

<b><u>No:</u></b>	<b>BH2010/03696</b>	<b><u>Ward:</u></b>	<b>QUEEN'S PARK</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>6 - 8 St James's Street, Brighton</b>		
<b><u>Proposal:</u></b>	<b>Installation of acoustic panelling to fixed freezer unit and waste storage area within service yard. Removal of Dawson's chiller unit and storage containers. Removal of existing palisade fencing and erection of new acoustic fencing and gates to service yard.</b>		
<b><u>Officer:</u></b>	Chris Swain, tel: 292178	<b><u>Valid Date:</u></b>	19/01/2011
<b><u>Con Area:</u></b>	East Cliff and adjoining Valley Gardens	<b><u>Expiry Date:</u></b>	16 March 2011
<b><u>Listed Building Grade:</u></b>	N/A		
<b><u>Agent:</u></b>	PW Davis Architects, Unit 7B, Estate Yard, Harewood, Leeds		
<b><u>Applicant:</u></b>	Wm Morrisons Supermarket Plc, Hilmore House, Gain Lane, Bradford		

This application was deferred at the last meeting on 14/03/12 for a Planning Committee site visit.

## 1 RECOMMENDATION

That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and the policies and guidance in section 7 of this report and resolves to **GRANT** planning permission subject to the following Conditions and Informatives.

### Regulatory Conditions:

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.  
**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
- 2) The development hereby permitted shall be carried out in accordance with drawings No. 09109-PL106 and 09109-PL-105, a Design and Access Statement, a Waste Management Statement, a Heritage Statement and an Acoustic Report (dated 25 November 2010) received on 26 November 2010, an acoustic report (dated 4 March 2011) received on 23 March 2011, and drawing No.09109-PL112-Rev D received on 11 January 2012.  
**Reason:** For the avoidance of doubt and in the interests of proper planning.
- 3) Within 30 days of the grant of this planning permission the external surfaces of the existing freezer unit shall be fully clad in accordance with the specification set out in the second paragraph of the submitted Acoustic Report by Belair Research Limited dated 4<sup>th</sup> March 2011. The cladding shall be retained as such thereafter.  
**Reason:** To safeguard the amenities of the locality and to comply with

- policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.
- 4) The delivery bay (including freezer unit and bin store) shall only be accessed by members of staff or vehicles between the hours of 07.00-20.30 on Mondays to Saturdays and Bank Holidays and between the hours of 09.00-16.00 on Sundays. The gates to the delivery bay hereby approved shall only be open during these hours.  
**Reason:** To safeguard the amenities of the locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.
- 5) No development shall take place until samples of the materials (including colour of paintwork) to be used in the construction of the external surfaces of the fencing/cladding hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.  
**Reason:** To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan.
- 6) Within 30 days of the grant of this planning permission the existing Dawson's chiller and the external container units shall be permanently removed from the service yard unless expressly agreed in writing by the Local Planning Authority.  
**Reason:** To safeguard the amenities of the locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

Informatives:

1. This decision to grant Planning Permission has been taken:

- (i) having regard to the policies and proposals in the Brighton & Hove Local Plan set out below, including Supplementary Planning Guidance and Supplementary Planning Documents:  
(Please see section 7 of the report for the full list); and
- (ii) for the following reasons:-  
The proposed development is not considered to detract significantly from the appearance or character of the site or the wider East Cliff and Valley Gardens Conservation Areas. The proposal is not considered to impact significantly on the residential amenity of neighbouring properties.

**2 THE SITE**

This application relates to the unloading bays/service area located in the north-west corner of Morrisons car park, which is accessible via Dorset Street to the north. The car park is an open tarmaced area and is situated above the retail floorspace of the store. The rear service yard is flanked to the west by St James's Place and Parochial Terrace/Parochial Mews, to the north by Dorset Mews and Dorset Street and to the east by George Street. The supermarket and wider car park site are located within the East Cliff Conservation Area and immediately adjacent to the Valley Gardens Conservation Area.

**3 RELEVANT HISTORY**

**BH2010/03717:** Variation of condition 5 of permission BN84/0222/F (Erection

of supermarket complex comprising of 1no floor of retail space with 1no level of open car parking for 96 cars) for delivery hours to be extended to 07.00 to 20.30 on Monday to Saturday (including Bank Holidays) and 09.00 to 16.00 on Sunday. Currently under consideration and reported elsewhere on the agenda.

**BH2009/02764:** Removal of existing palisade fencing and erection of new fencing and gates to service yard. Withdrawn 5 July 2010.

**BH2009/02750:** Installation of 2No. storage containers and 2no. chiller units in rear storage yard (retrospective). Withdrawn 5 July 2010.

**BH2001/02097/FP:** Variation of Condition 5 to allow permanent use of site for deliveries and use of unloading bays. Granted 22/11/01 for a temporary period of 7 months to assess the effects on a newly built residential development located adjacent to the loading bays and to assess if Safeways could adhere to their specified time.

**BH2001/001763FP:** Variation of Condition 5 of planning permission BN84/0222/F to allow deliveries to the store on Sundays between the hours of 09.00am and 16.00pm. Approved 30 April 2003.

**BH1998/02590/FP:** Variation of Condition 5 of permission BN84/0222/F to allow for service deliveries and use of the unloading bays on Sundays and Bank Holidays between 09.00am and 16.00pm Granted 16/02/99 for a temporary period of 6 months.

**BN84/0222/F:** Erection of supermarket, approved in April 1984, with Condition 5 attached relating to deliveries and the use of the unloading bays to take place between the hours of 07.00am and 19.00pm Monday – Saturday, and at no other time.

#### 4 THE APPLICATION

Planning permission is sought for the installation of storage containers incorporating sound insulated panelling and the removal of the Dawson's chiller unit from service yard. Removal of existing palisade fencing and erection of new acoustic fencing and gates to service yard.

There is a current planning enforcement investigation into noise nuisance from the freezer unit and the Dawsons's chiller unit and the unauthorised installation of palisade fencing to the north of the site. The approval of this application should address these concerns.

#### 5 CONSULTATIONS

##### External

**Neighbours:** Letters of representation have been received **from No.15 Dorset Mews and Nos. 18 and 19 George Street** objecting to the application for the following reasons:

- Adverse visual impact of fencing,
- Overbearing impact and loss of light/overshadowing,
- Concern expressed over noise from freezers/chillers,
- Gates will create noise problems when open,
- Noise will travel over fence gates to nearby bedrooms,
- Heavy gates will make noise when opening/closing,

- Delivery lorries are a source of noise disturbance,
- Fence/gate may make access for delivery vehicles more difficult.

**Cllr Fryer** objected to the proposal (comments attached).

Whilst Cllr Fryer is no longer a Ward Councillor for Queen's Park, the three current Ward Councillors, **Cllrs Bowden, Duncan and Powell** have agreed to uphold the original comments and have requested that the application be heard at Planning Committee if the recommendation is for approval.

**Internal:**

**Heritage Team:** This is a parking/service area within the East Cliff Conservation Area. Due to its use and the lack of any attractive screening it is not an area which makes a positive contribution to the character of the conservation area.

This is a proposal to enclose a part of the open area with high security fencing. The proposed fencing is very tall and it is suggested that a slight reduction to 2.5 m high would make a less imposing impact on the site. As the use and general appearance of the area does not currently contribute to the historic area in a positive way, it is considered that subject to the proposed amendment the fencing will not significantly worsen the effect of this space on the conservation area.

**Environmental Health:**

Original Comments – 23 February 2011.

Drawing 09109 – PL107 in elevation G makes reference to the Dawson Chiller. It is understood this was to be removed

The walk in freezer unit detailed on the plan has been the subject of noise complaints and a noise abatement notice was served relating to the noise from the plant serving the unit. It is acknowledged that some noise mitigation measures have been introduced and reduced the noise coming from the unit. However, further noise mitigation measures are still needed. It is understood that sound insulation material was proposed on the roof of the unit. This is not detailed on any drawings or plans. It is noted that 18mm acoustic buffalo boarding will be used which is a good mitigation measure. However, residents in George Street who have complained about noise from the unit overlook the site and their houses sit above the site so they overlook the roof of the freezer. They will therefore be affected by noise breaking through the roof. Screening alone using buffalo fencing is not sufficient to protect the George Street residents. The application should include an acoustic report demonstrating that the operation of the freezer can achieve at least 5 dB(A) below background at the nearest residential premises. This unit operates 7 days a week and 24 hours a day.

Even though the chiller unit and dry storage units are to be removed they are being replaced by a bin store and waste cupboard storage unit. Staff

accessing the bin store and collection lorries accessing the stores can all impact on the resident in the adjoining house at 15 Dorset Mews. Conditions are recommended to address the following issues:

- Times restricting the use of the bin store and cardboard store;
- Times restricting the use of the service bay area created by the fencing and gate; and
- Times restricting the collection times from the bin store and cardboard store.

Revised comments – 22 June 2011.

The chiller and dry storage units will be removed. These have been the subject of complaint and the noise from the chiller unit has been the subject of a noise abatement notice.

The specification for additional cladding detailed in the Belair Research Ltd letter dated 14<sup>th</sup> March 2011 confirms that noise from the operation of the freezer unit will be reduced to 33dB(A) or less at the nearest dwellings. This cladding specification needs to be added to the plans for this application. A noise abatement notice was served in relation to noise from the freezer unit and some work was done to reduce this noise. Complaints are still being made about noise from the freezer and the additional cladding is required to reduce the noise impact of this unit.

Recommend the use of the delivery bay, and access to the bins, and waste collection bins, and gate opening times to be all restricted to the delivery times.

**Sustainable Transport:** No objection.

## **6 MATERIAL CONSIDERATIONS**

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

The development plan is the Regional Spatial Strategy, The South East Plan (6 May 2009); East Sussex and Brighton & Hove Minerals Local Plan (1999); East Sussex and Brighton & Hove Waste Local Plan (February 2006); Brighton & Hove Local Plan (21 July 2005).

## **7 RELEVANT POLICIES & GUIDANCE**

Planning Policy Guidance Notes (PPGs):

PPG 24: Planning and Noise

Brighton & Hove Local Plan:

TR7 Safe development

QD1 Design – quality of development and design statements

QD2	Design – key principles for neighbourhoods
QD14	Extensions and alterations
QD27	Protection of Amenity
SU9	Pollution and noise control.
SU10	Noise nuisance
HE6	Development within or affecting the setting of conservation areas

## 8 CONSIDERATIONS

The main considerations in the determination of this application relate to the visual impact of the proposed development upon the character and appearance of the site, the surrounding East Cliff Conservation Area and the adjoining Valley Gardens Conservation Area and the potential of noise disturbance upon the adjoining residents.

### **Policy Context:**

Planning Policy Guidance: Planning and Noise (PPG24) outlines national policy on noise issues. Paragraph 19 of Annex 3 states that:

*“The likelihood of complaints about noise from industrial development can be assessed, where the Standard is appropriate, using guidance in BS 4142: 1990. Tonal or impulsive characteristics of the noise are likely to increase the scope for complaints and this is taken into account by the “rating level” defined in BS 4142. This “rating level” should be used when stipulating the level of noise that can be permitted. The likelihood of complaints is indicated by the difference between the noise from the new development (expressed in terms of the rating level) and the existing background noise. The Standard states that: “A difference of around 10dB or higher indicates that complaints are likely. A difference of around 5 dB is of marginal significance.” Since background noise levels vary throughout a 24 hour period it will usually be necessary to assess the acceptability of noise levels for separate periods (e.g. day and night) chosen to suit the hours of operation of the proposed development. Similar considerations apply to developments that will emit significant noise at the weekend as well as during the week. In addition, general guidance on acceptable noise levels within buildings can be found in BS 8233: 1987, and guidance on the control of noise from surface mineral workings can be found in MPG 11.”*

Paragraph 12 of PPG24 states that the hours when people are normally sleeping are 23.00-07.00.

Policies SU9, SU10 and QD27 of the Brighton & Hove Plan seek to ensure that development does not cause noise nuisance and does not cause harm to neighbouring amenity. Policies QD1, QD2 and QD14 seek to ensure a high level of design whilst policy HE6 looks to ensure any development preserves or enhances the appearance and character of the conservation area.

### **Appearance and Design:**

The application relates to alterations to the service/delivery yard, located to



the north of the supermarket. Planning approval is sought for the existing freezer unit adjacent to the eastern elevation of the Morrisons delivery building to the rear of the wider car park site. The freezer unit is 8.4m in length, 3.8m in width and 2.3m in height. The existing palisade fencing and the solid masonry wall are to be replaced with a 3m high acoustic fence that fully encloses the freezer unit. The roof of the freezer unit will also be enclosed in acoustic cladding.

To the north west corner of the site, a 9.5m by 4.5m area is to be used for bin storage. The proposed bin storage area would be accessed from the south and enclosed in 3m high acoustic fencing. The existing Dawson's chiller unit and the two container units are to be removed.

The proposed 3m high acoustic fencing would extend north from the east facing elevation of the existing freezer unit to within 2.3m of the retaining wall, adjacent to the closest property on Dorset Mews (No.15). The fencing would then run westwards and adjoin the proposed fencing enclosing the bin store. The palisade fencing would be removed and 2m high fencing would enclose the existing access steps. Access to the service yard from the car park would be via sliding gates within the eastern elevation of the fencing. There would also be a pedestrian gate to the northern end of this elevation.

The existing service yard and wider car park area have little townscape merit and whilst the fencing, taken as a whole, would be a dominant feature within the site, it would screen the freezer unit and bin storage from views from the public domain and provide separation from the existing car park. That said, the height, in conjunction with the solid nature of the black painted, metal fencing would result in a somewhat stark and functional appearance that would detract from the appearance and character of the conservation areas.

The Heritage Team have stated that whilst the existing parking/service area does not make a positive contribution to the character of the conservation area the proposed fencing is very tall and would have an imposing impact on the site. A reduction in height to 2.5m is suggested to ensure that the proposal will not significantly worsen the effect upon this space within the conservation area.

**Impact on Amenity:**

The wider site is in use as car park open to both Morrisons customers and the general public. There is a high level of vehicular and pedestrian movements within this built up urban area and the application has been assessed against this background.

The specification for additional cladding to the freezer unit, confirms that noise from the operation of the freezer unit will be reduced to 33dB(A) or less at the nearest dwellings. This would be within 5dB(A) of the background noise level.

The proposed acoustic fencing separating the delivery area from the public

car park and enclosing the bin store and freezer unit is considered to satisfactorily mitigate against potential noise disturbance from the freezer unit and the bin store to residential dwellings to the west, (St James's Place and Parochial Terrace), to the north (Dorset Mews and Dorset Street) and to the east (George Street). Whilst it is acknowledged that during deliveries the sliding gates would be open and thus reduce the sound proofing qualities of the acoustic fencing to a degree it would still be an improvement on the existing situation where there is no fencing. A condition is recommended to stipulate that the use of the service yard area, as well as the operating of the sliding gates shall be confined to the agreed delivery hours. This should mitigate against any significant harm to the residential amenity of neighbouring properties with regard to noise disturbance.

The Environmental Health Team is satisfied that the acoustic fencing around the freezer compound in conjunction with the acoustic cladding to the roof and sides of the unit will offer adequate mitigation against potential noise disturbance to adjoining properties and will ensure that noise disturbance to the nearest residential windows will be within 5dB of background noise levels (set out in BS 4142: 1990) and thus accord with the guidance set out in PPG24. The Environmental Health Team are also satisfied that the proposed acoustic fencing will also reduce the potential noise disturbance for more general activities within the enclosed service yard area.

Revisions to the height of the fencing have been secured to ensure that there is not any significant impact upon the residential amenity of the adjoining property to the north, No.15 Dorset Mews. The closest section of fencing (enclosing the existing stairwell) has been reduced to 2m with the main 3m high fencing set back approximately 2.3m from the retaining wall. These revisions ensure that the proposed fencing does not result in any significant loss of light or outlook or any overshadowing to the front elevation of No.15. It is noted that the two windows to the south facing side elevation of the property serve the internal stairwell and there is not considered to be any significant impact to this elevation with regard to loss of light or overshadowing. The fencing is set away from the rear of the property and there is not considered to be any significant impact to the rear garden.

The main bulk of the proposed fencing would be screened from views from the front elevation and garden of the property by the existing substantial retaining wall and given that the positioning of the 3m high fencing has been set back from the property, on balance is not considered to result in a significantly overbearing impact to No.15. Similarly the fencing is not considered to be a significant visual intrusion.

As stated above, the Heritage Team suggest a reduction in height of the fencing to 2.5m. The acoustic report received on 23 March 2011 assessed two different scenarios with fencing at both 2.5m and 3m in height. There was a 5dB(A) attenuation at 2.5m at the nearest noise sensitive windows as opposed to 10dB(A) using a 3m fence. It is considered that, whilst a 2.5m



high fence would reduce the impact of the proposal upon the appearance and character of the conservation areas it would also significantly reduce the effectiveness of the fence as an acoustic barrier and, on balance, and given the history of noise complaints the 3m high fence is considered acceptable. Furthermore, it is noted that the existing unauthorised palisade fencing would be removed from the site and the enclosure around the access steps at the northern end of the site would be reduced to 2m in height and this will lessen the impact of the proposed fencing in views from the public domain.

**Sustainable Transport:** It is not considered that the proposal would result in any significant detrimental impact to the safety of users of the car park. The Sustainable Transport Team has no objections to the scheme.

**9 CONCLUSION**

The proposed development is not considered to detract significantly from the appearance or character of the site or the wider East Cliff and Valley Gardens Conservation Areas. The proposal is not considered to impact significantly on the residential amenity of neighbouring properties.

**10 EQUALITIES IMPLICATIONS**

None.

BH2010/03696 6-8 ST James's Street, Brighton.



**From:** Geoffrey Bowden  
**Sent:** 14 January 2012 11:14  
**To:** Chris Owen  
**Cc:** Ben Duncan; Stephanie Powell  
**Subject:** Re: Objections

Dear Chris

Good to speak to you yesterday. This message is to confirm that ward councillors would like these two matters to come the planning committee for determination. As you correctly pointed out they are related and should be considered together.

Best wishes

Geoffrey

**CR** Geoffrey Bowden  
Green Party Councillor Queen's Park Ward  
Cabot Member Culture, Recreation & Tourism  
Email: [geoffrey.bowden@brighton-hove.gov.uk](mailto:geoffrey.bowden@brighton-hove.gov.uk)  
Mobile: 07557 97507

**From:** Geoffrey Bowden  
**Sent:** 05 January 2012 18:03  
**To:** Chris Owen  
**Cc:** Ben Duncan; Stephanie Powell  
**Subject:** Re: Objections  
**Importance:** High

Dear Chris

Firstly happy new year and apologies that your message got swept up in the pre-Christmas rush and was consequently overlooked by me. Having seen the original comments from former CR Fryer, my inclination is to trust her judgement and ask for the applications to be referred to the Planning Committee. However, I would like to discuss this with my ward colleagues first before getting back to you with a definitive response in time for your deadline.

Best wishes

Geoffrey

**CR** Geoffrey Bowden  
Green Party Councillor Queen's Park Ward  
Cabot Member Culture, Recreation & Tourism  
Email: [geoffrey.bowden@brighton-hove.gov.uk](mailto:geoffrey.bowden@brighton-hove.gov.uk)  
Mobile: 07557 97507



PLANS LIST – 04 APRIL 2012

**Brighton & Hove** COUNCILLOR REPRESENTATION  
**City Council**

**From:** Rachel Fryer  
**Sent:** 24 February 2011 00:43  
**To:** Chris Swain; Rachel Fryer; Ben Duncan  
**Subject:** Objections

**Hi Chris**

**I'm writing to register my objections to the two applications from Morrisons below and request that if you are minded to grant that the decision be referred to the Planning Committee for consideration:**

**BH2010/03696 : On the grounds that it has caused visual problems for residents of Dorset Mews**

**BH2010/03717:** On the grounds that residents have complained about noise problems created by delivery which will only be made worse by widening the hours of delivery

Best wishes

Councillor Rachel Fryer  
Green Party, Queens Park ward  
Spokesperson for Children, Families and Schools  
Brighton and Hove City Council  
Telephone: 01273 296442