of Brighton & Hove City Plan Part 2, and CP15 of the Brighton & Hove City Plan Part One.

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 required to contact the Council's 'S278 team' initially by e-mail (s278@brighton-hove.gov.uk) for necessary highway approval from the Local Highway Authority prior to any works commencing on the public highway to satisfy the requirements of condition. These works can only be agreed following submitted documents being accepted and approved as part of the DSMP condition requested.

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 Environment Act 2021.

- 1.2. 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.

2. SITE LOCATION

- 2.1. The application site relates to the grounds of the Royal Pavilion Estate, a Registered Park and Garden of Special Historic Interest, Grade II. The site contains the Grade I Listed Royal Pavilion and is located within the Valley Gardens Conservation Area.
- 2.2. To the north of the application site is the Grade I Listed Dome Theatre and associated buildings. To the west is the predominantly pedestrianised New Road and the numerous Listed Buildings including the Grade II* Listed Theatre Royal. To the south the site abuts Prince's Place, Pavilion Buildings and Palace Place, which comprise numerous locally and Grade Listed Buildings. The Old Steine/Pavilion Parade, the main north-south vehicular route into the city, lies immediately to the east of the site.
- 2.3. The nearest residential properties are in Prince's Place, Pavilion Buildings and Palace Place to the south fronting North Street, and there are also flats on the opposite side of Pavilion Parade to the east and New Road to the west.

3. RELEVANT HISTORY

- 3.1. **BH2023/02835** - Landscaping works to include the restoration and reinstatement of historic walls, metal railings and gates, restoration of existing 19C historic and existing modern replica lamp posts. Enhancement of planting, lawns, groundworks and removal of modern trees and hedging to the Western lawn and East/North East compartments to reinstate the Nash views. Alterations to existing paths, planting beds and fencing, improvements to drainage and irrigation systems. Remodelling of existing public WC block and installation of outdoor learning space with adjacent storage and hand wash area and any other associated ancillary development, including provision of public realm and landscaping improvements. Approved 09.08.2024.
- 3.2. **BH2023/02836** - Landscaping works to include the restoration and reinstatement of historic walls, metal railings and gates, restoration of existing 19C historic and existing modern replica lamp posts. Enhancement of planting, lawns, groundworks and removal of modern trees and hedging to the Western lawn and East/North East compartments to reinstate the Nash views.

Alterations to existing paths, planting beds and fencing, improvements to drainage and irrigation systems. Remodelling of existing public WC block and installation of outdoor learning space with adjacent storage and hand wash area and any other associated ancillary development, including provision of public realm and landscaping improvements. (Listed Building Consent). Granted 09.08.2024.

- 3.3. **BH2023/01822** - Temporary ice rink on Royal Pavilion Eastern Lawns annually during winter months. Structure to include ancillary buildings for box office, café/bar/restaurant, toilet facilities, skate exchange, learner's ice rink and associated plant and lighting. (2 year consent). Approved 21.09.2023.
- 3.4. **BH2017/00132** - Installation of temporary event space in East/North lawns from 25th May to 5th June inclusive, with approximate two week set up and one-week dismantling period. Temporary structures include replica timber street scenes, food and drink outlets, toilet blocks, stage and performance space. Refused 26.04.2017.
- 3.5. **BH2013/01992** - Temporary maze on Royal Pavilion Eastern lawns from 4th July to 3rd September 2013, with adjoining ticket office and props within maze (retrospective). Refused 21.08.2013.
- 3.6. **BH2009/01949** - Installation of new wrought and cast iron secondary vehicular gates and gate piers with automated electronic control gear and removal of existing central roadway bollard. Re-surfacing of existing tarmac with second-hand yorkstone flags and granite setts. Installation of wrought iron pedestrian gates and rebuilding of boundary wall (LBC). Approved 12.01.2010.
- 3.7. **BH2009/01947** - Installation of new wrought and cast iron secondary vehicular gates and gate piers with automated electronic control gear and removal of existing central roadway bollard. Re-surfacing of existing tarmac with second-hand yorkstone flags and granite setts. Installation of wrought iron pedestrian gates and rebuilding of boundary wall (Full Planning). Approved 25.11.2009.
- 3.8. **BH2004/03527/CD/FP** - Replacement of existing bow top fencing (50cm high) with proposed bow top style fencing (1.35m high). (Full Planning). Approved 19.01.2005.
- 3.9. **95/0290/CD/FP** - Installation of retractable traffic bollards at North Gate entrance and rising arm barrier at New Road exit. (Full Planning). Approved 16.05.1995.
- 3.10. **91/0756/LB** - Restoration of the Nash Garden scheme in the Royal Pavilion grounds. (LBC) Approved 02.07.1991.
- 3.11. **91/0574/CD/FP** - Restoration of the Nash Garden scheme in the Royal Pavilion grounds. (Full Planning) Approved 02.07.1991.

4. APPLICATION DESCRIPTION

- 4.1. This application seeks approval for a S73 application to vary condition 4 of planning permission BH2023/02835 that required an Ecological Design, Management and Monitoring Strategy (EDMMS), to remove the provision of a minimum 10% biodiversity net gain within a 30-year period. The other elements of the EDMMS would remain.

5. REPRESENTATIONS

None received.

6. CONSULTATIONS

Internal:

- 6.1. **Heritage:** No objection (verbal comments)

The proposed variation to remove BNG, with no changes to the approved plans, would have no adverse effect on the designated heritage assets over that already considered as part of the original application BH2023/02835. The amount of onsite BNG to meet 10% would likely be detrimental to the setting of the designated heritage assets due to the significant tree planting required, resulting in decreased views through the site and a +loss of funding for current heritage benefits. The costs associated with offsite BNG would again result in a loss of funding for the heritage assets and is considered detrimental.

- 6.2. **Sustainability:** Comment

The application relates to BNG and should be directed to East Sussex County Council.

External:

- 6.3. **County Ecologist:** No objection subject to conditions

As the requirement for applications prior to the commencement of mandatory biodiversity net gain (BNG) to provide a minimum net gain of 10% was a matter of local policy and guidance, the decision as to whether it is appropriate to deviate from it in this specific case is ultimately one for the Council. From an ecological point of view, providing that there are no significant changes to the habitat creation and enhancement scheme proposed as part of BH2023/02835, we would be satisfied. However, given that our advice of 24/01/24 raised various queries regarding the creation and enhancement measures proposed, our advice is that a condition requiring an EDMMS is still required (even if the 10% net gain requirement is removed).

- 6.4. **Historic England:** Comments awaited

- 6.5. **Sussex Gardens Trust:** No objection

Continue to support the successful restoration of the site to ensure removal from the "Heritage at Risk Register" of Historic England.

- 6.6. **The Gardens Trust:** No objection

- 6.7. Concur with Sussex Gardens Trust and continue to support the successful restoration of the site to ensure removal from the "Heritage at Risk Register" of Historic England.
- 6.8. Full details of consultation responses received can be found online on the planning register, with the exception of the verbal responses noted above.

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 JAAP (adopted October 2019).

8. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One:

SA2	Central Brighton
SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable economic development
CP5	Culture and tourism
CP8	Sustainable Buildings
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
CP12	Urban design
CP13	Public streets and spaces
CP15	Heritage
CP16	Open space
CP17	Sports provision
CP18	Healthy city

Brighton & Hove City Plan Part Two:

DM18	High quality design and places
DM20	Protection of Amenity
DM22	Landscape Design and Trees
DM26	Conservation Areas

DM27	Listed Buildings
DM29	The Setting of Heritage Assets
DM30	Registered Parks and Gardens
DM32	The Royal Pavilion Estate
DM33	Safe, sustainable and active travel
DM36	Parking and servicing
DM37	Green Infrastructure and Nature Conservation
DM43	Sustainable Drainage
DM40	Protection of the Environment and Health - Pollution and Nuisance
DM44	Energy Efficiency and Renewables

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD06	Trees & Development Sites
SPD09	Architectural Features
SPD11	Nature Conservation & Development
SPD14	Parking Standards
SPD16	Sustainable Drainage
SPD17	Urban Design Framework

Other Documents

Valley Gardens Conservation Area Study

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The original approved scheme, as set out above in the history section (BH2023/02835) was granted on 09.08.2024. The Local Planning Authority considered the scheme to be acceptable in all regards and secured various details and measures by planning conditions. As this application is made under Section 73 of the Town and Country Planning Act, consideration is limited to those matters which vary compared to the extant permission. The considerations to be taken into account in this application solely relate to the variation of condition 4 of application of application BH2023/02835.
- 9.2. In this case, the main considerations in the determination of this application relate to the visual, ecological and heritage impacts.
- 9.3. Condition 4 currently states;
"No development shall take place until an Ecological Design, Management and Monitoring Strategy (EDMMS) for the provision of a minimum 10% biodiversity net gain within a 30-year period, to include the measures in the Preliminary Ecological Appraisal (Greenspace Ecological Solutions, October 2023, ref. J21177_Rev B) has been submitted to and approved in writing by the local planning authority. The EDMMS shall include the following parts:
 - a) *Description and evaluation of habitat/features proposed (to include full updated Metric (using most current version) and details of condition assessments);*

- b) *Identification of adequate baseline conditions (for management and monitoring purposes) prior to the start of works (to include full updated Metric (using most current version) and details of condition assessments);*
- c) *Aims and objectives for the proposed works;*
- d) *Site specific and wider ecological trends and constraints that might influence works;*
- e) *Details of the body/organisation/person/s responsible for undertaking the works and lines of communication;*
- f) *Details of the legal and funding mechanism(s) by which the implementation of the EDMMS will be secured by the developer with those responsible for its delivery;*
- g) *Detailed design(s) and/or working method(s) to achieve stated objectives including type/source of materials, disposal of any wastes arising from works and appropriate scale plans showing location/area of proposed works;*
- h) *Works Schedule aligned with any proposed phasing and including an annual work plan capable of being rolled forward over a five-year period;*
- i) *Prescriptions for initial aftercare and long-term management that will ensure the aims/objectives are met;*
- j) *Details for on-going monitoring of BNG habitats in years 2, 5, 10, 15, 20, 25 and 30, and any other biodiversity features (where present), including:*
Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the work can be measured;
 - *Methods for data gathering and analysis;*
 - *Location, timing and duration of monitoring;*
 - *Review, and where appropriate, publication of results and outcomes, including when monitoring reports will be submitted to the Local Planning Authority; and*
 - *How contingencies and/or remedial action will be identified, agreed with the local planning authority and implemented so that the original aims/objectives of the approved scheme are met.*

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

Reason: In the interests of ensuring measurable net gains to biodiversity and in accordance with Section 40 of the Natural Environment and Rural Communities Act 2006, as amended, paragraphs 180 and 186 of the National Planning Policy Framework 2023, Policies CP10 of the Brighton and Hove City Plan Part One and DM37 of the Brighton and Hove City Plan Part Two, and BHCC's Interim Technical Advice Note on Biodiversity Net Gain (October 2022)".

10. STATEMENT OF SIGNIFICANCE

- 10.1. The Royal Pavilion is a Grade I listed building of international significance for its architectural, historic and artistic interest as a royal palace in an idiosyncratic largely Indian style (reflecting the Regency period's interest in Orientalism) and designed by the leading Regency architect, John Nash. Due

to its location, scale and design it is an extremely prominent building and its roofline of bulbous onion domes, pagoda roofed pavilions and minarets is synonymous with Brighton. Whilst its entrance is on the west elevation facing the popular Pavilion Gardens it is the more formal east elevation which is most impressive, and which is most photographed. The gardens also affect the setting of important listed building around it, including the Grade I Dome Theatre, the Grade II India Gate, the Grade II* King William IV Gate, and the listed lampposts within the gardens and other buildings that are not directly associated with the pavilion but are visible from it.

- 10.2. The gardens of the Royal Pavilion are a registered park and garden of special historic interest, Grade II. The eastern lawns are a much simpler and more formal space than the livelier gardens to the west. They form an integral and highly important part of the setting of the building, inviting views of the building itself and allowing the drama of the building's east elevation and roofline to unfold in views from the east and north-east.
- 10.3. The Pavilion Estate Gardens form a part of the linear ribbon of historic green spaces that form the heart of the Valley Gardens Conservation area. The pattern of development and the prevailing architecture are contemporary with the Royal Pavilion and form part of its wider context. This proposal would have an impact on the setting of all the listed buildings but particularly the Royal Pavilion; the character of the registered park and garden; and the character and appearance of the Valley Gardens conservation area.

Principle of development

- 10.4. The main aims of the works to the Royal Pavilion Gardens, approved under application BH2023/02835 and the associated approved Listed Building Consent application (BH2023/02836) was to enhance and protect the heritage of the site, so that it can be removed from the Heritage at Risk register. The project is mainly funded by a grant that required the project team to meet the heritage aims in full.
- 10.5. Following the approval of the previous application it has become apparent that in order to meet the heritage aims of the scheme, it will not be possible to provide 10% biodiversity net gain currently required in condition 4, as this would have required a level of tree planting that was so significant that it would have compromised how the Pavillion and the gardens were experienced as important heritage assets and thus would not have met the conditions for the grant funding.
- 10.6. The proposal for 10% BNG was put forward by the applicant as part of the application rather than being a mandatory national requirement. The original was submitted prior to the 12th of February 2024 when a 10% Biodiversity Net Gain became compulsory through national legislation.
- 10.7. The application seeks to vary the wording of condition 4 of the approved application BH2023/02835 to remove all references to the provision of a 10% BNG uplift, and any monitoring associated with it. The other requirements of Condition 4, which require the provision of and Ecological Design,

Management and Monitoring Strategy (EDMMS), which includes the measures in the Preliminary Ecological Appraisal, would still apply.

- 10.8. No changes or physical alterations would occur or are proposed as part of this application to that which has already been approved under BH2023/02835.
- 10.9. The present scheme, with the proposed variation, would continue to seek to restore and improve the Gardens while maintaining their use for outdoor recreation so in principle is considered acceptable.

Design, Appearance and Heritage impacts:

- 10.10. In considering whether to grant planning permission for development which affects a listed building or its setting, the Council has a statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Moreover, 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.
- 10.11. Case law has held that the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, and the desirability of preserving or enhancing the character or appearance of a conservation area should be given "considerable importance and weight".
- 10.12. As already noted, the Royal Pavilion grounds are Grade II listed and a designated Registered Park and Garden of Special Historic Interest. The Royal Pavilion is a Grade I listed building. The site lies within the Valley Gardens Conservation Area. The setting of the Pavilion is an essential part of its character as the gardens have been laid out to complement its design.
- 10.13. There is no objection to the variation of condition 4, on the basis of heritage impacts, as no changes are proposed to the approved plans and the impacts remain the same as those considered previously and found acceptable. The proposal has been considered by Conservation Officers, and they are of this opinion too, and that the level of onsite tree planting required would have a detrimental effect on the setting and significance of the heritage assets. The additional cost of BNG, whether onsite or offsite could also impact on the deliverability of the scheme and as such this would result in the proposed heritage benefits being unrealised. and if provided offsite, the associated costs would have negative impacts. Historic England have confirmed that they have no comment to make in respect of the application.
- 10.14. The siting, scale and appearance of the proposal with the variation to condition 4 remains as approved under BH2023/02835 and is therefore considered acceptable in that it seeks to reconnect, conserve and better integrate the existing historic buildings and the surrounding landscaped areas.

Ecological impacts:

- 10.15. The reason the BNG 10% uplift cannot be provided onsite is twofold. Firstly, following further investigations by the ecological consultants, due to changes in the way that the Statutory Metric handles the loss of individual trees, the development no longer provides the 10% biodiversity net gain required under the planning permission and in fact now has a small loss of 1.14% (-0.25 habitat units). The provision of the amount of biodiversity to achieve a 10% uplift would mean a very significant increase in the number of trees (148 estimated or equivalent 2.1 habitat units) which would need to be provided onsite. This would undermine the premise and delivery of the approved application which seeks to open up views of the park, improve security and increase visibility of the heritage assets in proximity.
- 10.16. Secondly, the costs associated with the delivery of the amount of onsite BNG are considered significant and would mean the allocation of funds towards elements which would undermine the premise of the approved application as identified above, and reduce the funding available for the other elements of the approved scheme, diminishing further the heritage improvements provided, and wider public benefits.
- 10.17. The provision of offsite BNG, to meet the 10% uplift, has been explored and the costs associated with it are again significant and, as with onsite BNG, would mean the allocation of funds towards elements which would undermine the premise of the approved application as identified above, and reduce the funding available for the other elements of the approved scheme, diminishing further the heritage improvements provided, and wider public benefits.
- 10.18. Therefore, the provision of BNG uplift is considered to reduce the heritage improvements which the approved scheme delivers, risking not enhancing or better revealing their significance, and the wider public benefits.
- 10.19. The County Ecologist has confirmed that the variation or removal of the need to provide onsite BNG is a matter for the Local Planning Authority (LPA) to judge, as the application was submitted prior to the commencement of mandatory biodiversity net gain (BNG), and therefore any provision of BNG was informed by local policy, in particular CP10 of City Plan Part One and DM37 of City Plan Part Two, and any variation of the requirement to provide BNG remains in the judgement of the LPA. The County Ecologist has requested that all other elements of condition 4, not related to the provision of BNG and monitoring, remain.
- 10.20. The variation of condition 4 to this effect, and the loss of the assumed 10% uplift in BNG onsite is regrettable, as the provision weighed in favour of the application being in accordance with policy CP10 and DM37 by providing net gains for biodiversity. If the variation is approved then the application would no longer provide BNG, but the other elements that were secured and considered as part of the development and the preliminary ecological assessment would remain. The development team has confirmed the intent is to achieve BNG uplift wherever possible during the course of the development, and if achieved would accord with DM37.

- 10.21. The loss of the 10% BNG uplift, and no longer being fully compliant with CP10 and DM37, must be considered against the overall negatives and positive benefits of the scheme previously assessed and the planning balance reconsidered with this new information.
- 10.22. The development, without BNG, would continue to generate increased accessibility and use of the gardens, particularly for those with protected characteristics such as reduced mobility.
- 10.23. The works still increase the significance of the heritage assets (the setting and views of the Royal Pavilion), while helping to preserve and enhance for future generations the existing heritage assets. The development still increases the public amenity benefits and education that the site currently provides through provision of more flexible buildings and an outdoor education space. Enhanced servicing access to the Royal Pavilion is provided with new access from Palace Place, increasing opportunities for the use of the gardens for special events to raise additional income in the support of the upkeep of the Royal Pavilion Estate.
- 10.24. In the event that 10% onsite BNG was provided, due to the cost and the amount of planting (trees) required, the openness of the park would be compromised initially and would become more so over time as the planting matures. This would undermine the premise of the original application which was to open and secure views of the Royal Pavilion and the surrounding heritage assets, with a more accessible public park. The costs associated with the provision of onsite BNG and particularly offsite BNG would comprise the delivery of elements of scheme which bring the predicted cultural, heritage and tourism benefits.

Conclusion and Planning Balance:

- 10.25. The loss of the 10% BNG uplift is considered regrettable but supportable, as at the time of application the 10% BNG uplift was not mandatory (as set out in national legislation), and the development would continue to deliver all the other positive impacts previously considered, including ecological improvements onsite and as the proposal still accords with the thrust of CP10 and DM37. If the variation to the condition is not agreed then some of the positive benefits of the scheme would be significantly reduced, particularly the heritage, cultural and tourism impacts. On balance the application to vary condition 4 is considered acceptable. Whilst the wording of condition 4 is varied as well as the timeframe condition updated, all other conditions remain as per the original permission.

Biodiversity Net Gain

- 10.26. This scheme is now considered exempt from the need to secure mandatory biodiversity net gain (BNG) under Schedule 7A of the TCPA, as section 73 permissions, where the original permission which the section 73 relates to was either granted before 12 February 2024 or the application for the original permission was made before 12 February 2024, are not liable to any mandatory BNG.

11. EQUALITIES

11.1. 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.

11.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

11.3. The proposed development will enhance the existing pathways increasing access for those with visual or mobility impairments. A changing rooms facility and baby change facilities are also being provided to the refurbished toilet block building, all of which would enhance accessibility and use of the gardens, increasing equality of use.