



Appeal Decision

Hearing opened on 8 November 2011

Site visits made on 7, 8 and 24 November 2011

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 January 2012

Appeal Ref: APP/Q1445/A/11/2157320
227-233 Preston Road, Brighton, BN1 6SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Sainsbury's Supermarkets Ltd/Caffyns plc against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/00336, dated 4 February 2011, was refused by notice dated 10 May 2011.
 - The development proposed is a change of use of car showroom/workshop (SG04) to 2 no retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM cash machine.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of car showroom/workshop (SG04) to 2 no retail units (A1) incorporating installation of external condenser unit, air conditioning units and an ATM cash machine at 227-233 Preston Road, Brighton, BN1 6SA in accordance with the terms of the application, Ref BH2011/00336, dated 4 February 2011, subject to the conditions in the attached schedule.

Application for costs

2. At the hearing an application for costs was made by the appellants against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. The hearing was adjourned on 8 November to enable the Council to consider the appellants' Air Quality Assessment. In the event its findings were not disputed and so the hearing did not resume as originally intended but was subsequently closed in writing. As well as unaccompanied inspections of the appeal site and its environs at various times of the day I made a further visit on 24 November to see the other stores referred to in representations.
4. A unilateral undertaking was submitted at the hearing. This provides for contributions to be made in respect of various highway and transport works and towards the planting of 3 new trees along Cumberland Road in the event that the existing horse chestnut has to be removed. Further consideration is given to these payments in the light of the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations later in the decision.
5. The draft National Planning Policy Framework is subject to change and therefore little weight should be attached to it.

Main Issues

6. The main issues are the effect of the proposal on:
- Highway safety in Preston Road and surrounding residential roads;
 - The living conditions of adjoining residential occupiers in Cumberland Road and Lauriston Road with particular regard to noise and disturbance arising from additional traffic movements and deliveries;
 - The character and appearance of the surrounding area which is within Preston Park Conservation Area;
 - The vitality and viability of the nearby parade.

Reasons

7. The appeal site is on the western side of Preston Road (A23) and comprises vacant commercial premises last used as a car showroom with associated car servicing at the rear. The northern part of the site was a car park. To the south is a parade but the area to the west is residential. Preston Road is heavily trafficked and carries about 24,000 vehicles each day.
8. It is intended to convert the existing building into 2 retail stores. The front unit would be occupied as a Sainsbury's Local and the rear one would be used as a pet store. The net sales areas would be 280 sq m and 261 sq m respectively. The car park would be re-configured and 25 spaces provided with access from Cumberland Road. Two further spaces would be available off of Lauriston Road. Deliveries would be restricted to 0700 to 2100 hours on Mondays to Saturdays and 0900 to 1700 hours on Sundays and Public Holidays. There would be 4 deliveries a day to Sainsbury's and 2 a week for the pet store.
9. A personal permission has not been suggested and the brand of the pet store is not in the public domain. In any event, planning permission should run with the land. Nevertheless, the proposal is clearly presented for one of the units to be occupied by a specific supermarket chain. The traffic and other implications likely to arise can reasonably be assumed to be similar to those experienced elsewhere. Therefore in general terms this forms a reliable basis for considering the development.
10. The past use of the site is characterised by residents as 'low key' although there were deliveries by transporters and MOTs. The site has been empty for some time and there is no indication that a resumption is likely if the appeal failed. That said, there have been commercial uses on the site historically and no one would wish it to remain unused. Therefore, whilst the precise 'benchmark' is not clear the appeal site is not an entirely 'blank canvass' in terms of assessing the impact on the locality.

Highway safety

11. The appraisal of traffic related issues begins with the likely traffic movements that would be generated. As part of the application the appellants presented predictions based on surveys undertaken at Paignton and Worcester Park. The Council was particularly critical about relying on the former as a comparator. However, as part of the appeal further studies of Sainsbury's Locals at Aylesbury, Rotherham and Nottingham were carried out. Two of these are sited on 'A' roads with similar volumes of passing traffic to the appeal site.

12. Based on this information it is disconcerting for the Council that the modal split analysis expects that up to 45% of trips to and from the store would be undertaken by car as opposed to the previous indication of 10-15%. Whilst the operational characteristics are said to be different it is also strange that a similar store in Redcar is identified but then ignored. That said, there is no reason to doubt the veracity of the figures now presented and the Council gave no evidence of its own to call them into question. Therefore the appellants' latest data provides a reasonable starting point for the purposes of the appeal.
13. Of course, local people use the roads around the appeal site on a daily basis and so can provide a first hand account of actual conditions. In this regard, I have taken on board all that was said at the hearing and the comments made in representations. However, it is notable that the impressions and experiences that I heard varied and so do not paint a wholly consistent picture of the current situation and its gravity.
14. The proposal would result in additional use of the Cumberland Road junction with the A23 as vehicles enter and leave the site. The main parties interpreted the traffic numbers differently in respect of the most appropriate peak hour. Nevertheless, it is expected that total proposed traffic movements would be 251 between 1800-1900 hours on a Friday compared to 81 movements at the moment. A greater uplift of over 5 times would occur between 0700-0800 hours on Saturdays but overall levels would be much lower. At other times both total traffic flows and the change in percentage terms would be less.
15. Although the Council claimed that visibility to the north is "poor" it did not explain by what yardstick this assertion was made which directly contradicts the officer report. Indeed, it was accepted that it is technically safe. The junction coincides with the merging of 2 lanes on the A23. There is also a wall alongside, a cycle lane and a bus stop just to the south. However, these "complications" are typical urban features and there is no technical evidence that the junction is inherently hazardous by reason of a plethora of activities. Moreover, the appellants' uncontested analysis shows that the junction would be operating within capacity with few queuing problems.
16. Particular concern was raised about right turns out of Cumberland Road. Some residents highlighted the present difficulties of this. At most, the predicted turning proportions indicate that 63 such manoeuvres would take place during the Friday PM peak. However, the signals to the south afford gaps in the traffic and the road is wide enough to enable such turns to be conducted in two parts. I saw examples of vehicles entering the A23 from Cumberland Road at busy times to head southwards. This was accomplished safely although sometimes requiring the 'give and take' that is often necessary in such circumstances. Furthermore, there is no accident record at the junction to suggest that this is a dangerous turn rather than one that is sometimes awkward.
17. Details were given of an accident along the A23 in August 2011 involving a delivery lorry just to the north of the appeal site. This involved a front-to-rear collision when the driver overtook a bus. Although this was serious and the road was closed for nearly 6 hours incidents of this nature are likely to occur from time-to-time along a main arterial route into Brighton. It does not, of itself, indicate that Preston Road is abnormally dangerous.
18. Up to 61 pedestrians were observed crossing Cumberland Road during the vehicular peaks. This is likely to increase as a result of the development and

- the road would also be busier. However, everyone, including any school children, needs to take care when crossing the road and this is a typical situation with no obvious hazards. Therefore account would be taken of pedestrian routes in line with Policy TR8 of the Brighton & Hove Local Plan.
19. Deliveries to Sainsbury's would take place in the car park. The largest lorry would be a 10.7m articulated vehicle that would visit daily. The Council criticises the swept path as "convoluted and highly optimistic" particularly on exit. There would be little margin for error but equally the technical evidence demonstrates that it is feasible and that there would not necessarily be a conflict with the pedestrian island just to the north in Preston Road. However, it is possible that lorries waiting to turn left would sit across the centre line especially as servicing could occur during the morning peak.
 20. That said, the incidence of deliveries would not be high. Moreover, vehicles leaving the site would be moving slowly and because of their size would be readily seen by any drivers seeking to proceed along Cumberland Road or to turn into the site. These arrangements are perhaps not ideal but the Council has rejected the option of servicing directly from Preston Road. However, there could, at times, be something of a hiatus caused by exiting delivery vehicles. This might lead to a brief delay or irritation but the risk of accidents would be very low. There is no clear indication that access from or egress onto the A23 would be unsatisfactory.
 21. In order to facilitate loading and unloading 6 parking spaces would be cordoned off including one for disabled persons. It is anticipated that this would only be required between 0700-0930 hours. In any event, it would be in the interests of any operator to minimise the disruption to customer parking and to ensure that the practicalities of making deliveries worked effectively.
 22. The appellants modelling based on average duration of stay indicates that there should be adequate capacity to meet parking demand (including staff) with a generous tolerance. Consequently it is unlikely that customers or potential customers would be obliged to search for a space in surrounding streets which are heavily parked. Furthermore, there is no other logical reason why drivers visiting the stores would percolate into this residential area since Cumberland Road is the shortest and easiest link onto the A23. The angle of the entrance is also designed to discourage left turns out of the site.
 23. Servicing of the second store would be achieved via the existing loading bay in Lauriston Road immediately to the south. Such vehicles would have to negotiate a 'loop' including Cumberland Road where conflict may occur due to the prevalence of parked cars. However, other premises use the bay which has been designed for this purpose and no doubt other domestic delivery vehicles enter these streets from time to time. Furthermore, deliveries would be infrequent. Therefore neither this nor the potential 'overspill' of vehicles from the food store would lead to a serious deterioration in safety for these roads.
 24. Clearly the proposal would increase traffic levels but there are no factors which show that the degree of risk would be unacceptably high as a result. So in view of all of the above the proposal would not harm highway safety in Preston Road and surrounding residential roads. As the danger to users of adjacent pavements, cycle routes and roads would not be increased there would be no conflict with Local Plan Policy TR7. Similarly there would be no adverse impact on transport so that Policy TR1 would be complied with in this respect.

Living conditions

25. The limited number of deliveries to the pet store from Lauriston Road would be unlikely to lead to a noise nuisance. Such objections are nevertheless raised about the proposed food store.
26. As part of the application the appellants carried out a Delivery Noise Assessment (DNA). This identified 4 sensitive receptors nearby and assessed noise intrusion with windows open and closed and compared predicted noise ratings from deliveries with background noise. None of the technical assumptions have been challenged and following a further assessment it is also accepted that noise levels from traffic and car parking would be imperceptible and therefore not problematic in themselves. Since customer vehicles would be unlikely to enter the residential streets to the west a general reduction in the peaceful living environment within them would not occur.
27. However, some houses are near to the car park where servicing would take place. The timing of deliveries could be controlled by condition and would not take place between 2300 and 0700 hours which is defined as night time by Planning Policy Guidance Note 24: *Planning and Noise*. According to the technical guidance there would therefore be no sleep disturbance. However, deliveries would take place every day of the week so there would be no respite from them. In particular, they would occur in close proximity to the rear facing rooms of 1 Cumberland Road.
28. The DNA presented a typical and worse case scenario. Based on the hour by hour BS4142:1997 *Rating Industrial Noise Affecting Mixed Residential and Industrial Areas* methodology typical case noise rating levels from HGV deliveries are predicted to be at or below background noise levels. However, they would be exceeded at 1 Cumberland Road in the worst case in the early morning and late evening on weekdays and Saturdays and for much of Sunday. Similarly with windows open and in the worst case internal noise levels at No 1 would exceed the BS8233: 1999 *Sound Insulation and Noise Reduction for Buildings – Code of Practice* 'good' target' of 30 dB LAeq and the World Health Organisation recommendation of 45 dB LMax. However, this would not arise in the typical case.
29. The distinction between the worst and typical case is explained by the operator undertaking more stringent management measures to minimise noise. These are set out in the Service Yard Management Plan. However, some of the steps to be taken are somewhat vague with references made, for instance, to engaging gears quietly. At the hearing more specific actions were mentioned such as turning off chiller units in advance and the use of rubber mats that might have a greater impact on mitigating both continuous and sudden sounds.
30. The situation is, therefore, that deliveries have the potential to cause disturbance to the occupiers of No 1. In particular, the sharp noise associated with roll cages or other types of banging or crashing have the scope to cause most annoyance. The Council was concerned that deliveries would be likely to coincide with busy times on Preston Road but this would tend to mask any noise connected with the proposal. The relevant targets would only be exceeded in certain circumstances and provided that more detailed measures were included in a Management Plan this could be avoided. The Council's experience of other sites supports the notion that clarity is important.

31. Therefore, subject to the provision of a revised Management Plan, the proposal would not harm the living conditions of adjoining residential occupiers in Cumberland Road and Lauriston Road. As such, there would be no conflict with Policies QD27 and SU10 of the Local Plan which seek to protect amenity and to minimise the impact of noise. The appellants also suggested that a further condition could be imposed specifying a noise level on the boundary with No 1 and that regular reporting could be required. However, given the number of deliveries anticipated and the times they would take place this is not necessary to alleviate the consequences of noise.

Character and appearance

32. The appeal site is within Preston Park Conservation Area. In defining its special character the Character Statement refers to the largely residential use. There are 3 separate areas dating from 1860 onwards distinguished by their age and pattern of development. However, there is no specific mention of the existing premises. As a modern and functional building with open parking the site makes no positive contribution to the significance of the heritage asset. This is the type of situation anticipated by Policy HE9.5 of Planning Policy Statement (PPS) 5: *Planning for the Historic Environment*.

33. The Character Statement does draw a distinction between a reasonably tranquil, domestic character and the very heavy traffic that passes continuously along Preston Road. However, for the reasons given earlier, traffic from the development would be unlikely to enter the network of quiet streets to the west. Even if it did the increase would be marginal so any consequences would not be disruptive.

34. The existing building would be retained in situ and the external works proposed would be minimal so that there would be little physical change to the street scene. The shopfront facing Preston Road could be clear glazed to provide visual interest and there is scope for planting to soften the car park from this direction. It is intended to keep the horse chestnut tree in the footway which adjoins the widened entrance. Although damaged by lightning and of limited arboricultural worth it is valued by residents and is "lovely" when it flowers. Should it prove impossible to keep it 3 new street trees would be planted.

35. The Council maintains that the proposal would change a small scale village neighbourhood into a commercial retail centre as the stores would be larger than the existing units in the parade. However, the site has been used for commercial purposes for many years and historically the petrol filling station on the site was more extensive. Given this and the other factors mentioned above the effect on the character of the area would be insignificant.

36. It is also argued that the proposal represents a "missed opportunity" to re-develop the site in a way that responds more positively to the urban grain. PPS5 refers to this as "place-shaping". However, whatever the development economics the site is not identified in the Character Statement or the development plan as one where change should take place in order to better reveal the significance of the conservation area. As such, no express long-term planning objectives would be thwarted. Furthermore, as the existing building would be re-used the appearance of the locality would be largely unchanged.

37. As such, the proposal would not detract from but would preserve the character and appearance of the Preston Park Conservation Area. Because of the nature

of the development it would also be in accordance with the design aspirations for neighbourhoods of Local Plan Policy QD2.

Vitality and viability

38. The overarching objective set out in PPS4: *Planning for Sustainable Economic Growth* is sustainable economic growth. Amongst other things, the Ministerial Statement on 'Planning for Growth' of March 2011 underlined that this is the Government's top priority. Moreover, significant weight should be given to the need to secure economic growth and employment.
39. The appellants have made an assessment of capacity within a 1km catchment area around the appeal site using population and expenditure data from Experian MM3. Despite the absence of specific local surveys this is a reputable information service competent at providing small area statistics. The qualitative impact of the proposal has also been considered and a sequential assessment of alternative available sites undertaken.
40. The short commercial parade nearby is not designated as a local shopping centre in the Local Plan and most of the premises are not in retail use. PPS4 confirms that small parades of shops of purely neighbourhood significance are not regarded as centres for its purposes. However, an off-license and newsagents are close to the proposed stores and slightly further away is a delicatessen. The Council is mainly concerned about these nearby retail units.
41. Policy SR2 of the Local Plan stipulates that new retail development beyond the edge of existing established shopping centres will only be permitted in certain circumstances. This broadly coincides with the approach set out in Policy EC17 of PPS4. Criterion (c) refers to providing an outlying neighbourhood with a local retail outlet for which a need can be identified. Whilst referring to the surrounding area of Preston as "outlying" might be stretching it in geographical terms there is significant expenditure surplus for top-up shopping within the catchment. Given also that PPS4 removed the requirement to demonstrate need there is not a fatal policy objection in this respect.
42. There is also an expectation that the tests within Policy SR1 are met. This indicates that there should not be detriment to the vitality or viability of existing parades. The wording of this is ambiguous since parades are not a type of defined shopping centre in the Local Plan. Nevertheless, by significantly increasing the retail floorspace and footfall near to existing businesses it seems likely that the proposal would generally bolster and boost their fortunes rather than diminish them.
43. However, the misgivings about the specific consequences for the off-license and newsagents are understandable. The appellants predict that the trade draw from each would be no more than a little over 2%. The explanation for this low figure is not convincing given the similarity between the goods sold and those that would be on offer at a Sainsbury's Local. It was accepted that there is no scientific way to calculate this impact. The PPS4 *Practice guidance on need, impact and the sequential approach* observes that the best evidence is likely to be of similar developments in similar circumstances elsewhere.
44. The officer report refers to a Tesco store in Hove, 2 Co-op stores at Seven Dials and a Waitrose in Western Road where smaller newsagents and food stores operate in close proximity. A Sainsbury's Local was highlighted in Portland Road, Hove. Since it opened in spring 2010 2 independent stores within 0.5km

have shut and 3 others are said to be seriously impacted. However, Portland Road is a much larger centre and whether the closures can be laid solely at the door of the Sainsbury's Local is uncertain. Furthermore, there are still 12 convenience stores within a 0.5km radius including some directly adjacent to it. However, the newsagents in the parade opposite Tesco Express at Dyke Road is empty and this situation is a closer parallel to that in Preston Road.

45. Therefore the possibility of the nearby off-license and newsagents being forced to close down cannot be discounted. In planning terms the importance to be given to this eventuality is limited as the parade is not a designated local centre. In addition, it is not the purpose of the planning system to protect individual traders. Indeed, PPS4 explains that the Government wants competition and enhanced consumer choice and does not distinguish between small, locally-run businesses and national companies. As far as provision is concerned the proposal would be a ready replacement thereby at least maintaining the range of services to the community.
46. The evidence is therefore that it is by no means certain that existing Class A1 uses would close if the proposal went ahead. However, even if this did happen, the impact on the vitality and viability of the parade as a whole would be insignificant. Hence there would be no conflict with criterion a) of Policy SR1.
47. The policy also indicates that development should be appropriate in scale with the centre which it is intended to serve. Strictly speaking, this provision does not apply since this is not a local centre. However, the concern is that the proposal would effectively operate as a self-contained out-of-centre store. Whilst the new stores would be larger than the existing units in the parade they would nonetheless be small in terms of general retail impact given the 'cut off' of 2,500 sq m in PPS4.
48. That said, the proposal would become the focal point of the locality as only around 20% of store turnover would be drawn from pass-by trade by those from outside the catchment. This is not the same as the assumption that 50% of trips to the site would be undertaken by people living locally but already on the road network. Therefore the proposal would be unlikely to become a separate 'destination' for those residing beyond the immediate area.
49. Criterion c) of Policy SR1 expects development to be genuinely accessible by a choice of means of transport. It is predicted that about 50% of customers would arrive on foot so that non-car use would be high. Because of the steep valley sides to Preston Road residents near to the site may well currently drive to the nearest top-up stores at Dyke Road, Droveway or Preston Drove. As a result there might be a modal shift from car to walking as custom is diverted. Moreover, the proposal would make it easier for the less mobile to access convenience shopping. Overall there would be benefits in terms of accessibility and in meeting the needs of the entire community in line with PPS4.
50. As there would also be no conflict with criterion d) in relation to highway danger, unacceptable traffic congestion and environmental disturbance the proposal would accord with Local Plan Policy SR1 and, in turn, Policy SR2.
51. In terms of PPS4 there are currently no appropriate vacant sites within the 1km catchment area. As such the sequential approach has been complied with and neither is there clear evidence that the proposal would lead to significant adverse impacts in terms of any of those set out in Policies EC10.2 or EC16.

There is nothing to suggest that the proposal would contribute towards a greater cumulative effect and so it would comply with Policy EC17. Indeed, it would create 25-30 local jobs.

52. PPS1: *Delivering Sustainable Development* stresses that community involvement is vitally important to planning. The enactment of the Localism Act on 15 November 2011 has brought the requirement for developers to consult local communities before submitting applications of specified descriptions of development a step closer. If that process had been undertaken it would have been unlikely to alter the strong but divergent opinions expressed. There are those who simply do not want the proposal near to them but also those who take a different view. The thoughts of most people within the catchment area are unknown. The lack of engagement in this case is therefore unfortunate but not decisive in the determination of the appeal.
53. The main objections are directed towards the proposed Sainsbury's Local but I have considered the proposal for 2 new stores holistically. Having done so, it would not adversely affect the vitality and viability of the nearby parade and would accord with the development plan and Government policy aims in PPS4.

Other matters

54. With regard to air quality the significance of the effects of the proposed development with respect to nitrogen dioxide exposure would be in the range 'slight adverse' to 'negligible'. As such, it would not be contrary to relevant planning policies.
55. There is no compelling evidence to link local convenience stores with crime or vandalism and alcohol sales already take place from the nearby parade. Consequently little weight should be given to these fears.
56. The highway works covered in the undertaking involve various changes in Cumberland Road and Lauriston Road to reflect the revised access arrangements. These include amendments to signage and road markings and works to footways. In addition, a bollard would be sited on the northern corner of Cumberland Road and Preston Road. All of these, together with the contingency sum for tree planting, are directly related to the development and are necessary to make it acceptable.
57. A further contribution of £17,000 would be paid towards a real-time information board for the bus stop immediately outside the appeal site and for REACT boxes for both the northbound and southbound stops in Preston Road. Nobody at the hearing was able to explain the purpose of the latter. Preston Road may well be a key bus route but the proportion of those expected to visit the stores by bus is miniscule. There is no evidence to show how the development would give rise to a need for extra facilities to be provided. As there would be no unacceptable impact on transport there would be no conflict with Local Plan Policy TR1. Consequently this part of the obligation is unnecessary and should not be taken into account.

Conditions

58. In considering the suggested conditions I have had regard to Circular 11/95 *The Use of Conditions in Planning Permissions* and have modified the wording where necessary in the interests of clarity and brevity.

59. Some, but not all, details of external materials and finishes of the proposed alterations are shown on the drawings. Given the location of the site within a conservation area further information about them and of hard surfacing should be secured. For similar reasons details of landscaping should be given and the works around the entrance properly monitored by an arboriculturalist to give the horse chestnut the best chance of survival. As mentioned earlier, the glazing along Preston Road should be kept clear. To facilitate minor material amendments a condition listing the approved plans should be imposed.
60. In order to safeguard the vitality and viability of the parade and to reflect what has been applied for limitations should be imposed on the proposed retail units. To protect the living conditions of those nearby it is necessary to control delivery times, to update the Service Yard Management Plan, to restrict noise from plant and machinery and to preclude customer access to Unit 2 from Lauriston Road. Any contamination identified unexpectedly should be dealt with to protect public health. The parking spaces and cycle stands should be provided to ensure that the proposed arrangements function as they should.
61. The Council sought to impose a condition closing the units to customers by 2200 hours but there is no evidence to support this. The proposal has been based around a closure of 2300 hours. It may be that the pet store would not be open for all of this time but that is not a reason to restrict it. However, it is not expected to open until 0900 hours and such a limitation should be included as it would potentially relieve parking pressure at a time when deliveries to Unit 1 are most likely to occur.
62. Given the other conditions a separate restriction on open storage is not necessary. Similarly the implementation of the proposed parking layout would prevent vehicular access from the A23 so a further condition in this respect is superfluous. There is ample scope within the units for refuse and recycling facilities so that a condition requiring such details is not justified.

Conclusions

63. The proposal would not harm highway safety, the living conditions of adjoining residential occupiers or the vitality and viability of the nearby parade and would preserve the character and appearance of the conservation area. It would accord with the development plan and there are no other considerations, including the representations against the scheme from local people, which outweigh these findings. Therefore, for the reasons given, the proposed development is acceptable and the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos SSLBRIGHTON(LOCAL).1/14D, 905_457/301C and 305M.
- 3) No development shall take place until details of the external materials and finishes to be used in the alterations hereby permitted and of any hard surfacing of the car park have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Unit 1 hereby permitted shall not be open to customers except between 0700 and 2300 hours. Unit 2 hereby permitted shall not be open to customers except between 0900 and 2300 hours. No other activity shall take place at the site between 2330 and 0630 hours.
- 5) No deliveries shall be taken at the site except between 0700 and 2100 hours on Mondays to Saturdays and between 0900 to 1700 hours on Sundays and Public Holidays. All deliveries for Unit 1 shall be carried out within the car park shown on drawing no SSLBRIGHTON(LOCAL).1/14D.
- 6) No development shall take place until a revised Service Yard Management Plan including measures to minimise noise during deliveries has been submitted to and approved in writing by the local planning authority. All deliveries shall be carried out in accordance with the approved Plan.
- 7) If, during the course of development, any contamination is found which has not previously been identified then measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures.
- 8) Noise from plant and machinery shall be controlled such that the rating level measured or calculated at 1m from the façade of the nearest existing noise sensitive premises shall not exceed a level 5dB below the existing LA90 background noise level.
- 9) The retail units hereby permitted shall operate as two independent units at all times and shall not be sub-divided. The sales floor area shall not exceed 280 sq m for Unit 1 and 261 sq m for Unit 2 and no mezzanine floorspace shall be created.
- 10) Unit 2 hereby permitted shall only be used for the sale of comparison goods and ancillary storage and for no other purpose including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Comparison goods are defined as books, clothing and footwear, furniture, audio-visual equipment, household appliances and other electrical goods, hardware and DIY supplies, chemist's goods, jewellery, watches and clocks, non-durable household goods, pet and garden supplies and recreational goods.

- 11) The service doors on the southern and western elevations of Unit 2 hereby permitted shall be used solely for service and delivery access.
- 12) No development shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority, which shall include details of any existing trees and hedgerows to be retained and of any boundary treatments. All approved planting and other works shall be carried out in accordance with a timetable previously agreed in writing by 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, unless the local planning authority gives written approval to any variation.
- 13) No works to widen the site entrance from Cumberland Road shall commence until an independent arboricultural consultant has been employed and details forwarded to the local planning authority. This person shall be present throughout all works to the site entrance to supervise the protection of the adjacent horse chestnut tree.
- 14) The development hereby permitted shall not be open to customers until the parking spaces, vehicle circulation area, vehicular access/egress onto Cumberland Road and cycle hoops have been provided in accordance with drawing no SSLBRIGHTON(LOCAL).1/14D. Thereafter the spaces, circulation area and hoops shall be retained and kept available at all times for their intended purposes.
- 15) The windows on the Preston Road frontage shall be fitted with clear glazing which thereafter shall be retained and kept unobstructed at all times.

APPEARANCES

FOR THE APPELLANTS:

Mr S Birrell	Associate Director, WYG Planning & Design
Mr K Malkin	Senior Planner, WYG Planning & Design
Mr A Brown BA CMILT MIHT	Mayer Brown Limited
Mr N Mann MIOA	WYG Environment

FOR BRIGHTON & HOVE CITY COUNCIL:

Cllr I Davey	Deputy Leader and Cabinet Member for Transport and Public Realm
Cllr A Kennedy	Deputy Leader and Cabinet Member for Planning and Regeneration
Mr A Smith	Planning Officer
Ms N Hurley BA (Hons) MTP MRTPI	Area Planning Manager

LOCAL RESIDENTS:

Mrs B Weatherstone

Mr J Goodman

Ms J Longhurst

Mr R Gotham

Mr G Thompson

Mr T Malone

Mr S Clark

Ms M Kelly
LLB Hons Barrister-at-Law

Ms S Hope

Mr H Khalil

Ms I Lindsten

Mr J Clemas

Mr G Smith

DOCUMENTS

- 1 Unilateral undertaking dated 7 November 2011
- 2 WYG Environment Air Quality Assessment October 2011
- 3 Local authority transport statistics
- 4 Photographs of accident on 6 August 2011 submitted by Mr Gotham
- 5 Catchment diagram submitted by Mr Gotham
- 6 1000m walk isochrome submitted by the appellants
- 7 Local store provision plan submitted by the appellants
- 8 Historic photographs of the appeal site submitted by the appellants
- 9 Proposed internal layout submitted by the appellants
- 10 Note on Traffic Numbers dated 14 November 2011
- 11 Council's response to Air Quality Assessment
- 12 Extract from the Local Plan Proposals Map showing local shopping centres
- 13 Brighton and Hove store provision plan submitted by the appellants
- 14 Commentary on stores at Carden Avenue, Portland Road and Western Road
- 15 Letter of 17 November 2011 confirming application for costs