

<u>No:</u>	BH2025/00500	<u>Ward:</u>	Westdene & Hove Park Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	23C Shirley Drive Hove BN3 6NQ		
<u>Proposal:</u>	Part-retrospective application for the erection of two storey detached dwelling with basement to the rear.		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	25.03.2025
<u>Con Area:</u>		<u>Expiry Date:</u>	20.05.2025
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Pell-Stevens Residential 30 Truleigh Drive Portslade BN41 2YQ		
<u>Applicant:</u>	Mr Mike Deller 23C Shirley Drive Hove BN3 6NQ		

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/documents listed below.

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

Plan Type	Reference	Version	Date Received
Location Plan			24-Feb-25
Location and block plan	25D11-FBA-ZZ-00-DR-A-2005-P01		27-Feb-26
Proposed Drawing	25D11-FBA-ZZ-00-DR-A-2002-P01		27-Feb-26
Proposed Drawing	25D11-FBA-ZZ-00-DR-A-2003-P01		27-Feb-26
Proposed Drawing	25D11-FBA-ZZ-00-DR-A-2004-P01		27-Feb-26
Report/Statement	Daylight Report	Rev A	14-Jul-25
Report/Statement	Arboriculture Assessment		06-Jun-25
Other	Green Roof Installation Guide		14-Jul-25

Other	Green Roof Maintenance Guide		14-Jul-25
Other	Green Roof Wildflower		14-Jul-25

2. Notwithstanding the details shown on the submitted drawings, within 3 months of the date of this permission (unless another time period is otherwise agreed in writing by the Local Planning Authority), a scheme for soft landscaping shall be submitted to the Local Planning Authority for written approval. The approved landscaping shall be implemented in accordance with the approved details in the first planting season following the date of the formal approval of the landscaping details. The scheme shall include a schedule detailing location, sizes and numbers of all proposed trees and plants. 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 protect neighbouring amenity and to enhance biodiversity to comply with Policies DM20, DM22 and DM37 of the Brighton & Hove City Plan Part 2 and CP12 and CP10 of the Brighton & Hove City Plan Part One.

3. Within 3 months of the date of this permission (unless another time period is otherwise agreed in writing by the Local Planning Authority), evidence to document that the hard surfaces of the hard landscape/driveway within the site are made of a porous material shall be submitted to the Local Planning Authority for written approval. In the event that testing proves the surface is not porous, details of a replacement material, and timetable for the remedial works shall be submitted to and approved by the Local Planning Authority in writing, and the works shall be carried out within the timetable agreed.
Reason: To reduce the risk of flooding and pollution and increase the level of sustainability of the development and to comply with Policies CP8, CP11 and DM43 of the Brighton & Hove City Plan and SPD16.

4. Within 6 months of the date of this permission (unless another time period is otherwise agreed in writing by the Local Planning Authority), the green roof system, as shown on approved drawings, shall be installed in accordance with the technical details outlined in the approved M-Tray installation guide, and the maintenance schedule shall follow the approved M-tray maintenance schedule, received on the 14 July 2025. The wildflower planting schedule received on the 14 July 2025 shall be implemented within the first planting season following the installation of the green roof.
Reason: To ensure that the development contributes to ecological enhancement on the site and in the interests of visual amenity, in accordance with Policy DM18 and DM37 of Brighton & Hove City Plan Part 2, Policy CP10 and CP12 of the Brighton & Hove City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.

5. A bee brick shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.
Reason: To enhance the biodiversity of the site and to comply with Policies CP10 and DM37 of the Brighton & Hove City Plan and SPD11.
6. Three swift bricks/boxes shall be incorporated within the external walls of the development hereby approved and shall be retained thereafter.
Reason: To enhance the biodiversity of the site and to comply with Policy CP10 of the Brighton & Hove City Plan Part One and SPD11
7. Access to the flat roofs over the dwellinghouse hereby approved shall be for maintenance or emergency purposes only and the flat roofs shall not be used as a roof garden, terrace, patio or similar amenity area
Reason: In order to protect adjoining properties from overlooking and noise disturbance and to comply with Policies DM20 of the Brighton & Hove City Plan Part 2
8. The cycle parking facilities shown on the approved plans 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 the Brighton & Hove City Plan Part 2 and SPD14
9. The refuse and recycling storage facilities indicated on the approved plans 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 DM20 of the Brighton & Hove City Plan Part 2, and CP8 of the Brighton & Hove City Plan Part One.
10. The residential unit hereby approved must achieve 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
11. The development hereby approved shall achieve a minimum Energy Performance Certificate (EPC) rating 'B'.
Reason: To improve the energy cost efficiency of existing and new development and help reduce energy costs to comply with policy DM44 of the Brighton & Hove City Plan Part 2
12. No extension, enlargement, alteration of the dwellinghouse(s) or provision of buildings etc incidental to the enjoyment of the dwellinghouse within the curtilage of the of the dwellinghouse(s) as provided for within Schedule 2, Part 1, [Classes A - E] of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies DM18 and DM20 of Brighton & Hove City Plan Part 2, and CP12 of the Brighton & Hove City Plan Part One.

13. The basement accommodation as shown on approved drawing number 25D11-FBA-ZZ-00-DR-A-2002-P01 received on the 27th February 2026 shall be constructed and laid out in strict accordance with the approved details, including the provision of the extended light wells and the blocking up of two lower ground floor windows as shown on the approved drawing, within 6 months of the date of this permission (unless another time period is otherwise agreed in writing by the Local Planning Authority). The basement rooms annotated as storage shall only be used as such and shall not be used as bedrooms. The basement layout shall be retained as approved thereafter.

Reason: To ensure satisfactory standard of accommodation for future occupiers and in accordance with policy DM1 and DM20 of Brighton & Hove City Plan Part 2.

14. Notwithstanding the proposed extension to the existing crossover on Shirley Drive to the front of the site to match adjacent as shown on the submitted site plan/block plan drawing, the permission for the dwelling hereby granted does not grant planning consent for any works within the public highway. Any such works would require separate consent from the Local Highway Authority and would need to ensure the health of the adjacent street tree is not compromised.

Reason: For the avoidance of any doubt, and as it has not been satisfactorily demonstrated that the impact of an extended crossover on the adjacent street tree can be appropriately mitigated, which would be to the detriment of its health and the visual amenities of the area and highway safety, in conflict with policies DM22 and DM33 of the Brighton and 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. 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.

3. Where possible, bee bricks should be placed in a south facing wall in a sunny location at least 1 metre above ground level.
4. Swift bricks be placed on any elevation, but ideally under shade-casting eaves. They should be installed in groups of at least three, at a height above 5m height, and preferably with a 5m clearance between the host building and other buildings or obstructions. Where possible avoid siting them above windows or doors.
5. Notwithstanding the extended crossover works on the public highway shown on the submitted drawings, no planning permission is granted for this highway proposal. Separate consent is required from the Local Highway Authority (LHA). This is dealt with separately to planning permission and the extension may not be acceptable to the LHA due to impact to the adjacent street tree. All necessary costs including any necessary amendments to a Traffic Regulation Order (TRO), the appropriate license and application fees for the crossing and any costs associated with the movement of any existing street furniture will have to be funded by the applicant. Notwithstanding inclusion on the drawings, no permission is hereby granted to carry out these works until all necessary and appropriate design details have been submitted and agreed by the LHA. The crossover is required to be constructed under licence from the LHA. The applicant must contact the Streetworks Team (permit.admin@brighton-hove.gov.uk 01273 290729) at their earliest convenience to avoid any delay and prior to any works commencing on the adopted (public) highway.

2. SITE LOCATION AND APPLICATION DESCRIPTION

- 2.1. The application site is located on the east side of Shirley Drive, between the junction of Hove Park Road to the north and Shirley Road to the south. The principal building 23 Shirley Drive building has been split into flats.
- 2.2. To the rear is an area of former garden to the main residence. This parcel of land has been developed into a 2-storey house, with basement accommodation. This construction followed the approval of a dwelling in the rear garden in 2020. The house which has been constructed did not accord with the approved drawings and therefore, as constructed, the house is unauthorised.
- 2.3. The site is not within a Conservation Area, and the existing property is not listed, nor in the vicinity of one, but it is opposite the locally listed Hove Recreation Ground. It is within Controlled Parking Zone (CPZ) P, and Groundwater Source Protection Zone 2.
- 2.4. Planning permission is sought for the erection of a two-storey detached dwelling with basement. The application has been submitted to regularise the development which has been constructed on-site (BH2020/01319). Some

additional prospective changes are proposed to improve the construction which has been undertaken. The application is a therefore a part-retrospective.

- 2.5. As noted above, the works which were undertaken on-site are in association with an approved development. The key changes between the previously approved application, and the development in this application can be summarised below
- Construction of basement accommodation.
 - Changes to window, door and porch arrangement
 - Change in materials from brick and panelling to white render
- 2.6. During the application process, the Local Planning Authority (LPA) have been informed that all matters in relation to the property are now sitting with the receivers. This has resulted in a new applicant.
- 2.7. Amended plans have been received during the application process to incorporate some light wells into the building to serve the basement, to block up windows to a storage space, and to enlarge the width of a lower ground floor bedspace. In addition, most recently, a full set of drawings have also been submitted of the approved development, the development as built, and the development as proposed - to aid comparisons.

3. RELEVANT HISTORY

- 3.1. **BH2022/02978** Excavation of lower ground floor with 3no lightwells and associated alterations - withdrawn 12.1.2023
- 3.2. **BH2022/02758** Application for approval of details reserved by condition 4 (landscaping scheme) of application BH2020/01319. Refused 25/10/2022 as the details could not be agreed due to a lack of detailing in respect of the tree screening, replacement planting and detail of the hard landscaping.
- 3.3. **BH2021/01397** Approval of Details reserved by Condition 3 (Materials) of BH2020/01319. Approved 17/6/2021
- 3.4. **BH2021/01853** Non-Material Amendment to application BH2020/01319 to permit a Juliette balcony to approved dwelling and changes to front doors on frontage property Approved 11/06/2021.
- 3.5. **BH2020/01319** Erection of part one, part two storey detached house (C3) to the rear of the property, installation of a front balcony and a winter garden to the side of the first floor of the frontage property and associated alterations. Approved 14/08/2020.
- 3.6. There is also an Enforcement Notice (1/10/24) relevant to the development. **ENF2022/00446**. The notice requires:
1. Demolish the dwellinghouse in its entirety.
 2. Remove from the Land all debris and materials resulting from compliance with Step 1.
 3. Return the Land to its former condition.

- 3.7. The Enforcement notice was appealed, and the appeal was upheld by the Planning Inspectorate. The Enforcement notice was upheld 29 July 2025 and the period for compliance with the requirements is 18 months from this date.

4. RELEVANT HISTORY AT OTHER SITES

23 Shirley Drive - main house

- 4.1. **BH2023/02013** Alterations to south-side first floor winter garden to form an open balcony (retrospective). Approved 21/8/2023

5. REPRESENTATIONS

- 5.1. **Ten (10)** letters of representation have been received objecting to the proposal for the following reasons:

- Overdevelopment loss of garden space
- Planning Law and procedures not followed
- Actions and conduct of applicant underhand and motivated by profit
- Poorly constructed
- House is unauthorised and should be demolished
- Poor design / out of character
- Impact trees and wildlife
- Impact on traffic
- Loss of light
- Air quality
- Overbearing / overdevelopment / inappropriate height
- Access Highways and Traffic considerations
- Similar development refused at 19 Shirley Drive
- Approval would set an unwanted precedent / lack of enforcement of planning
- Impact on ecology not fully considered
- Does not meet Code for Sustainable Homes

- 5.2. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

Internal:

- 6.1. **Arboriculture:** Comment

Summary:

Concerns raised regarding the impact on the health of the adjacent street tree from unauthorised highway works and any future works to extend the crossover.

Main Comment:

- 6.2. The submitted 2025 Arboricultural Report provided by Arbor Cultural Ltd along with historical correspondence between various BHCC departments relating to works undertaken next to a significant street elm located within the grassed

verge directly to the front of the site have been reviewed. BHCC Arboriculture have raised issue with root damage caused by trench work within the root protection area (RPA) of what is listed as T1 Elm within the survey for the connection of utilities to the development, along with soil compaction from the storage of materials, parking of contractors vehicles during construction and the driving over of this verge for the access of hard standing at the new development.

- 6.3. 3.3.7 of the arboricultural report states that although large diameter roots were severed there has been no destabilisation or long term impact to the tree, this conclusion appears to rely on a video filmed at the time of trenching along with a chlorophyll test; BHCC Arboriculture are continuing to monitor this tree for decline as this is a highly prominent tree of significant size located directly adjacent to a busy main road, were it to fail the aftermath could present considerable safety and liability implications.
- 6.4. The location of the suggested crossover, with respect to the adjacent tree, and the specification to which it would need to be built to tie into the surrounding Highways infrastructure is not consistent with preventing unacceptable damage to our street tree. The proposal is not consistent with BS5837:2012 in terms of hard surfacing within RPAs. No dig solutions, as stipulated in the British Standards as being the recommended method for such surfacing is not possible, therefore the stated use of Arboricultural Supervision that was recommended within the original 2020 Arboricultural Method Statement as being sufficient to mitigate any damage is not accepted as appropriate in this instance.
- 6.5. Should retrospective consent be granted for this development any formal application for an authorised vehicular crossover would be refused due to the need for excavation within the RPA of this high amenity street tree.
- 6.6. **Environmental Health Team Comment**
The EH team have received no noise complaints from the Air Source Heat Pumps (ASHP).
- 6.7. **Sustainable Drainage Strategy Comment**
The development indicates Sustainable Urban Drainage Strategy would be used however no information has been supplied. Further information is required in respect of, a foul water drainage strategy, Agreement, in principle, with Southern Water, for foul water discharge, A surface water drainage strategy, and supporting information. This information may be controlled by planning conditions.
- 6.8. **Transport Team Objection**
The site access was approved in principle under application BH2020/01319, with the extension of the existing crossover secured by condition. However, the crossover extension has not been implemented. The current proposals follow the previous design, but an existing tree may make this unworkable.

- 6.9. Concern that access arrangement does not meet the current requirements of Approved Document B5 of the Building Regulations (2000) or Manual for Streets guidance in relation to emergency fire appliances.

External

- 6.10. **East Sussex Fire and Rescue** Comment summarised
Access for fire appliances is not satisfactory as house over 45m from the highways. A domestic sprinkler system should be installed. Routes are also likely be unable to carrying weight of fire appliances.
- 6.11. **Southern Water** Comment summarised
The Council's Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development.
- 6.12. Full details of representations received can be found online on the planning register

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 updates October 2024);
 - 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:

SS1	Presumption in Favour of Sustainable Development
CP1	Housing delivery
CP8	Sustainable buildings
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
CP12	Urban design
CP13	Public streets and spaces
CP14	Housing density

CP19 Housing mix

Brighton & Hove City Plan Part Two:

DM1	Housing Quality, Choice and Mix
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
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
DM43	Sustainable Drainage
DM44	Energy Efficiency and Renewables

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD06	Trees and Development Sites
SPD09	Architectural Features
SPD11	Nature Conservation & Development
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards
SPD17	Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations relating to the determination of this application are the principle of the proposed development, design and the impact upon the character and appearance of the surrounding streetscene, impact on neighbouring residential amenity, the standard of accommodation proposed, and sustainability, biodiversity, trees and highways implications.

Background

- 9.2. This application has been submitted in an attempt to regularise the unauthorised development which has been undertaken, and includes some changes to the scheme. The Local Planning Authority (LPA) have been liaising with the applicant in respect of the development and the changes to the construction which are now proposed, to try to seek a satisfactory outcome.
- 9.3. The LPA previously investigated the site and identified the breach of planning permission in 2020. No appropriate revised planning applications were forthcoming which subsequently resulted in the LPA issuing an Enforcement Notice in October 2024 requiring the house on site to be demolished. An appeal by the developer to the Planning Inspectorate against the Enforcement Notice was dismissed, and the Notice was upheld and remains valid. There are various grounds on which an appeal can be made and in this case an appeal was made under ground (f), namely that the steps required by the Notice exceeded what is necessary to remedy the breach. The appellant did not ask the Inspectorate to consider whether planning permission should be granted for the development

alleged in the enforcement notice (under ground a). Therefore as the dwellinghouse was completely unauthorised, the Inspector upheld Notice to demolish the building as this would remedy the breach of planning control.

- 9.4. Notwithstanding the demolition notice, the new applicant wishes to remedy the situation and improve and significantly amend the development and is now seeking to apply for another (revised) planning permission for the site. It is noted that the site has been the subject of numerous applications, and the actions of the former developer and former applicant of the former developments have led to a relatively complex situation on site. The current part retrospective application must however be assessed on its own merits and should planning permission be granted, and then the permission implemented, the Enforcement Notice would cease and as such would fall away.
- 9.5. Although the principle of a residential development has been established through the granting of the previous permission on site, this permission has not been lawfully implemented, and nor is it an extant permission. It is however a material consideration in the assessment of this current application. This current application would establish a fresh permission, if granted.

Principle of the Development:

- 9.6. 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 2,487 homes per year. A 20% buffer is then applied to this figure to reflect the most recent Housing Delivery Test measurement (published in December 2024) for the council being less than 85%.
- 9.7. The council's most recent housing land supply position is published in the SHLAA Update 2025 which shows a five-year housing supply shortfall of 10,442. This is equivalent to 1.5 years of housing supply.
- 9.8. 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)."
- 9.9. The proposal would result in a net gain of one new dwelling. Increased weight is given to housing delivery as the council is currently unable to demonstrate a five-year housing land supply.
- 9.10. CP14 allows for subdivision of plots to provide higher density development where this is appropriate, and where the character of the surrounding area is not unduly compromised. The application is for a backland development. There has

been a recent planning approval to subdivide the plot and form a new residential unit, and this is a material consideration.

- 9.11. The rear garden of the property is considered to be a sufficient size to accommodate the addition of a new dwelling, without a structure appearing out of place or incongruous. Furthermore, there are examples of similar types of development in the vicinity of the site in the rear gardens of Shirley Drive. The principle of the development, to provide a new dwelling, is therefore considered to be acceptable and would not adversely harm the character and appearance or the general pattern of development of the immediate vicinity. Further consideration for the acceptability of the development in design terms is given below.
- 9.12. City Plan policies do not specify a required housing mix, however Policy CP19 states that developments will be required to demonstrate that proposals have had regard to housing mix considerations and have been informed by local assessments of housing demand and need. The proposed 4-bedroom house is considered acceptable for this scale of plot and the location.

Character, Design and Appearance:

- 9.13. Policy DM18 (High Quality Design and Places) of the City Plan Part 2 reinforces Policy CP12 and seeks to ensure that development considers and responds positively to the local context in respect of layout, scale of buildings, materials and architectural detailing.
- 9.14. The above ground elevations are comparable to the development previously approved for the site and this is a material consideration for the site.
- 9.15. The site is within the Hove Park character area of the Tongdean neighbourhood, which is characterised by large, interwar and post-war houses, on generous plots, set back from tree-lined roads. It not considered that the dwellinghouse would be out of character with this area, particularly as it would be set back 46m from the road, and would not be readily visible due to the distance from public vantage points in Shirley Drive.
- 9.16. As noted above, the application is not the first for a dwelling to be sited in a rear garden on its own plot within the surrounding area. Such dwellings exist at 2b Shirley Drive, the rear of no. 25 (now no. 25B), the rear of no. 27 (now no. 25C), no. 102, no. 112 as well as 19 Mallory Road. Therefore, the principle of subdividing the large rear gardens of properties to create separate plots is considered to be acceptable and congruous with the surrounding area. In terms of plot sizes, the development compares favourable in in terms of plot size and footprint of the building to the other development in the area. It is also comparable to the previous permission granted for the site in terms of the height and footprint and positioning of fenestration.
- 9.17. The dwelling is visible from properties in Rigden Road to the rear. However, given the height of the two-storey element at the rear elevation of 5.4m (nearly 7m from the rear site boundary) and distance from the rear of 14 and 16 Rigden Road of almost 40m, it is considered that it would not be particularly incongruous

or visually intrusive. It is noted that the development as built, and as proposed to be retained, contains solar panels on the sloping roof above the ground floor element at the rear of the property. This would give this elevation a more developed appearance when viewed from Rigden Road, compared to the approved house, however the visual impact would not justify refusal of the application.

- 9.18. Aside from the provision of modest light wells, the formation of the basement accommodation has a very minor impact on the overall external design of the house. It does result in the development extending slightly closer to the northern boundary than the house previously approved. Despite offering an additional floor of accommodation, this is below ground and it does not add to the visual bulk of the house which remains comparable in positioning, footprint and height to the approved development. The light wells would not be viewed prominently from neighbouring properties.
- 9.19. The building is modern in design, and this is reflected in the material palette. The building has been constructed using white render and dark grey fenestration with a slate sloping roof to the rear. The previous approval included brickwork, and grey panelling brickwork, grey self-finishing panels, white painted render, standing seam cladding and a green roof. In comparison to the previous approval, the constructed elevations appear a little simplistic. Also, fully white render elevations can be viewed as a little stark in a backland / garden setting. Nevertheless, due to the separation distances involved and the scale of the development, the house is not considered visually intrusive.
- 9.20. In addition, compared to the previous approval, the removal of the feature porch on the front elevation, and the removal of a previously approved small set back to the ground floor projection from the north elevation, also contribute to a fairly bland appearance to the elevations overall. However, by securing a genuine green or sedum roof to the building, the current building would integrate better with the garden location, and this would be secured by condition. The green roof provision did form part of the previously approved development but was not constructed.
- 9.21. In regard to the alterations which impact Shirley Drive, it is recognised that changes have been made to the footway to enlarge a driveway to the rear. The works give the overall site frontage at no.23 Shirley Drive a more developed appearance, but the works do not cause significant harm and fit sufficiently well into the local context, and do not jar with character and appearance of the street scene. The extended crossover previously shown on the original drawings has not been installed. This is discussed in more detail in the highways (and trees) section of this report.
- 9.22. This application does not contain any alterations to the elevations of 23A or 23B Shirley Drive.
- 9.23. Overall, the design of the new dwelling is considered acceptable and would not adversely harm the character and appearance of the associated plot, streetscene or the surrounding area, in compliance with relevant policies.

Impact on Amenity:

- 9.24. Policy DM20 of the City Plan Part 2 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.
- 9.25. In terms of the impact of the new house on adjoining neighbours the development proposed in this application is not significantly different to the previously approved development for the site.
- 9.26. Given the orientation of the site there is some potential for loss of light and an increase in overshadowing to 25b Shirley Drive and its front garden in addition to the rear garden of 16 Rigden Road. However, there are no windows in the south side of the former so there would be no impact in respect of loss of sunlight or daylight to any neighbouring windows. There would be only minor overshadowing of the gardens of both properties, and unlikely to be the areas in most use.
- 9.27. It is recognised that the dwellinghouse is visible from the windows of properties neighbouring the site. However, while there would be a change in outlook, it is not considered that there would be a significant adverse impact. Ample separation distances to the rear of 14 and 16 Rigden Road and some 20m from the rear window of the closest properties on Shirley Drive would prevent the development being overbearing. These distances ensure the development does not create an adverse sense of enclosure. In addition, discussed later in the report, additional planting will be secured for the site, which will aid the sense of privacy.
- 9.28. In terms of privacy, the ground floor windows would be less than 2m from ground level, which is the height of the existing boundary fence around the site, which is to be retained. The first-floor windows would face west, towards the existing building, but as previously mentioned, this distance would be approximately 20m and would not be considered to result in a significant impact upon privacy.
- 9.29. The Juliette balconies to the first floor fenestration would be etched glass, which would prevent views in and out to the lower portion in any case. There would be some overlooking of neighbouring gardens, but this is to be expected in an urban area such as this and already occurs between the existing properties. The proposed green roof features an access panel, but this would be for maintenance only. A condition shall be imposed preventing its use as an external amenity area.
- 9.30. It is considered necessary to restrict 'permitted development' rights to the dwellinghouses by condition to avoid any adverse impact upon neighbouring occupiers.
- 9.31. Policy DM40 addresses environmental protection, and relevant to this application, noise and disturbance. The excavation of the basement has resulted in a larger property than that previously approved for the site. It is acknowledged

that a proposed dwellinghouse would result in a more intensive use of the rear garden of no. 23 Shirely Drive, however the plan form does not allow for significant additional occupation. Only a single bed space would be proposed. It is not considered that the new property and associated increase in activity would result in significant noise and disturbance to adjacent residential occupiers.

- 9.32. The development includes the provision of an Air Source Heat Pump. The Environmental Health Team have commented on the application and not raised an objection. Standard practice for a prospective planning application is to secure certification documentation to ensure noise and disturbance risks from the technology are minimised and this be secured by condition. In the case of this part-retrospective application, this documentation has been submitted with the application. Should noise complaints be made in the future, there is recourse under the Environmental Protection Act for further investigation.
- 9.33. Overall, it is acknowledged that the works have resulted in prominent garden development when viewed from adjoining properties. The works are however comparable to the previous development approved and, on balance, would not cause significant harm to neighbouring properties.

Standard of Accommodation:

- 9.34. 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. Policy DM1 (Housing Quality, Choice and Mix) of the CPP2 requires that all new residential units should meet the Nationally Described Space Standards (NDSS).
- 9.35. The proposal seeks consent for a 4 bedroom, 6-person house with a total floor area of 223sqm. This is significantly in excess of the 112sqm stipulated as a minimum in the NDSS. The previous application secured a 3 bed 5-person property.
- 9.36. The basement, as originally constructed, has no natural light, outlook or ventilation. In these circumstances, it would only be suitable as a storage area. This application proposes a modification to the constructed basement to provide light-wells to bring an additional living space and the lower ground floor bedroom into functional use. The light wells would be 1.2 metres in width. The submitted drawings show elements of green wall for the light well in an attempt to improve the outlook from these spaces. However, this has not been fully explained, and the success of a green wall in this location is considered doubtful due to a lack of light.
- 9.37. The basement has a Gross Internal Area (GIA) of 66.8 sqm. This floor would provide an additional living room. Bedroom 4 also would be within this lower ground floor. The proposed bedroom would be 9.35sqm which would meet 7.5sqm required for a single room. An amended plan shows this bedroom would now exceed the required width of 2.15 metres.
- 9.38. A daylight / sunlight report has been submitted with the application to quantify the amount of light this bedroom would receive. It can be demonstrated that this

would meet the Building Research Establishment (BRE) minimum standards. Notwithstanding this, the bedspace, and the living area would suffer from a severely limited outlook which would be quite oppressive for future occupiers.

- 9.39. In addition to the secondary living space, two storage rooms would also be created in the basement. To ensure these spaces are used as such, and not subterranean bedrooms, the windows which have been constructed in these spaces shall be removed from the development. This is shown on the updated drawings, and the implementation of this element of the work and their use for storage only shall be secured by condition.
- 9.40. Although there are some concerns regarding the accommodation in the basement it is a secondary level of accommodation when looking at the house overall. The lower ground floor living space would be in addition to the generously proportioned living space at ground floor level, and the basement bedroom would be the smallest and the 4th bedroom in the property. The three first floor bedrooms would all have good light and outlook. Therefore, the quality of the accommodation in the basement in terms of the overall functioning of the house is given less significance, on balance.
- 9.41. The proposed ground floor is 95.8 sqm. This would provide open plan living and kitchen space, a study/snug and w.c. The ground floor layout would ensure natural light, outlook and ventilation to all rooms.
- 9.42. The proposed first floor is 60.49sqm. It would deliver 3 bedrooms, 1 bedroom at 16.95sqm which exceeds 11.5sqm required for a double bedroom, bedroom 2 at 11.1sqm which would be suitable for a single bedspace and bedroom 3 a single at 9.45sqm. All bedrooms would have natural light, ventilation and outlook from windows on the west elevation of the property. A bathroom and ensuite to bed 1 are proposed on this floor. Neither spaces would have windows which is regrettable but acceptable given the use of these rooms and the overall layout of the first floor.
- 9.43. The standard of accommodation above basement level is considered good. A generous layout and good-sized rooms with good levels of natural light and ventilation is demonstrated. In this instance therefore, when viewed in context with the accommodation on the upper floors, the basement living space and bedroom is considered acceptable in terms of the standard of accommodation.
- 9.44. Policy DM1 also 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. It is noted that the overall footprint of the property remains comparable to the previously approved application for the site and the level of amenity space is considered acceptable for a 4 bedroom property.
- 9.45. A refuse storage area has been built at the side of driveway. This has been built-out. This is an acceptable location for this facility and shall be secure in place
- 9.46. Overall, and on balance, the proposed development, is considered to provide an acceptable standard of accommodation which would meet the objectives of

policy DM1 and DM20. Some concerns regarding the level of accommodation in the basement remain, however as this would be secondary to the main functioning of the site, and in this instance, the basement is considered acceptable.

Sustainable Transport:

- 9.47. City Plan policies including CP9, DM33 and DM36 seek to ensure that development meets the demand for travel it creates. SPD14 Parking Standards is a material consideration.
- 9.48. The principle of the residential use in the rear garden has been established. In the previous application there was no objection to the development on transport grounds.
- 9.49. The original application indicated a new vehicular crossover on Shirley Drive (extending the existing one already to the south, northwards), which was secured by condition to enable an off-street car parking space. Since the original scheme was granted, however, some consultees have raised doubts as to whether it is possible in principle to successfully deliver the crossover extension (and provide vehicular access to the plot), given the proximity of the adjacent street tree. Its provision cannot therefore be relied upon and the development as a car-free scheme is a consideration for this current application.
- 9.50. The Sustainable Transport Team have commented on the current application and raise an objection as submitted. The unauthorised house has been constructed and occupied with an unsatisfactory highway arrangement as the crossover previously proposed has not been constructed. It is apparent that some unauthorised hard material has been introduced on the previous highway verge, and that the existing crossover to the property to the south is being used, for the new build house. This crossover is misaligned to the driveway to the rear of the site. Or the vehicles are crossing the kerb to access the drive. In both cases, this can result in damage to the highway and can lead to safety concerns.
- 9.51. The Transport Team advise the crossover works should be constructed as a matter of urgency to ensure a safe development which does not damage local highway infrastructure. However, the proximity to the street tree represents a constraint which may mean a crossover extension is not possible. Given that the proposed extension of the crossover is located within 1 metre of an existing street tree, there have been concerns regarding potential damage to the root system (see also comments in later section regarding Trees below).
- 9.52. By way of compromise, the Transport Team have stated, if an extension is possible in principle, and if necessary to protect the tree roots, a slightly misaligned dropped kerb could be accepted, but a new extended crossover must be made as close to a true alignment as possible, and the damage to the public highway already created made good.
- 9.53. The updated site plan now shows a new crossover arrangement – this is not conditioned to be delivered as part of this planning permission, however, given the uncertainty as to whether this can be successfully achieved. Creation of an

access onto an unclassified road does not require planning permission in its own right and would in any event need to be undertaken under permission and licence from the Highway Authority under a separate process to this planning application. If the crossover cannot be successfully delivered there would be no objection in principle to a 'car-free' development here, as the impact (in terms of overspill parking) from one dwelling is not considered significant. It is noted that parking opposite the site on Shirley Drive is short stay only, however, there is capacity for residents within the wider area (controlled via CPZ). In addition, the site is quite close to public transport services. The Highway Authority are able to investigate taking separate enforcement action against unauthorised works to the public highway.

- 9.54. In regard to car parking provision, SPD14 operates maximum parking standards for the city. The amount of car parking remains as previously approved and is acceptable in principle (should the access prove possible). Cycle parking has been implemented on site. The minimum cycle parking standard for this development is two spaces, and the location of the cycle store has been shown on the updated site plan. The size, location and type of the facilities as built, although different to that approved in the previous application, are considered adequate.
- 9.55. There will be an increase in trips to and from the site as a result of the proposed development, however, this is unlikely to be significant. There may also be parking overspill, again, this is unlikely to be significant, and no objection has been raised in these respects by the Local Highway Authority.
- 9.56. The Highway Team have also raised concern in relation to the distance from the highway to the furthest elevation of the proposed dwelling and the retention of a balcony structure overhanging the access, both of which restrict emergency vehicle access. This is discussed below in relation to fire safety.

Sustainability

- 9.57. City Plan policies including CP8 seek to ensure developments are sustainable and incorporate appropriate sustainable measures.
- 9.58. The proposed development would make efficient use of land in a sustainable location with good access to public transport and local amenities.
- 9.59. The development does incorporate a sustainable energy technology in the form of an ASPH which is welcomed.
- 9.60. Under current policy and practice, CPP2 Policy DM44 requires new build residential to achieve a minimum energy Performance Certificate EPC rating 'B'. This can be secured by condition. Water efficiency condition can also be applied to the development. The applicant has conducted testing to house as built to ascertain the performance of the building in terms of energy and water efficiency and is confident that these standard conditions can be met.
- 9.61. This application has been supplemented by some information in respect of the drainage strategies. This is not comprehensive, however it is not considered

justifiable to seek more information in this regard given the largely retrospective nature of the development. Southern Water has confirmed adequate connection to the public sewer has been undertaken. The house would also be subject to compliance with Building Regulations.

- 9.62. The previous permission was subject to a porous hard surfaces condition, to prevent undue surface run-off. The driveway has been laid with tarmac. The applicant has stated that the tarmac is porous. Whilst standard tarmac is not porous, there are more specialised tarmac products which can be considered porous for sustainable drainage systems. As this point has not been fully resolved at the time of writing, a condition requiring further information shall be required. If, after testing, this surface proves inadequate, the condition shall also require its removal and replacement with a suitable product within an agreed timetable.

Ecology and Biodiversity

- 9.63. City Plan policies CP10 and DM37 seek to ensure developments include ecological mitigation and enhancement as part of the proposals.
- 9.64. The development is largely retrospective in terms of its principal construction. Consent was granted before the adoption of statutory Biodiversity Net Gain Regulations. It is therefore problematic from an ecology and biodiversity perspective to mitigate against any harm to biodiversity at this stage. It is however noted that the previous permission bee and swift bricks were secured by condition to secure biodiversity enhancement, as well as a hard/soft landscaping scheme and green living roof. These can be secured by condition again, as the final details and locations shown within the application require further consideration.
- 9.65. The green roof which formed part of the original permission was never installed. This application is accompanied by information relating to a new green roof system; installation information, planting, and maintenance are all included in the information. This would replace the current flat roof which appears to have been constructed with astroturf which has no wildlife or landscape benefit. It is also unsightly from a design perspective.
- 9.66. There remains some ambiguity over the landscaping of the development. It is certainly the case that the planting initially envisaged for the site has not been fully implemented, including the planting on the western and southern garden boundary and the provision of vegetable planting area. It is clear that a wildlife pond originally proposed has not been adequately delivered. Referring back to the approved development of the site, it is also understood that three trees were lost to facilitate the construction on site. A further landscaping scheme will be required and a wildlife friendly native planting scheme can be secured as part of a landscaping condition. Although the amended drawings appear to show some additional planting, this is not fully explained, and a landscaping condition is required to detail the nature of the new planting and secure maintenance of the planting.

- 9.67. On balance, subject to condition, it is considered the proposals would be acceptable from an ecological perspective, and in compliance with relevant City Plan policy.

Trees

- 9.68. City Plan policies including DM22 seek to ensure developments retain, improve and where possible enhance landscaping and trees.
- 9.69. An Arboriculture Impact Assessment (AIA) has been submitted with this application. This was in response to concerns over the unauthorised construction and the impact on the street trees in Shirley Drive.
- 9.70. The site inspection in the AIA notes the digging of trenches on site has severed some tree roots to T01 although the report states they are not structural and the tree has not been destabilised. A health check on the Elm Tree shows it is under moderate stress. The report found the degradation in the health of the trees cannot be attributed to the trench, as the tree closest to the trench is in a better condition than the tree located further away. There is a mitigation suggestion made in the report to improve the health of these trees. However, these trees are outside the applicant's control/ownership as they are street trees within the public highway and any mitigation would require the consent of the Local Highway Authority. In addition, as stated within the council's Arboricultural officer's comments, the findings and conclusions of the AIA are disputed. They confirm that there are concerns regarding the impact of the highway works undertaken to date, in addition to the impacts of any future works to formalise and extend the crossover onto Shirley Drive.
- 9.71. Given the comments received from the council's Arboricultural and Highway teams, it is not clear that it will be possible to successfully extend the crossover without unduly impacting the tree, and thus a condition is recommended to make it clear the crossover works shown do not form part of the scheme for a new dwelling (if granted) and that separate consent from the Local Highway Authority is required for any such works. The matter would be looked into further should the applicant wish to pursue highway approval.

Fire safety

- 9.72. The Transport Team and East Sussex Fire and Rescue note the distance from the highway to the furthest elevation of the proposed dwelling exceeds the 45m maximum permitted without a sprinkler system. The Transport Team also note the balcony structure overhanging the access, which restricts vertical clearance below the 3.7m minimum required for fire appliance access.
- 9.73. These elements remain as previously approved for the site. It is understood that a sprinkler system has been installed. It is understood that the applicant has been consulting with Building Control to confirm whether any internal lobbies are required. It would not be prejudicial to determine this planning application before this issue is fully resolved, Planning Permission and Building Control being subject to separate regimes.

Other Matters Raised in Representations

- 9.74. Loss of view is not a material planning consideration however the impact on 'outlook' has been fully considered above. Loss of property value is not a material consideration.
- 9.75. It is not considered that the development would have any impact on air quality. It is noted that the Environmental Health Team have not objected to the development.
- 9.76. Representation made on the application refers to a refused back-land development at 19 Shirley Drive. The Local Planning Authority seek to make consistent decisions, and each application is assessed on its own merits, against adopted policy and taking in to account all other material considerations. There are distinct differences in the sites and the proposed development and the decision at the rear of 19 Shirley Drive is not considered to set a precedent for this application.
- 9.77. As noted in the representation, and explored above, planning procedures have not been followed on site and this has resulted in a prominent case of unauthorised development. However, this application must be assessed on its merits and against planning policy and in regard to all relevant considerations. Although the enforcement notice remains in place it is also necessary for the Local Planning Authority to explore any practical solutions with the new applicant. The consideration of this planning application offers an opportunity to progress the on-site situation. The demolition of the property is still an option for the site but should be seen as a last-resort outcome when other avenues have been exhausted.

10. CONCLUSION

- 10.1. The scheme makes a minor, but welcome contribution to the Council's housing targets through a family dwellinghouse offering a satisfactory standard of accommodation and an acceptable design. There are no significant impacts on neighbouring amenity. The scheme would be sustainable and include biodiversity enhancement. It has not been fully established whether a vehicular access to the site can be successfully achieved due to the proximity of an adjacent tree, however this would be considered separately by the Highway Authority, and its delivery is not critical to the acceptability of the residential scheme overall. Whilst the situation on site is complex and a little fragmented, the application does offer a practical way forward to deliver a policy compliant house. As such, this application is recommended for approval subject to conditions.

11. BIODIVERSITY NET GAIN

- 11.1. As a largely retrospective application, it is not considered that the development is legally required to provide Biodiversity Net Gain under Schedule 7A of the Town and Country Planning Act.

12. EQUALITIES

12.1. 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.

12.2. 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.

13. COMMUNITY INFRASTRUCTURE LEVY

13.1. 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. The exact amount would be confirmed in the CIL liability notice which would be issued as soon as it practicable after the issuing of planning permission, if granted.