



Appeal Decision

Site visit made on 28 January 2025

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Appeal Ref: APP/Q1445/W/24/3350527

145 - 151 Kingsway, Hove, Brighton and Hove BN3 4GR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ethan Brighton, Fortitudo (154) Ltd.; against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02311.
 - The development proposed is demolish two pairs of semi-detached dwellings and erect a block of approximately 42 apartments, together with associated parking and landscaping.
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Decision

1. The appeal is dismissed

Preliminary Matters

2. The appeal has proceeded by way of written representations rather than a Hearing. Representations made at application and appeal stage have been taken into account.
3. The application form states the site as No 145 Kingsway but it is clear from the accompanying details that the site is Nos 145-151 (odds) Kingsway. The Decision Notice describes the proposal as a nine storey building which is as stated in the appellant's submitted Tall Buildings Statement. The lowest floor would provide storage facilities, parking and access through to the rear car park. On the roof would be the structures containing the stair and lift cores, other plant and a terrace enclosed by a balustrade. The Council considered the application in this way and I will consider the appeal on the same basis.
4. The main Parties have had the opportunity to comment on the revised National Planning Policy Framework (the Framework) which came into force in December 2024. Comments made have been taken into account. Any references to Paragraphs of the Framework in this Decision are those in the revised document.
5. A draft agreement under s106 of the Town and Country Planning Act 1990 (as amended) was provided with the appeal. I will refer to this later.

Main Issues

6. The main issues are: the effect of the proposal on the character and appearance of the area taking particular account of the location within the Pembroke and Princes Conservation Area Conservation Area (the PPCA); the effect of the proposal on the living conditions of occupiers of nearby properties; and whether satisfactory living conditions would be provided for future occupiers of the proposed apartments.

Reasons

7. The site is in built up area in a key sustainable transport corridor along the A259 Kingsway. There are cycle paths, good public transport links and many facilities nearby. Residential development would be acceptable in principle provided other planning policies and material considerations are satisfied.

Character and appearance

8. Kingsway, the main road running along Hove seafront, is characterised by wide, tall building blocks, generally between 6-8 storeys in height. The blocks are of varying appearance being more modern in age and design as one moves westward along Kingsway, reflecting the later development of this part of the seafront. At intervals residential roads, many of which are fronted by regularly spaced, detached and semi-detached two storey houses, run at right angles to Kingsway.
9. The appeal site contains two pairs of 1930s semi-detached houses. These are of traditional design with facing materials of red brick, tile hanging, render, steep tiled hipped roofs and bay windows and appear to have been constructed later than houses on nearby streets. They are on the north side of Kingsway between the junctions with Hove Street and Princes Crescent.
10. Near to the appeal site Kingsway is a broad seafront road with open views to the Western Lawns public gardens and seafront esplanade. Nos 145-151 are somewhat unusual along this part of Kingsway where the predominant building form is of larger blocks of buildings, mainly apartments, of varying size, height and appearance. These vary from the eight storey Fairlawns on the corner on Princes Crescent to historic terraces such as Courtenay Terrace further along Kingsway.
11. The proposal would replace the four large inter war seafront properties with a flat roofed building containing seven floors of apartments plus a roof terrace with the enclosed tops of the two stairwells as well as undercroft parking and storage. At some 26m high the building would be much taller, broader and deeper than the existing houses and would reduce the spaciousness of the area as a result.
12. Policy CP12 of City Plan Part 1 2016 (CPP1) identifies the Western Seafront/Kingsway as an area with potential to raise densities and 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. The supporting text describes the Western Seafront/Kingsway as a linear corridor that directly overlooks Western Lawns as far west as Wish Road. The text specifically recognises that the Western Seafront/Kingsway corridor includes parts of conservation areas. The appeal site is within this corridor.
13. The Glossary to the Framework explains that Supplementary Planning Documents (SPDs) add further detail to development plan policies but are not part of the plan; can be used to provide further guidance on specific sites or particular issues; and are capable of being a material consideration. As envisaged in Policy CP12 further advice is set out in the Urban Design Framework SPD17 June 2021¹ and advice in relation to tall buildings is given in Sections B and D13. Accordingly though outside the areas indicated in paragraph 5.8 of SPD17, and whether or not poor building stock would be replaced, tall building development on the appeal site would not

¹ Subsequent to the Supplementary Planning Guidance Note BH15 'Tall Buildings',

conflict with Policy CP12 although not all the sites within the Policy CP12 areas will be suitable for taller development.

14. A large building would be more in keeping with the other large building blocks on Kingsway and Hove Road and reflects a tendency in Hove to build upwards. It would accord with Paragraph 125(e) of the Framework which gives general support to the use of air space above properties as an efficient use of land. There is also no in principle reason why a building could not be taller than those to either side. Policy DM18 of the City Plan Part 2 October 2022 (CPP2) advises that what matters is not so much the absolute size of a new building or development, but its size relative to its surroundings, and how apparent the scale of a building or development would be.
15. The appeal building would appear as two blocks with a setback link; the roof structure would be set back from the front elevation; and fenestration would have a horizontal emphasis. In these ways the appearance would echo some features of the seven storey brick built corner block of Viceroy Lodge, between the appeal site and Hove Street, and the six storey Princes Marine Hotel (the Hotel) to the other side of the site. The front balconies would wrap the corners of the blocks in a not dissimilar manner to those at Viceroy Lodge. Accordingly although the proposed building would be taller than those to either side, I consider it would not be an unduly incongruous form of development in the Kingsway street scene. Also in the context of other buildings and a major road I do not consider light spill from windows would be unacceptable in this case.
16. The building would reduce to some extent the sky visible between buildings as viewed from the beach, the esplanade and Western Lawns. However, due to the distances involved and the context of other tall buildings along Kingsway the harm would be relatively small. The proposed building would be largely hidden from view from Princes Crescent/Avenue and Hove Street by existing buildings. Accordingly I find there would be no harm to the character and appearance of those streetscapes.
17. There would be a density of around 320 dwellings per hectare which would be far in excess of the minimum density requirements of Policy CP14 of CPP1. The street level frontage would be dominated by hard surfacing to accommodate plant associated with sprinkler systems, parking and circulation areas, and on-site delivery/servicing parking because of the nearby busy traffic light controlled junction of Kingsway/Hove Street. This, together with the position of the building and the overhang of balconies above, means there would be little room for significant landscape planting. Accordingly the opportunity to provide a good design of a more active frontage to the building and a positive open area to complement that of the Western Lawns; and to enhance and improve the public realm and engagement with it; would be lost. This would be contrary to the aims of good architecture, layout and appropriate and effective landscaping as envisaged in Paragraph 135(b) of the Framework.
18. The few, relatively poor quality, trees to the rear of the site would be replaced by the planting of a semi-mature tree. Such a tree would improve the appearance of the car park area and there would be some planting including a single tree to the front. However, the proposal which would be overly dominated by hard surfacing and little information as to how soft landscaping has been maximised, both in the interests of the appearance of the area and to secure biodiversity net gain, has been provided.

This is indicative of a cramped and contrived over development that would not amount to the highest quality of design.

19. The PPCA extends from one side of Westbourne Place to one side of Hove Street from Kingsway to the backs of properties on Pembroke Crescent. The Conservation Areas of Old Hove and Sackville Gardens lie to either side of the PPCA.
20. The Pembroke Crescent/Avenue area represents the only large group of Victorian and Edwardian red brick developments in Hove. Much of the area south of New Church Road was developed in the interwar years. With the exception of most of the Kingsway frontage the PPCA is unique in Hove in terms of its sylvan 'garden suburb' atmosphere, with its gently curving streets and green front gardens, and it is this homogeneous character and appearance that is important to preserve or enhance. Additional character of the main part of the PPCA lies in the contrast of hard red brick and extensive use of white painted exterior timber and the predominance of the plain red tile albeit different designs characterised different eras of development.
21. The character of the Kingsway frontage of the PPCA and the closest part of Hove Street is very different. It embraces a number of more modern apartment blocks, the Hotel, and the Grade II Listed Barford Court with its boundary wall at 157 Kingsway. The special character of Barford Court is as one of the most notable examples of 1930's architecture with art deco features and a fine intact interior. Its high boundary wall is also listed Grade II. It would not be directly affected and there would be no harm to the setting in which it is appreciated due to the intervening existing buildings including the Hotel. Similarly there would be no harm to the setting of the more distant Hove Museum and Art Gallery on New Church Road.
22. I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area². The demolition of the existing buildings would result in the loss of the last vestiges of inter war development along this section of the Kingsway frontage and would result in harm to the character and appearance of the area. There would also be an intrusion of building into views out from the PPCA particularly from Princes Avenue. The lack of opportunity for soft landscaping would not enhance the sylvan 'garden suburb' character of the PPCA. However, the immediate environs of the appeal site part of the PPCA do not exhibit much by way of sylvan 'garden suburb' characteristics so the weight ascribed to this is less than substantial.
23. The possibility of unblocking the "linkage" between the appeal site and the properties along Princes Crescent by demolition and redeveloping 2/3 storey properties is less than remote; some of the appeal buildings have already been altered and extended and they form an outlier to the main part of the PPCA being sandwiched between other substantial modern building blocks. For these reasons I conclude that, whilst the proposal would not conserve or enhance the character or appearance of the PPCA, the harm to the PPCA as a whole would be less than substantial.
24. There would be significant public benefits associated with the effective use of land; the net gain of 38 dwellings most of which would be two bedroomed, in a highly accessible location; and economic benefits from employment during construction

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

and spend in the local economy. These public benefits outweigh the less than substantial harm to the PPCA.

25. For the reasons set out above I conclude that there would be harm to the character and appearance of the area. There would be conflict with Policies CP12 and CP14 of the CPP1; Policy DM18 of the CPP2; the SPD17 and Paragraph 135 of the Framework in these respects. However, there would be less than substantial harm to the character and appearance of the PPCA and this would be out-weighed by the public benefits of the proposal. Accordingly I find no material conflict with Policies CP15 of the CPP1 or DM26 of the CPP2.

Living conditions of neighbours

26. The submitted Daylight and Sunlight Report (Neighbouring Properties) 2023 (the DSR) is based on the various numerical tests laid down in the BRE Guide³ to assess the impact of the proposal on light receivable at some neighbouring properties in Viceroy Lodge and the Hotel. Other potentially affected properties at Bluebird Court and Princes Crescent do not form part of the assessment but due to the distances/intervening buildings any loss of daylight and sunlight would be expected to be negligible or minor adverse.
27. The results are advisory and should be interpreted flexibly as natural lighting is only one of many factors in the design of site layouts particularly when seeking to ensure the effective use of land. Paragraph 130(c) of the Framework indicates that a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
28. The Vertical Sky Component (VSC) is a measure of the skylight at the centre of each main window in a room and diffuse daylight may be adversely affected if after a development the VSC is both less than 27% and less than 0.8 times its former value. Daylight may also be affected if the area of a room which can receive direct skylight is less than 0.8 times its previous value although this is difficult to apply accurately where clear details of affected room layouts are not available.
29. The BRE sunlight tests should be applied to all main living rooms and conservatories which have a window which faces within 90 degrees of due south and to gardens and sitting out areas. The BRE guide also contains an objective overshadowing test which has been adopted for the purpose of the DSR. The guide recommends that at least 50% of the area of each amenity space listed above should receive at least two hours of sunlight on 21 March. If as a result of new development an existing garden or amenity area does not meet the above, and the area which can receive two hours of sunlight on 21 March is less than 0.8 times its former value, then the loss of light is likely to be noticeable.
30. The DSR concludes a number of windows and gardens at Viceroy Lodge would experience a noticeable loss of daylight and sunlight but some of these are to non-habitable rooms and some are sides to bay windows. There would be significant loss of daylight and sunlight to the southern façade of Nos 49-53, a three storey block directly behind the appeal site, up to a major adverse effect.

³ Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 3rd Edition' by P J Littlefair 2022

31. A significant part of the communal open space behind Viceroy Lodge and Bluebird Court, which judging by out-door seating and pot plants, is valued by residents, would no longer receive two hours of sunlight on the 21 March. Nor would an open space to the front of the main Viceroy Lodge (Garden 6 in the DSR). The impact on these open spaces would tend to major adverse.
32. I consider the proposal would have a major adverse effect on the living conditions of occupiers of some of the affected properties and users of the affected gardens. Windows at the Hotel would also lose light. Whilst harmful, occupiers of hotel rooms are less sensitive to light loss than occupiers of dwellings.
33. I have considered the assessment of a seven storey hypothetical proposal put forward by the appellant. However, the flexible approach contained in the BRE Guide does not necessarily mean that the proposed development should be at the same height as the highest adjoining building, rather than, say, the three or six storey buildings equally adjoining, or that a building should occupy almost the whole width of the site or have the same height throughout. Also no mention has been made of the effect on the adjacent gardens behind Viceroy Lodge and Bluebird Court. For these reasons this hypothetical scenario does not lead me to a different conclusion.
34. Windows in other parts of Viceroy Lodge and upper floor windows at the appeal site overlook Nos 49-53 Viceroy Lodge. As a result of the proposal there would be many more windows and balconies which would be higher up, closer to and more directly overlooking, windows and gardens at Nos 49-53 Viceroy Lodge. There would also be some overlooking of windows in Nos 1-55 Viceroy Lodge from the proposed balconies. As a result there would be a loss of privacy for occupiers of those properties. Privacy screening of the balconies facing neighbouring windows and gardens would help mitigate overlooking and, if incorporated within the balcony design, would not result in untoward visual clutter.
35. Such a large building less than 20 metres away would also give rise to a significantly increased sense of enclosure and gloomy outlook for some residents particularly of Nos 49-53 Viceroy Lodge. These relationships are different to those assessed by a colleague Inspector appeal Ref APP/Q1445/W/20/3246231 where the affected neighbours had side rather than main elevations facing the proposed building. The context set by Policy CP12 of CPP1 in supporting the development of taller buildings is also relevant in that it recognises there may effects on neighbouring occupiers. However, there needs to be consideration of the individual merits of each case.
36. Neighbours consider there that additional noise would be caused for occupiers of nearby properties. However, noise arising from normal domestic use would not normally be a planning reason for refusing residential development near existing residential properties.
37. Some occupiers of properties on Princes Avenue, Hove Lodge, Hove Lodge Mansions, Viceroy Court and Bluebird Court look onto the trees that would be removed. This outlook would change but the planting of a semi-mature tree would alleviate this harm and there is no entitlement to a specific view.
38. For the reasons set out above I conclude that the proposal would have a major harmful effect on the living conditions of occupiers of some nearby properties and a lesser harmful effect on others. There would be conflict with Policy DM20 of CPP2

in this respect. There would also be conflict with Paragraph 135(f) which seeks places with a high standard of amenity for existing and future users.

Living conditions of future occupiers of the proposed apartments

39. The apartments would meet the Nationally Described Space Standards with rooms of adequate size for the required furniture and circulation space. Sufficient amenity space would be provided on balconies and the roof terrace.
40. The Council considers south facing apartments could experience over heating from solar gain and that north facing ones, particularly those with or below balconies, could have gloomy and oppressive living conditions because of the preponderance of single aspect apartments. This would be likely to increase reliance on mechanical ventilation and lighting which would be less energy efficient.
41. However, the requirement for two staircases compromises the ability to provide dual aspect apartments and I have seen no planning policy requirement for such apartments. Moreover, the north facing units would have shallower floor plans and balconies for maximum daylight penetration. South facing units would have more generous balconies and overhangs to help ameliorate solar gain inside. I conclude that living conditions for future occupiers would not be unsatisfactory in this respect.
42. The south-facing front façade of the proposed building would be exposed to the winds from the most probable direction with the highest speeds. The Wind Microclimate Desk Study indicates that balconies, canopies and balustrades would help break up any down draughts. The installation of glass balustrades to south facing balconies and to the roof terrace would help mitigate direct head winds and provide a trade-off between sea views and sea breezes. Doors on the roof terrace would be best placed on the north elevation in this respect.
43. Many of the apartments would have magnificent views to the sea and the Western Lawns. This would capitalise on views and would be a substantial benefit to future occupiers.
44. I conclude that satisfactory living conditions would be provided for future occupiers of the proposed apartments. There would be no conflict with Policies DM1 or DM40 of the CPP2 in requiring high quality homes with a suitable quality of life for future occupiers.

S106 Agreement

45. The draft Agreement between the appellant and the Council provides for a contribution towards the provision of off-site affordable housing. This would be lower than that required by Policy CP20 of the CPP1 but has been justified by the limited viability of the scheme. Based on the submitted Financial Viability Assessment the District Valuer advises a contribution of £96,090 could be supported by the development of 42 open market apartments. The Council accepts this subject to a late stage review mechanism to cover the eventuality that higher sales values might be realised. However, there is no mechanism to secure the contribution, despite substantial extensions of time to allow this to be provided.

Other Matters

46. Measurable biodiversity net gain (BNG) is required in accordance with Policies CP10 of the CPP1 and DM37 of the CPP2. The Framework supports BNG in

developments and the Council's BNG Interim Technical Guidance Note indicates that a 10% net gain for major developments was brought in from the adoption date of the CPP2 on 20 October 2022 in advance of the mandatory requirements imposed by the Environment Act 2021. The application form is dated after the CPP2 was adopted so the requirement of 10% BNG applies. The appellant has offered to install a hedgehog home, bee, swift and bat bricks: details could be secured through a condition. Pollinator rich plants and maximising of soft landscaping including the use of living green roofs could also be secured through an Ecological Design Strategy and a Landscape and Environmental Management Plan.

47. The most recently published Strategic Housing Land Availability Assessment demonstrates about 1.7 years deliverable housing land supply which is a substantial shortfall compared to the five year supply sought by the Framework. Calculations in accordance with the revised Framework may indicate an even greater housing need: the appellant calculates this could be as low as 1.29 years. Even if the supply is not as low as that, there is a very substantial shortfall and an acute need to be met. Notwithstanding comments by interested Parties the evidence indicates that about half the identified housing need is for two bedroom properties. The loss of larger family houses would be outweighed by the overall gain in dwellings.
48. Some representations also raise concerns about congestion and highway safety hazard particularly because of the close proximity of traffic lights and the many pedestrians seeking to cross to the beach, disruption during construction and potential flooding. I have seen no compelling evidence to support these concerns, nor are objections raised by the relevant public authorities or utility companies. I have therefore not placed weight upon them.
49. Kingsway is a defined Key Public Transport Corridor and Controlled Parking Zone (CPZ) R. The latest plan shows 26 vehicle parking spaces which accords with the Parking Standards (SPD14). The provision of cycle storage space and nearby public transport links would encourage future occupants to use means of travel other than the private vehicle. (CPZ) R is at about 91% capacity with an average of about 85%. The Council considers any overspill parking could be accommodated without significant increased parking stress and raises no objections to the level of on-site parking provision.
50. I acknowledge the concerns of local residents about the availability of parking; the likelihood that pressure for parking spaces would increase; and additional traffic particularly when combined with other developments such as that anticipated at the King Alfred leisure Centre site. However, these would not be justifiable planning policy reasons for refusing this proposal in such an accessible location in a Key Public Transport Corridor.
51. Concerns have been raised about financial investors cashing in on a prime location, and failing to consider local impact when they plan, during the build period and after they have gone. However, the developer is entitled to make a profit and this in itself would not be a reason to refuse the proposal.
52. Local residents consider the area to be over-crowded with insufficient infrastructure. However, the proposal would be liable to the Community

Infrastructure Levy which would enable investment in such things as transport, education, health, social and green infrastructure, and/or public services.

53. Concern has been expressed that there is a lack of demand locally for flats with many still unoccupied and not affordable with very high rents. Nevertheless the Council has identified a demand for two bedroom dwellings and raise no objections to the size of the proposed apartments. Moreover, it is likely that the location would be a desirable one. Accordingly this matter does not lead me to any different conclusion.
54. There are covenants which apply to the appeal site. These are private matters between the site owner/developer and the beneficiaries of the covenants and are not material considerations for the purposes of planning appeals. Nor are the effects on the land values of other properties normally a planning matter.

Planning Balance

55. As the Council cannot demonstrate the requisite five year supply of deliverable housing land the provisions of Paragraph 11(d) of the Framework come into play. I have found less than substantial harm to the character and appearance of the PPCA and this would be out-weighed by the public benefits of the proposal. Accordingly the application of Policies in the Framework that protect areas or assets of particular importance, as set out in footnote 7, do not provide a strong reason for refusing the development proposed. Accordingly Paragraph 11(d)(ii) applies.
56. I have concluded that the proposal would amount to over-development of the site, would not amount to the highest quality design, and there would be harm to the character and appearance of the area. There would be conflict with development plan policies and SPD17 in these respects. I afford the conflict with the development plan in respect of the effects on character and appearance of the area moderate weight in this appeal.
57. The proposal would have a harmful effect on the living conditions of occupiers of some of the neighbouring properties by way of loss of daylight, privacy and outlook. The proposal conflicts with the development plan in this respect. The loss of light in some cases would tend towards major adverse. Although, the numbers of occupiers whose living conditions are affected in this way is comparatively small, and account must be taken of the policy thrust towards taller buildings which will inevitably entail some adverse effects on living conditions when seeking the most effective use of land, I afford the matter substantial weight against the proposal.
58. The development would not meet the affordable housing target of Policy CP20 and no mechanism to secure the reduced contribution justified by viability constraints has been provided. This conflict with the development plan carries considerable weight against the proposal.
59. The proposed development would provide dwellings of much needed size in an accessible location. The proposal would in a small way support the Government's objective of significantly boosting the supply of homes and would help deliver the housing intended in the development plan. This attracts great weight in favour of the proposal.

60. The effective use of land would be maximised in accordance with Policy DM19 of the CPP2 and small to medium windfall sites such as this can often be built out quickly. The Framework supports windfall sites and indicates densities may have to increase to meet identified housing need as does the development plan. There would be economic benefits during the construction period and from extra spend in the local economy. These matters weigh substantially in favour of the proposal.
61. Good design is a key policy in the Framework. Taking all the above into account I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole having particular regard to key policies.

Conclusion

62. In failing to comply with development plan policies as set out above the proposal cannot be said to comply with the development plan taken as a whole. I find insufficient material considerations to justify a Decision other than in accordance with the development plan. The appeal should be dismissed.

S Harley

INSPECTOR