



Appeal Decision

Hearing held on 26 October 2020

Site visit made on 27 October 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/Q1445/W/20/3246231 239 to 243 Kingsway, Hove BN3 4HE

- 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 Agenda Homes Ltd against the decision of Brighton & Hove City Council.
 - The application BH2018/00937, dated 23 March 2018, was refused by notice dated 9 August 2019.
 - The development proposed is demolition of the existing dwellings and erection of an eight storey building to provide 37 residential dwellings, with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwellings and erection of an eight storey building to provide 37 residential dwellings, with associated access, parking and landscaping at 239 to 243 Kingsway, Hove BN3 4HE in accordance with the terms of the application, BH2018/00937, dated 23 March 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. At the time of the Hearing, the draft Brighton & Hove City Plan Part 2 was being consulted upon prior to submission for examination. It is still at a formative stage in its development, and therefore carries limited weight.
3. The Council began charging a Community Infrastructure Levy on 5 October 2020. This change in circumstances has resulted in the appellant altering the planning benefits and contributions put forward as part of the scheme. Two alternative unilateral undertakings have been submitted and I consider these later in my reasoning.

Main Issues

4. The main issues are:
 - The effect on the character and appearance of the area
 - The effect on the living conditions of neighbouring occupants, in respect of dominance and loss of privacy.

Reasons

Character and appearance

5. Kingsway, the main road running along Hove seafront, is characterised by tall building blocks, generally between 6-8 storeys in height. The blocks are of varying design being more modern in age and design as one moves westward along Kingsway, reflecting the later development of this part of the seafront. Taking access at intervals from Kingsway are residential roads running at right angles to the seafront, which are fronted by regularly spaced, detached and semi-detached two storey houses.
6. The appeal site occupies a position on the corner of Kingsway with Braemore Road. It reflects the part of the seafront where tall blocks start to give way to more domestic scale buildings. The Kingsway frontage between Braemore Road and Berriedale Avenue consists of six detached and semi-detached dwellings. On adjoining frontage blocks this row is flanked on either side by taller apartment blocks.
7. Policy CP12 of the Brighton & Hove City Plan Part 1 identifies the western seafront along Kingsway as far west as Wish Road as an area with potential to accommodate taller developments, defined as 18 metres or more in height (approximately 6 or more storeys), and sets out design criteria which new development is expected to meet. Further advice is given in Supplementary Planning Guidance Note BH15 'Tall Buildings', which identifies the western seafront as a corridor capable of accommodating 'mid-rise' tall buildings (defined as 6-8 storeys in height). Implicit in that policy approach is that taller buildings would be juxtaposed with domestic scale houses, potentially to the side as well as behind, in the same way they are on roads to the east of the appeal site. This sets the context in which I have assessed the appeal scheme.
8. The proposed building at 8 storeys high complies with Policy CP12 and the guidance in BH15 'Tall Buildings', and is consistent with the nearest apartment blocks at Berriedale House and Braemore Court, both of which are also 8 storeys in height. The perceived height of the appeal building would be somewhat less as the top floor would be recessed back from the front and side elevations.
9. In terms of scale, it would be comparable to the neighbouring apartment blocks although somewhat smaller in massing because it would span only half the block width, and would reduce to 5 storeys in height on its western and northern elevations. It would be of a significantly larger scale than the three remaining houses immediately to the west making up the remainder of the frontage block. There are examples of other such contrasts in scale along Kingsway, each differing in detail. More importantly, the policy context supporting the development of taller buildings along the seafront corridor means that such contrasts will occur and do not, by themselves, justify resisting development that is otherwise acceptable. Over time, as the policy objectives are met, such contrasts are likely to reduce as other frontage sites are developed.
10. In terms of its positioning in relation to other buildings along Kingsway, the 5 storey element of the appeal building would align with the front elevation of the neighbouring building at 245 Kingsway, with the 8 storey element projecting further forward some distance away. The forward projection of the front

elevation of the 8 storey element would be comparable with that of Braemore Court to the east, with the corner balconies projecting further. While this would be further forward than the existing buildings on the site, and those which would remain immediately to the west, given the variation in forward projection of taller buildings along Kingsway I consider it would not appear out of place or discordant in wider views along the seafront. I reach this view having taken into account the sweep of buildings in the immediate vicinity of the appeal site, where buildings stand slightly further back from Kingsway than those to the east.

11. On Braemore Road, the 5 storey element would align with the front elevation of the neighbouring building at 6 Braemore Road, with the 8 storey element projecting out some distance further along, and the corner balconies projecting out further still. Looking at other roads in the vicinity, this positioning is not unusual, with the side elevations of buildings fronting Kingsway projecting beyond the lines of buildings in the adjacent residential roads, as is the case in Braemore Road. In my view, the staggered frontage provided by the 5 and 8 storey elements of the appeal building provide an appropriate transition from the Braemore Road frontage to that of Kingsway.
12. I also consider that the proposed building would meet the other design criteria set out in Policy CP12. It would have a distinctive appearance with strong horizontal banding, curved balconies and the use of modern materials. In my view this would provide visual interest to the building that would complement its seafront location. Amendments to the parking layout made during the course of the application provide more space for landscaping, which would improve its setting. It has been designed to meet sustainable construction and accessibility requirements.
13. I conclude that the height, massing, scale and position of the appeal building would accord with other tall buildings along Kingsway, would be acceptable in terms of its relationship with the street scene along Braemore Road, and would complement the character and appearance of the wider area. It would therefore comply with Policy CP12 of the Brighton & Hove City Plan Part One, Policy QD5 of the Brighton & Hove Local Plan and Supplementary Planning Guidance Note BH15 'Tall Buildings', which support the development of taller buildings along the western seafront corridor that meet defined height parameters and achieve a good standard of architecture and design.

Living conditions of neighbouring occupants

14. The proposed building would be of a significantly larger and taller scale than the existing buildings on the site and would be clearly seen from the rear gardens of neighbouring properties, in particular those adjacent in Kingsway and Braemore Road. However, such a contrast in scale is a feature of the apartment blocks along the seafront and the more domestic scale buildings behind them and in some cases to the sides. The relationship between the appeal building and the houses neighbouring the site would be comparable to this established form of layout.
15. The context set by Policy CP12 in supporting the development of taller buildings is also relevant in that it will inevitably result in such relationships becoming established further along the western seafront, subject to consideration of the individual merits of each case.

16. The appeal building has been designed to reduce to 5 storeys closest to the neighbouring dwellings at 245 Kingsway and 6 Braemore Road, with the wings aligning with the neighbouring buildings' front and rear elevations. This design approach would help to reduce the sense of dominance from the development on the neighbouring properties.
17. While I acknowledge that the outlook from neighbouring properties would change significantly, in particular from their garden areas, having regard to the established contrast in scale between buildings on the seafront and houses adjoining them, the policy context, and the design of the appeal building, I consider that it would not have such an overbearing or dominant effect as to be harmful to the living conditions of neighbouring occupants.
18. The appeal building would increase the number and height of windows looking out onto, and visible from, neighbouring dwellings. Those most affected would be 6 Braemore Road and the houses beyond it, 245 Kingsway and the other immediate houses fronting Kingsway, and to a lesser extent properties in Berriedale Avenue.
19. Window to window relationships would be limited, with most additional overlooking applying to garden areas. Within the existing neighbourhood, first and second floor windows from neighbouring dwellings already overlook each other's gardens, as it normal in a residential environment where houses back or flank onto one another. The appeal building would increase the amount of such overlooking because of the considerably greater number of windows, but would not introduce overlooking or inter-visibility where it does not already exist. The relationship between the appeal building and neighbouring dwellings would be comparable to other relationships along the western seafront, where such inter-visibility is well established.
20. Overlooking from balconies is somewhat different, in that the perception of being observed tends to be stronger and wider views can be obtained from them. In response to that concern, screening is proposed to be installed on the northern (rear facing) balconies and northern side returns of balconies facing Braemore Road up to and including the fourth floor. Higher floor balconies would be recessed back from their respective elevations and would not cause the same sense of overlooking.
21. The same situation could arise on the western elevation of the appeal building. I noted on my visit that the upper part of the frontage to 245 Kingsway is used as a domestic garden area and there would be the potential for overlooking between the western sides of the southern (forward facing) balconies up to and including the fourth floor of this area, and the front gardens of the other dwellings immediately to the west. This potential overlooking could be reduced by screening, which I consider to be necessary in this case. Such screening could be required by condition.
22. Subject to the screening of balconies, I consider that the degree of overlooking that would be caused by the appeal building would be little different to that found in similar relationships along the seafront and would not be harmful to the privacy of neighbouring residents.
23. Although not included in the Council's reason for refusal, the issue of loss of sunlight and daylight has been referred to in representations. In this regard, the most affected property would be 6 Braemore Road. The property has one

ground floor side window lighting part of a kitchen/diner. Light to this window is already limited by the boundary fence and an adjacent building. Light to it would be further reduced by the flank elevation of the proposed appeal building. Because it forms a secondary source of light, the main windows to the room being along the rear elevation, I consider this further reduction in light would not reduce light to the room to a point where it would affect the functioning or proper enjoyment of that space. Other windows in the flank elevation light the stairwell or non-habitable rooms. These would also experience a reduction in light, but because of their function that would not be as significant to the use and enjoyment of the property.

24. Other buildings, including Braemore Court, 5 Braemore Road and 245 Kingsway would experience a reduction in sunlight and daylight although having regard to the British Research Establishment report¹ only a limited number of windows in the flank of Braemore Court would be materially affected. Given the separation between the appeal building and Braemore Court, which is not unusual for apartment blocks along the seafront, I do not consider this limited impact to be harmful.
25. Although clearly there would be significant change in the outlook, degree of overlooking and in some cases light to neighbouring properties, I conclude that in the context of development along the western seafront, these factors would be comparable to the existing and anticipated relationships between taller buildings fronting Kingsway and the houses that adjoin them. As such, they fall within accepted relationships between such buildings and I do not find that the living conditions of occupants in neighbouring dwellings would be harmed. The development would therefore comply with Policy CP12 of the Brighton & Hove City Plan Part One and Policy QD27 of the Brighton & Hove Local Plan, which resist overdevelopment and loss of amenity to proposed, existing and/or adjacent occupiers where it is liable to be detrimental to human health.

Other Matters

Unilateral undertakings - drafting

26. The unilateral undertakings submitted by the appellant would bind the current owners and their successors in title but would not bind two mortgagees who have interests in 239 Kingsway and who have declined to become signatories to the undertakings. In response to those circumstances, the appellant has added clauses within the undertakings which covenant not to commence development until the interests of the mortgagees have been discharged and provide an escrow account which, in the event of default, would enable the Council to recover money for the purpose of meeting the obligations. The appellant has also suggested conditions, including some that are intended to secure the same outcomes as the obligations in the undertakings. I consider these further under 'conditions' below.
27. Not having all parties with an interest in the land as signatories of the undertakings is clearly not ideal, because if the mortgagees were to take possession of 239 Kingsway they would have the benefit of the land free of the obligations in the undertakings. However, in the circumstances of this case I consider the risk of the development being implemented without the

¹ BRE Client Report, review of daylight, sunlight and overshadowing, 239-243 Kingsway, Hove, dated 3 May 2019.

obligations being fulfilled is small. The scheme is designed as a single, indivisible building that spans the whole of the site and which could not in reality be built out in part. The undertakings which have been signed would continue to be enforceable in whole on the owners of the land at 241 and 243 Kingsway and their successors.

28. I take further comfort from the addition of the clause providing for an escrow account, which would deliver a substantial sum of money to the Council in the event that the obligations were not met. I am not convinced that it would be entirely effective in delivering all the obligations, for example those which are not primarily financial, but it would nevertheless secure monies that the Council could use to achieve similar outcomes.
29. The Council has raised some detailed criticisms of wording in the unilateral undertakings. I have considered these criticisms but concluded that they do not affect the lawfulness of the undertakings or the ability to enforce the obligations in them.
30. While I acknowledge that the absence of the mortgagees on 239 Kingsway as signatories to the undertakings does introduce a degree of risk, having regard to the circumstances set out above, I consider that risk to be sufficiently small that it can be discounted, and the undertakings can be taken into account.

Unilateral undertakings - content

31. The appellant has submitted two alternative unilateral undertakings to secure planning contributions and requirements associated with the scheme. The two undertakings differ in that one offers affordable housing while the other does not.
32. Both undertakings include obligations to secure an artistic component, a contribution towards a local employment scheme, a travel plan including incentives for future occupants to use a car club, cycles and public transport, a review of affordable housing contributions, a construction, training and employment strategy, and certain highway works. These obligations respond to requirements in Policies CP3, CP5, CP7, CP9 and CP17 of the Brighton & Hove City Plan Part One and Policies QD27 and TR7 of the Brighton & Hove Local Plan.
33. The contributions differ in certain respects from those provisionally agreed at the application stage because since then the Council has adopted a Community Infrastructure Levy, which has replaced the need for some of the former contributions.
34. One of the unilateral undertakings also offers 2 units as affordable housing or an equivalent financial contribution in the event that no registered affordable housing provider wishes to take them on. This provision is lower than required by Policy CP20 of the Brighton & Hove City Plan Part One but has been justified by the appellant on the basis of the limited viability of the scheme. The Council accepts that the scheme has limited viability but considers that it could nonetheless support a higher provision of affordable housing. Arguments for the appellant and Council have been advanced in financial appraisals by BNP Paribas Real Estate² and VOA District Valuer Services³ respectively. The

² Latest position summarised in letter dated 23 October 2020.

³ Viability report dated 15 October 2020, amended by email dated 22 October 2020.

number of units of affordable housing offered is less than that provisionally agreed during the application stage, in part because of the financial consequences of the Community Infrastructure Levy.

35. On the evidence before me I am satisfied that there is a need for affordable housing in Brighton & Hove and the Council is justified in seeking an element of affordable housing in residential schemes, as required by Policy CP20. The policy recognises that affordable housing targets may have to be applied flexibly having regard, amongst other criteria, to the financial viability of developing a site and the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives. I therefore consider that the development does need to incorporate affordable housing, in so far as it can do so viably.
36. So far as the financial appraisal is concerned the appellant raises concerns about the use of BCIS benchmark costs instead of quantity surveyor estimates for the scheme, the level of profit margin, and sales values for the site. However, these were all matters that were provisionally agreed at the time of the application between the appellant and Council, and I am not persuaded that there is any good reason to reach a different view now. In relation to the recent revaluation following the adoption of the Community Infrastructure Levy, the disagreement between valuations has focused on the issue of the appropriate house price index to use in updating sales values. The appellant considers that to be the house price index for flats, while the Council prefers the house price index for all properties.
37. At the Hearing the Council argued that the higher all property house price index was appropriate given the premium values expected for flats along the seafront, which makes them more desirable than flats more generally across Brighton & Hove. However, I note that the appellant has already accepted a higher sales value than they originally considered appropriate for the site, which reflects a premium for seafront living. Once that argument is set aside, I consider that as this is a detailed scheme wholly for flats, the house price index for flats would be the most appropriate index to use in calculating the viability of the site. On that basis, I accept the appellant's calculation that only 2 units of affordable housing can be supported by the scheme at the present time, as opposed to the 3-4 units suggested by the Council. I note that there is an obligation in unilateral undertaking one that enables a review of the affordable housing contribution were the viability position to change.
38. The unilateral undertaking which includes the obligation to provide affordable housing (unilateral undertaking one) would secure 2 units for this purpose, as well as the other contributions summarised earlier. For the reasons explained above, I consider the obligations in that unilateral undertaking meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations and the guidance in paragraph 56 of the National Planning Policy Framework (the 'Framework'), and I therefore place weight on the contributions provided in it in coming to my decision.
39. The unilateral undertaking which does not include an obligation to provide affordable housing (unilateral undertaking two) would fail to meet the requirements of Policy CP20, even as applied flexibly because of the limited viability of the scheme. I therefore do not place weight on it.

Party wall

40. The appeal scheme would result in the demolition of 243 Kingsway, which shares a party wall with 245 Kingsway. A method statement setting out how the demolition might be carried out and a new external party wall provided to 245 Kingsway was submitted during the Hearing. This statement indicates that such works should be achievable without harming the neighbouring property, although I consider it necessary that such works need to be reviewed and agreed by the Council. This can be achieved through the imposition of a condition. Irrespective of the condition, separate safeguards are available to the neighbouring property owner through the use of the Party Wall Etc Act 1996.

Heritage assets

41. I am required to pay special regard to the desirability of preserving nearby listed buildings or their settings or any features of special architectural or historic interest they possess⁴. In front of the site are several grade II listed seafront shelters, and the western lawns which are considered a non-designated heritage asset. The shelters are mid-19th century ornate structures situated along the esplanade, while the western lawns are used for a variety of public recreational purposes. The lawns in front of the appeal site were formerly used as a pitch and putt course, but are now laid to grass.
42. These heritage assets lie on the opposite side of Kingsway to the appeal site and are separated from it by the dual carriageway, central reservation, footpaths and cycle path. While the proposed development would be seen from these assets, and vice versa, they would be physically and visually separated by the intervening roadway. It was agreed by both main parties at the Hearing that the settings of the heritage assets would not be adversely affected by the development, a view which I share. I consider the proposal would have a neutral effect on the shelters and the western lawns, which would therefore preserve their settings.

Miscellaneous

43. Some representations raise concern about the amount of car parking within the appeal scheme, which might put a consequent pressure on on-street parking. However, the development accords with the Council's parking standards for such schemes. A parking survey carried out at the time of the application also showed that the controlled parking zone in which the site is located had spare capacity to accommodate on-street parking demand that might be generated by the appeal scheme. Both unilateral undertakings include an obligation for a travel plan with incentives to encourage the use of public transport and other non-car modes of transport by future occupants. Having regard to these factors, I consider that the parking provision included in the scheme is acceptable.
44. Some representations also raise concerns about local services being overloaded, that pollution could increase, there could be a wind tunnel effect, opposing access points could cause a highway safety hazard, and concerns about stress on drainage and water pressure. I have seen no evidence to

⁴ Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

support these concerns, nor are objections raised by the relevant public authorities or utility companies. I have therefore not placed weight upon them.

Planning Balance

45. I have concluded that the proposed development would complement the character and appearance of the area, helping to achieve the objectives of Policy CP12 which supports the development of taller buildings along the western seafront. While recognising that the development would result in considerable changes to the outlook and amount of windows looking out on to neighbouring dwellings, I have concluded that these changes are not harmful to the living conditions of occupants of those dwellings, having regard to the context set by Policy CP12 and similar relationships between tall buildings along Kingsway and neighbouring residential dwellings.
46. The development would not meet the affordable housing target set in Policy CP20, but for the reasons detailed above I conclude that the policy needs to be applied flexibly because of viability constraints and the realisation of other planning objectives. I therefore accept there is justification for a reduced level of affordable housing in the scheme and have placed weight on unilateral undertaking one which includes such a benefit, as well as it securing other obligations necessary to meet the requirements of the Development Plan.
47. The Council cannot currently demonstrate a five year housing land supply. In such circumstances the policies which are most important for determining the application are considered to be out of date, and paragraph 11 of the Framework advises that permission should be granted for applications involving the provision of housing, such as the appeal scheme, unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
48. The appeal site does not lie within an area of particular importance. Nor do I consider the adverse impacts of the scheme significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development is therefore triggered. It follows that, in accordance with the presumption, planning permission should be granted.

Conditions

49. I have considered the conditions suggested by the Council and the appellant in the light of the advice in paragraph 55 of the Framework. I have included those which I consider meet the tests set out in the Framework, subject to rewording in the interests of clarity and precision, and where possible combined in the interests of simplicity. They have been reordered to accord with the advice in the Planning Practice Guidance. There are two pre-commencement conditions that have been agreed in writing by the appellant in the Statement of Common Ground.
50. In addition to the standard time limit condition, a condition specifying the approved plans has been included in the interests of certainty. Details of ground levels are required in the interests of the character and appearance of the area and neighbouring living conditions.
51. A Construction Environmental Management Plan is required to protect neighbouring living conditions and highway safety. I have omitted a reference

to the Control of Pollution Act 1974 as this is separate legislation and if the developer is required to seek prior consent under it then that should be undertaken as a separate matter.

52. Approval of external materials is required in the interests of the character and appearance of the area. I have combined it with another condition suggested by the Council for large scale drawings of fenestration to be approved. Approval of surface water drainage is required to avoid the risk of flooding. A method statement detailing how the party wall with 247 Kingsway will be made good is necessary in the interests of the living conditions of the neighbouring property. Conditions triggering optional Building Regulations on accessibility and water efficiency are required to accord with policies in the Development Plan and achieve sustainable construction standards. A condition requiring the installation of the refuse and recycling facilities shown on the approved plans is necessary in the interests of the living conditions of future residents. A Car Park Management Plan is required to ensure clarity and the efficient use of the parking space provided with the development. The same applies to the provision of cycle facilities and electric vehicle charging points.
53. A condition requiring approval of landscaping is necessary in the interests of the character and appearance of the area. I have combined conditions suggested by the Council for hard and soft landscaping, boundary treatments and nature conservation enhancement together into one. A condition requiring approval of external lighting is necessary in the interests of the living conditions of neighbouring occupants. Conditions requiring the installation of a photovoltaic array and a higher standard of energy efficiency for the building than current Building Regulations are necessary in the interests of energy efficiency and sustainable construction. The approval and installation of screening of balconies facing north and west is required in the interests of the privacy of neighbouring occupants, as is a condition limiting the use of flat roofs of the building other than where indicated to be used as balconies.
54. A condition requiring the parking area is used solely for that purpose is necessary to avoid unnecessary parking stress in the surrounding area. A condition requiring hard surfacing to be porous is necessary to aid surface water drainage on the site and reduce the risk of flooding. A condition controlling noise from associated plant and machinery is necessary in the interests of the living conditions of neighbouring occupants.
55. I have omitted a suggested condition relating to potential contamination on the site. I have no evidence that the site is contaminated and therefore the condition is unnecessary. If contamination is subsequently proved to be present, there are other controls available to the Council under Environmental Health legislation to deal with that situation.
56. A condition requiring construction of new or extended crossovers is unnecessary as an equivalent requirement is included as an obligation in unilateral undertaking one.
57. The appellant has suggested conditions as an alternative to the obligations secured by the undertakings. In my view conditions requiring a developer to enter into legal agreements, comply with other regulatory requirements, or requiring the payment of sums of money or other similar considerations do not meet the tests set out in paragraph 55 of the Framework, nor do they accord

with the advice in the Planning Practice Guidance⁵. While the Guidance notes that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be possible, it is unlikely to be appropriate in the majority of cases. In this case, where there is more than one obligation covering a range of different subjects, I consider the use of such negatively worded conditions would not be appropriate.

58. The appellant has also suggested a condition that prevents development commencing on land at 239 Kingsway until development takes place on land at 241 or 243 Kingsway. As this would further reduce the risk of the development being implemented without meeting other planning obligations, I consider it meets the tests in the Framework and I shall impose it.
59. Another condition suggested by the appellant that would limit occupation of units on land at 239 Kingsway has a similar intent, but its wording is imprecise, and I consider it would be difficult to enforce. It does not therefore meet the tests in the Framework.

Conclusion

60. I conclude that the appeal should be allowed.

Guy Davies

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be commenced before the expiration of 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings: proposed block plan P100, proposed site plan P101 Rev 1, proposed streetscene elevations P111, proposed site sections P112, proposed contextual elevations to Kingsway P113, proposed contextual elevations to Braemore Road P114, proposed ground floor plan P201 Rev 2, proposed first and second floor plans P202, proposed third and fourth floor plans P203, proposed fifth and sixth floor plans P204, proposed seventh and eighth floor plans P205, proposed south and east elevations P211, proposed north and west elevations P212, proposed sections P221, proposed sections P222, refuse strategy plan P301 Rev 1, parking strategy plan P302 Rev 1, landscape masterplan.
3. The development hereby permitted shall not commence, including demolition, until details of existing and proposed ground levels within the site and on land adjoining have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved level details.
4. The development hereby permitted shall not commence, including demolition, until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the build schedule and anticipated completion

⁵ Planning Practice Guidance: use of planning conditions, paragraph 010.

date, a scheme for liaison between the developer and local residents, a scheme for minimising noise, dust and vibration during construction, details of the hours of construction, details of any construction compound, arrangements for parking of construction personnel, and a plan showing the routes for construction traffic. The development shall be carried out in accordance with the approved Plan.

5. No development above ground floor slab level of the development hereby permitted shall take place until details or 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. Such details or samples shall include all bricks, mortar, cladding, and details of proposed window, door and balcony treatments to include elevational drawings and sections to a scale of at least 1:20. The development shall be carried out in accordance with the approved materials.
6. No development above ground floor slab level of the development hereby permitted shall take place until a scheme for the design and maintenance of surface water drainage from the site has 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 scheme.
7. No demolition of 243 Kingsway shall take place until a method statement has been submitted to and approved in writing by the Local Planning Authority detailing how the party wall with 245 Kingsway will be constructed. The party wall and any associated works shall be completed within one month of the demolition of 243 Kingsway.
8. The development hereby permitted shall not be occupied until two of the dwellings have been completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) and shall be retained as such thereafter. All other dwellings shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained as such thereafter.
9. The development hereby permitted shall not be occupied until all dwellings have been completed in accordance with Building Regulations Optional Requirement G2 Regulation 36(2b) to achieve a water efficiency standard using not more than 110 litres of water per person per day maximum indoor consumption.
10. The development hereby permitted shall not be occupied until the refuse and recycling facilities shown on refuse strategy plan P301 Rev 1 have been installed and shall thereafter be retained for use by all occupants.
11. The development hereby permitted shall not be occupied until a Car Park Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of how each car parking space will be allocated and managed and measures to ensure that each car parking space is for the sole use of its allocated owner and/or those they permit to use said space. The approved Plan shall be implemented prior to occupation of the development and thereafter retained.

12. The development hereby permitted shall not be occupied until details of secure cycle storage facilities for occupants of and visitors to the development have been submitted to and approved in writing by the Local Planning Authority. The approved storage facilities shall be implemented prior to first occupation of the development and thereafter retained.
13. The development hereby permitted shall not be occupied until details of electric vehicle charging points within the car park have been submitted to and approved in writing by the Local Planning Authority. The charging points shall be installed prior to first occupation of the development and thereafter retained.
14. The development hereby permitted shall not be occupied until a scheme for landscaping and enhancement of the nature conservation interest of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of hard surfacing, details of boundary treatments and details of proposed planting, including numbers and species of trees and other plants. All hard landscaping and boundary treatments shall be completed in accordance with the approved scheme prior to first occupation of the development. All planting, seeding and turfing included within the approved scheme shall be carried out in the first planting and seeding seasons following first occupation of the development or the completion of the development, whichever is sooner. Any trees or other plants which, within a period of five years from the first occupation of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.
15. The development hereby permitted shall not be occupied until details of the external lighting of the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include information on the predicted illuminance across the site and immediately adjacent properties. The approved lighting shall be installed prior to first occupation of the development hereby permitted and maintained and operated thereafter in accordance with approved details.
16. The development hereby permitted shall not be occupied until details of the photovoltaic array referred to in the Energy Statement has been submitted to and approved in writing by the Local Planning Authority. The photovoltaic array shall be installed prior to first occupation of the development and thereafter retained.
17. The development hereby permitted shall not be occupied until the balcony louvres shown on the approved plans have been installed, and the louvres shall thereafter be retained.
18. The development hereby permitted shall not be occupied until details for privacy screening of those parts of balconies facing west have been submitted to and approved in writing by the Local Planning Authority. The privacy screening shall be installed prior to first occupation and thereafter retained.
19. The development hereby permitted shall be constructed to an energy efficiency standard that is designed to achieve a minimum reduction of 19%

CO₂ emissions over Building Regulations requirements in Part L 2013 (TER baseline).

20. The vehicle parking area shown on parking strategy plan P302 Rev 1 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 permitted.
21. No cables, wires, aerials, pipework, meter boxes or flues other than as shown on the approved drawings shall be fixed to any external façade of the development hereby permitted.
22. Other than where indicated to be used as balconies on the approved drawings, access to the flat roofs of the development hereby permitted shall be for maintenance or emergency purposes only and the flat roofs shall not be used as a roof garden, terrace, patio or similar amenity area.
23. All external ground floor hard surfacing within the development hereby permitted shall be made of porous materials.
24. Noise associated with plant and machinery incorporated within the development hereby permitted shall be controlled such that the rating level measured or calculated at 1 metre from the façade of the nearest noise sensitive building shall not exceed a level 5dB below the existing LA90 background noise level. The rating level and existing background noise levels are to be determined in accordance with the guidance provided in BS 4142:1997.
25. No development shall commence on land at 239 Kingsway until development has commenced on either land at 241 or 243 Kingsway.

***** End of Conditions*****

Appearances

FOR THE APPELLANT:

Michael Wood	Associate Director, WSP Indigo
Jamie Barratt	Agenda Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Nee	Principal Planning Officer, Brighton & Hove City Council
Councillor Bridget Fishleigh	Member of the Brighton & Hove City Council Planning Committee

INTERESTED PERSONS:

Councillor Robert Nemeth	Ward councillor
Daniel Fyne	Local resident

Paul Taggart	Local resident
Edward Goslett	Local resident
Oliver Urpi	Local resident
Oliver Carter	Local resident
Robert Ground	Local resident
Eimar Murphy	Local resident

Document received during the Hearing

Method statement for separation of buildings and creation of party wall at 243-245 Kingsway.

Documents received following the Hearing

Copies of unilateral undertaking one (with provision of affordable housing units) and unilateral undertaking two (with no provision of affordable housing units), both signed and dated 13 November 2020.

Copies of land register titles and plans for the appeal site.

List of suggested conditions by the appellant.

Opinion by Paul Stinchcombe QC dated 13 November 2020, on behalf of the appellant.

Email from Brighton & Hove City Council, dated 16 November, commenting on post-hearing submissions by the appellant.

Email from the appellant, dated 18 November 2020, commenting on points raised by the Council.