

Appeal Decision

Inquiry held on 29 and 30 November and 1 December 2016

Site visit made on 1 December 2016

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/Q1445/W/16/3147426

6 Falmer Avenue, Saltdean, Brighton BN2 8FH

- 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 Hyde New Homes and Mr E McNorvell against the decision of Brighton & Hove City Council.
 - The application Ref BH2014/03394, dated 7 October 2014, was refused by notice dated 29 January 2016.
 - The development proposed is the demolition of the existing house and stables and construction of 32 new dwellings together with open space, landscaping and associated access road and parking and a new pedestrian link between Falmer Avenue and South Downs footpath.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing house and stables and construction of 32 new dwellings together with open space, landscaping and associated access road and parking and a new pedestrian link between Falmer Avenue and South Downs footpath at 6 Falmer Avenue, Saltdean, Brighton BN2 8FH in accordance with the terms of the application, Ref BH2014/03394, dated 7 October 2014, subject to the conditions contained in the schedule at the end of this decision.

Application for costs

2. At the Inquiry an application for costs was made by Hyde New Homes and Mr E McNorvell against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural and background matters

3. The application was originally submitted seeking permission for, amongst other matters, the construction of 36 new family dwellings. The scheme was formally amended to seek permission for a reduced number of dwellings, 32, comprising 28 houses and four flats, a reduction in the number of parking spaces, amendments to the residential Travel Pack and included changes to the design and architectural form of the new buildings. The changes also incorporated amendments to the footpath link and
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landscape screening, amongst other matters.¹ The amended scheme was the subject of public consultation. Further minor amendments to the scheme were also incorporated and the revised scheme was considered by the Brighton and Hove City Council Planning Committee in January 2016. The application was subject of a recommendation to grant planning permission, subject to conditions and a legal agreement, from Officers. The Committee resolved to refuse planning permission and a refusal notice was subsequently issued.

4. The Council formally refused planning permission for one reason which related to the design of the scheme and its effect on the character of the local area and the surrounding landscape.
5. The reason for refusal identified conflict with policies QD1, QD2, NC5 and NC8 of the Brighton and Hove Local Plan 2005 (the Local Plan). Following the Council's decision on this application the Brighton and Hove City Plan Part One (The City Plan) has been formally adopted and now forms part of the statutory development plan along with saved policies from the Local Plan. The aforementioned policies from the Local Plan have been superseded and no longer form part of the development plan. The parties agree² that the policies in The City Plan relevant to the reason for refusal are Policies CP12, SA4 and SA5 and are those on which the appeal should be considered. It is further confirmed that reference should be made to Policy CP1 in relation to housing delivery.
6. On the last day of the Inquiry I was provided with a Planning Obligation agreement dated 25th November 2016³ which would secure the provision of financial contributions towards education, a local employment scheme, recreation and sustainable transport. The agreement would also secure an artistic component within the development, affordable housing, the provision and implementation of a travel plan, a construction training and employment strategy, a Construction Environmental Management Plan and a planting schedule. The Council have reciprocal clauses in respect of the use of the contributions for the purposes for which they are made. I shall return to the agreement further below.
7. The scheme before me is that as considered by the Planning Committee for 32 dwellings and it is on the basis of this amended scheme that I have considered this appeal.

Main Issue

8. The main issue in this appeal is:
 - the effect of the proposed development on the character and appearance of the surrounding area and landscape, including the South Downs National Park.

Reasons

Policy background

¹ Letter dated 28 October 2015 from Lewis and Co Planning to Liz Arnold, at Brighton and Hove City Council confirm the details.

² Statement of Common Ground paragraphs 2.1 and 2.12

³ Document 19

9. The site sits in an area of land between the built up area and the wide rolling downlands of the South Downs National Park. For the purposes of the City Plan the term 'Urban Fringe' has been applied to such areas, including the appeal site.
10. The City Plan along with the saved policies from the Brighton and Hove Local Plan 2005 form the development plan for the area. Policy SA4 of the City Plan sets out the objectives which the Urban Fringe should achieve and indicates that development will not be acceptable within it except where a site has been allocated for development in a development plan document or a countryside location can be justified. Policy SA5 relates to the setting of the National Park and requires development to have regard to it.
11. These policies are to be read in the context of policy CP1 which sets out housing delivery for the plan period and within which it is set out that 1060 dwellings will be provided in the Urban Fringe in the Plan period 2010 - 2030. The City plan however only makes provision for 13,200 dwellings in the plan period which is 44% of the Full Objectively Assessed Need for the City⁴, a reduced requirement based on the constraints of the city created by its coastal location, National Park boundary and limited opportunities for development within the City. Development in the Urban Fringe locations has been brought forward to increase the potential level of housing delivery against the Objectively Assessed Need to provide a requirement that sought to close the significant gap that had been identified between delivery and need.
12. The Council's latest SHLAA update⁵ assesses the appeal site under SHLAA reference 722, the associated map refers to it as site 1001. The assessment concludes '*The potential for some residential development on part of the site has been established through the findings of the 2014 Urban Fringe Assessment. The benefits of residential development on this site are recognised in terms of helping to meet the City's housing supply requirements and the City's need for affordable housing (NPPF, City Plan CP1 and CP20). Change units to 32.*'
13. The Council reviewed its original assessment of Urban Fringe sites following concerns raised by the Local Plan Examiner and produced the Brighton and Hove Urban Fringe Assessment Final Report June 2014⁶. This document sought to provide a more rigorous assessment of the potential of the Urban fringe to deliver housing development in the light of the significant predicted shortfall against the housing need. The appeal site is identified as site reference 50, and concludes that some 38% of the site would be developable and that an indicative number of 12 dwellings could be accommodated on the eastern half of the site. A further assessment of the Urban Fringe – Brighton and Hove: Further Assessment of Urban Fringe Sites 2015 – Landscape and Ecological Assessments⁷ has been undertaken to support the emerging City Plan Part Two. The appeal site is addressed as Study Area L19 (Site 50) and concludes that housing can be delivered across the potential development area within study area L19 without

⁴ Brighton and Hove City Plan page 132 paragraph 4.2 the City's 'objectively assessed housing need' over the plan period to 2030 could mean needing to build 30,120 dwellings to 2030.

⁵ SHLAA Update 2015 (Draft) July 2016 – Core Document CD.PP.10

⁶ Core Document - CD.PP.08.

⁷ Core Documents – CD.PP.09.

significant impacts on landscape and ecology. Two assumptions are taken, firstly that development proposals reflect consideration of the form and scale of any new buildings in relation to the adjoining bungalows on Falmer Avenue and impacts on views from the South Downs National Park; and secondly landscaping is introduced to create a southern boundary that filters views of development but does not have a significant effect on the openness of the seaward views from the South Downs National Park.

14. The policy framework therefore supports some form of development of this site and any consideration of the views and impacts of the proposed development need to have regard to that position. The City needs to make provision for housing in the Urban Fringe. The Council's supporting Urban Fringe Assessments, which are identified as material considerations in policy SA4, suggest that some form of residential development could be accommodated on the appeal site. The latest SHLAA also identifies the site and increases the acceptable capacity, in terms, to 32.

Character, appearance and landscape

15. The appeal site is formed from the site of an existing dwelling, no 6 Falmer Avenue, and a field of open grassland to the rear adjoining the outer edge of the settlement boundary of the Brighton and Hove built up area. The site does not sit within the National Park and although Saltdean Countryside suggest that this is through administrative error, it is a matter of fact that the site is not in the National Park. My statutory duty and the relevant Framework policies in respect of National Parks need to be considered in that context. The appeal site is however located at the boundary with the National Park and therefore potentially affects its setting and therefore the appreciation of its landscape and scenic beauty and it is in this context that these matters should be considered.
16. Saltdean Countryside also suggest that the site is a valued landscape and should therefore be afforded protection under paragraph 109 of the Framework. However, other than the value placed on it by local people there was little else that was identified in terms of physical attributes that could be pointed to to support that contention. I am not persuaded in that regard and therefore have not treated the site as a valued landscape in terms of the Framework.
17. The development of the appeal site will result in change to the appearance of the site; that is not a disputable point, and one accepted by the appellant⁸. The issue is the degree of change and the materiality of that change in the context of the landscape and the visual effect taking account of the broader context, including the policy background.
18. The appeal scheme is a modern interpretation of the 1920's Art Deco movement of architectural design. The flat roofs, shaping, detailing and white rendered façades are very obvious reflections of this style of architecture. The coastal locations of this part of England are areas where such aspects of architectural design are well known and there are good examples of this in the Saltdean area, the Lido and the former Ocean Hotel being referenced.

⁸ Closing Statement of appellants - paragraph 1.

19. It is true that much of the immediately surrounding streets are not of this form of architecture. Much of the surroundings are made up of an eclectic mix of two-storey and bungalow housing, predominantly detached or semi-detached with tiled roofs. However, it is difficult to discern a particular characteristic or distinctiveness within this. The proposed development will introduce a small group of houses within the wider neighbourhood that has a coherent and collective architectural style that is well considered. In broader terms the proposed properties are two storey, with flat roofs, limiting their overall height, and are a mix of detached and semi-detached houses. In this way the properties are not unrelated to the general pattern and mix of development that surrounds them.
20. The white rendered façades would not in my view, be unsympathetic to or uncharacteristic of the wider area. Whilst a number of the surrounding properties are bungalows or two storey houses with brown roofs and brick walls, giving them a muted and natural colour, there are many examples of light coloured and white rendered properties surrounding. In longer distance views, in particular from the Lido and Saltdean Oval the detail of the nature of development on the hillside is not easily made out. But what can be seen are the many examples of light coloured rendered walls on properties and the appeal site would not be out of keeping in this context. When considered in the context of the Lido, the Ocean Hotel and other close by examples of Art Deco buildings, the appeal proposals would not be such a distraction or significant point of attraction in the housing on the hillside.
21. When viewed from this lower location, and the further-afield view-points, whilst the site could be seen as a small piece of green space on the hillside, it is not seen or read as part of the wider downland and National Park open lands, such as the land to the north east in that view point. I am satisfied that in terms of the longer views there would be no significant harm to the setting of the National Park and that there would be no significant loss of distinction between the settlement edge and the National Park beyond.
22. Moving to more localised views, from Westmeston Avenue Bridleway adjacent to the western boundary of the site and at the top northern boundary, the changed appearance of the site would be very obvious. Similarly, views available to the occupants of properties in the houses along Falmer Avenue and Bishopstone Drive would be of close quarter views of the development on the site. These views of the site would change significantly from the open field presently. However, the Urban Fringe Assessment identifies the part of the site with the boundary with those properties fronting Falmer Avenue as being, in landscape terms, the least sensitive, and therefore where the Council's assessments would direct housing. Changes to these views are therefore something that policy promotes. This would also be true for the lower proportion of the site and a good proportion of the southern boundary.
23. When approaching the site from the north, the site dips and falls away towards the settlement boundary. The low level of the housing, maintained by the flat roofs, and the landscaping would mitigate and reduce any significant intrusion of the scheme into wider and longer views over the top of the settlement and outwards towards the sea. Whilst the Council were concerned that the landscaping may be inappropriate in that it could result

in a reduction in openness of the site, I am of the view that a well-considered planting scheme with appropriate species would soften and filter views of the hard edge of the settlement and assist in making a less stark and hard urban edge to the National Park boundary. This area is to be managed by the developer and future management could ensure that landscaping does not become excessively tall or obstructive such that this would form a significant barrier to openness.

24. In the round, whilst I accept that there would be change to the appearance of the site, I am satisfied that this would not result in material harm to the wider landscape. . There would be no harm to the setting of the National Park as the settlement edge would be a softer and more filtered form and be improved from the stark and abrupt change that is evident in the immediate surroundings at present.
25. In terms of the surrounding townscape the design of the appeal scheme has referenced positive architectural and design elements from the wider surroundings and reflected these in a modern design approach. The scheme provides detached and semi-detached family housing, which reflects housing within the surrounding area. The Framework at Paragraph 17 advises that the planning system should always seek high quality design and at paragraphs 58, 59 and 60 advises that decisions should aim to ensure developments are visually attractive as a result of good architecture and appropriate landscaping; should avoid unnecessary prescription or detail and should not attempt to impose architectural style or particular tastes and should not stifle initiative. In my view many of the concerns expressed by residents and reflected in the Council's decision related to their objection to the architectural style and visual appearance of the development. This is a particularly subjective matter and in the context of this scheme I am convinced by the architectural justification and rationale for the form and design of the scheme which I view as an appropriate and well-conceived layout, form and design in the context of its wider seaside location and the influences of Art Deco design in the surrounding area.
26. I note the adverse effects that have been suggested by the National Park Authority and Natural England and I have had regard to their comments. However, these are relatively generic comments and there is little detailed assessment of the proposals and the specific consequences that may arise from it. This is to be set against the detailed Landscape and Visual Impact Assessment of the proposals undertaken by the appellant, the details of which were accepted by the Council⁹ , and the evidence I heard at the Inquiry.
27. For these reasons I conclude that the appeal proposal complies with policy CP12 as a well-designed scheme of high quality. Given the need for residential development in the Urban Fringe, the requirement for a countryside location is accepted¹⁰ . Given my conclusions on layout and impact above the development does not therefore conflict with policies SA4 or SA5. I therefore conclude that the proposal would not have an adverse effect on the character or appearance of the surrounding area, including on the surrounding landscape and the South Downs National Park.

⁹ Statement of Common Ground 2.24 – 2.30

¹⁰ Cross examination of Ms Murphy

Other Matters

Air Quality

28. Air Quality and Traffic matters were inter-related in that concerns were raised with the modelling and general inputs which went to the credibility of the models and the reliance that could be put upon them.
29. The greatest concern related to the background level of traffic against which the assessments should be set and it was suggested that the appellants' modelling had this out by a factor of two. It is contended that the surveyed traffic in the nearby Air Quality Monitoring Area was identified as in the region of 15, 000 vehicles whereas it should in fact have been in the region of 7,000. Local residents were concerned that had a full Traffic Impact Assessment been submitted this would have been picked up earlier in the process and factored into the other assessments appropriately. The Council and appellant accept that this lower figure was appropriate but they rely on the overall conclusions that the level of impact from the amount of traffic generated by a small development of this nature would be negligible. These conclusions are accepted by the Council's air quality officer and this is confirmed in the Statement of Common Ground¹¹.
30. These conclusions are based on the assumption that the majority of traffic generated by the proposal would use the A259 rather than the High Street and that negligible levels of pollution would be contributed to the Air Quality Monitoring Area. Whilst Saltdean Countryside demonstrated that there were some inconsistencies and flaws in the modelling, they did not provide evidence to demonstrate the impact that the development would have on the Air Quality Monitoring Area or that the development would result in anything more than negligible impacts as contended by the appellant.
31. Air Quality is a significant issue for many urban areas and Brighton and Hove is no exception. I have no robust evidence before me to demonstrate that the development would result in increased levels of pollution in the Air Quality Monitoring Area, other than by negligible amounts, and therefore conclude that the proposals would not materially affect Air Quality. On this basis the proposal would comply with policy SU9 of the City Plan as accepted in the Statement of Common Ground¹².

Highway Safety

32. The Council does not object to the proposal in terms of the access geometry and design. There are some concerns expressed about the steepness of the slopes by local residents and the conditions of the road in winter. However the design of the access meets the appropriate standards and there are no significant differences to other circumstances on the surrounding streets. The level of car parking on site meets the Council's parking standards¹³ as set out in the Council's SPD14.
33. The question of whether a full Transport Impact Assessment rather than a Transport Statement should be submitted was a matter of concern for

¹¹ Statement of Common Ground 2.43.

¹² Paragraph 2.43 Statement of Common Ground.

¹³ Parking Standards SPD 14 Core Document CD.PP.11.

objectors. In the light of the Highway Authority's assessment and conclusions on these matters I am satisfied that they have had sufficient information on which to consider the impact of the development on highway safety matters. The Council are satisfied that the development is acceptable and does not result in any highway safety issues. I have not been provided with any evidence to demonstrate an adverse effect on highway safety issues, including likely increases in accident rates, dangerous entrance design, poor visibility, lack of parking etc. and on this basis I am satisfied that the proposals would comply with policies TR4 and CP9 of the City Plan.

Impact on local services and facilities

34. Saltdean Countryside suggest that the appeal site is not well located in relation to local services and facilities and that it will result in additional pressure on already stretched services and facilities. There is a local bus stop on Bishopstone Drive within easy walking distance of the site that provides access to the wider area. There is a small parade of shops at Lustrells Vale, a short distance from the site. The topography reduces the accessibility but it is still within a reasonable walking distance and accessible to the site. There is a local primary school on Chiltington Way, again within walking distance of the site.
35. A legal agreement is provided which makes provision for financial contributions towards education, towards sustainable transport and access routes to the bus stop and local facilities. There are also financial contributions towards a local employment scheme to support and assist local employment skills and for recreation which would be used to improve local public facilities.
36. Overall, and taking account of the provisions of the legal agreement, I am satisfied that the proposals are sustainably located and would not put undue pressure on local services.

Living conditions

37. The separation distances between the proposed houses and the existing houses range from around 26m to 20m at the closest point, which is along the southern boundary, that with properties fronting onto Bishopstone Drive. The Council Officer report addresses separation distances in relation to privacy and outlook and concludes that the separation distances are typical of surrounding dwellings and are typical of a built up area. The assessment also refers to the proposed landscaping that is identified between the rear gardens of the proposed properties and the existing properties. The scheme identifies a landscaped strip that would include tree planting and which would be managed by a management company and would not form part of the individual curtilages of the proposed properties. I agree with the Council that this would mitigate privacy concerns and filter views between the properties.
38. The design of the proposed properties, with the flat roof, along with the changes in levels across the site, including cutting, that would take place would limit the effect of the buildings in terms of the effect on day light and sunlight. The houses in Bishopstone drive would be to the south of the development and would not suffer sunlight or shadowing effects. The

Properties in Falmer Avenue have greater separation and would be to the east. The layout and separation is such that there would be no material loss of sunlight or shadowing that would harm the living accommodation of those properties.

39. Given the nature of the proposed dwellings, the design of the units, the orientation and layout of the properties and the site I am satisfied that there would be no material impact on the living conditions of the existing residents in the surrounding properties on Falmer Avenue or Bishopstone Drive.

Benefits of the scheme

40. The development would assist in the Council meeting its housing delivery as a site in the Urban Fringe, where according to policy CP1 some 1060 units will need to be located over the plan period. Even if the Council is right in its claim of a 5 year housing land supply (and I make no finding on that matter, for the reasons I set out below), I nevertheless regard this as a benefit of the scheme.
41. Moreover, the proposal identifies that 40% of the scheme, some 13 units , would be provided as affordable housing. This is secured through the Planning Obligation Agreement. This is a significant benefit and one to which I attach substantial weight, given the need for affordable housing in the locality. This would accord with policy CP20 of the City Plan.
42. Other economic benefits would accrue from the development associated with increased population spending power, including during construction, albeit these later economic benefits are only afforded limited weight given the small scale nature of the development.

Planning Obligation

43. A legal agreement has been provided that makes provision for a number of financial contributions. A financial contribution towards education is provided to address any additional pressure on primary and secondary education at nearby local schools. This is reasonable and necessary. There is a financial contribution towards sustainable transport which would improve the local bus stop facilities and access routes to the bus stop and local facilities. Again these are reasonable and necessary in order to improve accessibility. There is a financial contribution towards a local employment scheme to support and assist local employment skills which would improve accessibility to work. There is a financial contribution for recreation which would be used to improve local public facilities, including children's play facilities, at Saltdean Park or Rottingdean Recreation Ground. The recreation contribution would also be used to improve outdoor sports facilities at those locations and indoor sports facilities at Prince Regent swimming Pool and or Withdean Sports complex.
44. All of these contributions are of an appropriate scale and kind, they address the impacts of the development on local facilities and therefore are directly related to the development and are necessary to make the development acceptable in planning terms including improving the accessibility of the site to local facilities. I am satisfied that they therefore meet the tests of the Community Infrastructure levy Regulations, 122, and the tests in the

Framework, 204. I am also informed by the Council that they meet the requirements of regulation 123 with regard to pooling restrictions. They are therefore appropriate for me to take into account in the determination of this appeal.

45. The agreement also has a requirement for the provision of a Travel Plan and construction training and employment strategy the details of which would further support the accessibility and sustainability of the site. These are therefore reasonable and necessary and also meet the appropriate tests.
46. The Agreement also includes provisions related to an Artistic component, a Construction and Environmental Management Plan (CEMP) and a Planting scheme. The Artistic component is required by policies CP5, CP7 and CP13 which collectively require investment in the public realm for development to contribute to social environmental and physical infrastructure and to improve the legibility of the City's public realm. There is strong policy support for such a requirement. The artistic component is to be designed into and be an element of the scheme and I am satisfied that the scale is therefore commensurate with the development and in assisting to encourage and create a sense of place and create distinctiveness and improve visual amenity that such a requirement meets the appropriate tests.
47. The CEMP and Planting Scheme are requirements aimed at safeguarding the amenities of surrounding residents, ensuring highway safety and the visual amenities of the development. They are required to ensure a satisfactory form of development that would be managed to ensure that the development is undertaken and maintained in an appropriate manner. They are reasonable and necessary.

Five year housing land supply

48. A significant proportion of the Inquiry was taken up with considering whether the Council has a five year supply of deliverable housing sites. However,. In view of my findings on the main issue and my overall conclusion below this is not a matter that is determinative in this instance. In view of this it is not necessary to reach a finding on the question of the housing land supply and I have not considered the matter further.

Overall conclusions and conditions

49. Having considered all the policies drawn to my attention I find that the development accords with the development plan as a whole. I have also concluded that the development would not result in material harm to air quality, traffic hazards or neighbouring amenity; and that the proposals would therefore not conflict with the development plan in these regards.
50. Paragraph 14 of the Framework advises that the presumption in favour of sustainable development means in decision making that development proposals that accord with the development plan should be approved without delay. On this basis I conclude that the proposal represent

sustainable development and should therefore be approved. I will therefore allow the appeal.

51. The parties provided a list of some 30 conditions which were for the most part agreed. I have considered these conditions in the light of the advice in the Planning Practice Guidance and having regard to the list of suggested conditions in annex A of circular 11/95 – the use of conditions in planning permissions. I have imposed the following conditions.
52. Condition 1 is the statutory time limit condition and condition 2 is an approved plans conditions which the PPG advises is good practice.
53. The Council suggested removing permitted development rights however it proposed all classes of extensions A to E in Part 1 of Schedule 2 of the General Permitted Development Order and the advice is that such blanket restrictions should not be applied except in exceptional circumstances. Given the flat roofed nature and design of the development it would appear that parts B and C are unnecessary but I accept that given the design of the buildings and limited size of plots it is reasonable in these circumstances to remove permitted development rights for extensions to protect the occupiers of neighbouring properties and the design integrity of the proposed houses. I have therefore attached an adjusted condition to reflect these comments, condition 3.
54. Condition 4 seeks to protect the proposed parking. Conditions 5, 6 and 7 refer to hard and soft landscaping management and materials and are required to maintain the appearance of the development and address surface water run-off. Conditions 8 and 9 are required to ensure the provision of wheelchair-accessible accommodation.
55. Condition 10 is necessary in case unforeseen contamination is discovered and given the proximity to adjoining built development; this affords sufficient protection. As there is no history of contamination identified the submission of a desktop study and contamination assessment for the site is overly onerous. I have therefore not imposed such a requirement.
56. A restriction to ensure obscure glazing to the windows of certain properties was suggested, however, these are corner panel windows at the front of the properties and the suggested condition would be an unreasonable restriction. I have therefore not imposed this condition. Condition 11 is required to safeguard the privacy of surrounding properties and restricts the use of the flat roofs of the properties to maintenance and emergency access only, so that they are not to be used as amenity or sitting out areas.
57. Conditions 12 through to 15 deal with materials for the development and details of the design of the properties and access road. These details are necessary to ensure a high standard of design and in the interest of the appearance of the development and highway safety.
58. An Archaeological works programme is required to safeguard and record any buried remains of historical or archaeological interest and therefore I have imposed condition 16. Conditions 17, 18 and 19 address matters related to drainage and are required to protect the water environment, ensure proper disposal of surface water and address flood risk. I have not included the reference to a third party as identified in the originally

proposed condition in terms of the approval process as these are matters for the Local Planning Authority and conditions should not require approval of a third party.

59. Conditions 20, 21, 24, 25, 26, 27 and 28 require the submission of details and secure the provision of tree protection measures, electric vehicle charging points, nature conservation interests, landscaping, refuse storage, external lighting and cycle parking. The details are required either prior to the commencement of development or prior to first occupation dependant on the nature of the matter. I am satisfied that these are required to ensure a good standard of development in the interests of the appearance of the development, and to ensure these appropriate facilities are provided and secured.
60. There were concerns at the inquiry that the submission of a separate landscaping scheme could result in conflict with condition 2. However, condition 25 secures the delivery maintenance and replanting of the landscaping along with details of boundary treatment and hard landscaping. No such conflict has been identified and if there were any material conflict between the details approved under this condition and condition 2 that would be a matter for the council to resolve in considering the details. This is not a significant impediment.
61. The final remaining suggested conditions 22 and 23 relate to energy efficiency and water efficiency standards and are required to comply with policy CP8 of the City Plan.
62. Conditions 14, 15, 16, 17, 18, 19, 20 and 21 are 'pre-commencement' conditions and require certain actions before the commencement of development. In all cases this is necessary to ensure that the condition will have its proper effect.
63. For the reasons given above I conclude that, subject to the conditions discussed above, the appeal should be allowed.

Kenneth Stone

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Hilary Woodward	Senior Planning Solicitor Brighton and Hove City Council
She called	
Ms Eimear Murphy BSc(Hons), Env Pl PGDip UD PGDip Hist Bldgs MRTPI HIBC.	Murphy Associates
Mr Nick Ireland BA(Hons, M in TP, MRTPI	G L Hearn

FOR THE APPELLANT:

Mrs Harriet Townsend	Of Counsel, instructed by Lewis and Co Planning.
She called	
Professor Alan Phillips Dip Arch, RIBA, RICS, ARB.REG Arch, FIE, RA(ACT), MRSH, FFAS, MSAI.	Alan Philips Architects
Angela Brady OBE, PPRIBA, PDSA, FRIAI, FRSA, (hon)FRIAS, (Hon) PHD, (Hon) FIstructE, FBIID, FAIA, FRIAC	Brady Mallalieu Architects Ltd
Angus Jeffery BSc, PhD, CMLI	Landscape Visual Limited
Paul Burgess BA(Hons) BPL MRTPI	Lewis & Co Planning

FOR SALTDEAN COUNTRYSIDE:

Nigel Bennett	Magenta Planning
Linda Whitby	Saltdean Countryside
Rob Shepherd	Saltdean Countryside
Cathy Gallagher	Saltdean Countryside

INTERESTED PERSONS:

Mary Mears	Local Ward Councillor
Heather Butler	Rottingdean Parish Council
Sean Flanagan	Local Resident

DOCUMENTS

- 1 Appellants' Opening Statement
- 2 Council's Opening Statement
- 3 Saltdean Countryside's Opening Statement
- 4 Saltdean Countryside additional Information on Infrastructure to be addressed by Cathy Gallagher
- 5 Email exchange between Mr Burgess and Mr Carpenter regarding delivery of site at Toads Hole Valley, submitted by appellants.
- 6 Additional Core Documents submitted by appellant:
 - 1) Opening submissions
 - 2) Brighton and Hove Local Plan 2005 policies QD1 and QD2
 - 3) Extract of Proposals Map, City Plan Part One
 - 4) City Plan policy CP12
 - 5) Phides Estates (Overseas) Ltd vs SoS - High Court Judgement
 - 6) Forest of Dean District Council vs SoS - High Court Judgement
 - 7) A) land to the North of The Telephone Exchange – appeal decision
B) land west of Reading Road – appeal decision
C) Pod Corner – appeal decision
 - 8) A) 67 Falmer Road - Appeal decision
B) Council's complaint to paragraph 31 of that decision
C) Appellants contribution to the argument.
 - 9) Stroud District Council vs SoS – High Court Judgement
 - 10) Forest of Dean District Council vs SoS – High Court Judgement
 - 11) PPG Paragraph 30 – starting point for five-year housing supply
 - 12) Notice of application for costs
 - 13) Paul Burgess response to rebuttal Proof of Nick Ireland
 - 14) Paul Burgess proof of evidence replacement appendix 4
 - 15) Paul Burgess proof of evidence replacement appendix 5
 - 16) Angus Jeffery Landscape visual page index note.
- 7 A) Ariel Photograph of site
B) Ariel Photograph of site with scheme imposed, submitted by appellants
- 8 Mr Shepherd's statement to Inquiry following appellants technical notes on Air Quality and Traffic.
- 9 Cathy Gallagher's statement to Inquiry
- 10 Mr Flanagan's comments to Inquiry
- 11 Mr Flanagan's details of citation of Client Earth decision
- 12 Amended Table 11 in Nick Ireland's proof submitted by Council
- 13 Copy of Mr Flanagan's comments on the original application
- 14 List of positions from which parties wish the inspector to view the site on the unaccompanied part of the site visit.
- 15 Council's closing submissions
- 16 Saltdean Countryside's closing submissions

- 17 Appellants closing submissions
- 18 Council's written response to the appellants cost claim
- 19 Section 106 Planning Obligation Agreement dated 25 November 2016.

SCHEDULE OF CONDITIONS FOR APPEAL APP/Q1445/W/16/3147426

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Plan Type	Reference	Version	Date Received
Site Location Plan & Wider Context	01	-	20/10/2014
Site Location	02	-	20/10/2014
Site Location - Showing Site & Wider Topography	04	-	20/10/2014
Topography Survey – Existing Site Plan	05	-	20/10/2014
Topography Survey – Existing Site Sections	06	-	20/10/2014
Proposed Site Layout and Landscaping	07	Rev. I	16/12/2015
Overall Site Layout Showing Distances from Neighbours & Boundaries	08	Rev. C	28/10/2015
House Types – 4 Bedroom Detached	09	Rev. D	03/12/2015
House Types – 3 Bedroom Open Market	10	Rev. D	03/12/2015
Houses Types – 3 Bedroom Semi-Detached	11	Rev. D	03/12/2015
House Types – 2 Bedroom Semi-Detached Shared Ownership	12	Rev. D	03/12/2015
Sections as Proposed – Section AA1	13	Rev. D	03/12/2015
Sections as Proposed – Section AA2	14	Rev. D	03/12/2015
Sections as Proposed – Section BB1	15	Rev. C	07/12/15
Sections as Proposed – Section BB2	16	Rev. D	03/12/2015
Sections as Proposed – Section CC1 & CC2	17	Rev. D	03/12/2015
Sections as Proposed – Sections DD1	18	Rev. D	03/12/2015
Sections as Proposed – Section DD2	19	Rev. D	03/12/2015
House Types – Flats	21	Rev. A	03/12/2015
Existing Site Plan & Camera Locations	FALMAV 01	Rev. B	28/10/2015
Landscape Site Plan	FALMAV 02	Rev. K	16/12/2015

Landscape Masterplan	FALMAV 02.1	Rev. A	28/10/2015
Retaining, Boundaries & Screening	FALMAV 03	Rev. J	16/12/2015
Detail Units 01-04	FALMAV 03.1	Rev. E	16/12/2015
Detail Units 05-10	FALMAV 03.2	Rev. D	01/12/2015
Details Units 11-14	FALMAV 03.3	Rev. D	01/12/2015
Details Units 15-24	FALMAV 03.4	Rev. D	01/12/2015
Detail Units 25-32	FALMAV 03.5	Rev. C	16/12/2015
Planting Zones/Species	FALMAV 04	Rev. G	16/12/2015
Lighting & Street Furniture	FALMAV 05	Rev. E	03/11/2015
Permeable Surfaces	FALMAV 06	Rev. F	03/11/2015
Pedestrian Footpath	FALMAV 07	Rev. F	03/11/2015
Tree Protection	FALMAV 08	Rev. F	03/11/2015
Landscape Sections	FALMAV 11.1	Rev. B	01/12/2015
Landscape Sections	FALMAV 11.2	Rev. B	01/12/2015
Landscape Sections	FALMAV 11.3	Rev. B	01/12/2015
Landscape Sections	FALMAV 11.4	Rev. B	01/12/2015
Landscape Sections	FALMAV 11.5	Rev. B	01/12/2015
Ownership/Mgt	FALMAV 12	Rev. B	28/10/2015

- 3) No extension, enlargement, alteration or provision within the curtilage of the of the dwellinghouses as provided for within Schedule 2, Part 1, Classes A, D or E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) shall be carried out without planning permission obtained from the Local Planning Authority.
- 4) The vehicle parking area shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved.
- 5) Prior to the first use of the development hereby approved the hard surface hereby approved shall be installed in a porous material and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property in accordance with a

scheme to be submitted to and approved in writing by the local planning authority.

- 6) Throughout the development period the grassland shall be maintained as a regularly-mown sward. If protected species are encountered during the demolition or construction phase, works shall stop and written advice shall be sought from a qualified Ecologist on how to proceed. Any such written advice shall be submitted to and approved in writing by the Local Planning Authority and the development shall only proceed in accordance with the approved written advice.
- 7) No hedgerow, tree or shrub shall be removed from the site between 1st March and 31st August inclusive, unless a qualified Ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. The ecologist's written confirmation shall be submitted to the Local Planning Authority and no hedgerow, tree or shrub shall be removed until the written approval of the local planning authority has been received.
- 8) A minimum of 2 of the affordable housing units and 2 of the total of all of the residential units hereby approved shall be built to wheelchair accessible standards.
- 9) The wheelchair-accessible dwellings hereby permitted, as detailed on drawing no. 21 Rev. A received on 3rd December 2015, shall be completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) prior to first occupation and shall be retained as such thereafter. All other dwellings hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, Building Notice or Initial Notice to enable the building control body to check compliance.
- 10) If during construction, contamination not previously identified is found to be present at the site then no further development shall be carried out until a method statement identifying and assessing the risk and proposing remediation measures, together with a programme for implementation, has been submitted to and approved in writing by the Local Planning Authority. The remediation measures shall be carried out as approved and in accordance with the approved programme.

- 11) Access to the flat roofs of the dwellings hereby approved shall be for maintenance or emergency purposes only and the flat roofs shall not be used as roof gardens, terraces, patios or similar amenity areas.
- 12) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
- a) samples of all brick, render and tiling (including technical specification and details of the colour of render/paintwork to be used)
 - b) samples of all cladding to be used, including details of their treatment to protect against weathering
 - c) samples of all hard surfacing materials
 - d) samples of the proposed window, door and balcony treatments
 - e) samples of all other materials to be used externally
- Development shall be carried out in accordance with the approved details.
- 13) No development above ground floor slab level shall take place until 1:20 scale section plans of the proposed window cills, parapet and balcony copings, showing a projection of at least 40mm, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and completed fully in accordance with the approved details and shall be retained as such thereafter.
- 14) No development shall commence until full details of existing and proposed ground levels (referenced as Ordinance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, and the finished floor levels of all proposed buildings, have been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.
- 15) No development shall take place until detailed drawings of the internal access road and junction with Falmer Avenue, to include details of materials, the junction treatment, dropped kerbs/raised crossing, tactile paving, signage/road lining and street lighting have been submitted to and approved in writing by the Local Planning Authority. The internal site works shall be implemented in accordance with the details approved prior to the first occupation of the development and retained as such thereafter.

- 16) i) No development shall take place until a programme of archaeological work (which shall include a post investigation assessment) has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- ii) The development hereby permitted shall not be brought into use until the post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under part i) and provision for analysis, publication and dissemination of results and archive deposition has been secured.
- 17) No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage scheme for the site, using sustainable drainage methods, have been submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage system shall be implemented in accordance with the approved detailed design prior to the building work commencing.
- 18) No development shall commence until details of the proposed means of foul sewerage disposal have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied.
- 19) No development shall commence until details of the proposed water infrastructure plans have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied.
- 20) No development shall commence until fences for the protection of trees on the site and neighbouring sites have been erected in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority. The fences shall be erected in accordance with BS5837 (2012) and shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.
- 21) The development hereby permitted shall not be commenced until details of electric vehicle charging points within the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

- 22) None of the residential units hereby approved shall be occupied until the unit has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 23) None of the residential units hereby approved shall be occupied until the unit has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
- 24) Prior to first occupation of the development hereby permitted a scheme to enhance the nature conservation interest of the site shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall accord with the standards described in Annex 6 of SPD 11 and shall include;
- i) details showing the type, number, location and timescale for implementation of the bird boxes and/or bricks,
 - ii) details showing the type, number, location and timescale for implementation of the bat boxes,
 - iii) the use of species of known value to wildlife, which should be native and of local provenance, and
 - iv) the maintenance of wildlife connectivity throughout the site.
- The agreed measures shall be implemented in full prior to the first occupation of the development hereby approved.
- 25) Notwithstanding the information submitted, prior to first occupation of the development hereby permitted, a scheme for landscaping shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
- a. details of all hard surfacing;
 - b. details of all boundary treatments;
 - c. details of all proposed planting, including numbers and species of plant, and details of size and planting method of any trees.
- All hard landscaping and means of enclosure shall be completed in accordance with the approved scheme prior to first occupation of the development. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of any of the buildings or the completion of the development, whichever is the sooner; and 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.

- 26) Prior to first occupation of the development hereby permitted a scheme for the storage of refuse and recycling shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 27) Prior to first occupation of the development hereby permitted, details of external lighting to the central public open space area shall be submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed in accordance with the approved details and thereafter retained as such.
- 28) Prior to first occupation of the development hereby permitted, full details of secure cycle parking facilities for the occupants of, and visitors to, the development shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

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