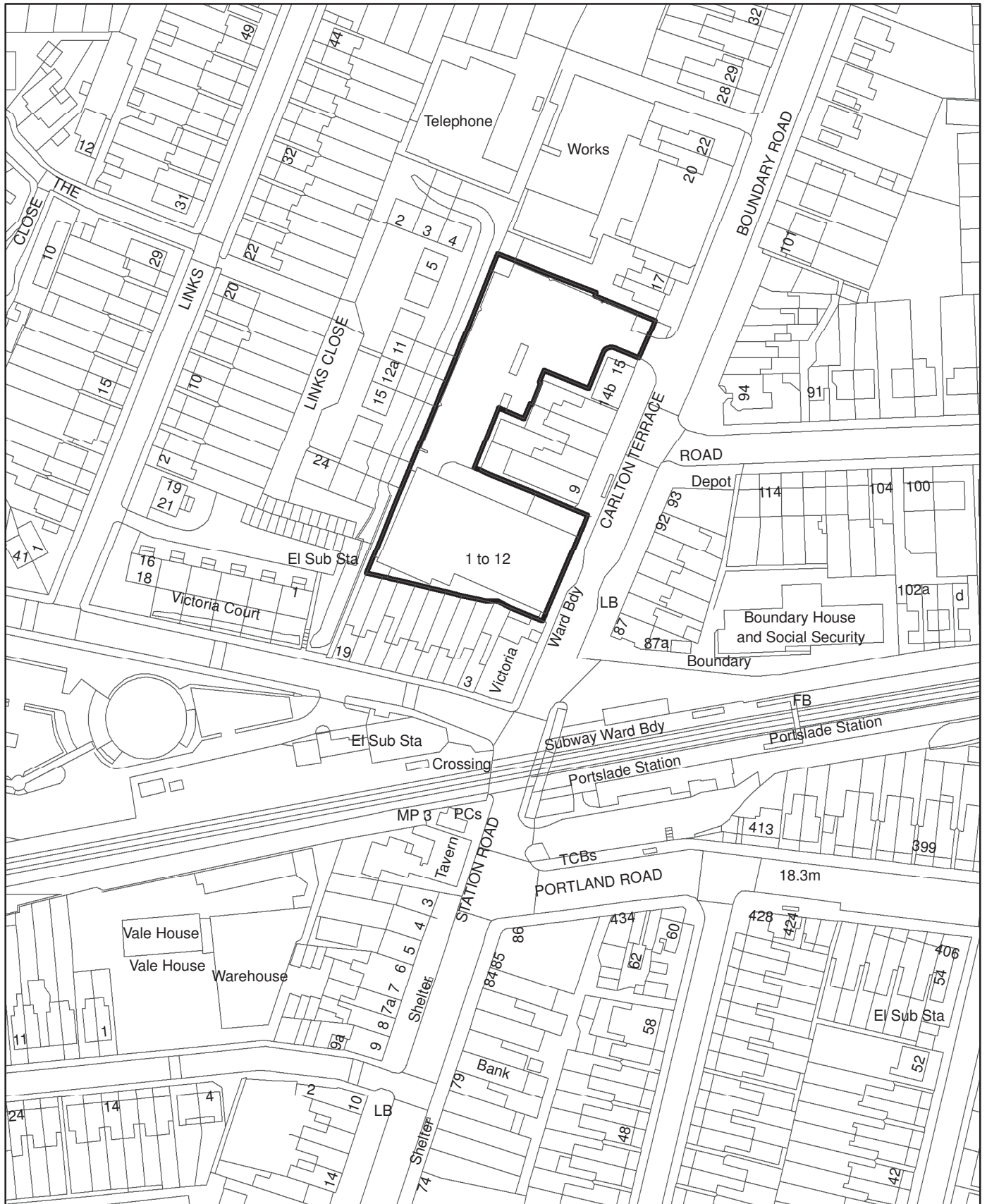


ITEM C

**Aldi Stores Ltd, 7 Carlton Terrace,
Portslade, BN41 1XF**

**BH2013/02050
Removal or Variation of Condition**

BH2013/02050 Aldi Stores Ltd, 7 Carlton Terrace, Portslade



**Brighton & Hove
City Council**



Scale : 1:1,250

<u>No:</u>	BH2013/02050	<u>Ward:</u>	SOUTH PORTSLADE
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	Aldi Stores Ltd 7 Carlton Terrace Portslade		
<u>Proposal:</u>	Application for variation of condition 1 of BH2011/02857 to vary the hours of operation of the store to read: The store shall not be open for trading to the public except between the hours of 0800 and 2100 on Monday to Saturday and 1000 to 1600 on Sundays and Bank Holidays. Staff may be within the premises between the hours of 0700 and 2200 hours on Mondays to Saturdays and 0930 and 1730 on Sundays and Bank Holidays.		
<u>Officer:</u>	Steven Lewis Tel 290480	<u>Valid Date:</u>	17/07/2013
<u>Con Area:</u>	n/a	<u>Expiry Date:</u>	16 October 2013
<u>Listed Building Grade:</u>			
<u>Agent:</u>	Planning Potential Ltd, Magdalen House 148 Tooley Street London		
<u>Applicant:</u>	Aldi Stores Ltd , c/o Planning Potential Ltd Magdalen House 148 Tooley Street London		

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 11 and the policies and guidance in section 7 and resolves to **GRANT** planning permission subject to the Conditions and Informatives set out in section 11.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application relates to the Aldi store located at Carlton Terrace in Portslade. The development consists of 2 buildings. A large detached building comprising of a retail store on the ground floor and 12 residential units above and a smaller detached three storey building comprising of a ground floor shop and 2 flats.

3 RELEVANT HISTORY

BH2013/02049 - Application for variation of condition 12 of BH2011/02857 for a reduction in the free parking allowance to read: The first one and a half hours of parking shall be free of charge for visitors of the Portslade Shopping Centre. – Under consideration

BH2012/04062 - Application for variation of 5 of previously approved application BH2006/00834 (Mixed use development comprising food retail unit & separate shop unit, 14 residential units with associated parking. (Revision of BH2004/00571/FP). Condition 5 to be varied to alter allowed delivery times. Amended condition to read as follows - 'No HGV movements nor any loading or

unloading of vehicles associated with the retail uses hereby permitted shall take place between the hours 20.30 and 07.00 Monday to Saturday. Deliveries on Sundays/Bank Holidays shall be limited to one main delivery and a milk delivery only between the hours of 09.30 and 17.30, with no deliveries outside these hours'. – Withdrawn 14/05/2013

BH2011/02857 - Application for variation of conditions 11 & 12 of application BH2010/01684. Variation of condition 11 to provide 2 car parking spaces for residential use and variation of condition 12 to provide 2 hours of free car parking to all visitors of the Portslade Shopping Centre. – Split decision Condition 11 (Residents Parking reduction) Refused, Reduction of Free Parking from 3hrs to 2hrs Approved - 07/12/2011

BH2010/01684: Application for variation and removal of conditions to application BH2006/00834 to vary condition 5 to allow an extended delivery period at the store, vary wording of condition 4 to allow the premises to trade to the public between 8.00 and 20.00 hours and for ancillary activities to take place outside of these hours when the store is closed to the public, vary condition 16 to reduce free car parking to all visitors of the Portslade Shopping Centre from 3 hours to 1 hour, removal of condition 15 in order not to provide 5 resident parking spaces. Split Decision to allow Variation of Condition 4, Refuse variation of 5, 15 & 16 - 30/12/2010. Appeal to Vary Condition 5 *Allowed* - 07/06/2011.

BH2006/00834: Mixed use development comprising food retail unit & separate shop unit, 14 residential units with associated parking. (Revision of BH2004/00571/FP). Approved 31/05/2006.

BH2004/00571/FP: Mixed use development comprising food retail unit and separate shop unit with 5, 2-bedroom flats and 9, 1-bedroom flats at first floor level, associated parking and highway works (existing buildings to be demolished). Approved 20/05/2004.

4 THE APPLICATION

- 4.1 Planning permission is sought for the variation of condition 1 of BH2011/02857 to vary the hours of operation of the store to read: The store shall not be open for trading to the public except between the hours of 0800 and 2100 on Monday to Saturday and 1000 to 1600 on Sundays and Bank Holidays. Staff may be within the premises between the hours of 0700 and 2200 hours on Mondays to Saturdays and 0930 and 1730 on Sundays and Bank Holidays.
- 4.2 In effect the application would extend the opening hours of the store by an extra hour in the evening on Monday to Saturdays, and would allow staff to work within the premises for an additional 30 minutes Monday to Saturday. Sunday and Bank Holiday timings would not be affected.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours: Eighteen (18)** letters of representation have been received from **F6 & F7 9-10, 33b Carlton Terrace, 87 (Cherry's News), 94 (The Coffee Station), Flat 3 94a Boundary Road, 3 Florence Avenue, 30 Hallyburton**

Road, Flats 2, 3, 5, 6, 8, 10, 11, 12, (unnumbered x2), Ronuk House - 7 Carlton Terrace objecting to the application for the following reasons:

- Ronuk House, Located above the store; includes accommodation for key workers and as such has shift workers. The operation and extension of the store therefore further impacts upon the amenities of occupiers.
- The soundproofing of Ronuk House is poor and does not provide sufficient mitigation for the noise levels imposed upon residents.
- The Committee are invited to visit Ronuk House and witness the operation, unloading and witness the level of disturbance.
- Complaints have been made by residents of Ronuk House to the Environmental Health and Planning Investigations Teams with reference to hours, noise, use of fire doors for loading.
- At present the staff operating hours are already being breached.
- The store already causes significant noise and disturbance by conducting works throughout the night and deliveries outside of permitted hours.
- Noise disturbance is taking place from the operation of the store and in close proximity to residents.
- The profitability of the store should not come before the welfare of residents.
- There would be a negative impact to businesses in the area by extending the hours.

One (1) letter of representation has been received from **61 Trafalgar Road** supporting the proposal on the following grounds:

- The additional hour in the evening may be useful and could reduce some of the pressure of busy shopping at the weekend.

5.2 Sussex Police:

No objection to the extension of hours.

Internal:

5.3 Environmental Health: Support

Having assessed the acoustic report prepared by Sharps Redmore Partnership, dated 5th June 2013, it appears that the proposed changes are unlikely to have significant impact upon local residents.

As such it is recommended that the application is approved.

5.4 Transport: Support

Having examined the application material the proposal would not increase the scale or number of trip generations of this store.

The likely impact is a small amount of spreading and retiming of existing trips which may slightly reduce congestion and will not cause any additional safety risks and there are no changes relevant to other local plan transport policies. There is therefore no transport objection to the application.

5.5 **Planning Policy: Comment**

The decision should be made in accordance with the adopted Local Plan and emerging City Plan Part 1.

6 MATERIAL CONSIDERATIONS

6.1 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.”

6.2 The development plan is:

- Brighton & Hove Local Plan 2005 (saved policies post 2007);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (Adopted February 2013);
- East Sussex and Brighton & Hove Minerals Local Plan (November 1999); Saved policies 3,4,32 and 36 – all outside of Brighton & Hove;
- East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only – site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.

6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.

6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF.

6.5 The Brighton & Hove City Plan Part One (submission document) is an emerging development plan. The NPPF advises that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the NPPF.

6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove Local Plan:

- TR1 Development and the demand for travel
- TR7 Safe development
- TR14 Cycle access and parking
- TR19 Parking standards
- SU9 Pollution and nuisance control
- SU10 Noise nuisance
- QD27 Protection of Amenity

Supplementary Planning Guidance:

SPGBH4 Parking Standards

Brighton & Hove City Plan Part One (submission document)

SS1 – Presumption in favour of development

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the change in the opening hours and staff working hours and the impact of the changes upon the amenities of nearby residential occupiers.

Planning Policy:

- 8.2 Policy QD27 states that planning permission for any development will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
- 8.3 Policy SU9 advises that permission will only be approved where it can be demonstrated that it may not be liable to cause pollution (including noise); where detrimental to human health and safety and it does not reduce the LPA's ability to meet air quality and does not negatively impact upon existing pollution and nuisance situation.
- 8.4 Policy SU10 advises that applicants may be required to submit noise impact studies or assessments to assess the effect of a development or existing noise source upon a potential proposal prior to determination. Developments which are likely to generate significant noise levels would only be permitted where appropriate noise attenuation measures which would reduce the impact to acceptable levels. Where necessary conditions will be imposed to ensure appropriate noise limits, hours of operation and mitigation. In addition, the policy advises that permission for noise sensitive development such as housing will not be granted if its users would be affected adversely by noise from existing uses or generates significant levels of noise.

Noise, disturbance and residential amenity

- 8.5 The main consideration in this case is the change of and extension of hours of opening and staff working and the potential impact upon the amenities of adjoining and nearby residential occupiers.
- 8.6 Adopted Local Plan Policies require that it can be demonstrated that a development, an extension of opening and working hours in this case does not unduly harm the amenity of existing residential occupiers and/or it can be shown that adequate mitigation measures can be secured.
- 8.7 The applicant has submitted a detailed noise assessment with the application. The acoustic assessment follows current best practice by considering British Standard (BS) 8233:1999 and World Health Organisation "Guidelines for Community Noise". The assessment undertook sound meter readings from the Car Park, the store and an intermediate monitoring location.

- 8.8 The report sets out a robust case for the proposed and perceived changes in noise levels and concludes that an additional hour of trading and further staff operation beyond as requested would not have detrimental impact on the amenities of the residents of Carlton Terrace.
- 8.9 The Council's Environmental and Noise Officers from the Environmental Health team have analysed the results and methodology of the report and agree with its findings.
- 8.10 It is on this basis that the proposal to extend hours of opening and operation is recommended for approval.
- 8.11 The objections and representations from neighbouring residents are noted and given appropriate weight as a material consideration. It is clear from the comments received by the immediate neighbours, especially those in Ronuk House, located above the Supermarket, that the residents do presently perceive and report a harmful level of disturbance emanating from the operation of the store.
- 8.12 The extent of planning powers and noise as a material consideration when considering potential statutory noise disturbance must be considered. Where there is robust evidence to show that the potential noise disturbance would not be detrimental to the amenities of adjacent residents as in this case; and where there is other primary legislation capable of managing and resolving noise nuisance; in this case the Environmental Protection Act 1990 (as amended); the Local Planning Authority must be careful not to act in excess of its powers.
- 8.13 In future should a statutory noise nuisance be reported and found to be occurring the matter could be successfully managed and resolved through the other primary legislation. It is on this basis and the findings of the acoustic assessment that the balance to be struck is in favour of granting the extension of hours of trading and operation.

Other issues.

- 8.14 The site has been subject to some recent Planning Investigations with regards to the operation and opening hours of the store. The resolution of these cases has been suspended upon the consideration of this case.
- 8.15 Issues relating to the non compliance of conditions 5 & 11 of planning approval BH2011/02857 relating to the increase in height of the western boundary wall to a minimum of 2.4m and the signing/labelling of resident parking bays are also currently being considered by the Planning Investigations Team.
- 8.16 Matters relating to competition and effect upon local businesses are noted but cannot be afforded weight as a material consideration in this case.

9 CONCLUSION

- 9.1 The comments of local residents with regards to the levels of noise and disturbance and loss of amenity are noted. However the acoustic assessment is

considered robust, it is not considered that the additional hours are likely to have a further detrimental impact upon the amenities of adjacent occupiers. Powers are available under other legislation should future issues arise

10 EQUALITIES

- 10.1 The change in the opening and operation hours would be unlikely to have any equalities implications.

11 CONDITIONS / INFORMATIVES

Regulatory Conditions:

1. The store shall not be open for trading to the public except between the hours of 08.00 and 21.00 hours on Monday to Saturday, and 10.00 to 16.00 on Sundays and Bank Holidays. Staff may be within the premises between the hours of 07.00 and 22.00 hours on Monday to Saturday, and 09.30 to 17.30 on Sundays and Bank Holidays.
Reason: To allow satisfactory operation of the store and to protect the residential amenities of the occupiers of the flats above the store and to comply with policy QD27 of the Brighton & Hove Local Plan.
2. The compactor machine shall only be operated during the actual store trading hours to the public and at no other times.
Reason: To protect the residential amenities of the occupiers of the flats above the store and to comply with policy QD27 of the Brighton & Hove Local Plan.
3. No HGV movements nor any loading or unloading of vehicles associated with the retail uses hereby permitted shall take place between the hours of 20.30 and 07.30 Monday to Saturday. Deliveries on Sundays/Bank Holidays shall be limited to one main delivery and a milk delivery only between the hours of 09.30 and 17.30, with no deliveries outside these hours.
Reason: To allow satisfactory operation of the store and to protect the residential amenities of the occupiers of the flats above the store and to comply with policy QD27 of the Brighton & Hove Local Plan.
4. The approved and implemented refuse and recycling facilities shall 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 SU2 and QD27 of the Brighton & Hove Local Plan.
5. The existing wall along the western boundary of the site shall be increased in height to a minimum of 2.4m within 3 months of the date of this approval. The wall shall be maintained as such to the satisfaction of the Local Planning Authority.
Reason: To effectively screen the development from adjacent residential properties and to reduce the effect of noise and disturbance from the development in the interests of amenity and to comply with policies QD27 and SU10 of the Brighton & Hove Local Plan.
6. The windows on the ground floor of the east elevation of the main store fronting Carlton Terrace shall be clear glazed only, and shall be kept free of internal or external advertisements unless otherwise agreed in writing by the Local Planning Authority.

- Reason:** To ensure there is an interesting and attractive frontage at street level, to comply with policy QD10 of the Brighton & Hove Local Plan.
7. Any planting from the approved and implemented landscaping scheme which dies, becomes seriously damaged or diseased within a period of 5 years from being set out, shall be replaced in the next planning season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- Reason:** To enhance the appearance of the development in the interests of the visual amenities of the area and to comply with policy QD15 of the Brighton & Hove Local Plan.
8. The approved and implemented cycle parking facilities shall be retained for such use at all times.
- Reason:** To ensure that satisfactory facilities for the parking of cycles are provided to encourage travel by means other than the private car and to comply with policy TR14 of the Brighton & Hove Local Plan.
9. The approved Travel Plan shall be implemented to the satisfaction of the Local Planning Authority at all times.
- Reason:** To promote sustainable travel choices for employees of the main store to reduce reliance on the private car, to comply with policies TR1, TR2 and TR14 of the Brighton & Hove Local Plan.
10. The first floor kitchen and living/dining room windows on the southern elevation serving Flat 1 above the main store, and the first floor glazing to the entrance to the flats on the southern elevation, shall not be glazed otherwise than with obscure glass and either fixed shut or top hung and thereafter permanently retained as such.
- Reason:** To safeguard the privacy of the occupiers of adjacent properties in Victoria Road, to comply with policy QD27 of the Brighton & Hove Local Plan.
11. The 5 resident parking bays indicated on the approved plans in association with application BH2006/01684 shall not be used other than for occupiers of the residential units. The residents' car parking spaces shall be clearly signed/labelled as such, and details of signage shall be submitted to and approved in writing to the Local Planning Authority within one month of the date of this permission, unless otherwise agreed in writing. The agreed scheme shall be implemented to the satisfaction of the Local Planning Authority and thereafter retained.
- Reason:** To ensure adequate car parking provision to serve residential occupiers of the development, to comply with policies QD1, TR1, TR4, TR18 and TR19 of the Brighton & Hove Local Plan.
12. The first two hours of parking shall be free of charge for visitors of the Portslade Shopping Centre.
- Reason:** To ensure parking provision is made available to shoppers not using the main store as there is an identified shortage of shopper's parking spaces within the Portslade District Shopping Centre, in the interests of enhancing the vitality and viability of the Centre, to comply with policies SR6 and TR2 of the Brighton & Hove Local Plan.
13. The access gates shall be locked outside of opening hours of the main store except for purposes of loading/unloading and access by residents of the flats.
- Reason:** In the interests of visual amenity and to ensure adequate security for the site, to comply with policy QD7 of the Brighton & Hove Local Plan.

PLANNING COMMITTEE LIST – 18/09/13

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One (submission document) 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. This decision to grant Planning Permission has been taken:
 - (i) having regard to the policies and proposals in the National Planning Policy Framework and the Development Plan, 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 variation of condition 1 of BH2011/02857, to extend the opening and operating hours would not unduly harm the amenities of adjacent and nearby occupiers.

