



Appeal Decision

Site visit made on 20 January 2026

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

Appeal Ref: APP/Q1445/W/25/3375220

Site of former Electricity Sub Station, Manor Gardens, Brighton, BN2 5EB

- 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 Brighton Lions Housing Society Limited against the decision of Brighton & Hove City Council.
 - The application Ref is BH2025/01123.
 - The development proposed is erection of three storey residential block to provide 6 no flats (C3).
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Decision

1. The appeal is allowed and planning permission is granted for erection of three storey residential block to provide 6 no flats (C3) at site of former Electricity Sub Station, Manor Gardens, Brighton, BN2 5EB in accordance with the terms of the application, Ref BH2025/01123, subject to the conditions in the attached schedule.

Preliminary Matter

2. As part of the appeal revised plans were provided showing two windows to be obscure glazed in the southern elevation. This does not fundamentally alter the proposed development. As no party would be prejudiced they can be considered in reaching a decision on the appeal.

Main Issues

3. These are whether living conditions for future occupiers would be satisfactory and the effect on the living conditions of the occupiers of Lions Court and 5, 6 and 7 Manor Green in relation to privacy, outlook, daylight and sunlight.

Reasons

4. The appeal site includes land previously occupied by a substantial electricity sub-station which has now been demolished. It is within a residential area and bordered on two sides by three-storey blocks of flats at Lions Court. To the west are the small bungalows in Manor Green which are at a higher level. The six flats would be within a three-storey building in a similar position to the sub-station although its footprint and overall mass would be greater.
5. Brighton and Hove is a dense urban area where buildings are generally tightly packed. The appellant suggests there are multiple examples of close spacing between fenestration but does not highlight any in the vicinity. Indeed, in the immediate area surrounding the appeal site, the gaps between the buildings are fairly spacious although some inter-visibility between habitable rooms is possible.

6. Policy DM20 of the City Plan Part Two indicates that planning permission will be granted where it would not cause unacceptable loss of amenity to nearby residents or proposed occupiers. The distance between facing windows in the north and east elevations of the proposed development and the adjoining flats would be around 9m. The supporting text to the policy advises that proposals for new development need to give full consideration to their impact but that most potential negative impact can be addressed through design and mitigation. Two of the upper floor windows in the north elevation would also be obscure glazed.
7. None of the proposed windows on the northern or eastern sides of the building would have views over private amenity space. However, they would look directly towards the windows within the existing blocks at close quarters. This would be an uncomfortable relationship in this suburban setting where reasonable expectations regarding privacy are higher than in the more built-up parts of the City. That said, none of the main living spaces at 14-19 Lions Court would face the development and only six windows in the south elevation at 1-12 Lions Court serve a main living room. The juxtaposition of buildings and the proximity of windows to one another nevertheless just crosses the threshold from a situation which would be tolerable to one that would be harmful.
8. Further use of obscure glazing could mitigate the effect on privacy but would also potentially restrict the outlook from the proposed windows. It is therefore not obvious that this would eliminate the adverse consequences identified.
9. The proposed building would project further south than the previous one and would run along part of the rear boundary of 6 Manor Green. The walls of the proposal would be readily apparent from the rear windows and garden of No 6. However, the majority of the rear boundary would not be enclosed and the effect would not be unduly overbearing or hem in the outlook from the back of that property to an excessive degree.
10. The upper floor windows closest to Nos 6 and 7 Manor Green would be obscure glazed. The views towards their rear gardens from the windows furthest from them would be oblique. As such, they would not give rise to a material loss of privacy. The same applies to the relationship with the garden of 5 Manor Green. Some residents may perceive this arrangement as facilitating overlooking but greater importance should be attached to the actual likely consequences.
11. The Daylight, Sunlight and Overshadowing study concludes that the overall environmental impact for adjacent properties, including 5 Manor Green, would be negligible. This is particularly as the effect on sunlight would be limited to certain times of the day. Local residents question this finding but the analysis undertaken is based on recognised technical standards and is not disputed by the Council. The assessment criteria used seek to ensure that the degree of change would be within reasonable limits.
12. Nevertheless, as privacy would be compromised the living conditions for future occupiers would not be satisfactory and those of the occupiers of Lions Court would be harmed. As a result, there would be conflict with Policy DM20.

Other Considerations

13. Using the Government's standard method for local housing need the requirement in Brighton and Hove is 2,498 homes per year. The Council is only able to

demonstrate a supply of specific deliverable sites equivalent to 1.4 years which amounts to a shortfall of 10,643. This is substantially below the expectation in the National Planning Policy Framework of a minimum of five years' worth of housing. The position in the City is so dire that even this small windfall development would contribute meaningfully and this provides significant support for the proposal.

14. Furthermore, the Framework indicates that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. The proposed development falls into this category. Moreover, that proposals should be approved unless substantial harm would be caused.
15. The appellant is a registered social landlord. The units are intended to be affordable and are referred to as such in the application and in the officer report. Whilst there is a willingness to enter into a planning obligation, no formal mechanism exists to secure it. Policy CP20 expects that a scheme of this size should provide at least one affordable home.
16. Planning permission runs with the land and so, in theory, the site could be sold on after it was obtained. However, the Society has a wider land holding including Lions Court and so the risk of this occurring is low. At worst, when judged against the policy, there would be a failure to provide a single unit of accommodation which would be insignificant. The lack of an obligation reduces the importance that can be given to the provision of this type of housing but, in practice, this is a matter that favours the proposal.

Other Matters

17. The proposed development would be much larger than the previous sub station in terms of volume. However, it would be comparable in scale to the immediately surrounding blocks and would therefore fit into the existing townscape. Its appearance would be modern but the materials proposed would largely emulate those found in the vicinity.
18. The development would be near to two protected trees. The sycamore at 5 Manor Green is said to support various species including a rare beetle. The works would exceed the area of the remaining concrete base of the substation but the proposed pile and beam construction would only affect a minor proportion of the root protection zone. Provided that suitable measures are taken during construction there is no objection on arboricultural grounds. Development cannot proceed until the Council has approved a biodiversity gain plan and there is a requirement to submit detailed information as part of that plan.
19. Several existing parking spaces would be lost as part of the development. The issue is covered by the management of the Controlled Parking Zone. Even if some cars are displaced resulting in overspill parking elsewhere, there is no evidence that this would have an unacceptable impact on highway safety or severely impact the road network. The proposal would be car free and this is in line with the objective of promoting sustainable transport.
20. The construction process and associated deliveries would be likely to be disruptive given the site constraints but this would be short-lived and can be managed by condition. It does not amount to an overriding reason to oppose development. There is no reason to suppose that future residents would cause noise or create any more disturbance than existing ones.

21. Other concerns are raised including the location of the bins further from existing flats, fire risks associated with the proximity to the remaining sub-station, flooding and pollution. These are covered in the officer report and do not give rise to objections. Some of these matters are dealt with by other legislation whilst others could be addressed by conditions.
22. The representations refer to the local community as comprising mainly older and vulnerable people some of whom have mobility issues. A community hub and garden meeting point is suggested as an alternative for the appeal site but this decision has to consider the development proposed rather than a different option.
23. Consultation was undertaken in accordance with the Council's procedures and comments have been received from a number of people. There is therefore nothing to indicate that this was seriously deficient or led to disadvantage.

Final Balance

24. The proposed development would harm the living conditions of existing residents in Lions Court due to direct window to window overlooking and would also not provide satisfactory living conditions for future occupiers on privacy grounds. The Framework seeks to create places with a high standard of amenity for existing and future users.
25. The proposal conflicts with Policy DM20. Although the scheme complies with many of the other City Plan policies referred to, none have been cited that positively favour it. Therefore, it is contrary to the development plan as a whole.
26. However, national policy lends significant support to the proposal. This is because of the Government's objective to significantly boost the supply of homes which is especially important in Brighton and Hove because of the paucity of the current supply. In addition, the site is brownfield land within the built-up area where new development is strongly encouraged. Whilst there is some uncertainty it is more than likely that six affordable homes would be delivered. Taken together these considerations are of very considerable force as the proposal would be in a sustainable location, make effective use of land and provide affordable homes.
27. Due to the housing land supply situation, paragraph 11 d) of the Framework is relevant. In the light of the above findings, the adverse impacts in terms of living conditions do not significantly and demonstrably outweigh the benefits that would occur, when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies which, in this case, outweighs the harm identified and the development plan conflict.

Conditions

28. The plans should be specified in the interests of certainty and the obscure glazing should be provided in accordance with those plans for reasons of privacy. Given the proximity to surrounding properties, the activities to be undertaken in the construction of the development should be controlled through a management plan. Existing trees should be protected before work starts and during construction by means of a method plan. In the interests of the character and appearance of the area details of external materials, landscaping and levels should be agreed.
29. To ensure that the development functions properly the refuse facilities should be provided. Cycle storage is shown on the approved plans but Policy DM33 requires

this to be universally available and so further details of the racks are required. To adhere to relevant City Plan policies, the proposal should provide accessible and adaptable dwellings, meet the reduced water consumption standard and achieve a B rating for energy performance.

30. Some of the details referred to by these conditions are required before work starts as they affect that process and so need to be agreed prior to commencement. Where necessary, the wording of the suggested conditions has been adjusted for simplicity and clarity.
31. Although referred to in the supporting text of the City Plan, the requirement to provide a bee brick and swift boxes is not necessary to make the development acceptable in planning terms. In considering whether to approve a biodiversity gain plan the Council would need to be satisfied, amongst other things, that the biodiversity gain objective is met. There is therefore no need to separately require a completion report relating to habitat enhancements.

Conclusion

32. The material considerations, particularly the Framework, indicate that the appeal should be decided other than in accordance with the development plan. Therefore, for the reasons given, it should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers 0563-S-01, 0563-S-02, 0563-P-01, 0563-P-02A, 0563-P-03, 0563-P-04 and 0563-P-05A.
- 3) The development hereby permitted shall not commence until 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, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. This shall include measures to minimise disturbance to neighbours including details of hours of construction and associated vehicular movements. The construction of the development shall be carried out in compliance with the approved Plan.
- 5) Prior to the commencement of the development hereby permitted (including all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan and an arboricultural method statement shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Notwithstanding Condition 2), no development above ground floor slab level of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority.
- 7) Prior to the occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the local planning authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after the occupation of the development. Any trees or plants which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby permitted shall not be occupied until the refuse and recycling storage facilities shown on the approved plans have been provided. These facilities shall thereafter be retained for use at all times.
- 9) Notwithstanding Condition 2) details of the cycle storage racks shall be submitted to and approved by the local planning authority. The approved details and the cycle storage facility shown on the approved plans shall be provided before the development hereby permitted is occupied. These facilities shall thereafter be retained in use at all times.

- 10) The development hereby permitted shall not be occupied until the flats have been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement thereafter.
- 11) The development hereby permitted shall not be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
- 12) The development hereby permitted shall achieve a minimum Energy Performance Certificate rating of 'B' for new build residential.
- 13) The obscure glazing shown on the approved plans shall be installed prior to first occupation of the development hereby permitted and thereafter permanently retained as such.