



Appeal Decision

Site visit made on 2 September 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 OCTOBER 2022

Appeal Ref: APP/Q1445/W/20/3266006

106-112 Palmer and Harvey House, Davigdor Road, Hove BN3 1RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr D Murphy of Stonegate Homes (Hove) Limited against Brighton and Hove City Council.
 - The application Ref BH2020/00781, is dated 6 March 2020.
 - The development proposed is erection of a new building comprising 43no. dwellings, together with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appellant amended the proposal in November 2020. Those amendments included a reduction in the number of dwellings proposed to 38, as well as changes to the site layout and outdoor spaces. I understand that public consultation was not undertaken on this revised scheme and that the notifications of this appeal carried out by the Council referred to the scheme for 43 dwellings. While the appellant would prefer me to consider the 38-unit scheme, to do so would deprive those who should have been consulted on the changed development of the opportunity of such consultation. For this reason, and applying the 'Wheatcroft Principles'¹, my decision is based on the description of development as applied for and those supporting plans, which relate to a scheme for 43 dwellings.
3. The appellant has brought to my attention an alternative scheme for redevelopment of the appeal site which is under consideration by the Council². I do not have full details of this alternative scheme before me and, in any event, the appeal relates to the development described above and its supporting plans.
4. The Brighton and Hove City Plan: Part Two is currently in draft form and undergoing independent examination. I am unclear, based on the information before me, as to how far away these policies are from adoption or in what form they will be adopted post examination. I can therefore only afford them limited weight. I have in any case determined the appeal having regard to the adopted development plan at this time.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² Reference BH2021/02014

Main Issues

5. Having considered the Council's appeal statement, and the reasons that it would have refused planning permission, the main issues are:
- i) the effect of the development proposed on the character and appearance of the area;
 - ii) whether the development would provide an acceptable standard of living conditions for future occupants;
 - iii) the effects on highway safety with regard to provision of parking and servicing and delivery arrangements;
 - iv) whether the development would deliver an appropriate level of affordable housing and make appropriate provisions for local employment and training.

Reasons

Character and Appearance

6. The appeal site is an area of hard surfacing which forms part of the car park of Palmer and Harvey House, bound by a belt of trees and hedgerows to the north. The site is positioned behind the buildings which front Davigdor Road to the south and Montefiore Road to the east which are of varying heights and designs. Part of the appeal site adjoins the open car park of the Montefiore Hospital, over which views of the appeal site are possible from the road.
7. The main building of Palmer and Harvey House exists immediately to the west of the appeal site, comprising seven storeys and predominantly glazed elevations. While it is set back from Davigdor Road, its L-shape wraps around the office building of Preece House which, together with its access and surrounding ground level car park, give Palmer and Harvey House a sense of space and separation from the surrounding buildings, allowing it to appear visually distinct.
8. Due to its siting, the elevations of the proposed building above the ground floor level would be situated within close proximity to the surrounding buildings, particularly to the flank end of Palmer and Harvey House to the west and parts of Montefiore Hospital which includes a large flank elevation on the boundary with the appeal site.
9. On the western side of the proposed building, a narrow and heavily enclosed gap would be created between the front elevation of the proposed building and flank side elevation of Palmer and Harvey House. Such proximity of buildings of this scale is uncharacteristic of the immediate area, and would create a cramped appearance, at odds with the prevailing character of the surrounding area. This would be exacerbated by the proposed detailed design of the front and side elevations, which are busy and animated by a multitude of balconies and openings which would contribute to the cramped appearance.
10. Due to the siting of the appeal site, the proximity of the proposed building to those surrounding it would not be highly visible from the street, except, however, in views over the car park to the east. In these views from Montefiore Road, the proximity of the eastern elevation to the hospital building would be apparent, and in combination with the detailed design of the proposal on this

elevation including balconies and large areas of glazing, would appear unduly cramped and uncomfortable.

11. Despite the otherwise limited visibility from the road, the above concerns would be apparent from within the site itself and would be visible to its users and those of the surrounding buildings from private viewpoints. I find that its set back position from the road, and limited wider visibility would not, therefore, adequately mitigate for its poor relationship to the surrounding buildings.
12. At the ground floor level, the development would comprise a significant extent of hard landscaping for parking and manoeuvring of vehicles. As a result of the dominance of hard surfacing and the lack of any defined pedestrian environment, the development would provide an unattractive and poor-quality public realm for its users. The absence of soft landscaping across the site would exacerbate the dominance of the hard surfacing and fail to provide any measures to soften the visual impacts of the parking areas and cars. To address this matter would require substantial alteration to the proposal and could result in other implications relating to parking, layout of dwellings and living conditions. As such it would not be appropriate or reasonable that these matters be addressed by condition.
13. The appellant has drawn my attention to some of the nearby developments and their proximity to neighbouring buildings, as well as the extent of their red line boundaries and on-site landscaping. Based on the information provided, those developments have material differences to the appeal scheme, having street frontages which inherently provide some space around the buildings. Other details, for example relating to their design and bulk, have not been provided to allow further comparison. As such I am not satisfied that they are directly comparable to the appeal scheme.
14. While the existing site is extensively hard surfaced, the appeal scheme would change the use, accessibility, character and appearance of the site, including how it functions. Therefore, the existing dominance of hard surfacing does not provide justification for a similar approach in the appeal scheme.
15. Overall, and taking these attributes together, the appeal scheme would cause harm to the character and appearance of the area. The proposal would conflict with Policy QD15 of the Brighton and Hove Local Plan 2005 (the LP), which requires, among other things, adequate consideration to be given to landscape design including all the spaces between and around buildings. There is also conflict with Policy CP12 of the Brighton and Hove City Plan Part One 2016 (the CPP1) which relates to urban design principles and the need to respect urban grain and ensure that the design of external spaces is an integral element of the overall design approach.

Living Conditions

16. Those units proposed to the south eastern corner of the development would be close to the large flank wall of the Montefiore Hospital and to its other staggered rear elevations. While those corner units would be dual aspect, their east facing windows would experience a particularly poor level of outlook due to the scale and proximity of the flank wall which they would face. The south facing windows and doors would serve the main living areas but would be modest in scale and similarly be in close proximity to, and directly face the rear elevation of the neighbouring buildings. In combination, the scale and

proximity of the neighbouring buildings would appear dominant in the outlook from those units as a whole and have an oppressive effect on the living conditions experienced by future occupants.

17. The appellant has demonstrated through a Sunlight and Daylight Assessment, that levels of daylight to all rooms would be satisfactory. While the Council have concerns regarding the methodology of that assessment, I do not have substantive evidence to suggest that the lighting conditions would consequently be unacceptable. Despite this, I do not consider that the levels of daylighting evidenced adequately mitigates or reduces the effects of the poor outlook from those units. The appellant also states that the neighbouring developments would have similar internal layouts. I do not have details of the layouts of those developments before me and their relationship to neighbouring buildings is materially different to that of the appeal scheme, and so likely to result in different living conditions.
18. In addition to the above concerns for some of the units themselves, the proposed residential entrances would be located beneath the main building and alongside the undercroft parking. While artificial lighting and CCTV could assist in providing security to this area, the entrances would be likely to experience little natural lighting or natural surveillance by reason of their siting and design. Even if this area were not publicly accessible, it would nonetheless be used by occupiers of the development, visitors and users serving it, and based on the evidence, the distance from the main highway and footpaths would further reduce opportunities for surveillance rather than improving safety. As a result of these factors the entrances would be unwelcoming and promote a fear of crime in future occupants. I do not consider that the imposition of a condition relating to CCTV and lighting would adequately address this issue.
19. All one-bedroom units would be single aspect, facing either east or west. However, due to the positioning of those units they would generally experience good levels of outlook over the remaining car park to the north of Palmer and Harvey House and over the neighbouring car park to the east. In combination with the adequate levels of daylight demonstrated by the appellant, large, scaled openings serving the habitable rooms and private outdoor space, I consider that overall, these units would provide an adequate standard of accommodation.
20. I note the Council's concerns for the impacts of a four-storey extension to the northern side of the Montefiore Hospital, which could occur in the future. This could have significant implications on the living conditions of future occupants of the development. Nonetheless, I have assessed the appeal scheme on the basis of the information before me and the circumstances at this time.
21. There is dispute between the parties as to whether the proposed units meet the National Described Space Standards (NDSS) and I do not have substantive evidence to support either claim nor to which units the concerns relate. However, even if the units did fall slightly short of the NDSS, given the other attributes of these units described above, a small, short fall would not alter my judgement in terms of the overall standard of accommodation.
22. All proposed units would benefit from access to private outdoor space and shared roof terraces at the sixth-floor level. Notwithstanding the concerns above relating to the visual impacts of landscaping across the site, the proposal would provide acceptable access to outdoor spaces to its future occupants.

23. For the reasons given, the proposal would cause harm to the living conditions of its future occupiers, particularly in terms of the outlook from some of the units and design of the residential entrances. Consequently, the proposal would conflict with Policy QD27 of the LP, which states permission will not be granted where it would cause loss of amenity to proposed residents and Policy CP12 of the CPP1 insofar as it relates to design of external spaces and the fear of crime. There would also be conflict with paragraph 130 of the National Planning Policy Framework (the Framework) insofar as it requires that planning decisions create places with a high standard of amenity for future users and where crime and disorder, and the fear of crime, do not undermine the quality of life.

Highway Safety- Parking

24. The proposed development would provide 23 parking spaces at the ground floor level predominately beneath the main building. The Council accept that the quantum of parking proposed meets the local maximum parking standard.
25. Despite this, the appeal site forms part of the car park for Palmer and Harvey House, and those existing parking spaces would be displaced as a result of the proposed development. There is a long planning history relating to the change of use of Palmer and Harvey House from offices to residential units and I understand those schemes are not dependant on the appeal site for parking. However, based on the evidence before me and findings of my site visit, it is not apparent that any change of use of Palmer and Harvey House has occurred to date. The Council state that, if the office use were reinstated, the appeal scheme would result in the loss of 70 parking spaces serving the offices. This has the ability to result in a significant increase in local parking pressures should those vehicles attempt to park elsewhere near the site.
26. It has not been satisfactorily demonstrated that the nearby roads, or roads beyond the nearby parking restrictions, have the capacity to absorb the additional on-street parking demand created by the development. I note that the proposed level of parking provision is similar to that accepted at the neighbouring developments, however it has not been evidenced whether those entailed the loss of existing parking spaces in a manner comparable to the appeal scheme. The appellant has also drawn my attention to census data, changing trends in car ownership and the availability of initiatives including car clubs near the site. However, I do not have evidence that these factors would significantly reduce or mitigate for the substantial loss of parking on the appeal site to serve Palmer and Harvey House.
27. The appellant has suggested conditions to help mitigate impacts on nearby parking demand, including submission of a Travel Plan to discourage car use, and a restriction on parking permits for future occupants. However, these measures would relate to the parking of future occupiers of the development, rather than to the users of Palmer and Harvey House, to which the concern relates. As such these conditions would not make the development proposed acceptable in planning terms.
28. Despite the site's good accessibility in terms of public transport, and the maximum parking standards adopted by the Council, given the extent of parking spaces which would be lost, the potential consequences of the development on the nearby roads could be significant. This could lead to inconsiderate parking, which would increase the risk of conflict between

vehicles and pedestrians. Consequently, this would be harmful to highway safety. The appeal scheme would conflict with Policy TR7 of the LP which relates to the safe use of roads and Policy CP9 of the CPP1 which seeks to provide a safe transport system and manage mobility.

29. Insofar as this main issue is concerned, I do not find conflict with Policy QD27 of the LP which relates to protection of amenity.

Highway Safety- Deliveries and Servicing

30. I note that the Highways Authority reviewed, and provided comments on, additional information provided by the appellant in November 2020 which sought to address some of their concerns. However, for the reasons given above under Preliminary Matters, my assessment relates to the original description of development and its supporting plans.
31. The appellant's Transport Statement demonstrates that deliveries and servicing, including refuse collections, would take place to the rear of Palmer and Harvey House. This area would be heavily constrained by buildings and by existing and proposed parking spaces. The tracking diagrams suggest turning vehicles would be very close to parked cars and show movement over one parking space at the back of the site. Consequently, any obstruction resulting from the presence of other large vehicles or a poorly parked vehicle, would result in the need for vehicles to reverse along the access for a significant distance. In addition, vehicles would turn in front of the building and in the path of pedestrians entering and exiting the site.
32. Furthermore, the appellant's forecasting for deliveries to the site does not take into account taxis and deliveries by cars and does not fully consider the implications of a combined office and residential use on the wider site, should the relevant permissions for change of use not be implemented. In the absence of this information, it cannot be established with certainty that the delivery and servicing arrangements would be adequate or have the capacity to accommodate for the needs of the development. Inadequate arrangements would result in the need for vehicles to reverse to the highway, which would substantially increase the risk to other vehicles and pedestrians, and cause harm to highway safety.
33. To address the above concerns would require significant adjustment to the site layout and may result in other implications, for example relating to visual impacts. For this reason, I do not consider that it would be reasonable for these matters to be addressed by condition. The allocation of parking bays for deliveries is similarly unlikely to sufficiently address the above concerns insofar as they relate to larger vehicles.
34. For these reasons the appeal scheme would cause harm to highway safety through its delivery and servicing arrangements and would conflict with policies CP9, CP12 and CP13 of the LP which together require development to reduce adverse impacts of vehicular traffic and parking, consider external space and provide a safe and sustainable transport system. The proposal would also conflict with Policy TR7 of the CPP1 relating to safe development and the objectives of the Framework where it requires safe and suitable access to the site and that development should not unacceptably impact on highway safety.

Affordable Housing, Local Employment and Training during Construction

35. The supporting text to Policy CP20 sets out the established need for affordable housing within the City and why it is necessary for such developments to contribute to the identified need. I am therefore satisfied that such a contribution is necessary to make the proposal acceptable in planning terms.
36. Policy CP20 of the CPP1 sets a target of 40% on site affordable housing provision on sites of 15 or more dwellings and states that the targets will be applied more flexibly where the Council considers this to be justified. The Council consider that, informed by the appellant's Viability Assessment, the appeal scheme could deliver nine affordable units plus a financial contribution.
37. While this is not disputed by the appellant, I have no mechanism before me to secure a contribution to affordable housing as part of the appeal scheme. Therefore, the absence of affordable housing weighs against the development.
38. Policy CP7 of the CPP1 and its supporting text seek contributions towards employment and regeneration initiatives including securing local employment, training and apprenticeships to include young people who are not in employment, education and training. These requirements are expanded upon in the Council's 'Developer Contributions Technical Guidance' 2017. The Council have provided a figure for a financial contribution that it considers would be necessary, alongside employment and training strategies for both the demolition and construction phases of the development.
39. While the contributions have not been contested by the appellant, I do not have substantive evidence before me to establish whether those particular obligations would be compliant with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. However, neither do I have an agreement or a mechanism before me to secure such obligations in any event.
40. As the appeal is to be dismissed on other substantive issues, this is not a matter which I need to consider further.

Other Matters

41. While the upper levels of the appeal scheme may be visible to some degree from the locally listed St Ann's Well Gardens to the south, based on the evidence, given the distance between them and substantial intervening buildings, I am satisfied that the appeal site does not form a part of its setting or significance.

Planning Balance and Conclusion

42. The Council accept that it is unable to demonstrate a 5-year housing land supply. As such, the provisions of paragraph 11 of the Framework are relevant to the appeal. The most important policies are deemed to be out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
43. The proposal would cause harm to the character and appearance of the area, to the living conditions of future occupants and to highway safety, as well as providing insufficient affordable housing. The result of such harms would be

significant and long lasting and would cause conflict with the Framework. I attach substantial weight to these harms.

44. The proposed development would contribute 43 units to the Council's housing stock, in an accessible location. I ascribe this significant weight given the lack of a 5-year land supply. In addition, there would be economic benefits in terms of jobs created during the construction phase of development and through the interactions and spending of future occupiers of the site.
45. While the Framework seeks to make efficient use of land, paragraph 124 is nonetheless, clear that efficient use of land should take into account factors including housing need, desirability of maintaining prevailing character and the importance of securing well-designed spaces. As the appeal scheme would not achieve these objectives, I afford limited weight to the benefit of the efficient use of the land.
46. The emerging City Plan Part 2 Policy SSA3, allocates land at Lyon Close, which encompasses the appeal site and Palmer and Harvey House, for mixed-use redevelopment including specified quantum's of housing and employment uses. I do not have details before me of how the proposed development would impact upon the Council's aspirations for this area and, in any event, as the policy is in draft form and I do not have details of its likely adopted form, I afford this little weight in favour of the development.
47. Overall, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The appeal scheme would not therefore benefit from the presumption in favour of sustainable development.
48. For the reasons given, there are no material considerations, including the approach of the Framework, that would indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR