



Appeal Decision

Site visit made on 24 October 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/Q1445/W/23/3317868

15 - 26 Lincoln Cottages, Brighton BN2 9UJ

- 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 Burlington Property Group against Brighton & Hove City Council.
 - The application Ref BH2022/03810, is dated 9 December 2022.
 - The development proposed is the demolition of all existing buildings and construction of nine residential dwellings (Use Class C3).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of all existing buildings and construction of nine residential dwellings (Use Class C3) at 15 - 26 Lincoln Cottages, Brighton, BN2 9UJ, in accordance with the terms of the application, Ref BH2022/03810, dated 9 December 2022, subject to the conditions set out within the attached schedule.

Preliminary Matters

2. Had an appeal not been lodged, the Council indicate that the application would have been refused, and putative refusal reasons have been provided. The main issues have been taken from the Council's statement, and from the interested party representations.
3. Additional and amended plans and details were submitted to the Council prior to the appeal being lodged. The Council and interested parties have had the opportunity to submit representations in respect of these details as part of the appeal process. No parties would therefore be prejudiced by my consideration of the amended plans and details submitted prior to the date of the appeal.
4. In response to a request made during the appeal process, the main parties have provided additional evidence in respect of affordable housing. A unilateral undertaking (UU) related to the matter has subsequently been provided. The Council has submitted comments in respect of the UU, and I am satisfied that no parties would be prejudiced by my consideration of the additional evidence related to affordable housing. I will return to this matter later.

Main Issues

5. The main issues are the effect of the development on;
 - the character and appearance of the area; and
 - the conditions of the occupiers of nearby properties, with particular regard to privacy, light, highway congestion, car parking availability, odour, noise and disturbance.

Reasons

Character and appearance

6. A series of non-residential buildings are located on the appeal site, in an otherwise densely built-up and mainly residential area, lit by streetlights. Typically, houses within the area are formally arranged in terraces along the hillside. Many of the terraces directly adjoin fairly narrow streets, and the residential properties within them have limited-sized rear gardens. The external walls of the properties are mainly a mix of natural brick, painted brick and painted render finishes in a range of colours. Many houses within the area have rear flat roofed dormer window features, finished in materials which differ from the host dwelling.
7. Although not directly addressing a highway, the proposed development would take the form of a terrace of houses. Each property would have a rear garden of a size similar to that which prevails within the area. This, and the provision of small front gardens and a landscaped walkway to the front of the houses means that the spacing between the proposed buildings and the nearby terraces would be similar to that between other terraces in the area. As such the amount and layout of the proposals would not constitute overdevelopment.
8. Many residential properties backing onto the appeal site have lower ground floors and/or rear dormer windows, with accommodation arranged over a variety of levels. Although one single-storey dwelling is proposed, visually the height of the other 3-storey houses would be between that of the neighbouring terraces on higher and lower ground than the appeal site. In terms of its height, the development would not therefore be incongruous.
9. The second-floor and roof form of the proposed dwellings would differ from that of the simple gable roofs which are prevalent within the area. However, and notwithstanding the proposed inclusion of what has been described as 'green' roofs, in visual terms the form and appearance of this part of the development, would share similarities with the many rear dormer windows on nearby properties. Furthermore, and although there would be a variety in the external materials used in the construction of each dwelling, the proposed use of brick and render is typical of that which prevails within the area.
10. The design of the windows and glazing would differ from that within nearby properties. Nevertheless, due to the pleasing regularity in the positioning and designs of windows across the development as a whole, these features would not be harmful to the appearance of the area.
11. Therefore, and for the reasons given, the proposed development would not be harmful to the character and appearance of the area. Consequently, and in respect of this main issue, it would comply with policies CP12 and CP14 of the Brighton & Hove City Council - Brighton & Hove City Plan Part One dated March 2016 (the city plan part 1), and policy DM18 of the Brighton & Hove City Council - Brighton & Hove City Plan Part Two dated October 2022 (the city plan part 2). Amongst other things, these policies require new development to be of a high-quality design which contributes to establishing a strong sense of place, and which is of a density that is appropriate to the area.
12. Policy DM21 of the city plan part 2 relates to extensions and alterations to existing buildings, and as such, it is not determinative in this appeal.

Living conditions

13. Sole access to the site would be via a short and relatively narrow path off Lincoln Cottages. Lincoln Cottages is a short no-through road serving several houses and a vehicle repair garage, as well as providing access to the garages and buildings on the appeal site, which are largely vacant. It has no formal turning head, and there are a limited number of either on-street permit holder or 'pay and display' parking spaces within the street.
14. The findings of the transport statement are noted. However, it is reasonable to anticipate that there would be a frequent number of vehicle movements attracted to the appeal site, should the development be undertaken, and that there would be increased levels of congestion within Lincoln Cottages than previously or currently experienced. This is partly because cars and other larger vehicles would no longer be able to utilise the existing access to the site. It is also because 9 dwellings are proposed; the car-free nature of the scheme; and because the appeal site is on a hillside. Future occupiers are therefore more likely to secure the delivery of heavy or bulky items rather than carry them on foot or by bicycle.
15. I do not doubt that most delivery vehicles would temporarily stop, park or turn within Lincoln Cottages to enable deliveries/collections to be made or to collect or drop off future residents. This would increase congestion within the short street and cause frequent but minor harm and disruption to the occupiers of both the car repair garage and houses on the street.
16. Bin storage areas of sizes sufficient to accommodate several bins/waste caddies are proposed to the front of each of the dwellings. It is proposed that the refuse be moved to a sizable area adjacent to the side wall of number 14 Lincoln Cottages for collection. Subject to a condition being imposed requiring that the individual bin stores to the front of each dwelling, be used for no alternative purpose, I have no reason to doubt that other than on collection days, future occupiers would store partially full and full bins within their individual curtilages, rather than walk past them on the narrow path providing access to the properties. Nevertheless, and even if waste is put out and collected in a timely manner, the collective waste from the development is likely to generate unpleasant odours. Albeit this would be limited to times in advance of bin collections, at these times such odours would cause a minor harm to the living conditions of the occupiers of number 14 Lincoln Cottages.
17. Given the narrowness of both the site access and the surrounding streets, and the proximity of nearby dwellings, I do not doubt that the demolition and construction phases of the development would result in noise, activity levels and temporary congestion of local roads which would be disruptive to occupiers of nearby properties. However, on the basis that measures, such as those identified within the outline construction traffic management plan are implemented, the harm that would be caused would be short-term and minor.
18. Notwithstanding the site's hillside location, and although a snapshot in time, during my mid-week and mid-morning site visit, many pedestrians were encountered in the area. There was also a ready availability of on-street resident and 'pay and display' car parking in the streets closest to the appeal site. Notwithstanding this, I accept that there are times when there is competition for parking spaces within the area. Nevertheless, the appeal site and neighbouring streets are very well located in terms of access to local

services and facilities, including regular and frequent bus services, without reliance on the use of private motor vehicles. As such, only a small increase in competition for car parking spaces would result from the construction of an additional nine residential dwellings as part of a car free scheme. Therefore, very limited harm would be caused to the occupiers of nearby dwellings in respect of this matter.

19. The proposed terrace would be located between and broadly parallel to 2 terraces of houses on Ewart Street and Lincoln Street. These neighbouring houses are generally separated from the appeal site by rear gardens/courtyards.
20. Number 79 Lincoln Street has a readily usable rear outdoor area which, from the evidence, can receive more than 2 hours of sunlight on 21 March. Following the implementation of the proposed development, there would be a significant reduction in the area of this space that could receive 2 hours of sunlight on the same date. However, it is within the summer months that private outside spaces are generally more frequently used. The evidence demonstrates that the overshadowing effect of the proposed development on the outdoor amenity space serving number 79 in the summer would be significantly less than on 21 March. As such, the harm that would be caused to the occupiers of number 79 in respect of sunlight within their outdoor amenity area would be limited.
21. The evidence indicates that only incredibly small areas of the courtyards serving 81 and 87 Lincoln Street are currently capable of receiving 2 hours of sunlight in the spring and autumn. Although there would be almost total loss of sunlight to these properties at such times of year, given the small size of the areas effected, no demonstrable harm would be caused to the living conditions of occupiers of these properties.
22. Daylight distribution within a number of habitable rooms addressing the appeal site would be reduced following the implementation of the development proposals. However, the evidence indicates that the proposals would conform with the BRE targets concerning the amount of sky that would continue to be visible from the windows serving these rooms. Furthermore, from the evidence, the amount of sunlight which would continue to be achievable within habitable rooms addressing the appeal site, would exceed BRE target values. For these reasons, no demonstrable harm would be caused to the living conditions of occupiers of neighbouring properties in respect of daylight or sunlight within their homes.
23. The separation distance between the front, rear and side of the proposed dwellings, and the houses and gardens backing onto the site is not large. However, there are no windows proposed in the end elevations of the proposed terrace, and boundary walls and fences demark much of the site boundary. These factors, in combination with new boundary treatments and planting, details of which could be secured by condition, would prevent harmful levels of overlooking from ground floor rooms within the proposed development and associated outdoor spaces over neighbouring houses and gardens.
24. The first and second-floor openings that would address neighbouring properties would comprise larger obscure-glazed fixed panels and smaller clear-glazed opening windows. The smaller windows would be at an oblique angle to the closest neighbouring dwellings. As such, the direct outlook from the rooms served by these windows would be of more distant neighbouring houses and

gardens. Given this and the presence of intervening boundary treatments between and around neighbouring properties, there would be no harmful loss of privacy incurred by occupiers of neighbouring properties, within their homes and gardens, as a result of the development.

25. The construction and subsequent occupation of nine dwellings on the appeal site would undoubtedly generate types and levels of noise and activity above those currently generated within the site. However, reasonable levels of noise and activity also result from the use of surrounding land and buildings. Therefore, and even if drivers of moped-type vehicles were to use the path off Lincoln Cottages to access the houses, any increases in the amounts of activity and noise within the site from the ordinary use of the proposed dwellings, would not be clearly distinguishable and harmful to the living conditions of occupiers of nearby properties. Furthermore, the inclusion of well-designed and positioned external lights including low-level bollard lighting, would prevent light shining directly into neighbouring houses, and so prevent demonstrable harm being caused to the occupiers of those houses backing onto the site.
26. The height, orientation and location of the proposed buildings in relation to rear outside spaces of adjoining properties on Lincoln Cottages and Ewart Street, is such that there would be no harmful reduction to the level of sunlight to these spaces. Furthermore, and based on the evidence within the submitted daylight and sunlight report and sunlight amenity study plans, the same conclusions are reached concerning those adjoining gardens in Lincoln Street that have not been previously addressed.
27. For the reasons given above, the proposal would not result in a harmful loss of privacy for the occupiers of neighbouring dwellings. However, it would cause harm to the conditions of occupiers of nearby properties with particular regard to odour, daylight, sunlight, highway congestion, competition for car parking spaces, noise and disturbance. As such, and in respect of these matters, it would conflict with the parts of policies DM18, DM20 and DM36 of the city plan part 2, which seek to ensure that development delivers high-quality places which would not cause unacceptable loss of amenity to nearby users, residents or occupiers, and which make provision for vehicles to service new developments, including for online shopping/delivery services.
28. However, also in respect of this main issue, and for the reasons given, the proposals would not conflict with policy CP9 of the city plan part 1, which seeks to promote sustainable travel. Nor would they conflict with policy DM33 of the city plan part 2, which promotes safe sustainable and active travel.

Other matters

29. At the time of my site visit, land and buildings within the appeal site appeared to be largely vacant. Whilst I have no reason to doubt that the buildings have previously been used as garages, studios and workshops, the site has been allocated for housing within the development plan. In principle, the residential use of the site would therefore comply with the development plan.
30. While alternative schemes may have been put forward on the site, I must assess the scheme that is before me.
31. Policy CP20 of the city plan part 1 states that affordable housing provision is required on all sites of 5 or more dwellings, and that for sites of between 5 and

9 dwellings, 20% affordable housing should be provided as an equivalent financial contribution. The submitted signed and dated UU makes provision for a financial contribution to be made to the Council towards off-site affordable housing provision, in accordance with the requirements of Policy CP20. The Council has justified the sum sought with updated information. Accepting that there is a significant need for affordable housing in the city, the measures in the UU are deemed to be necessary, related directly to the development and fairly related in scale and kind. As such, the UU would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework).

32. I appreciate that a proposal for residential development on the site was refused planning permission in 1989 (Ref: 89/0299/OA). However, the planning policy context has changed significantly since that time, and therefore the development proposals are not readily comparable.
33. It is regrettable that more effective communication between the appellant and the occupiers of nearby properties didn't take place, which might have allayed some interested party concerns. However, there is no requirement for such communication to occur.

Other considerations

34. The Council has stated that it has a 2.1 year housing land supply. The site is allocated for residential development within the development plan. Given this, and the size of the shortfall in housing land supply, great weight is attributed to the benefit that would result from the provision of nine dwellings on the site.
35. Future occupiers would be likely to use and contribute to local services and facilities. There would also be short-term economic benefits during the construction phase. The proposals also include measures to secure energy efficiency and to improve the biodiversity value of the site, as well as the provision of secure bike storage for each house. However, given the modest scale of the proposals, limited weight is accorded to each of these benefits.
36. Nevertheless, the proposed development would conflict with the policies of the development plan which relate to conditions of occupiers of nearby properties. These policies are broadly consistent with the Framework. However, given that minor harm would be caused to the conditions of occupiers of nearby properties, the conflict with these policies attracts limited weight.
37. The Council's lack of a five-year housing land supply means para 11 d of the Framework applies. The application of policies in the framework that protect areas or assets of particular importance, as identified within footnote 7, do not provide a clear reason for refusing the development proposed, as outlined in paragraph 11 d) i. Therefore, paragraph 11 d) ii. of the Framework is engaged.
38. The proposed development aligns with the Framework where it seeks to boost the supply of housing. Furthermore, paragraph 69 of the framework indicates that small and medium-sized sites can make an important contribution towards meeting the housing requirement of an area, and are often built out quickly. Given the substantial shortfall in housing land supply within the district, I attribute great weight to this.

39. The proposals would also correspond with the Framework where it seeks to support; the economy; strong and vibrant communities; and measures that would improve biodiversity and make effective use of land. Given the modest scale of the proposals, limited weight is attributed to these matters. However, the proposed scheme is contrary to the Framework where it seeks to create places with a high standard of amenity for existing users existing users. Given that only minor harm has been identified, this conflict only attracts limited weight.
40. In this case, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole. As such the proposal benefits from the presumption of sustainable development as outlined in Paragraph 11 d) ii. of the Framework.
41. Therefore, and on the basis of the individual merits of the scheme, the material considerations indicate that planning permission should be granted notwithstanding the conflict with the development plan.

Conditions

42. Some of the Councils suggested conditions have been consolidated, and the wording of conditions has been amended where appropriate. This is for the purposes of clarity and to meet the six tests within paragraph 56 of the Framework.
43. The statutory condition which specifies the time-period for the implementation of the permission is imposed. For clarity, a plans condition is also added which identifies the plans to which the permission relates.
44. A condition preventing the use of the flat roofs as outdoor amenity spaces is not required, as alterations to enable the use of these spaces for such purposes would not be permitted development. However, conditions regarding refuse storage preventing additional external lighting being installed unless agreed by the Council, and requiring details of a construction management plan are needed. As is a condition removing the right to replace obscure glass windows with clear glass, preventing the form of windows being altered, and preventing the installation of additional windows, other than at ground floor level. These conditions are necessary to protect the living conditions of the occupiers of neighbouring properties. The construction management plan condition needs to be a pre-commencement condition, to ensure that harm to the occupiers of nearby properties is minimised during the demolition and construction phases.
45. The further removal of permitted development rights is not warranted, because no unacceptable harm would be caused to the living conditions of neighbours, resulting from other works that would be permitted development.
46. Conditions requiring the Councils agreement to foul and surface water drainage strategies are necessary to prevent waste and surface waters from causing environmental harm or leading to an increase in flood risk in the area.
47. To ensure that the development; results in a net gain to the biodiversity value of the site; is energy efficient; minimises non-renewable energy requirements and water use; utilises renewable energy; and to encourage cycling, related conditions are imposed. These are necessary to ensure that the development is environmentally sustainable, and to encourage sustainable travel. The

ecological design strategy condition requires details to be agreed prior to the commencement of the development. This is to ensure that clearance and demolition works would be sensitively undertaken having regard to any species, flora or fauna that may be present.

48. Given the historic uses of the site, a pre-commencement contamination condition is imposed. This is to safeguard the health of future occupiers, as well as the health of construction workers and the occupiers of nearby properties.
49. To ensure that the development is accessible to as many people as possible, and that the dwellings are adaptable to the different needs of future occupiers, a related condition is added. To ensure that the proposals would not cause harm to the character and appearance of the area, conditions are also imposed, regarding materials, slab levels, and landscaping.

Conclusion

50. For the reasons given, the appeal should succeed and planning permission should be granted.

V Simpson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1712-01 Version 13, 1712-09 Version 13, 1712-10 rev A Version 14, 1712-11 Version 13, 1712-12 rev A Version 14, 1712-13 rev A Version 14, 1712-14 rev A Version 14, 1712-15 Version 13, 1712-16 rev A Version 14, 1712-17 rev A Version 14, 1712-18 rev A Version 14, 1712-19 rev A Version 14, 1712-20 Version 13, 1712-21 Version 13, 1712-22 rev A Version 14, 1712-23 Version 13, 1712-24 Version 13, 1712-26 rev A Version 14 and 1712-27 rev A Version 14
- 3) Prior to the commencement of the development, an ecological design strategy containing measures to enhance the biodiversity value of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include monitoring and maintenance details as well as details of any remedial measures that would be undertaken in the event that any of the measures were to fail. The development shall subsequently be undertaken and maintained in accordance with the approved strategy.
- 4) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of

Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 90 days of the report being completed and approved in writing by the local planning authority.

- 5) No development shall take place, including any works of demolition, until a Demolition and Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The plan shall include details of/for:
- the parking of vehicles of site operatives and visitors;
 - the storage, loading and unloading of plant and materials arising from both the demolition and construction phases of the development;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt, as well as noise;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - delivery, demolition and construction working hours;
 - details of any loading/unloading areas within the highway;
 - details of measures to protect highway assets and to mitigate impacts on public transport and emergency services and to provide for their continued operation during the works; and
 - details of any temporary traffic management at the site access and elsewhere in the vicinity of the site.

The approved Demolition and Construction Management Plan shall be adhered to throughout the demolition and construction periods of the development.

- 6) Notwithstanding the details shown on the approved plans, no development above ground floor slab level shall take place until details 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. The development shall subsequently be carried out in accordance with the approved details.
- 7) Other than demolition works, no development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. This shall include

management and maintenance details. The development shall subsequently be implemented, managed and maintained in accordance with the approved scheme.

- 8) Other than demolition works, no development shall take place until a drainage strategy detailing the proposed means of foul water disposal and an implementation timetable, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and timetable.
- 9) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been completed and made available for use. Thereafter, these areas shall be retained for refuse and recycling storage and collection purposes only.
- 10) Prior to the occupation of any of the dwellings hereby permitted, details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be implemented prior to first occupation of the development. The scheme shall include the following:
 - details of all hard and soft surfacing, including the 'green roofs', to include the type, position, design, dimensions and materials;
 - a schedule detailing sizes and numbers/densities of all proposed trees/plants including food bearing plants, details of tree pit design, use of guards or other protective measures, and conformation of location, seed mixes, species and sizes, nursery stock type, and defect period;
 - a soft landscaping maintenance and management plan, including irrigation details; and
 - details of all boundary treatments to include type, position, design dimensions and materials;

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.

Any hard surfaces forming part of the landscaping scheme, shall be made of porous materials and retained as such thereafter, or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area within the site.

- 11) Prior to the first occupation of the development hereby permitted, 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. Thereafter they shall be retained for use for cycle storage purposes only.
- 12) Other than demolition works, no development shall take place prior to full details of existing and proposed ground levels (referenced as Above Ordnance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections and proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.

- 13) Prior to the first occupation of the development hereby permitted details of the photovoltaic panels included in plan refs; 1712-19 rev A V14 and 1712-16 rev A V14, shall be submitted to and approved in writing by the local planning authority. The photovoltaic panels shall then be installed and thereafter retained in accordance with the approved details.
- 14) Prior to the first occupation of the development, an energy efficiency scheme shall be submitted to and approved in writing by the local planning authority. This scheme shall include measures to ensure that the following minimum standards are met:
 - no dwelling to exceed a water efficiency standard of more than 110 litres per person per day maximum indoor water consumption; and
 - all dwellings to achieve a minimum Energy Performance Certificate (EPC) rating 'B'.

The development shall subsequently be undertaken in accordance with the approved scheme.

- 15) Other than those shown on the approved plans, no external lighting shall be installed on the site, prior to details of any such lighting being submitted to and agreed in writing by the Local Planning Authority. Any such lighting shall then be installed and retained in accordance with the approved details.
- 16) The development shall be carried out in accordance with the details and recommendations contained in the Preliminary Ecological Appraisal prepared by Phlorum, and dated December 2022).
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no glazing, windows or doors, other than those expressly authorised by this permission, or that would serve ground floor rooms of the dwellings hereby permitted, shall be constructed or installed.
- 18) Each dwelling hereby permitted shall be constructed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings), and shall be retained in compliance with such requirement thereafter.

End of conditions