

<b>Subject:</b>	<b>GOLDSTONE RETAIL PARK, NEWTOWN ROAD, HOVE: REQUEST FOR A VARIATION OF S106 DATED 11 APRIL 1996 SIGNED IN ASSOCIATION WITH APPLICATION 3/95/0748</b>	
<b>Date of Meeting:</b>	<b>20 November 2013</b>	
<b>Report of:</b>	<b>Executive Director of Environment, Development &amp; Housing</b>	
<b>Contact Officer:</b>	<b>Name: Clare Simpson</b>	<b>Tel: 29454</b>
	<b>E-mail <a href="mailto:Clare.Simpson@brighton-hove.gov.uk">Clare.Simpson@brighton-hove.gov.uk</a></b>	
<b>Wards Affected:</b>	<b>Hove Park</b>	

**1. PURPOSE OF THE REPORT:**

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

**2. RECOMMENDATIONS:**

- 2.1 That the Planning Committee resolves to allow the completion of a variation to the s106 planning agreement dated 11<sup>th</sup> April 1996 relating to Goldstone Retail Park to amend the number of units permitted within the main block of Goldstone Park to be increased from 4 units to 5 units.

**3. BACKGROUND INFORMATION:**

- 3.1 Application 3/95/0748 (the original permission) granted planning permission for the redevelopment of the former Goldstone Football Ground site to provide 4 non-food retail units with associated car parking, servicing and landscaping.
- 3.2 Approval was subject to conditions. Condition 12 related to the type of goods permitted for sale:

One unit of the development hereby permitted of not less than 929m<sup>3</sup> of floorspace shall only be used for the sale of the following goods categories:

- a) Building and DIY supplies;
  - b) Furniture floor covering, fabric and ancillary items including carpets;
  - c) Electrical goods;
  - d) Motor vehicles, cycles and spare parts including care accessories;
  - e) Garden furniture, tools and equipment;
  - f) Caravans, tents and camping equipment.
- 3.3 Approval was also subject to a Section 106 Obligations requiring a number of post-commencement and post occupation highways works and layout works. Additionally Clause 3.4.2 of the completed Section 106 states that:

- 3.4 The proposed development shall not include a greater number of retail units than shown on Drawing Number 94186(d) 08 Rev C that is to say a maximum of four separate units within one block.
- 3.5 Development was carried out in accordance with the original permission

#### **4. PLANNING HISTORY**

- 4.1 Application BH2013/02445 granted planning permission for the erection of single storey restaurant (A3) with external seating area and alterations to car park. Consent was granted on the 26/09/2013. This application was an amended scheme to a similar application approved under BH2012/01182. Works to implement this consent have not commenced to date.
- 4.2 Application BH2012/01182 granted planning permission for the erection of freestanding retail terrace to include 1no single storey retail unit (A1) and 1no single storey coffee shop (A3), incorporating external seating area and alterations to car park. Works to implement this consent have not commenced to date.
- 4.3 Application BH2010/02779 granted planning permission for external alterations to front, side and rear elevations and reconfiguration of the mezzanine certified under certificate BH2006/00088 and subsequently under BH2007/04363. Consent was granted on the 16/11/2010. This consent has been implemented and unit 4 of Goldstone Retail Park has been divided in to two units.

#### **5. PROPOSAL**

- 5.1 The applicant has requested a variation of the s106 attached to application 3/95/07408 to amend clause 3.4.2 to read, 'The development shall not include a greater number of retail units than 5 separate units within one block'.
- 5.2 Works undertaken in association with Planning Permission BH2010/02779 created an additional planning unit by dividing unit 4 into two separate planning units. The proposed variation would bring the s106 obligation into line with the current arrangements on the ground.

#### **6. CONSULTATION:**

##### **6.1 Sustainable Transport: No objection.**

The previous division from 4 to 5 units was approved by the Council and is now an established fact. The trips generated by this subdivision are now part of the context within which subsequent applications have been assessed. I have examined the scope for subdivisions of retail units to produce higher unit trip rates but standard sources and practice do not allow for any such effect, so that the previous and possible future subdivisions of units would not be expected to generate a materially higher number of trips.

- 6.2 Work submitted in support of application BH2013/02445 demonstrates that there is substantial spare capacity in the car park so parking would not be

displaced locally. For these reasons there are no traffic/transport objections to the requested variation to the S106 agreement.

**7. COMMENT:**

- 7.1 The original consent was granted on the 11<sup>th</sup> April 1996. The Planning Obligations were considered necessary in order to make the development acceptable. The Officer's report and the wording of the s106 does not contain specific rationale to justify the imposition of Clause 3.4.2. It is assumed the clause to control the numbers of the units on the site was considered necessary to ensure that the development would not harm the established retail areas in the town centres. By controlling the number of units on the site, the Council also are able to retain an element of control over the highways impact of the development.
- 7.2 It is usual procedure for Local Planning Authorities to carefully control consents for out-of-town retail development. This often takes the form of conditions on minimum floor space, and/or conditions relating to the type of goods which can be sold to ensure the out of town retail units do not compete with established town centre locations. The control mechanisms in the original consent for Goldstone Retail Park relate to Condition 12 (outlined above) and clause 3.4.2 restricting the numbers of unit, which is the subject of this proposed amendment.
- 7.3 Unit 4 has been subdivided so there are now 5 units within the main block in Goldstone Retail Park. A breach of the Planning Obligation has therefore occurred. The external works to facilitate the subdivision were undertaken under planning permission BH2010/02779. Although the description of the development granted under BH2010/02779 did not refer to the subdivision of the unit, this subdivision is considered to benefit from Planning permission since the alterations were shown on the approved plans. Section.55 (2)(f) of the Town and Country Planning 1990 Act allows the subdivision of premises where there is no material change of use. So the request to amend the s106 would be to regularise the current situation and ensure that s106 reflects the lawful use on-the ground.
- 7.4 In regard to the acceptability of the proposed amendment on local plan policy, it is considered that the current situation would not conflict with the aims and objectives of policies in the Local Plan which seek to protect existing defined shopping centres and resist new retail warehouse development. The proposed amendment to clause 2.4.3 does not permit any additional retail floor space. Furthermore planning policy CP4 Retail Provision the emerging policy in City Plan Part 1 states that Brighton & Hove's hierarchy of shopping centres will be maintained and enhanced by encouraging a range of facilities and uses consistent with the scale and function of the shopping centre and to meet peoples day to day needs. It is not considered that permitting the unit to subdivide would have any affect on the viability and vitality of the existing shopping centres. The units still provide large, warehouse-style retailing and do not therefore assume the characteristics of retail units conventional to

town-centre locations. The ground floor areas of the subdivided unit are 1111m<sup>3</sup> for the larger unit and 732m<sup>3</sup> for the smaller unit. The units are currently occupied by Pets and Homes and Harveys/Benson for Beds. It is not considered that the subdivided unit would provide direct competition that could undermine the viability/vitality of Hove town centre.

- 7.5 In regard to Transport, the Councils' Sustainable Transport Team have agreed that the amendment of the clause restricting the number of the number of units on site is appropriate. The Transport Officer has looked at the recent transport information in relation to an additional unit proposed under application BH2013/02445 which demonstrated adequate car parking capacity on site. Furthermore, it should be noted that the proposed amendment relates to the number of units onsite, and not any increased floor space of retail units.
- 7.6 Given the sub-division of the unit did not require planning permission and the resulting units are not considered to be harmful in terms of planning policy or traffic and transport, to retain the existing clause stipulating a maximum of 4 units on site would be unreasonable.

## **8. FINANCIAL & OTHER IMPLICATIONS:**

### **8.1 Financial Implications:**

None identified.

### **8.2 Legal Implications:**

Lawyer Consulted: Alison Gatherer

The NPPF stipulates that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

In addition, where obligations are being revised, local planning authorities should take account of changes in market conditions over time and wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

It appears appropriate in this instance to revise the planning obligation to reflect the current position.

### **8.3 Equalities Implications:**

None identified

### **8.4 Sustainability Implications:**

None identified

### **8.5 Crime & Disorder Implications:**

None identified

8.6 Risk and Opportunity Management Implications:

None identified

8.7 Corporate / Citywide Implications:

None identified.

**9. CONCLUSION**

- 9.1 The applicant has applied to vary the signed s106 agreement as set out at 4.1 of this report.
- 9.2 The proposed amendment is considered to be acceptable for the reasons as detailed above.
- 9.3 Therefore, the recommendation is for the s106 agreement to be varied.

