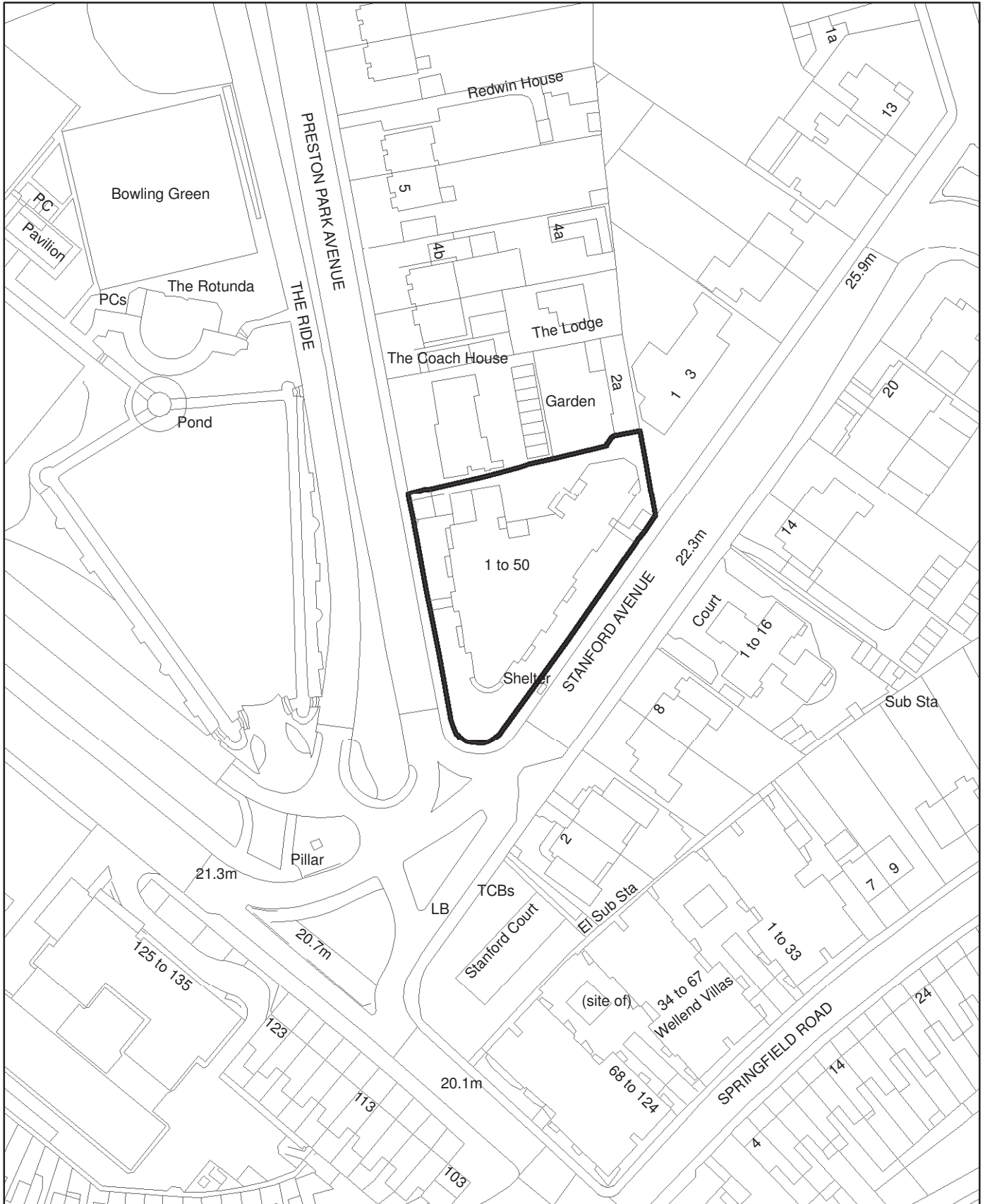


**I-50 Preston Mansions, Preston Park
Avenue, Brighton**

**Request for a variation of s106
25 August 2004 signed in association with
BH2004/00406/FP**

28 AUGUST 2013



**Brighton & Hove
City Council**



Scale : 1:1,250

Subject:	1-50 Preston Mansions, Preston Park Avenue, Brighton Request for a variation of s106 25 August 2004 signed in association with BH2004/00406/FP		
Date of Meeting:	28 th August 2013		
Report of:	Head of Planning & Public Protection		
Contact Officer:	Name: Adrian Smith	Tel: 290478	
	E-mail: adrian.smith@brighton-hove.gov.uk		
Wards Affected:	Preston Park		

1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the s106 Planning Obligation Agreement.

2. RECOMMENDATIONS:

- 2.1 That the Committee resolves to allow the completion of a variation to the s106 planning agreement dated 15th August 2004 relating to 1-50 Preston Mansions, Preston Park Avenue, Brighton to allow residents of the development to apply for residents' parking permits

3. BACKGROUND INFORMATION:

- 3.1 Application BH2004/00406/FP granted planning permission for the redevelopment of the site to provide a part-four part-five storey block of flats comprising 50 units (of which 20 were to be affordable) together with 35 parking spaces (including 5 disabled spaces). Approval was subject to conditions and a Section 106 Obligation to include provision for a car sharing scheme, transport initiatives, and the exclusion of residents from eligibility for parking permits in the event a residents' parking scheme is introduced in the area. At the time the planning application was determined in 2004 there was no controlled parking zone ("CPZ") in place in the relevant area. A CPZ was however subsequently implemented in 2010, having been consulted on in 2009.

4. PROPOSAL

- 4.1 The managing agents for 1-50 Preston Mansions have requested a variation of the s106 attached to application BH2004/00406/FP to remove the requirement for occupants of the development to be ineligible for parking permits.

5. CONSULTATION:

- 5.1 **Sustainable Transport:** No objection.

The Highway Authority has no objections to the proposed variation of the S106 agreement signed in association with planning approval BH2004/00406/FP. As per current legal advice, in order to restrict eligibility of CPZ parking permits, under policy HO7 of the Local Plan, a proposed development needs to be within an existing CPZ. In this scenario this was not the case as no CPZ was

operational from the time the development was approved and occupied. The application was approved and then occupied in late 2006. The extension of CPZ J was consulted upon in 2009 and implemented in 2010.

- 5.2 Given the length of time since the permission being granted and the consultation on a CPZ coming forward it cannot be deemed that making the residents ineligible for parking permits successfully mitigates the impact of the development as approved. Therefore in this case and as per current legal advice the Highway Authority has no objections to the proposed variation of the S106.

6. COMMENT:

- 6.1 The application was granted on 24 September 2004 following completion of a Section 106 agreement that, amongst other provisions, restricted the eligibility of residents for parking permits in the event a CPZ was established around the site. This requirement followed the advice of the Traffic Manager.
- 6.2 The rationale for the clause was based on the scheme providing only 35 onsite parking spaces (5 of which were disabled bays) for a development of 50 residential units in an area identified as already being under significant parking pressure. The applicant's Transport Assessment had sought to address parking concerns by promoting the sustainability of the site location (close to two railway stations, and on main bus and cycle routes) and incorporating a 'car club' scheme into the development. The establishment of the car club was also secured in the Section 106 Obligation.
- 6.3 The development was completed and occupied in 2006.
- 6.4 In 2009 consultation was undertaken for an extension to zone J that included Preston Park Mansions. The extension to zone J was subsequently implemented in 2010, with residents becoming ineligible for parking permits as per the clause in the signed s106.
- 6.5 At the time of approval, completion and occupation the development at Preston Mansions sat outside a CPZ and provided onsite parking for 35 vehicles. The extension to zone J was implemented 4 years after the completion of the development, allowing any overspill parking generated by the development within the surrounding streets to 'bed down'. Given the degree of separation between the completion of the development and the establishment of a CPZ around the site, it cannot be reasonably argued that making residents ineligible for parking permits mitigated the impacts of the development as approved in 2004, as such impacts had already been dissolved into the area. Further, the provision of onsite parking for the development means that the development can not be said to be genuinely car-free as required under policy HO7.
- 6.6 The Councils' Sustainable Transport Team have agreed that the removal of the clause requiring residents to be ineligible for parking permits in the event a Controlled Parking Zone is established around the site is appropriate in this instance given the information above.
- 6.7 Advice has been sought from the Head of Law on the proposed variation and the Senior Planning Solicitor has advised as follows:

- *“Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.*
- *Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.*

6.8 Given the intervening years following the completion of the development and the mitigation of the impact of the development during that period, it is not considered that restricting residents of the development from obtaining parking permits is now reasonable or supportable.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

None identified.

7.2 Legal Implications:

Lawyer Consulted: Hilary Woodward

Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.

7.3 Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.

7.4 Equalities Implications:

None identified

7.5 Sustainability Implications:

None identified

7.6 Crime & Disorder Implications:
None identified

7.7 Risk and Opportunity Management Implications:
None identified

7.8 Corporate / Citywide Implications:
None identified.

8. CONCLUSION

- 8.1 The applicant has applied to vary the signed s106 agreement as set out at 4.1 of this report.
- 8.2 The proposed amendments are considered to be acceptable for the reasons as detailed above.
- 8.3 Therefore, the recommendation is for the s106 agreement be varied to allow residents of the development to apply for residents' parking permits.