

<u>No:</u>	BH2024/01452	<u>Ward:</u>	Wish Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Site Of 239 To 243 Kingsway Hove BN3 4HE		
<u>Proposal:</u>	Part-retrospective application for the installation of an emergency backup generator with associated screening.		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	11.06.2024
<u>Con Area:</u>	N/a	<u>Expiry Date:</u>	06.08.2024
<u>Listed Building Grade:</u>	N/a	<u>EOT:</u>	09.10.2024
<u>Agent:</u>	Lewis And Co Planning SE Ltd Lewis & Co Planning 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	239 Kingsway Hove Ltd C/o Lewis And Co Planning 2 Port Hall Road Brighton BN1 5PD		

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location and block plan	P_300	01	11 June 2024
Proposed Drawing	P_301	P4	5 September 2024
Report/Statement	Acoustic Report - Plant Sound Assessment - 7th Wave Acoustics	1203.00 1R.2.0.J P	11 June 2024

2. Within two (2) months of the date of the permission hereby granted, the 1.5m high natural larch timber fence and posts shall be fully installed in accordance with the approved plan (Ref: P_301 Rev.P4) received by the Local Planning Authority on 5th September 2024. The fencing shall thereafter be maintained in place in perpetuity.

Reason: To ensure a satisfactory appearance to the development and to comply with policies CP12 of the Brighton & Hove City Plan Part One, and DM18 of the Brighton & Hove City Plan Part Two.

3. Noise associated with the generator hereby permitted 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 20 dB above the existing background sound level, in accordance with the conclusion of the Acoustic Report by 7th Wave Acoustics (Ref: 1203.001R.2.0.JP) received by the Local Planning Authority on 11th June 2024.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

4. The development hereby permitted is for an emergency backup generator to be used in circumstances of loss of power to the site in a fire emergency only (and associated testing), and it shall not be used for general daily use.

Within 2 months of the date of this permission, an Operational Statement shall be submitted to the Local Planning Authority for written approval detailing how the generator would be used for testing outside of the event of a fire-related emergency within the Argentum development. The Statement will include the following information:

- a) The frequency of equipment tests and length of time the generator would be emitting a noise output during each test.
- b) A scheme of how the developer will inform local residents in advance of any upcoming testing of the equipment to include informing them of the time of day it will take place and duration, and it shall detail how any complaints will be recorded and addressed.

The agreed Operational Statement shall be adhered to thereafter.

Reason: As this matter is fundamental to the protection of amenity and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the Council from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.
3. Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun due to the fact that the planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.

2. SITE LOCATION

- 2.1. The application site is a corner plot on the north side of Kingsway and the west side of Braemore Road. Permission has been granted for the erection of an eight storey block of self-contained flats (C3), known as Argentum, development of which is nearing completion.
- 2.2. More specifically, the current development concerns the northeast corner of the site, where a walled compound has been erected, containing cycle parking, an electricity box, and a generator. It is adjacent to the shared boundary with no.6 Braemore Road, a residential property (C3). A site visit was undertaken in July.

3. RELEVANT HISTORY

- 3.1. **BH2024/00098** Application for approval of details reserved by condition 11 (car park management plan) of application BH2022/03385. Approved
- 3.2. **BH2023/03305** Application for approval of details reserved by condition 18 (privacy screening) of BH2022/03385. Under Consideration
- 3.3. **BH2022/03137** Application for approval of details reserved by condition 15 (lighting details) of BH2022/03385. Approved
- 3.4. **BH2023/02023** Application for approval of details reserved by condition 14 (landscaping and enhancement of nature conservation interest scheme) and 16 (photovoltaic array details) of application BH2022/03385. Approved
- 3.5. **BH2022/03639** Non-material amendment to application BH2018/00937 (allowed on appeal) to change the material for the feature band to allow for the use of render. Approved
- 3.6. **BH2022/03385** Application to vary Condition 2 of planning permission BH2018/00937 (allowed on appeal), as amended by BH2022/00541, to allow amendments to approved drawings, to vary Condition 8 (Disability access) to refer to Part M4(3)(2a) of the building regulations, to vary Conditions 12 (Cycle Parking), and 13 (Electric Vehicle Charging) to refer to approved details and to vary Condition 26 (Unit numbers) to refer to 33 units. Approved **Note: The approved drawings made reference to 'provision of a generator' in the location of the current proposal.**
- 3.7. **BH2022/01897** Application for approval of details reserved by condition 6 (surface water drainage design and maintenance scheme) of application BH2018/00937 (allowed on appeal). Approved
- 3.8. **BH2022/01472** Application for approval of details reserved by condition 5 (materials details) of application BH2018/00937 (allowed on appeal). Approved
- 3.9. **BH2022/00727** Application for approval of details reserved by condition 3 (existing and proposed ground levels) of application BH2018/00937 (allowed on appeal). Approved

- 3.10. **BH2022/00541** Non-material amendment to application BH2018/00937 (allowed on appeal) to amend development description to: Demolition of the existing dwellings and erection of an eight storey building to provide self-contained flats (C3), with associated access, parking and landscaping. Approved
- 3.11. **BH2022/00457** Application for approval of details reserved by condition 7 (method statement for construction of party wall) of application BH2018/00937 (allowed on appeal). Approved
- 3.12. **BH2022/00420** Application for approval of details reserved by condition 4 (Construction Environmental Management Plan) of application BH2018/00937 (allowed on appeal). Approved
- 3.13. **BH2018/00937** Demolition of existing buildings and erection of an eight storey building to provide 37no residential dwellings (C3) with associated access, parking and landscaping. Refused - Appeal Allowed

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought part-retrospectively under Section 73a of the Town and Country Planning Act 1990 for the installation of an emergency generator that would have a cuboid form, with a height of approximately 1.5m, and footprint of approximately 2.4m².
- 4.2. The application states that the generator is a Building Regulations requirement and would only operate in the event of a power loss to the whole site as a result of fire. It would ensure power would be retained to lifts and the sprinkler system. Once a year the generator would need to be tested for approximately 1 hour.
- 4.3. When running, the generator will generate noise levels of up to 20dB above the existing background level.
- 4.4. The generator itself is retrospective and has already been installed. The scheme has been amended during its lifetime, with timber fencing being added to the proposal to visually shield the existing generator in views from the public highway. This screening is not yet in place on site.

5. REPRESENTATIONS

- 5.1. Six (6) representations have been received, objecting to the proposal on the following grounds:
- Detrimental impact on property value
 - Noise nuisance
 - The development is unattractive.
 - The proposed screening is inadequate to conceal the generator.
 - The development is too close to the shared boundary.

- The development could be built elsewhere.
 - Loss of view
 - The applicant should have considered the generator earlier in the planning process.
 - The generator is a health and safety risk.
- 5.2. A representation has also been received from **Ward Councillor Nann**, objecting to the proposal on the following grounds:
- No attempt has been made to hide the generator in street views
 - The generator is ugly and overbearing, spoiling street views

It should be noted that all representations were received prior to amendments to the scheme including visual screening.

6. CONSULTATIONS

Internal

- 6.1. Environmental Health Team (Comment)
 This emergency generator, if continually active, would cause a severe adverse effect on closest receptors. However, this generator, as the name suggests, is for use in emergencies only, i.e. in case of fire where generator power would be required. Therefore, the effect on these receptors should be minimal. As suggested, the generator is required to be tested once a year for approximately one hour. All nearby residents should be advised well in advance of this testing, due to the adverse noise effects this increased 20dB will generate from the testing.

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report.
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
 - Brighton & Hove City Plan Part Two (adopted October 2022)
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013)
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
 - Shoreham Harbour Joint Area Action Plan (adopted October 2019)

8. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One (CPP1)

SS1	Presumption in Favour of Sustainable Development
CP10	Biodiversity
CP12	Urban Design

Brighton & Hove City Plan Part Two (CPP2)

DM18	High quality design and places
DM20	Protection of Amenity
DM22	Landscape Design and Trees
DM36	Parking and Servicing
DM37	Green Infrastructure and Nature Conservation
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents

SPD17 Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of development; the design and appearance of the development; and the potential impacts to the amenities of local residents.

Principle of Development

- 9.2. Provision for a generator in this location was agreed in principle with the granting of permission BH2022/03385 in August 2023, as shown specifically on approved drawing L(01)-003 Revision F. It is considered that it would be unreasonable to refuse permission for a generator in this location in principle, given the approved development and clear provision for a generator shown on the approved drawing.
- 9.3. The principle of an emergency backup generator on the site is supported to ensure adequate fire safety. It has been stated in the representations received that the generator could be built elsewhere; as abovementioned, the principle of a generator in this location has been accepted in the previous permission that remains extant. In addition, as discussed below, the current siting is considered acceptable.

Design and Appearance

- 9.4. The generator is a functional addition to the landscape, and not an entirely alien feature in a city environment. Whilst of no architectural merit, it is relatively modest in scale (with a volume of approximately 3.5m³). It is partly enclosed within a brick compound and is set back into the site off the main frontage, reducing its visual impact. It would nevertheless remain visible within the streetscene, and it is considered necessary for installation of the proposed screening fencing to be secured by condition within a reasonable timeframe post-decision, in the interest of visual amenity. The proposed timber screening is considered adequate for its purpose and will satisfactorily conceal views of the generator. The impact of the screening itself within the wider streetscene

would be acceptable as it would be up to 1.5 metres in height and limited to around the generator only and set back within the site.

- 9.5. Soft landscaping has been planted around the internal perimeter of the compound, which when fully grown will help soften the appearance of the development; however, it would not be appropriate to solely rely upon soft landscaping to secure an acceptable appearance since it would take time to grow in and cannot be relied upon in perpetuity. Therefore, it is necessary to secure installation of the timber fencing by condition.

Impact on Amenities

Noise Nuisance

- 9.6. The generator would be anticipated to cause harm to the amenities of local residents if in constant use, but it has been confirmed by the applicant that it is for use only in an emergency where a fire occurs in the Argentum development; the generator would then activate and provide power to the lifts and sprinkler system. The generator would also be activated on an annual basis for testing for a short period of about an hour. On this basis, it is considered that the proposal would be acceptable as the potential noise nuisance from the development would only be for an extremely limited period of time. Conditions will be included to secure emergency use only and ensure that the noise rating from the generator's operational use does not exceed that predicted within the submitted Acoustic Report.
- 9.7. It is also recommended that permission should be granted only subject to an agreed scheme of use, which would detail the times and dates of testing, and how local residents would be kept informed and given advance notice of when testing is to be undertaken. This would help prevent testing being undertaken at unsocial hours, or more often than is necessary, and safeguard the amenity of local residents.
- 9.8. Given that the potential harm can be managed with the inclusion of appropriate planning conditions, this issue does not warrant planning permission being withheld. This approach is recommended by the Council's Environmental Health Team.
- 9.9. The above notwithstanding, the council will retain the authority to investigate under the Environmental Protection Act 1990, should any complaints be received.

Loss of View

- 9.10. It has been raised in the representations received that the development has led to the loss of a view. The generator is 1.5m in height and the LPA does not consider that any significant views have been lost as a result of the development. It should also be noted that specific views are not protected under planning. The proposed siting and height of the fence screen would not significantly project above the current side boundary wall (about 10cm) and is not considered to be unacceptably overbearing to neighbours.

Biodiversity

Biodiversity Net Gain (BNG)

- 9.11. The development will not be required to provide a biodiversity gain plan as it has been made under Section 73A of the Town and Country Planning Act 1990, and is therefore exempt from such a requirement.

Other

- 9.12. Concerns have been raised that the proposed development would have a detrimental impact on property value, but this is not a material planning consideration.
- 9.13. To seek planning permission retrospectively is a valid course of action in the development process and has not been weighed against the developer in the assessment of the propriety of this proposal.
- 9.14. It has been stated in representations received that the generator should have been considered by the developer earlier in the planning process; however, as abovementioned, the provision of a generator in this location was agreed in principle within permission BH2022/03385.
- 9.15. It has been raised in the representations received that the generator poses a health and safety risk. This is not a planning consideration.

Conclusion

- 9.16. The development is considered to be acceptable in terms of appearance and the impacts it is anticipated to have on the amenities of local residents, subject to conditions securing the installing of the timber fencing; requiring compliance with the noise rating stated in the Acoustic Report; and the submission of and approval in writing of a methodology statement that would set out how and when testing will occur, and how local residents will be properly informed. For the foregoing reasons the proposal is considered to be in accordance with policies CP12 of the Brighton and Hove City Plan Part One, and DM18, DM20 and DM40 of the City Plan Part Two.

10. EQUALITIES

- 10.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and

determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

