



Appeal Decision

Hearing held on 6 December 2023 and 7 December 2023

Site visit made on 7 December 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/Q1445/W/23/3321177

Enterprise Point and 16-18 Melbourne Street, Brighton BN2 3LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Brundell of Kosy Co Living EP Limited against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/01490, dated 29 April 2022, was refused by notice dated 14 March 2023.
 - The development proposed is demolition of the existing buildings and erection of a new development of 6 and 8 storeys, comprising co-working business floor space (use class E) and provision of co-living studio flats (Sui Generis) with communal internal spaces, including kitchens and living rooms, and gym and external landscaped amenity courtyard, gardens and roof terrace, access, cycle and car parking, plant, electricity sub-station, bin stores, laundry and associated landscaping and environmental improvement works to the public realm and Melbourne Street.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing buildings and erection of a new development of 6 and 8 storeys, comprising co-working business floor space (use class E) and provision of co-living studio flats (Sui Generis) with communal internal spaces, including kitchens and living rooms, and gym and external landscaped amenity courtyard, gardens and roof terrace, access, cycle and car parking, plant, electricity sub-station, bin stores, laundry and associated landscaping and environmental improvement works to the public realm and Melbourne Street at Enterprise Point and 16-18 Melbourne Street, Brighton BN2 3LH in accordance with the terms of the application, Ref BH2022/01490, dated 29 April 2022, subject to the attached Schedule of Conditions.

Preliminary Matters

2. The National Planning Policy Framework (Framework) was revised in December 2023. The main parties were consulted and I have taken into account the comments received.
3. While I note the address on the application form, I have used the address from the decision notice and appeal form in the interests of certainty.

Main Issues

4. The main issues are:

- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on the living conditions of neighbouring occupiers with regard to light and privacy.

Reasons

Character and appearance

5. Melbourne Street, from which the proposal would be accessed, lies off Lewes Road in Brighton, which forms a direct route to the city centre and has a vibrant mix of uses including a variety of residential development, education and retail uses.
6. Melbourne Street itself is a modest road that bends twice to return to Lewes Road. Although it comprises some 2 storey traditional houses, the road also has a school and block of flats, known as Viaduct Lofts, giving it a varied character and appearance. Viaduct Lofts lies opposite to the site and is part 3, 4 and 7 storeys with the tallest part of the building sited at the bend in the road. The building is set fairly close to the back of the pavement, resulting in an enclosed character at this corner of the road.
7. A scheme by the Appellant adjacent to the site on the northern stretch of Melbourne Street has been granted planning permission by the Council. It is proposed by the Appellant as the first phase of three, with the appeal scheme being the second phase. I see no reason why that proposal (Phase 1) would not be implemented. Therefore, it forms part of the emerging character of Melbourne Street.
8. The Phase 1 building would be orientated perpendicular to the appeal site and would be around 4 and 6 storeys high. It would be set at the back of the pavement and, along with Viaduct Lofts, would reinforce the enclosed character of the vicinity around this corner.
9. The proposed third phase would be for the site at the junction of Melbourne Street with Lewes Road. As planning permission has not been granted, this scheme does not form part of the emerging character of the area.
10. To the north of the site lies the access road to Woodvale Cemetery which is lined with a belt of trees that form a pleasant backdrop to the site when viewed from the south.
11. Shanklin Road lies to the east of the site and is at a higher ground level than Melbourne Street. The rear of the dwellings along Shanklin Road can be seen from the site and contribute to the varied character of the area.
12. The rear of a number of 3 and 4 storey dwellings with small gardens face the southern section of Melbourne Street and have tall rear boundary walls and fences at the back of the pavement which give this stretch of the road a varied, enclosed character.
13. The existing Enterprise Point building is a part 5, part 6 storey 'L' shaped building with a large footprint that is sited roughly centrally on the site. Given

the significant setback of the existing building, the site has a spacious feel. The surrounding area generally consists of linear development with modest setbacks from the pavement that result in a close-knit townscape. Therefore, as the surrounding buildings are largely set close to the pavement on Melbourne Street, the existing building appears as an awkward departure from the prevailing pattern of development in the area. The existing building therefore has a poor relationship with the surrounding townscape.

14. Moreover, the space around the existing building including fronting Melbourne Street is largely hard surfaced with car parking which adversely affects the character of the area.
15. The proposal consists of the demolition of the existing building and the erection of a new development of 6 to 8 storeys comprising coworking business floor space and co-living studio flats. The proposed layout consists of a 6 to 8 storey block along the street frontage of Melbourne Street (Block A), a single storey block along the north of the site, and three 6 storey blocks along the east of the site (Blocks B, C and D).
16. The view from the school looking north towards the site is dominated by the existing building, which presents a considerable length of façade towards the school site. The proposed scheme would present shorter lengths of façade to the school albeit sited closer to the boundary. The range of materials and the proposed arrangement of windows would break up the massing of this façade to an extent. In addition, the proposed courtyard between the western and eastern blocks would allow views through to the belt of trees beyond.
17. However, this would not override the abrupt change in scale between the proposed buildings and the two storey building of the school and adjacent dwellings. While the existing building does present a sudden change in scale, its set back within the site softens the discordant effect to a degree. As the proposed blocks are sited near the boundary of the site and the school, the transition in scale along Melbourne Street would be awkward and discordant. This would result in harm to the character and appearance of the area when seen from this close-range view.
18. Block A would be 8 storeys at the corner of the road then would step down to 7 then 6 storeys at the boundary with the school. The 6 storey façades facing the school and Viaduct Lofts would diminish the spacious feel that is currently experienced along the road due to the set back of the existing building. However, the proposed set back would be inline with the two storey dwellings along the street and would visually blend with the Phase 1 development. The proposed public realm improvements would result in some landscaping and defined street frontage that would provide a more pleasant character and appearance than the existing car park on the site.
19. The 6 storey part of the proposed Block A building would have a lower height than the tallest part of Viaduct Lofts and a small part of Block A would be slightly taller than Viaduct Lofts. In addition, the height of Block A would be generally in keeping with the approved Phase 1 scheme which would also step down in height from the corner of the road. Therefore, although the scheme would be taller than the 3 and 4 storey parts of Viaduct Lofts, when viewed from the south, the proposal would generally appear in keeping with Viaduct Lofts and Phase 1 in terms of massing.

20. In views from the west and from Lewes Road the 8-storey part of the proposed building at the corner of Melbourne Street would be seen. The building's height and massing in this view would be in line with the Phase 1 building and would appear as a continuation of it. Furthermore, the articulation of the facade at ground level would create visual interest and glimpses through to the courtyard. The enclosed feel created by the Phase 1 development and Viaduct Lofts would be extended around the corner of Melbourne Street. As the proposed building would not be significantly taller than the taller part of Viaduct Lofts or Phase 1, it would not appear overbearing or unduly dominant in these views.
21. The view of the site from some of the properties along Shanklin Road is dominated by the existing building. However, other properties such as those opposite the proposed Blocks B and D currently do not face buildings in close proximity. The proposed blocks are roughly in line with the existing building, and the ground level of Shanklin Road is significantly higher compared with Melbourne Street. In addition, the proposed height of the buildings would result in parts of the sky being generally seen in views from Shanklin Road. Therefore, the proposal would not appear unduly bulky or dominant in these views.
22. The proposal would result in a significant number of a similar type of dwellings on the site. This would be likely to result in an increase of the number of comings and goings to the site and as such an increase of activity along Melbourne Street. This would be in keeping with the busy nature of Lewes Road which is a short distance away.
23. In addition, activity on Melbourne Street increases at school drop off and collection times. Moreover, the existing building would be likely to generate a considerable amount of activity when in full occupation. Accordingly, given the mixed use nature of Melbourne Street, and its close proximity to Lewes Road, the proposed density and use of the proposal would not harm the character and appearance of the area.
24. In summary, the abrupt change in scale from the 6 storey proposed buildings to the school playground, adjacent 2 storey school buildings and 2 storey dwellings would appear discordant, resulting in an adverse effect on the character and appearance of the area.
25. Consequently, the proposal would harm the character and appearance of the area. Therefore, it would conflict with CP12 and CP14 of the Brighton & Hove City Plan Part One March 2016 (CPP1) and Policy DM18 of the City Plan Part Two October 2022 (CPP2), and SPD17: Urban Design Framework June 2021 which together aim to respect the diverse character and urban grain of the city's identified neighbourhoods and seek a high standard of design.
26. As the discordant effect would be seen mostly in close-range views along Melbourne Street, the harm would be limited and localised.
27. The proposal would not conflict with CPP2 Policy DM19 which seeks to maximise opportunities for the development and use of land.

Living conditions

28. The proposal would result in Block A being sited significantly closer to Viaduct Lofts than the existing building. A review of the updated daylight and sunlight

material was conducted by the British Research Establishment Ltd (BRE). It concluded that the scheme would result in significant losses of daylight and sunlight.

29. Around 30 windows were assessed to be below the vertical sky component (VSC) guidelines and some 15 rooms below the daylight distribution guidelines. A number of these would experience minor adverse effects and other windows would serve rooms that are served by other windows and therefore either comply with BRE guidelines or would experience minor adverse effects. A small number of ground floor windows serve kitchens that are accessed from the stairwell. These rooms would experience low levels of daylight in any event due to their location. The remaining windows include those serving living/kitchen dining areas.
30. In summary, around 7 of the windows of Viaduct Lofts that were assessed, would experience major adverse effects in terms of daylight. Although I note the evidence regarding the VSC levels being affected by the presence of existing balconies, it is nonetheless the case that occupiers of these spaces would be significantly affected by the loss of daylight resulting from this scheme.
31. A number of windows of Viaduct Lofts fall outside the BRE's recommendations for Annual Probable Sunlight Hours (APSH). Around six windows are located beneath overhanging balconies which restrict the receipt of sunlight to the windows and rooms that serve them. I also acknowledge that a number of other windows serve dual aspect rooms. While it may be the case that the levels of sunlight reaching the spaces would be acceptable without the balconies, the living conditions of the occupiers of these spaces would nonetheless be significantly affected by the development.
32. Overall, even if BRE's guidelines are applied flexibly, a number of windows of Viaduct Lofts, most notably those with overhanging balconies above serving living, kitchen and dining spaces would experience significant losses of daylight and sunlight. As such, the living conditions of these neighbouring occupiers would be adversely affected as result of the proposal.
33. The assessed windows at Shanklin Road, the flats at 29 Shanklin Road, Melbourne Street, St Martin's School, Gladstone Court and Gladstone Place would largely meet BRE guidelines. Where the windows do not meet the guidelines, the impact would generally be minor to moderate.
34. The most significant adverse effect in terms of loss of light would be for a moderate number of windows of Viaduct Lofts. Other windows of Viaduct Lofts and surrounding properties would generally experience minor to moderate harm. Therefore, the overall harm to the living conditions of neighbouring occupiers in terms of light would be moderate.
35. In terms of privacy, the windows of Viaduct Lofts facing the proposal would be around 14m from the façade of Block A. This would be substantially closer than the existing Enterprise Point building, Therefore, the proposal would result in some loss of privacy. However, the relationship between the windows of the opposing buildings and Viaduct Lofts would be similar to that between Viaduct Lofts and the proposed Phase 1 building. In addition, the lower half of the proposed windows up to the fifth floor of Block A that face Viaduct Lofts would

be obscured. As such, primarily when future occupiers are stood at their windows would they gain direct views into the neighbouring properties.

36. The distance between the proposal and the properties at Shanklin Road would be between 15m and 17m. The two upper floors of Blocks B, C and D would have angled windows that would direct views away from the dwellings opposite. The lower half of the windows of the lower floors would be obscured such that, as with Block A, future occupiers would gain direct views of the opposite buildings primarily when stood at the window. Moreover, block C would align roughly with the existing building line of Enterprise Point. Therefore, the number of windows facing the Shanklin Road properties, and therefore the levels of overlooking, would not be significantly greater than existing along this particular façade.
37. As the harm to privacy of the neighbouring occupiers would generally be experienced when future occupiers would be stood at their windows, the harm to privacy would be moderate.
38. Consequently, the proposal would harm the living conditions of neighbouring occupiers with regard to light and privacy. Therefore, the proposal would conflict with CPP2 Policy DM20 which seeks proposals that would not cause unacceptable loss of amenity to the proposed, existing, adjacent or nearby occupiers.

Other Matters

39. To the northeast of the site lies Woodvale Cemetery which is a Grade II listed Registered Park and Garden. The original 19th century flint wall which marks the boundary of the cemetery forms part of the northern boundary of the site. A number of listed buildings and monuments lie in the cemetery. However, given the separation distance to the appeal site, the proposal would only affect the setting of Grade II listed Woodvale Cemetery North Lodge (North Lodge). The significance of Woodvale Cemetery and North Lodge, insofar as they relate to this appeal, lie in their architectural and historic value as an early High Victorian cemetery and associated architecture.
40. Given the proximity of the site to these heritage assets, it lies within their setting. Enterprise Point can be seen from the access road to the cemetery. The modern materials, form and massing of the existing building have a poor relationship to the historic cemetery and North Lodge and therefore provide a negative contribution to their setting.
41. The proposal would rise above the adjacent tree canopy and would be seen from the access to the cemetery thereby affecting the setting of both the cemetery and North Lodge. However, as the proposed materials would be more traditional than the existing building and would read as a continuation of the Phase 1 scheme, the proposal would enhance the setting of these heritage assets.
42. As stated in the heritage assessment, Roundhill Conservation Area (RCA) is mainly characterised by late 19th century terraces which feature continuous frontages to Round Hill Crescent. The significance of RCA is derived from the visually cohesive neighbourhood of mid-to-late 19th century development which retains a high degree of architectural character, and from the uniform heights of these Victorian terraces and villas.

43. The existing building is visible in some long range views from within the RCA. However, given its form, materials and massing which generally does not relate to the historic nature of RCA, it does not contribute positively to its setting.
44. The proposal would be clad in traditional materials, would appear as an extension of the Phase 1 scheme, and would appear more in keeping with Viaduct Lofts which currently is more prominent than the existing building. Therefore, the proposal would preserve the significance of RCA.
45. I acknowledge local concerns including regarding traffic and associated noise and air quality. The Transport Statement submitted with the appeal compares the trip generation associated with the proposed co-living use, with the existing office use. It concludes that the proposed development would result in fewer vehicular trips than in the existing situation and would increase the use of more sustainable transport modes. Therefore, it has not been demonstrated that the proposal would result in adverse effects on this respect.
46. I recognise local concerns regarding the use of the proposed buildings for temporary accommodation including student accommodation. However, the submitted legal agreement includes a provision to ensure that the dwellings are not used or occupied by persons in full-time education or enrolled in any university at undergraduate level.
47. A number of trees are proposed to be removed to facilitate development. The majority of these are either of low quality or in such a condition that they could not realistically be retained in the context of the current land.
48. In terms of wildlife, The Preliminary Ecological Assessment concluded that surveys were recommended in order to determine presence or likely absence of bats. A precautionary approach to works in respect to breeding birds, badgers, and hazel dormice was also recommended to minimise any adverse impacts on this species group. This could be secured by a suitably worded condition.
49. Whilst I note local concerns regarding the capacity of local healthcare services, there is no evidence before me to indicate that the proposal would result in unacceptable effects in this regard. Therefore, this matter has not altered my overall decision.
50. A condition requiring a Building Management Plan would include the access arrangements for the outdoor terraces to ensure that undue noise from users would not adversely affect the living conditions of neighbouring occupiers.
51. I note the comments of the Inspector for the case at Palmeira Avenue and Cromwell Road. As that proposal was for Use Class C3 flats, it is not directly comparable to this appeal and has not altered my overall decision.

Planning balance

52. The Council are unable to demonstrate a five year supply of housing. The provisions of paragraph 11dii of the Framework therefore are engaged. As the figure lies in the region of 1.9 years which amounts to around 7,700 dwellings, this constitutes a significant shortfall.
53. The scheme proposes co-living units, where the residential studios are sized below the Nationally Described Space Standards. However, the units would not be self-contained units and would have access to common kitchens and

lounges on each floor as well as co-working and other amenities including gym. The proposed development would deliver 269 co-living studios, equating to a contribution of 149 housing units using the Housing Delivery Test ratio of 1.8 units to one dwelling. In addition, there would be economic benefits during the construction phase and future occupiers would contribute to local services and facilities. Accordingly, while I note the evidence regarding the need for one-bedroom dwellings, given the substantial number of units proposed, and the shortfall of housing supply, I attribute significant weight to this benefit.

54. The Council has not undertaken a precise study for the need for co-living accommodation. However, an Interim Planning Guidance Note on Co-Living Accommodation has been published by the Council. It states that the Council will not support co-living development on sites identified for future C3 housing delivery and sets out an expectation for co-living accommodation to be of a moderate scale (i.e. no more than around 100- 200 units). As the guidance note does not form policy, is not supplementary to any particular policy, and has not been consulted upon, I attribute very limited weight to any conflict the scheme has with this document.
55. Given the nature of co-living accommodation, there is no dispute between the parties that the provision of affordable housing on the site would not be appropriate. Therefore, the legal agreement requires that £2.5 million is paid to the Council as the Affordable Housing Contribution. Due to the acute need for affordable housing in the district, I attribute significant weight to this benefit.
56. Public realm improvements to Melbourne Street include widening of the pavement and cycle stands. As the building frontage and relationship with the street would be more active than the existing car park, I attribute this benefit limited weight.
57. The existing site largely consists of hardstanding and built development. The proposal would introduce landscaping and features such as green roofs. As further details in terms of biodiversity and environmental benefits are not before me I attribute only limited weight to this benefit.
58. The proposal would harm the character and appearance of the area and result in adverse effects on the living conditions of neighbouring occupiers with regard to light and privacy. Therefore, the scheme would conflict with the development plan as a whole.
59. Given the limited and localised nature of the harm to the character and appearance of the area, I attribute limited weight to the conflict with CPP1 Policies CP12 and CP14 and CPP2 Policies DM18 and DM19. As the harm to the Living conditions of neighbouring occupiers would be moderate, I attribute moderate weight to the conflict with CPP2 Policy DM20.
60. Given the significant weight attributed to the benefits of the scheme, the adverse effects would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conditions

61. The conditions regarding time limit and specifying plans are necessary in the interests of certainty. As drawings 2203-P-171 to 2203-P-174 are daylight and sunlight assessment drawings, it is not necessary to include them in the plans condition.

62. The conditions relating to site waste management plan, demolition environmental management plan, construction environmental management plan, smoking areas, delivery and service management plan, external lighting, roof plant and machinery, building management plan, refuse and recycling are necessary in order to safeguard the living conditions of neighbouring occupiers. The Construction Environmental Management Plan would also ensure that accessibility for disabled neighbours would be safeguarded.
63. Given the condition requiring a building management plan, the suggested condition regarding the access to and use of podium gardens is not necessary. Conditions regarding protected species and local wildlife sites have been combined and are necessary in the interests of biodiversity. Given the existing use of the site, conditions regarding ground conditions and contamination are necessary.
64. In order to safeguard against flooding, conditions relating to drainage strategy, sustainable drainage plan and infiltration are necessary. In the interests of highway safety, highway works for improvements to Melbourne Street and cycle parking are necessary. Conditions relating to materials, boundary treatments, ground levels, landscaping, cables fixed to elevations and protection of retained trees are necessary to safeguard the character and appearance of the area.
65. The conditions relating to energy statement, ecological design strategy including swift bricks and bee bricks, air source heat pumps, green roof, whole-life carbon assessment, pv array, electric vehicle charging point, BREEAM, water efficiency standard, energy performance certificate, district heating system are necessary in the interests of ecology and biodiversity. Given the nearby designated heritage asset, conditions regarding the flint boundary wall and archaeology are necessary.
66. In order to safeguard the living environment of future occupiers, conditions relating to privacy screens, secure by design, noise from plant, sound insulation and wheelchair accessible rooms are necessary.
67. The condition relating to piling and investigation boreholes is necessary to safeguard groundwater resources. The condition regarding use of non-residential spaces and living accommodation is necessary in the interests of certainty.

Planning Obligation

68. The appellant has completed a legal agreement under Section 106 of the Act (a S106) in conjunction with Brighton & Hove City Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.
69. Affordable Housing: The affordable housing contribution was calculated through discussion between the main parties as there is no established methodology for calculating affordable housing based on co-living accommodation. From the evidence I consider the contribution to meet the tests contained in the Framework and the CIL Regulations 2010.

70. The S106 also secures provisions relating to: Local Employment Scheme Contribution, Artistic Component, Residential Accommodation Travel Plan, Commercial Element Travel Plan, Employment and Training Strategy and Use of the Property.
71. I am satisfied that in each case the obligations meet the three tests set out in Paragraph 57 of the Framework for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (2010). As a result, I have taken the S106 into account.

Conclusion

72. Consequently, there are material considerations to warrant a decision other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

R Sabu

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:
2203-P-100 A; 2203-P-150 B; 2203-P-221 E; 2203-P-201 D;
2203-P-211 E; 2203-P-231 E; 2203-P-241 E; 2203-P-251 F;
2203-P-261 E; 2203-P-271 D; 2203-P-281 B; 2203-P-301 C;
2203-P-302 B; 2203-P-303 D; 2203-P-304 C; 2203-P-305 B;
2203-P-306 B; 2203-P-307 C; 2203-P-308 C; 2203-P-601 A;
2203-P-602 A; 2203-P-603 A; 2203-P-604 A; 2203-P-611 A;
2203-P-612 A; 2203-P-613 A; 2203-P-651 A; 2203-P-213 A; and
2203-P-321A.
- 3) No development, including demolition and excavation, shall commence until a Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details approved.
- 4) No development, including demolition, shall take place until a Demolition Environmental Management Plan (DEMP) has been submitted to and approved in writing by the local planning authority. The DEMP shall include:
 - (i) The phases of the Proposed Development including the forecasted completion date(s)
 - (ii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of joining the considerate constructors scheme)
 - (iii) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site
 - (iv) Details of hours of construction including all associated vehicular movements
 - (v) Details of the construction compound
 - (vi) A plan showing construction traffic routesThe demolition shall be carried out in accordance with the approved DEMP.
- 5) No development, shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include:
 - (i) The phases of the Proposed Development including the forecasted completion date(s)
 - (ii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of joining the considerate constructors scheme)

(iii) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site

(iv) Details of hours of construction including all associated vehicular movements

(v) Details of the construction compound

(vi) A plan showing construction traffic routes

The construction shall be carried out in accordance with the approved CEMP.

- 6) No development, shall take place (including demolition and all preparatory work) until a scheme for the protection of the retained trees to the north of the rear site boundary, in accordance with BS 5837:2012, including a Tree Protection Plan(s) (TPP) and an Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the local planning authority. The development thereafter shall be implemented in strict accordance with the approved details.
- 7) No development shall take place (including any demolition, ground works, site clearance) until a Method Statement for protected species (bats, breeding birds, dormice, badgers, reptiles and hedgehog), invasive species such as buddleia (where required) and protection of Woodvale, Extra-mural and Downs Cemeteries Local Wildlife Site has been submitted to and approved in writing by the local planning authority. The content of the Method Statement shall include the following:
- a) purpose and objectives for the proposed works;
 - b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - c) extent and location of proposed works shown on appropriate scale maps and plans;
 - d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
 - e) persons responsible for implementing the works;
 - f) initial aftercare and long-term maintenance (where relevant);
 - g) disposal of any wastes arising from the works.

The works shall be carried out in strict accordance with the approved details and shall be retained and maintained in that manner thereafter.

- 8) (i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the local planning authority:
- (a) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the submitted desk top study (by Terrafirma ref. PO-22-020/P1EP dated Aril 2022) in accordance with BS 10175:2011+A2:2017;
- And if notified in writing by the local planning authority that the results of the site investigation are such that site remediation is required then,

(b) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

(ii). The development hereby permitted shall not be occupied or brought into use until there has been submitted to, and approved in writing by, the local planning authority a written verification report by a competent person approved under the provisions of condition (i)b that any remediation scheme required and approved under the provisions of condition (i)b has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). The verification report shall comprise:

- a) built drawings of the implemented scheme;
- b) photographs of the remediation works in progress;
- c) certificates demonstrating that imported and/or material left in situ is suitable for use.

- 9) The development hereby permitted shall not commence until a monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the local planning authority, has been submitted to, and approved in writing by, the local planning authority. Reports as specified in the approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to, and approved in writing by, the local planning authority.
- 10) The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as 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 by the local planning authority. The development shall then be implemented in accordance with the approved level details prior to the first occupation of the development and shall thereafter be retained as such.
- 11) No development above ground floor slab level of any part of the development hereby permitted 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 in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable.
- 12) No development shall take place until an Ecological Design Strategy (EDS) addressing enhancement of the site to provide biodiversity net gain, including provision of 4 bat boxes, swift bricks, bee bricks and landscape planting of high wildlife value has been submitted to and approved in writing by the local planning authority. The EDS shall include the following:
 - a) purpose and conservation objectives for the proposed works;

- b) review of site potential and constraints;
- c) detailed design(s) and/or working method(s) to achieve stated objectives;
- d) extent and location /area of proposed works on appropriate scale maps and plans;
- e) type and source of materials to be used where appropriate, e.g. native species of local provenance;
- f) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- g) persons responsible for implementing the works;
- h) details of initial aftercare and long-term maintenance;
- i) details for monitoring and remedial measures;
- j) details for disposal of any wastes arising from works.

Further supplementary ecological surveys for bats shall be undertaken to inform the preparation and implementation of corresponding phases of ecological measures required through the EDS. The supplementary surveys shall be on an appropriate type for the above species and survey methods shall follow national good practice guidelines.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 13) Prior to the commencement of development (excluding demolition) a Sustainable Drainage Plan including detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods as per the recommendations of the Outline Drainage Strategy, dated May 2019 shall be submitted to and approved in writing by the local planning authority. The Sustainable Drainage Plan shall include the following:
- (i) Details of the location of the existing drainage infrastructure.
 - (ii) Details and location of the final drainage infrastructure as proposed in the Outline Drainage Strategy.
 - (iii) Suitable assessment and management of flood risk from groundwater and surface water runoff given the proposed basement.
 - (iv) Appropriate calculations to demonstrate that the final proposed drainage system will be able to cope with both winter and summer storms for a full range of events and storm durations
 - (v) The applicant should demonstrate the surface water drainage system is designed so that flooding does not occur on any part of the site for a 1 in 30 year rainfall event, and so that flooding does not occur during a 1 in 100 (+40% allowance for climate change) year event in any part of a building or in any utility plant susceptible to water.
 - (vi) A management and maintenance plan for the final drainage design for the proposed development, which includes the orifice plates.

The approved Sustainable Drainage Plan shall be implemented and maintained in accordance with the approved detailed design.

No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.

- 14) Notwithstanding the plans hereby submitted, no development hereby permitted shall take place until a full scheme of highway works for improvements to Melbourne Street have been submitted to and approved in writing by the local planning authority. The scheme shall include:

- Improvement the northern footway to and in the vicinity of the development by -
- removal of the redundant vehicle crossovers and reinstates these as raised footway;
- widening of the adopted footway (if necessary, through dedication of additional land as adopted highway) so that its unobstructed clear width after street furniture and other potential obstructions is either: (A) $\geq 1.8\text{m}$ wide; or (B) $\geq 1.5\text{m}$ wide but with regular $\geq 1.8\text{m}$ wide passing areas of a minimum 2m length including but not limited to in front of doors and entrances;
- resurface and improvement of the footway; and
- provision of an on-street inset loading bay on Melbourne Street in front of the Phase 2 development site.

The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.

- 15) Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any part 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, including (where applicable):

- a) samples/details of all brick, render and tiling (including details of the colour of render/paintwork to be used)
- b) samples of all cladding to be used, including details of their treatment to protect against weathering
- c) samples/details of all hard surfacing materials
- d) samples/details of the proposed window, door and balcony treatments
- e) samples/details of all other materials to be used externally

Development shall be carried out in accordance with the approved details.

- 16) No development above ground floor slab level of any part of the development hereby permitted shall take place until the following has been submitted to and approved in writing by the local planning authority:

- an energy statement demonstrating how the development will meet the requirements of the Future Homes Standard and Future Buildings Standard, as appropriate for the different elements of the development; and
- overheating risk assessment

Development shall be carried out in strict accordance with the approved details.

- 17) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the Air Source Heat Pumps (ASHP) have been submitted to and approved in writing by the local planning authority. The details shall include details of the technology, distribution systems and location(s) of water storage. The development shall then be constructed in accordance with the approved details prior to first occupation and shall be retained as such thereafter.
- 18) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the green roof has been submitted to and approved in writing by the local planning authority. The details shall include a cross section, construction method statement, the seed mix, and a maintenance and irrigation programme. The roof shall then be constructed in accordance with the approved details prior to first occupation and shall be retained as such thereafter.
- 19) No development (including demolition) shall take place until a survey report and a method statement has been submitted to and approved in writing by the local planning authority, setting out how the existing flint boundary wall on the northern boundary of the site is to be protected, maintained, repaired and stabilised during and after demolition and construction works. The report shall include details of any temporary support and structural strengthening or underpinning works required. The demolition and construction works shall be carried out and completed fully in accordance with the approved method statement.
- 20) (a) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

(b) No phase of the development hereby permitted shall be brought into use until the archaeological site investigation and post-investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed and written details submitted to and approved in writing by the local planning authority. The archaeological site investigation and post-investigation assessment will be undertaken in accordance with the programme set out in the written scheme of investigation approved under (a).
- 21) No development, including demolition and excavation, shall commence until a whole-life carbon assessment has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details approved.
- 22) The development hereby permitted shall not be occupied until details have been submitted in writing to the local planning authority for

approval of identified designated outdoor smoking areas and associated external cigarette bins at entrances and exits of the building hereby approved. The development shall then be constructed in accordance with the approved details prior to first occupation and shall be retained as such thereafter.

- 23) The development hereby permitted shall not be used/occupied until a Delivery & Service Management Plan, which includes details of the types of vehicles, how and where deliveries and move-in/move-out will be scheduled and otherwise be managed, dwell times for deliveries and move-in/move-out activity, how deliveries servicing and refuse collection will take place, and the frequency of all those vehicle movements has been submitted to and approved in writing by the local planning authority. All deliveries servicing and refuse collection shall thereafter be carried out in accordance with the approved plan.
- 24) Notwithstanding plans hereby submitted, and prior to occupation of the development, details of secure and inclusive cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the local planning authority.

This should include:

- a) Details of the secure access provisions proposed;
- b) Proposed cycle parking stores which are accessible from the proposed pedestrian/cycle only courtyard space and do not encourage potential conflict with motor vehicles;
- c) The layout of SPD 14 policy compliant long-stay cycle parking provisions, including dimensions of the cycle parking store including aisle widths and vertical clearance (demonstrating 2.6m can be achieved where two-tier stands are proposed);
- d) Long-stay cycle parking types including 20% Sheffield stand provision and 5% enlarged Sheffield stand provision;
- e) A mobility hub/cycle parking store to provide long-stay cycle parking, and provisions for electric charging provision for scooters/e-bikes; and
- f) SPD 14 policy compliant short-stay cycle parking (i.e., Sheffield stands) should be provided in the public realm within the curtilage of the proposed development site; and
- g) the proposed location for the BTN Bikeshare hub and bikes (10 bikes) within the on-site courtyard area.

The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

- 25) The development hereby permitted shall not be occupied until a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments (including details all external doors and gates) has been submitted to and approved in writing by the local planning authority. The boundary treatments shall be provided in accordance with the approved details prior to occupation of the development and shall thereafter be retained at all times.

- 26) No part of the development hereby permitted shall be first occupied or brought into use until written evidence, such as Secure By Design certification, has been submitted to and approved in writing by the local planning authority to demonstrate that the scheme has incorporated crime prevention measures.
- 27) Prior to occupation, a Lighting Design Strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and/or technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.
 - c) include details of; levels of luminance, hours of use, predictions of both horizontal illuminance across the site and vertical illuminance affecting immediately adjacent receptors, hours of operation and details of maintenance. The predicted illuminance levels shall have been tested by a competent person to ensure that the illuminance levels agreed are achieved. Where these levels have not been met, a report shall demonstrate what measures have been taken to reduce the levels to those agreed.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy prior to first occupation, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the planning authority.

- 28) The development hereby approved shall not be first occupied until details of the photovoltaic array shown on the approved roof plan (drawing no. 2203-P-281 RevB) has been submitted to and approved in writing by the local planning authority. The photovoltaic array shall then be installed in accordance with the approved details prior to first occupation and thereafter retained.
- 29) Prior to 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 completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
- A) details of all hard and soft surfacing to include the type, position, design, dimensions and materials and any sustainable drainage system used;
 - b) a schedule detailing sizes and numbers/densities of all proposed trees/plants including food-bearing plants, and details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period;

c) 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.

- 30) The development hereby permitted shall not be first occupied until full details of roof plant and machinery been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to first occupation and shall thereafter be retained as such.
- 31) The development hereby permitted shall not be first occupied until full details of privacy screens on the boundaries of the balconies hereby permitted have been submitted to and approved in writing by the local planning authority. The screens shall be installed prior to occupation of the development and thereafter be retained.
- 32) Prior to first occupation of the development hereby permitted, full details of electric vehicle charging points within the proposed car park hereby approved have been submitted to and approved in writing by the local planning authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.
- 33) The development hereby approved shall not first occupied until a Building Management Plan has been submitted to the local planning authority for written approval. The Plan shall include details of:
- i) Details of the numbers and nature of staff to be on site including 24 hour security arrangements.
 - ii) Location and permitted use by residents, business users and community users of outside amenity areas including building entrances and access, hours of use and management of outside amenity areas including roof terraces.
 - iii) Details of community liaison arrangements including contacts and complaints procedures.
 - iv) Details of arrangements for arrivals and departures of residents.
 - v) Details of management and access to indoor communal facilities including to community and gym facilities.
- The agreed Building Management Plan shall be implemented in accordance with the approved details and retained as such thereafter.
- 34) Within 6 months of first occupation of the non-residential development hereby permitted a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Excellent' shall be submitted to, and approved in writing by, the local planning authority.
- 35) If during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority), shall be carried out until a method statement identifying and assessing the risk and

- proposing remediation measures, together with a programme for such works, shall be submitted to the local planning authority for approval in writing. The remediation measures shall be carried out as approved and in accordance with the approved programme.
- 36) Piling and investigation boreholes using penetrative methods shall not be carried out other than in accordance with details to be submitted and agreed in writing by the local planning authority.
 - 37) Noise associated with plant and machinery incorporated within the development when in use shall be controlled such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS 4142:2014 (or the relevant updated Standard). In addition, there should be no significant low frequency tones present.
 - 38) The floors/walls/stairs between the commercial/communal areas and the residential uses shall be designed to achieve a sound insulation value of at least 5dB better than Approved Document E performance standard.
 - 39) The development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
 - 40) None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
 - 41) The wheelchair 'accessible' studio rooms hereby permitted as detailed on approved drawings shall be completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) prior to first occupation and shall be retained as such thereafter. All other dwelling(s) hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter.
 - 42) No tree shown to be retained on the approved drawings shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from the local planning authority. 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.
 - 43) No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
 - 44) The non-residential part of the premises hereby permitted as shown on the Proposed Ground Floor Plan 2203-P-201-D shall be used as an office

(Use Class E(g) (i) and (ii)) only and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use shall occur without planning permission obtained from the local planning authority.

- 45) The living accommodation hereby approved shall be occupied for sui generis residential purposes only as a main residence and shall not be permitted to be occupied by any other form of residential or short stay accommodation within Class C of the 1987 Use Classes Order (as amended).
- 46) Within 6 months of first occupation an Energy Performance Certificate confirming that the development achieved a minimum (EPC) rating 'B' for new build residential and non-residential development should be submitted to and approved in writing by the local planning authority.
- 47) Prior to first occupation, provision within the development hereby approved shall be made to ensure the site can be connected to a district heating system in the future, including securing and safeguarding a route onto the site from the highway for a connection.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Ed Grant (of Counsel, Cornerstone Barristers, instructed by Third Revolution Projects)

Robert Shaw BSc (Hons DipTP, MRTPI, Third Revolution Projects: Privacy, Planning)

Colin Pullan BA (Hons) DipUD, Pegasus Planning: Townscape

Michael Beatty BSc (Hons) MRICS, GIA Chartered Surveyors: Daylight/Sunlight

Paul Van Reyk LLB (non-practicing Solicitor), Kosy Co Living EP Limited: s106

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Nee Principle Planning Officer

Katie Reilly Senior Urban Design Officer

Robert Davidson Principle Planning Officer, Planning Policy Team

Councillor Sue Shanks

INTERESTED PARTIES:

Sanchia Burch Local resident

Mark Burch Local resident

Holly Beeston Local resident

Julian Howland Local resident

Maxine Wilson Local resident

Mike Evans Local resident

Katherine Evans Local resident

Tim Rowkins Ward councillor

DOCUMENTS

List of Appearances for Appellant

Council response to revised National Planning Policy Framework

Appellant response to revised National Planning Policy Framework

Appellant final response to revised National Planning Policy Framework

Core documents (reissue)