

# BRIGHTON MARINA REGENERATION PROJECT

proof of evidence  
David Gavin



# Nathaniel Lichfield and Partners

Planning Design Economics

## **BRIGHTON MARINA REGENERATION PROJECT**

### **PROOF OF EVIDENCE OF DAVID GAVIN MRTPI**

### **EXPLORE LIVING AND X LEISURE: APPEAL UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AGAINST REFUSAL OF PLANNING PERMISSION**

LPA REF: BH2007/03454

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## 1.0 Introduction and scope of evidence

### **Qualifications and experience**

1.1 My name is David Gavin. I am a Director of Nathaniel Lichfield and Partners (NLP), one of the largest independent town planning consultancies in the country.

1.2 I am a graduate of the University of Hull holding a degree of Bachelor of Arts. I studied at the University of Auckland, where I was awarded a Diploma in Town Planning, and I am a graduate of Oxford Brookes University where I was awarded a degree of Master of Science. I am a Member of the Royal Town Planning Institute.

1.3 I have been with Nathaniel Lichfield and Partners since 1983 and have been employed as a Director since 1990. Prior to this I worked for local government, central government and private consultancy both in the UK and overseas.

1.4 During this time I have been engaged on a wide range of large complex mixed use projects covering all aspects of urban regional and statutory planning.

1.5 I have worked for a wide range of clients including Glaxo Smith Kline, the British Broadcasting Corporation, Marks and Spencer, BT, BP International, Land Securities, Bovis LendLease, University College and the National Maritime Museum.

1.6 I have been involved with the Brighton Marina project since February 2006 when Explore Living's design team commenced preparation of the proposals which are now before the Secretary of State through the present appeal. I am familiar with the appeal site and surroundings.

1.7 NLP have been responsible for the preparation of the planning application including the Environmental Statement and were closely involved in the negotiations with Brighton and Hove City Council (BHCC) and other interested bodies and parties.

### **The appeal proposals**

#### ***Pre-application consultation***

1.8 From the outset of the preparation of the application proposals in February 2006 Explore Living engaged in extensive pre-application consultation with BHCC, key stakeholders and the local community. This involved numerous meetings, workshops, public exhibitions, newsletters and the dissemination of information via the appellant's dedicated project website. The appellant's commitment to public consultation continued up to the determination of the

application in December 2008. A full description of this activity is contained in the Statement of Community Involvement at section 3 (September 2007) [CD2/5.1] and the associated Addendum at section 2 (June 2008) [CD2/5.2].

- 1.9 The appeal scheme reflects this extensive consultation, having been reviewed and refined on a number of occasions to reflect, where it was appropriate to do so, the comments and suggestions received.
- 1.10 A draft planning submission, which included a draft Environmental Statement (ES), was presented to BHCC in May 2007. The planning application was formally submitted to BHCC on 14 September 2007. Amendments to the scheme resulted in a substitution of documents in June 2008. Further amendments were submitted in September 2008. Both amendments to the application were the subject of further extensive public consultation.
- 1.11 An overview of the scheme's history during this time can be found in the SOCG in section 3 'Planning and Project History' (page 10-11).

#### **The committee report of December 2008**

- 1.12 The planning application (LPA Ref. BH2007/03454) was presented to BHCC's planning committee on 12 December 2008 with a recommendation to grant planning permission. The committee report [CD3/1.1] included a full list of appropriate conditions and informatives, and commitments required in a section 106 obligation. The officers compiled a very extensive report which addressed in detail the policy context, the views of statutory stakeholders and other third parties, and recommended planning permission be granted. By the time the scheme was considered at committee in December there were no objections from any statutory consultees.
- 1.13 In the report prepared by the planning officers the following conclusions underpinned their positive recommendation (see section 10, page 165):

#### *"REASONS FOR RECOMMENDATION TO GRANT PLANNING PERMISSION*

*The development would deliver key Local Plan objectives within a phased scheme. The Environmental Statement submitted with the application is robust and complies with Environmental Impact Assessment Regulations. The development would accord with central government advice and Local Plan Policies and the adopted Supplementary Planning Guidance Note for the Marina SPGBH20 and PAN04; Brighton Marina Masterplan (2008). Elevational treatments, heights and footprints of the buildings have been amended addressing design concerns, preserving the setting of views of strategic importance and helping the development to relate satisfactorily to existing and the approved Brunswick outer harbour development. The development would be of a good quality design, would use high quality materials and the proposal would generally have acceptable visual impact on the character and appearance of the locality and views of strategic importance including the setting of Conservation*

*Areas, Listed Buildings and Gardens and the Sussex Downs Area of Outstanding Natural Beauty. It would incorporate satisfactory private amenity space to serve residents and would meet the demand it creates for infrastructure, including education, transport, health and community facilities and public art. It would create and enhance existing community/recreation facilities in the marina. It would not result in significant traffic generation or compromise highway safety. It would significantly enhance sustainable modes of transport and provide highway improvements and provide enhanced pedestrian and cycle access. It would make effective and efficient use of land and would be sustainable; being energy efficient, generating renewable energy and incorporating sustainable building practices to a high standard. It would incorporate a public realm of high quality and would not create an adverse micro-climate. It would incorporate landmark architecture, including tall buildings. It would help regenerate the marina and would provide jobs and training. It would meet a range of housing needs including 40% affordable housing provision and housing for people with disabilities and would be accessible and would satisfactorily meet the needs of people with disabilities. It would enhance the role of the marina as a District Shopping Centre and would not compromise the role of existing shopping centres in the city. The development would not harm sites of ecological importance and would enhance biodiversity and archaeology would not be adversely affected by the development. It would not have an adverse impact on the amenity of existing or prospective occupiers or compromise security for users of the development or the marina. It would incorporate refuse and recycling storage. The development would not be at risk of flooding.”*

### **The decision appealed against**

- 1.14 After nearly three years of background study, design evolution and consultation the BHCC officers produced a clear and cogent analysis in their report to committee with a recommendation to approve the planning application. The application was nevertheless refused by the committee. The decision notice of 19 December 2008 [CD3/2] contains six reasons for refusal.
- 1.15 On 2 September 2009 the Council resolved to “clarify and amplify” the reasons for refusal in its statutory decision notice dated 19 December 2008 [CD3/3.1]. It is to be noted that no supporting analysis or judgement was provided in the report submitted to the committee on this occasion.
- 1.16 In preparing evidence both the original reasons for refusal and the additional matters now raised by the Council have been addressed in the appellant’s evidence.
- 1.17 At the 2 September 2009 committee meeting members resolved to abandon reliance on reason for refusal 6, which relates to flooding. No additional substantive objections, for example in relation to transport matters or the need for financial contributions to the Sussex Police in the section 106 obligation or

any other matters raised by third parties but not previously espoused by BHCC, were added.

1.18

The original reasons for refusal (as amended) are set out below with the Council's deletions highlighted in bracketed *italics* and additions in **bold** type.

- 1 The proposed development, by reason of **design**, siting, layout and height, would be **unacceptable, overly dominant and would fail** [*overly dominant and would not relate satisfactorily to existing development within the marina, and would fail*] to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff. **The proposals would therefore fail to comply with policies QD1, QD2, QD3, QD4, HO4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan and policies CC1, CC6, CC8, C2, C3, and BE1 of the South East Plan, PPS1 and PPG15.\***
- 2 The proposed [*development would cause material nuisance and loss of amenity to residents living opposite and within the marina. In addition, by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan*] **dwelling within the Cliff Building would not provide good quality accommodation by reason of a preponderance of single aspect dwellings and shaded courtyards, the size of units, coupled with their poor relationship to the cliff, ramps and access road, giving rise to cramped and unsatisfactory living conditions, contrary to policies QD1, QD3, QD27 and HO4 of the Brighton and Hove Local Plan and PPS1 and PPS3.**
- 3 [*The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan*]. **The proposed development with its preponderance of one and two bed units and its affordable housing tenure mix, fails to respond adequately to identified housing needs within the City, contrary to policies HO2, HO3 and QD3 of the Brighton and Hove Local Plan. Furthermore, the disposition of affordable units within the proposed development would not counter social exclusion or foster the creation of cohesive sustainable communities, contrary to PPS3, in particular paras 9, 10 and 12 and**

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\* It should be noted that the clarified and amplified wording of reason for refusal 1 was clarified and amplified by the Council at the pre-inquiry meeting [CD/1/1].

**PAN04, in particular paras 3.2, 13.3 and 16.0 of the Brighton Marina Masterplan.**

- 4 The applicant has failed to demonstrate that the proposed development would result in a scheme with an adequate **design and** provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policies **QD1, QD2, QD3, H04 and H06** of the Brighton and Hove Local Plan **and PAN04 in particular paras 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3 of the Brighton Marina Masterplan.**
- 5 The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy H021 of the Brighton and Hove local plan.

**Scope of evidence**

- 1.19 I appear at this inquiry on behalf of Explore Living to present evidence related to town planning matters. More specifically, my evidence:
- (a) demonstrates the compliance of the proposed development with the statutory development plan, non-statutory policy and guidance issued by BHCC to supplement the local plan and national policy guidance;
  - (b) addresses reasons for refusal 4 and 5; and
  - (c) addresses other relevant material planning considerations.
- 1.20 With regard to reason for refusal 4 I will deal with those aspects of it which are relevant to Policy H06 and show:
- (a) that the proposed development will provide an appropriate on-site level of outdoor recreational space; that the appeal site is well located in relation to off-site recreational space; and that both policy H06 and draft SPG9 specifically provide for situations at the marina where the requirements cannot be met on site by allowing off-site contributions; and
  - (b) that the proposed financial contribution to the enhancement of off-site sports and recreation facilities is appropriate and has been acknowledged as acceptable both by BHCC's officers and by Sport England.
- 1.21 Iain Reid in his evidence demonstrates that the on-site provision of amenity and recreation space is well designed, of high quality in its amenity, well related to the buildings it will adjoin, and well suited to its purpose. Bob Allies shows that the proposed spaces will be well integrated with new buildings and will perform an important role within the context of a masterplan which will be conducive to the creation of a sustainable community in this part of the city.
- 1.22 With regard to reason for refusal 5 I will show that the proposed development will generate a demand for school places which can be met locally in the case

of primary provision and within a wider area in the case of secondary provision. An appropriate level of financial contribution towards education provision has been made which was accepted by BHCC's officers, just as it was by BHCC on the adjacent Brunswick development, and this approach is wholly consistent with local plan policies QD28 and HO21.

1.23 In my evidence I have regard to the extensive planning application documentation, including the Planning Statement [CD2/11], the Design and Access Statement (DAS) [CD2/7.1 – 7.3], Environmental Statement (ES) [CD2/10.1 – 10.3] the Statement of Common Ground (SOCG), the Transport SOCG (TSOCG), the Rule 6 statement of BHCC, and those of other participants in the inquiry comprising Brighton Marina Residents' Association, Save Brighton, The Kemp Town Society, the Marine Gate Action Group and Sussex Police and the comments of third parties who have made written submissions.

1.24 Where appropriate I refer to the evidence of other witnesses including:

- **Bob Allies** of Allies and Morrison Architects who presents evidence on urban design and architecture and specifically addresses reasons for refusal 1, 2 and 4;
- **Richard Coleman** of CityDesigner who presents evidence on townscape, visual impacts and heritage effects and specifically addresses reason for refusal 1;
- **Iain Reid** of Lovejoy who presents evidence dealing with the quality and functionality of the public realm and recreational open space provision specifically relating to reasons for refusal 4;
- **Matthew Spry** of Nathaniel Lichfield and Partners who addresses housing need and reason for refusal 3;
- **David Bean** of Explore Living addresses matters relating to affordable housing in relation to reasons for refusal 2 and 3; and
- **David Frisby** of Colin Buchanan who addresses all matters relating to transport.

### **Relevant planning controls**

1.25 The SOCG at sections 7 and 8 identifies appropriate planning conditions and obligations. Where applicable, throughout my evidence I refer to proposed conditions and obligations contained within this document.

1.26 A section 106 planning obligation, containing suitable and enforceable commitments consistent with national policy, will be produced at the inquiry.

### **Structure of evidence**

1.27 My evidence is organised as follows:

- (i) In section 2.0 I provide a brief description of the appeal site and surroundings.

- (ii) In section 3.0 I set out the highlights of the planning history of Brighton Marina and comment on the implications for the appeal scheme.
- (iii) In section 4.0 I briefly describe the proposed development and the regeneration, housing and planning benefits it will generate.
- (iv) In section 5.0 I demonstrate that the appeal proposals are in accordance with the statutory development plan and non-statutory local policy and guidance issued by BHCC to supplement the local plan.
- (v) In section 6.0 I assess the proposals against national policy and guidance.
- (vi) In section 7.0 I address reason for refusal 4.
- (vii) In section 8.0 I address reason for refusal 5.
- (viii) In section 9.0 I briefly comment on the planning issues raised in the Rule 6 statements and by third parties.
- (ix) In section 10.0 I set out my overall assessment of the proposals and conclude that the planning merits in this case are compellingly in favour of planning permission being granted.
- (x) In section 11.0 I provide conclusions of my evidence.

## 2.0 The appeal site and surroundings

- 2.1 A full description of the appeal site and surroundings is contained in section 2 of the SOCG and in section 4 of the ES 'Description of the Application Site and Surrounding Area' [CD2/10.1]. A brief summary is included here.
- 2.2 Brighton Marina is located on the south-coast of England approximately 2.24km east of the centre of Brighton (See Plan 1 at Appendix 1). Immediately to the north of the appeal site and beyond the Asda store lie the chalk cliffs and beyond the A259 road and Marine Gate, a 1930s residential development located on the cliff top at a higher level, some 200 metres away from the appeal site. Further northwards lies East Brighton Park and Sheepcote Valley.
- 2.3 Immediately to the west of the marina is Black Rock, a Council-owned site earmarked for future recreation and leisure use. The Volks Railway Station at Black Rock is located further to the west.
- 2.4 North-west of the marina lies Kemp Town with its listed buildings (approximately 120 of which are Grade I), its seafront squares, historic gardens and Kemp Town Enclosures.
- 2.5 Roedean School is situated north-east of the marina. To the south and east of the marina is the sea.
- 2.6 The appeal site comprises entirely previously developed land and occupies an area of some 12 hectares. It is located at the western quarter of Brighton Marina (see Plan 2 included in Appendix 2). This part of the marina is commercial in character with the Asda superstore and its surface car park, Merchant's Quay, with its outlet retailing, a casino, the David Lloyd health and fitness centre, bowling alley, cinema and restaurants.
- 2.7 The main point of vehicular access to the marina is situated at its western end via a network of ramps from the A259 and contained within the boundary of the appeal site.

## 3.0 Planning history

- 3.1 The planning history of Brighton Marina is included in the SOCG in section 3. In this section I briefly describe the main events in it and draw out pertinent implications for the appeal scheme.
- 3.2 The original planning approval was granted following a public inquiry in September 1966 for a scheme prepared by architects Overton and Partners. Subsequent applications approved by Brighton Council followed in February 1971 and August 1974. In March 1975 permission was granted for a high density scheme designed by architects Louis de Soissons [CD12/1] following a public inquiry chaired by David Widdicombe QC [CD10/2].
- 3.3 As the development of the marina involved construction on the seabed, Crown Approval was needed and this was achieved through an Act of Parliament: The Brighton Marina Act 1968 [CD10/1]. Construction of the marina commenced in 1971 and was completed in 1978.
- 3.4 The cost of constructing the marina far exceeded its original budget and further development was halted after this period.
- 3.5 In 1985 the marina was taken over by the developer Brent Walker.
- 3.6 In 1986, Brunswick Developments plc purchased the marina and developed the bowling complex, health and fitness centre, casino. The residential development of 800 flats and houses was carried out with housebuilder Barratt Homes. A 1,600 space multi-storey car park and cinema complex at the western end of the marina was completed in 1988.
- 3.7 In 1994 flats and houses were built on promontories overlooking the Inner Marina.
- 3.8 In 1995 permission was granted for a nightclub, bowling alley, fast food sales restaurant and car parking.
- 3.9 In 1997 permission was granted for residential development in Marina Village.
- 3.10 In 1998 permission was granted at West Quay for a two storey building comprising restaurant, public house, staff flat and service bay.
- 3.11 In May 2000 an application for construction of a new deck and 5 storey building containing 24 flats and car parking/boat storage was granted planning permission.
- 3.12 In July 2000 development known as 'The Waterfront' was granted permission for a mixed use retail, restaurant and hotel development.

- 3.13 In February 2001 permission was granted for a building to provide retail, office/workshop space, call centre and car parking towards the east of the marina.
- 3.14 In April 2006 Brunswick Developments Group plc obtained detailed planning permission for 853 residential units in 11 buildings ranging from 6 to 40 storeys, along with associated Class A, B1, D1 and D2 uses. BHCC have provided written confirmation that a material start has taken place on this development (Appendix 3) and hence this permission is extant.
- 3.15 The yachting marina itself was leased to Premier Marinas, operators of five of the largest marinas in the country. The commercial section of the marina was taken over by Parkridge Developments, specialists in retail and leisure projects who developed 'The Waterfront' in October 2002, a four storey complex incorporating retail units, a hotel and restaurants with views over the marina.
- 3.16 Brighton Marina was a hugely ambitious and visionary engineering project of the 1960s. It ran into financial difficulties and its original Louis de Soissons masterplan [CD12/1] was never realised.
- 3.17 A long line of successive approvals, many controversial, combined with mixed market fortunes has led to unplanned piecemeal development taking place over many years at the western sector of the marina.
- 3.18 Visually this part of the marina is drab, fragmented and un-interesting in character. It is car dominated and has a poor and unsafe public realm and pedestrian circulation. Many of the pedestrian links (to Black Rock and through the multi-storey car park) can be menacing in character. It symbolizes unsustainable development.
- 3.19 It is this unplanned sequence of events which has given rise to the townscape issues which the appeal scheme seeks to address.
- 3.20 Within the context of Brighton the marina is an extremely important regeneration opportunity for the city. It is a large area of previously developed urban land, not efficiently and effectively used, in a location that is well served by public transport. As developments have taken place over the past ten years BHCC have put in place a policy framework to encourage and guide new development and secure this regeneration opportunity (SPG15 [CD8/8], SPG20 [CD8/9.1 and 9.2] and PAN04 [CD8/12]). The 2006 decision on the Brunswick development, determined upon the same established planning policy framework applicable to the appeal proposals, confirmed the Council's support for major regeneration.
- 3.21 If regeneration is to be achieved here it is critical that the private sector is encouraged to invest in the marina and thus ensure that the aims and regeneration objectives of the Council's policy framework are realised. This will need a confident and vigorous approach to be adopted. The appellant's

scheme does this and takes advantage of an historic opportunity to reverse the unplanned and haphazard approach to development of the past and deliver significant regeneration in this part of the city in a coherent, planned and sustainable way. The proposed regeneration will deliver a step change in the regeneration momentum at the marina and the urban renaissance in Brighton and the wider region.

## 4.0 **The proposed development and the regeneration, housing and wider planning benefits**

### **The proposed development**

- 4.1 A detailed description of the proposed development is included in the SOCG in section 4 and in the ES in section 5 'Proposed Development' [CD2/7.1].
- 4.2 The appellant seeks full permission for a proposed mixed-use development at the western sector of Brighton Marina which in summary comprises:
- (a) the provision of a total of 1,301 residential units of which 40 per cent or 520 will be affordable;
  - (b) the phased demolition of the existing ASDA store and its redevelopment to create a new and enlarged store within the Brighton Marina District Centre including car parking, housing and associated commercial and community uses, with a new bridge link connecting the marina to the cliff (with its pedestrian and cycle routes);
  - (c) the relocation of the existing petrol filling station and the redevelopment of the site to provide residential accommodation;
  - (d) the redevelopment of the estates management office to provide residential accommodation;
  - (e) the remodelling of the western end of the multi-storey car park to provide residential accommodation;
  - (f) the reconfiguration and replacement of the McDonald's drive-through to create new residential accommodation;
  - (g) the utilisation of two retail units within the Octagon development to provide a Healthy Living Centre;
  - (h) the construction of a combined Heat and Power unit (CHP);
  - (i) alterations to existing vehicular and pedestrian circulation to provide for a new transport interchange, secondary access linking the marina to Madeira Drive and a new shared space, pedestrian and cycle routes and car parking; and
  - (j) the creation of new areas of open space, landscaping and planting.

### **Regeneration, housing and wider planning benefits**

- 4.3 The appeal proposals provide a rare and historic opportunity to deliver a wide range of regeneration, housing and planning benefits to the marina and to Brighton.

## **Regeneration benefits**

- 4.4 The western quarter of Brighton Marina is unplanned and physically, visually and functionally incoherent (see PAN04, section 3, page 3 [CD8/12]).
- 4.5 The proposed development will repair and regenerate a part of Brighton physically, socially, economically and aesthetically. It will do so in a highly sustainable manner taking full advantage of an opportunity to utilise a brownfield site with good public transport accessibility and will bring confidence and coherence physically and visually through a master planned approach. It will assist in the holistic revival of the marina through a scheme which is deliverable. It will inject a step change into the regeneration momentum in a part of the city where for many years it has been planned to happen (SPG20 [CD8/9.1 and 9.2] Core Strategy, policy DA2, Proposed Amendments, June 2009 [CD8/2.2]) and the development will encourage and set a worthy example for the progress of the urban renaissance both here and in the wider area.
- 4.6 The development will both sustain and be sustained by the physical and social infrastructure, without exacerbating the risk of flooding and without creating pressures on existing services and facilities which they are unable to bear.
- 4.7 New investment in housing, retail, other commercial uses and transport will make an important contribution to reviving the fortunes of the marina district centre. A new and enlarged ASDA store, new unit shops, office uses and a relocated transport interchange will improve the operation of the district centre while a permanent residential population will help to sustain demand for appropriate retail uses, adding to retail capacity and reducing seasonality of shopping. New public realm and pedestrian circulation will further contribute to improving the function and vitality of the district centre.
- 4.8 Implementation of public art to the value of £600,000 will be secured via a section 106 obligation (see SOCG, section 8, page 59), and will add a cultural and artistic dimension to the buildings and public spaces.
- 4.9 The marina benefits from good accessibility by public transport (PAN04 section 9.1 to 9.3, page 11-12, [CD8/12] and the Transport Assessment, section 3.3, page 19 [CD2/13]). The appeal scheme will enhance this through the provision of a new centrally located transport interchange with dedicated areas for buses and taxis, covered waiting areas and real time information systems; new bus priority measures along key routes within the city to and from the marina, combined with a financial contribution and provision of land to provide a new route into the marina for the Rapid Transport System (RTS); improvements to the existing vehicular ramp; a new toucan crossing on the A259; improved pedestrian and cycle routes and facilities, including signage; a travel plan; and a significant financial contribution; all of which will assist in creating a step change in the quality of public transport accessibility at the

marina. The above measures are identified by David Frisby in his proof of evidence in section 6, page 38 to 42 and in the TSO CG section 3.7.

- 4.10 A new secondary means of access beneath the ramps linking the marina to Madeira Drive will be provided, reducing reliance on a single point of access/egress via the existing concrete ramps. This will enable access by the emergency services, a future RTS, provide a convenient at-grade route for pedestrians and cyclists and allow for future integration of development at Black Rock, thereby encouraging further regeneration of previously used land adjacent to the marina (see Transport Assessment, page 68, paragraph 4.9.2 and page 78, paragraph 5.3.14 [CD2/13] and Design and Access Statement, page 213, paragraphs 8.2.1 and 8.2.4 [CD2/7.1]).
- 4.11 The construction of a new high level pedestrian bridge link will provide convenient pedestrian and cycle access between the marina (the Cliff Building) and the cliff top, improving pedestrian and cycle access to and from the marina and direct access onto the coastal path and Sustrans cycle route (see Design and Access Statement, page 211, paragraph 8.1.2 [CD2/7.1] and Transport Assessment, page 78, paragraph 5.3.14 [CD2/13]).
- 4.12 All of the above will help to better integrate the marina physically, functionally and visually into the city, regenerate the western area of the marina, strengthen the economy of the marina and of this part of the city, introducing a critical mass to ensure that the marina becomes at last, as it should, a thriving sustainable community, with a vibrant and viable district centre, and a destination of international renown, which are core objectives of PAN04 (see page 4 [CD8/12]) and SPG20 (volume 2, page 29 [CD8/9.1]).

#### **Making full and effective use of previously developed land**

- 4.13 The appeal site is composed entirely of previously developed land. The proposed development will secure the long-term beneficial use of this land within the urban envelope of a settlement that is heavily constrained both physically by the sea and the cliffs (see Plan 3 in Appendix 4), and by virtue of statutory policy designations, including those relating to its historic environment and to the Sussex Downs AONB. The final approval of the South Downs National Park will reinforce these constraints (see Appendix 5 for the proposed boundary).
- 4.14 A central thrust of Government policy is that full and effective use must be made of previously developed land (PPS1 paragraph 27(viii), PPS3 paragraph 40 and 45, PPS6 paragraph 1.5 and draft PPS4 Policy EC5.1 (14)). This is exemplified by PPS1 which states at paragraph 27(viii):

*“Promote the more efficient use of land through higher density, mixed use development and the use of suitably located previously developed land and buildings. Planning should seek actively to bring vacant and underused previously developed land and buildings back into beneficial use to achieve the targets the Government has set for development on previously developed land.”*

4.15 Policy EC5.1 of draft PPS4 provides guidance on the local planning approach to designated town and district centres. Local planning authorities should set out a spatial vision and strategy for the management and growth of centres in their area over the plan period. Point 10 of EC5.1 states that as part of the vision and strategy they should:

*“encourage residential or office development as appropriate uses above ground floor retail, leisure or other facilities within centres.”*

4.16 This is also supported by PPS6 which, at paragraph 2.21, states that:

*“residential or office development should be encouraged as appropriate uses above ground floor retail, leisure or other facilities within centres”.*

4.17 National policy on making full and effective use of land has been reflected by BHCC in their emerging Core Strategy (Spatial Objective SO1, June 2008, page 21 [CD8/2.1]).

4.18 Higher density development, which includes tall buildings, is strongly encouraged as a way of making full and effective use of land within the urban area. It can only be an issue if it is in conflict with policy or fails to deliver high quality development compatible with its surroundings or is at a location not well served by public transport (local plan policy QD3, South East Plan Policy CC6, SPG20, SPG15, PANO4 and emerging Core Strategy Spatial Objective SO1).

4.19 Paragraph 7.2.4 of SPG15 states that *“in line with best practice, and in the interests of achieving an efficient urban form, intensification of development should occur in areas that are within walking distance of either railway stations or major bus routes. Concentrating tall building development in proximity to existing transport interchanges contributes to a more active and vibrant sense of place and strongly promotes a more sustainable approach to urban living”.*

4.20 The emerging Core Strategy ‘Proposed Amendments’ paper (page 13, paragraph 4.4) seeks to direct a *“significant amount of new development to the seven identified ‘Development Areas’, which benefit from close proximity to public transport”.* This confirms the Council’s recognition that the marina is a suitable location for significant development, including tall buildings, because it benefits from good public transport provision (see David Frisby’s evidence paragraph 3.4.9 to 3.4.12).

4.21 The appeal scheme will introduce material improvements to the local environment and townscape, in the form of buildings and well designed spaces compatible with the site’s surroundings. It will create a sustainable community

with good quality accommodation for future residents. This is demonstrated in Bob Allies' evidence (see sections 6, 7 and 8 of his proof of evidence). Reference to Richard Coleman's evidence should also be made, particularly where he deals with design quality (see sub-section 8.8), the effect on Kemp Town (see section 10) and the effect on the AONB (see section 11). Combined, their evidence shows that the architecture and the design as a whole will be of the highest quality and will enhance both the function, and the recreational and visual amenity of the marina, without harm to the protected historic and natural environment, or to the living conditions of existing and future residents. David Frisby's evidence demonstrates it is at a location well served by public transport (see sub section 4.7), a conclusion supported by the Council in the very comprehensive TSOCG (paragraph 2.2.5, page 3).

- 4.22 In reporting to the December 2008 meeting of BHCC's planning committee the officers concurred with the above conclusion when they stated that the proposals would make effective and efficient use of land, would be sustainable and would be of a good quality design incorporating landmark architecture including tall buildings (see the committee report, section 10, page 165 [CD3/1.1] and PANO4, section 9.1 to 9.3, page 11-12 [CD8/12]).

#### **Contribution to the delivery of housing**

- 4.23 There is an urgent need to increase the supply of housing and affordable housing in Brighton, where there is a shortage of general needs housing, and housing for key workers including nurses, teachers and firefighters.
- 4.24 The evidence of Matthew Spry shows that the proposals generate a large number of good quality new homes, through the provision of 1,301 units of which 40 per cent or 520 will be affordable and available to key workers (see paragraph 5.49, page 29 and paragraph 6.2, page 35). This will assist BHCC in meeting the housing targets as set out in the emerging Core Strategy policy LP11 [CD8/2.1] and the South East Plan policy H1 and SCT5 [CD7/1].
- 4.25 Such a significant contribution must be seen in the context of Brighton as a whole. This is a settlement with a limited legacy of derelict and vacant brownfield sites and where future growth outside of the current city boundaries is constrained (see Plan 3, Appendix 4). The emerging Core Strategy, June 2008 (Spatial Objective SO1, page 21 [CD8/2.1]) recognises that meeting future housing needs on greenfield sites is likely to be problematic and hence the city must address its housing needs within its constrained boundaries. The emerging Core Strategy (Proposed Amendments paper, June 2009 [CD8/2.1]) at paragraph 4.4 advises that "*the priority for new housing development will be the re-use of previously developed land within the defined built up urban area of the city*".

#### **Other planning benefits**

- 4.26 In the South East Plan Brighton and Hove is included within the Sussex Coastal Sub-regional Strategy Area (see policy SP1, page 17). Within this area there are

widely varying economic and social needs with evidence of higher levels of multiple deprivation, lower earnings, higher levels of unemployment and a poorer qualified workforce (see South East Plan, chapter 17, paragraph 17.1 [CD7/1]).

- 4.27 The appeal scheme will support the aims of the South East Plan, a view supported by SEEDA (see Appendix 6) by optimising the use of previously developed land, providing good quality new homes available to key workers and those in housing need, improving transport infrastructure and through an investment of over £300 million, will create new job opportunities both temporary (3,670 jobs over a 7 year construction period) and permanent jobs on-site (312), along with additional jobs in the wider area (400) and construction training opportunities. On the latter Laing O'Rourke have committed to employ local construction workers on the site, and to increase local construction training opportunities by providing work placements at this and other Laing O'Rourke projects (in partnership with a local provider and Constructing Futures). This will be secured by a planning obligation (see SOCG, section 8, page 59).
- 4.28 There will be improved opportunities to view the SSSI cliffs (see the Design and Access Statement, Appendix 6, Volume 3, Section 7.4, page 117) created via enhanced access to the undercliff walkway, incorporation of an "Arrival Space" at the Cliff Site, Cliff Park viewing area, a new bridge link connecting the cliff top with the Cliff Building, a viewing platform on the roof of Marina Point (by appointment) and the incorporation of geological interpretation facilities within the Cliff Park, the latter is to be secured by the section 106 obligation as identified within the SOCG at section 8 (page 59).
- 4.29 At present, the appeal site has relatively poor biodiversity (ES section 18 paragraph 18.57). The proposals will provide a significant net increase in biodiversity at the marina through new planting and habitat creation, green roofs and green walls. This is considered in paragraph 5.55 below.

## 5.0 **Development plan policy and non-statutory guidance**

5.1 In this section I demonstrate that the appeal proposals accord fully with the statutory development plan and are consistent with relevant non-statutory policy and guidance issued by BHCC to supplement the adopted local plan.

5.2 I do this by first addressing the statutory development plan and then other policy documents applicable to the appeal scheme. I outline site specific designations and those immediately surrounding the site.

5.3 In order to comment on the extensive array of relevant policies a policy matrix has been prepared (Appendix 7). This considers policies within the statutory development plan and in non-statutory policy and guidance. Appropriate conclusions are drawn from it.

5.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that this appeal application must be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

5.5 For the purposes of this appeal, the development plan comprises:

(a) the South East Plan (adopted in May 2009) [CD7/1].

(b) the “saved” Brighton and Hove local plan (adopted July 2005) [CD8/1].

5.6 The publication of the final version of the South East Plan in May 2009 supersedes Regional Planning Guidance 9 (RPG9) (2001) [CD7/3] and the East Sussex and Brighton and Hove Structure Plan (1991-2011) [CD7/2] both of which were extant at the time the application was determined.

5.7 As the Structure Plan no longer forms part of the development plan no weight can attach to its policies. For the strategic policy dimension reliance must be placed on the adopted South East Plan and the local plan.

5.8 The Brighton and Hove local plan was adopted on 21 July 2005. A number of local plan policies have been “saved” until they can be replaced by the emerging Development Plan Documents (DPDs) which form part of the Local Development Framework (LDF). The local plan is not expected to be fully replaced until July 2011, when the new development policies and Site Allocations DPDs are adopted.

### **BHCC non statutory Supplementary Planning Guidance**

5.9 Brighton Marina is the subject of the following “saved” supplementary planning guidance:

- **SPG4 Parking Standards** (adopted 1997 and reconfirmed in September 2000) [CD8/5]. This guidance document sets out standards for parking within developments.
- **SPG5 Black Rock Development Brief** (adopted 2001) [CD8/6]. This provides guidance on future development of the adjacent Black Rock site.
- **SPG9 A Guide for Residential Developers on the Provision of Outdoor Recreation Space** (November 2000 in draft) [CD8/7]. This document supports Policy HO5 of the 2001 local plan second deposit draft, the spirit of which is reflected in Policy HO6 of the adopted local plan. This draft SPG provides guidance on the application of this policy along with a formula for calculating financial contributions for off-site recreational provision and has been used by the Council in determining the planning application.
- **SPG15 Tall Buildings** (adopted January 2004) [CD8/8]. This document identified Brighton Marina as a node suitable for tall buildings (see paragraph 8.3, page 15), which are defined as any building exceeding 6 storeys (see paragraph 5.2, page 5).
- **SPG20 Brighton Marina: 'A Masterplan for Enhancement'** (adopted January 2003 [CD8/9.1 and 9.2]. This document comprises a detailed Urban Design Analysis (Volume 1) and a Development Brief (Volume 2) for the western area of the marina. This sets out the intention of BHCC to regenerate the marina to create a thriving (generally) high density, mixed-use community, including residential uses and tall buildings (see page 54 and 59).
- **SPD08 Sustainable Building Design** (adopted June 2008) [CD8/10]. This document sets out guidance on sustainable building design.

5.10 SPGs are prepared to support statutory policies. They are material considerations, to which appropriate weight must be given having regard to the process undertaken in their production, the status they have assumed in the policy matrix, and their degree of relevance to the matter under consideration. In the present case SPG20 is of particular relevance as it is adopted and deals in detail with the appeal site itself. Draft SPG9 (which has remained in draft form since 2000) is not yet adopted and should be given less weight.

### **Emerging Local Development Framework**

5.11 BHCC are producing their Local Development Framework (LDF), which in time will replace the local plan. In June 2009, BHCC published their Core Strategy Proposed Amendments paper [CD8/2.2] for consultation which followed the Core Strategy Revised Preferred Options paper in June 2008 [CD8/2.1].

5.12 In the emerging LDF, Brighton Marina is identified as a suitable location for tall buildings and a location for a high density, sustainable mixed use district (see the emerging Core Strategy, Revised Preferred Options, June 2008, page 34), draft policy CP2 'Urban Design'; page 93 and draft policy CP15 'Retail Provision' page 138-139).

- 5.13 In the emerging Core Strategy (June 2008; [CD8/2.1]) Policy CD2 advises that development should make the most effective use of those identified areas which have potential for taller development and the marina is identified as one of seven such areas. The Core Strategy Proposed Amendments paper, which was published for consultation on June 2009, reinforces Brighton Marina as one of seven “*Development Areas*” within the city and confirms the status of the marina as a suitable location for significant mixed-use development, including residential and retail uses (see draft policy DA2 and Revised Spatial Strategy [CD8/2.2]). In this draft document BHCC is contemplating a restriction on the level of residential development at the inner harbour, i.e. the appeal site, to 650 units and a requirement that any new development should be below cliff height.
- 5.14 The appellant has submitted objections to these two propositions in draft policy DA2, but supports the identification of the marina as one of the city’s locations for high density, mixed use development.
- 5.15 The emerging Core Strategy has not been the subject of independent investigation (see SOCG paragraph 5.10). It does not form part of the development plan. As there remain a number of live unresolved objections, including that of the appellant, very little weight can attach to it.
- 5.16 No prematurity objection to the proposals has been raised. And in any event the proposals must be considered on their merits under the extant and complete policy regime; the outcome of this appeal can and should inform the LDF process.
- 5.17 Guidance on this matter is provided in the supplement to PPS1 “*The Planning System: General Principles*” [CD4/1.3] which at paragraph 18 states:
- “Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question”.*

#### **Other non-statutory documents**

- 5.18 In parallel with preparation of their LDF, BHCC have produced several non-statutory Planning Advice Notes (PANs). These include:
- **PAN03 Accessible Housing & Lifetime Homes** (January 2008) [CD8/11]. This document provides guidance for developers on implementing Policy H013.

- **PAN04 Brighton Marina** (March 2008) [CD8/12]. This document was developed with the intent of providing supplementary guidance to accompany SPG20. BHCC intend that this document will, in due course, form the basis of SPD and given its direct relevance to the western sector of the marina it should be treated as an important material consideration.
- **PAN05 Design Guidance for the Storage and Collection of Recyclable Materials and Waste** (2007) [CD8/13]. This document provides guidance to support policies on waste and recycling in new developments.

5.19 The PANs have all been prepared outside of the formal LDF process but have been the subject of consultation and are a material consideration to which some weight should attach. PAN04 is of particular significance as it deals with the area covered by the appeal.

### **Site Specific Designations**

5.20 In the “saved” local plan, the following statutory designations (shown on Plan 4 in Appendix 8) are applicable to the appeal site:

- (a) Part of the site is a District Centre (the Asda store and Merchant’s Quay) (Policy SR5).
- (b) The cliffs to the north of the site form part of the Brighton to Newhaven Cliff Site of Special Scientific Interest, (SSSI) (Policy NC2). This is also a Regionally Important Geological Site (RIGS) (Policy NC4).
- (c) To the north of the site, along the cliff top, lies an indicative Greenway designation (Policy QD19).

### **Immediately surrounding designations**

- (a) Adjacent to the appeal site are two Sites of Nature Conservation Interest namely (Policy NC4):
  - the beach at Black Rock
  - land adjacent to the Volks railway
- (b) The whole of Kemp Town, situated north west of the appeal site, is a Conservation Area (Policy HE6, HE8 and HE9 and the Kemp Town Enclosures are included on the English Heritage Register of Historic Parks and Gardens (Grade II).
- (c) Bordering the eastern boundary of the marina and situated to the north is the Sussex Downs AONB (Policy NC7).
- (d) The marina lies along the defined ‘Coastal Zone’ (Policy SU7).

### **South Downs National Park**

- 5.21 The proposed South Downs National Park was approved by the Secretary of State in March 2009, subject to a number of boundary modifications. The final confirmation Order is due in autumn 2009. Consultation is currently taking place on membership of the National Park Authority (NPA) which will become the planning authority for the area. A 'shadow' Park Authority is due to come into being on 1 April 2010 with the full range of statutory powers and functions taking effect from 1 April 2011. The current boundary of the proposed national park (which could be amended) can be found at Appendix 5.
- 5.22 When the NPA produces its planning documents, these will in due course form part of the statutory development plan.
- 5.23 In the meantime, it should be noted that the AONB boundary overlaps with a substantial part of the proposed National Park boundary (see Appendix 5).
- 5.24 Within the South East Plan the proposed National Park is a material consideration in certain instances as confirmed by Policy C2 'The South Downs' [CD7/1], which states:
- "Pending the final approval of the proposed South Downs National Park, the purposes of its designation should be a material consideration in the making of any planning decision that may significantly affect the Park."*
- 5.25 The purpose of its designation, set out in the National Parks and Access to the Countryside Act 1949 sub-section 5 (National Parks), is to conserve and enhance the natural beauty, wildlife and cultural heritage of the Park and promote opportunities for the understanding and enjoyment of its special qualities by the public.

## **Assessment of proposals against development plan policy**

- 5.26 As I have observed, the policy framework applicable to the appeal scheme is wide-ranging and complex. To address this a policy matrix has been prepared (Appendix 7) which sets out all applicable development plan policies with consideration of whether the appeal scheme proposals are in compliance, having regard to the various application documents and the appellant's evidence.
- 5.27 In judging whether a particular scheme can be considered to comply with the development plan, case law is instructive. In R v Rochdale Metropolitan Borough Council ex parte Milne (No 2) (2001) 81 P & CR 27 this matter was considered. This court held that it would be untenable that if there is a breach of any one policy in a development plan a proposed development cannot be said to be "*in accordance with the plan*". Due to the numerous conflicting interests that development plans seek to reconcile it would be difficult to find any project of any significance that was wholly in accordance with every relevant policy in the development plan and therefore for the purposes of section 54A (now replaced by section 38(6)) it is enough that a proposal accords with the development plan considered as a whole.
- 5.28 In this section I consider the relationship between the appeal proposals and the policies and conclude that the appeal scheme is not only in compliance with the development plan but will effectively deliver both regional and local planning objectives and will thus advance the objectives of the development plan as they apply in the present case. In doing so I have used the policy matrix (Appendix 7) and focussed on those policies which I believe to be most directly applicable to the determination of this appeal. My conclusions are set out below.

### **Encouraging the future growth of Brighton and the planned growth and regeneration of Brighton Marina**

- 5.29 Strategic policies seek to focus new development within the South East's network of regional hubs (South East Plan policy SP1 and SP2 [CD7/1]). Brighton is a regional hub, an identified Growth Point, a Primary Regional Centre and a Diamond for Growth (South East Plan, page 20 [CD7/1]). Brighton is also designated by SEEDA, who are responsible for taking forward the economic objectives of the South East Plan, as a Diamond for Investment and Growth which are locations identified as being capable of stimulating prosperity. (The South East Plan, Spatial Strategy for the South East, key diagram and policy SP1 and SP2).
- 5.30 In the Regional Economic Strategy 2006-2016 [CD19/1] an important aim within the regional hub is that housing growth should be allied to employment growth. For the "Coastal South East" (page 35) a key priority is to:

*“create cities and towns where people choose to live by investing in an urban renaissance, redeveloping and regenerating key town centres to stimulate development of local economies”.*

- 5.31 In the South East Plan, Brighton is included within the Sussex Coast Sub-regional Strategy Area where economic growth and regeneration should pro-actively be pursued and should be a focus for delivering economic and social regeneration (South East Plan, policy SCT1 [CD7/1]).
- 5.32 The appeal scheme will support the strategic aims of the South East Plan and the Regional Economic Strategy by delivering significant new higher density housing and other developments at a location well served by public transport. It will improve public transport interchange and encourage non car modes of travel. It will deliver an investment of over £300 million and a significant number of new jobs and training opportunities. The economic importance and contribution of the appeal scheme is recognised by SEEDA (Appendix 6) and the former Secretary of State for the Environment, The Rt Hon. John Gummer (see Appendix 20).
- 5.33 The appeal scheme will make a major contribution to the physical, economic and social regeneration of the marina and Brighton and thus of the sub-region in line with strategic objectives.

#### **Making full and effective use of previously developed land**

- 5.34 A central plank of government policy is that new development should utilise previously developed land within the built-up areas (PPS1, paragraph 27(viii), PPS3 [CD4/2] paragraph 40 and 45, PPS6 [CD4/3] paragraph 1.5, draft PPS4 [CD4/16] paragraph 9, paragraph 6, policies EC4.1 (9) and EC5.1 (10) (14) and South East Plan [CD7/1] policy SP1 and SP3, and SPG20, volume 2, page 54 [CD8/9.2]) where efficient use of land for mixed use development, including residential use, is encouraged and where appropriate, higher densities of development are supported.
- 5.35 It is noteworthy that draft PPS4 (point 10 policy EC5.1) and PPS6 (paragraph 2.21) promotes the vitality and viability of centres by encouraging residential and other uses above ground floor retail as is the case in the appeal proposals.
- 5.36 Brighton Marina is a location where regeneration for high density, mixed-use development has and continues to be supported through the development plan (South East Plan policy SP1, SP2, SP3, H2 and H5, local plan policy QD3 and guidance SPG20 and SPG15 and emerging Core Strategy draft policy DA2).
- 5.37 The appeal scheme will be built entirely on previously developed land within the urban envelope of the city of Brighton and will contain an appropriate mix of uses, including retail uses appropriate to the marina’s district centre status, all of which is consistent with the objectives of SPG20. It is a location which is identified as being appropriate for higher densities (see page 54, Volume 2),

which should “*deliberately include tall structures*” (page 59, Volume 2) and is specifically identified as a tall building node in SPG15 (paragraph 8.2.2, page 15). This approach is proposed to be continued in the emerging Core Strategy by virtue of draft policies CP2 – ‘Urban Design’ and DA2 – ‘Brighton Marina, Gas Works and Black Rock Area’.

- 5.38 This is addressed within the evidence of Bob Allies at section 7.0, particularly sub-sections 7.3, 7.4 and 7.13 and the Design and Access Statement “*Tall Buildings Statement*” Appendix 1, Volume 2 [CD2/7.2].
- 5.39 In reporting to committee in December 2008 [CD3/1.1] officers concurred and concluded that the proposals would make effective and efficient use of land and would be sustainable (see section 10, page 165).
- 5.40 Furthermore, the Council confirmed their commitment to these aims through the grant of permission for the Brunswick development, which has started the regeneration momentum. The appeal scheme proposals will continue this momentum and accords with the Council’s aims of securing the planned expansion, renewal and transformation of the marina. This is a stated key objective of SPG20, volume 2 (see page 29 [CD8/9.2]).
- 5.41 While still at an early stage, the emerging Core Strategy recognises the constrained nature of Brighton (dictated by the sea and the South Downs) and the importance of making full and efficient use of previously developed land (Strategic Objective SO1, Revised Preferred Options, page 21 [CD8/2.1]). The Core Strategy Proposed Amendments Paper states that the priority for new housing will be the reuse of previously developed land within the defined built up area of the city (paragraph 4.4, page 13). In doing so it identifies Brighton Marina, Gas Works and Black Rock as an area where a significant amount of new development should be directed (draft policy CP11, page 11 and draft policy DA2, page 17).

#### **Securing an increase in housing supply and affordable housing in particular**

- 5.42 Brighton has a need to increase its housing supply to meet targets within the South East Plan [CD7/1], which requires 11,400 additional homes between 2006-2026 (policy H1 and SCT5), but also to meet its local requirements, in particular affordable housing. Additional sources of housing supply should be encouraged and include opportunities for mixed-use residential developments.
- 5.43 Local plan policy HO2 advises that new residential development should reflect local housing need and that the local planning authority should negotiate with developers to secure a 40 per cent element of housing. This is consistent with South East Plan policy SCT6.
- 5.44 As the evidence of Matthew Spry demonstrates, the proposed development will make an important contribution to meeting the City’s housing need through the

provision of 1,301 new dwellings, of which 40%, or 520, will be affordable units. The development will help to meet a range of housing need, including 1, 2 and 3 bed units (see paragraph 6.2, page 35).

- 5.45 In reporting the application to committee in December 2008 [CD3/1.1] the officers rightly concluded that the proposals would meet a range of housing needs including 40 per cent affordable housing provision along with housing for people with disabilities (see section 10, page 165).

### **Achieving a highly sustainable form of development**

- 5.46 The Government's aims for sustainable development are to ensure social progress, protection of the environment, prudent use of natural resources and maintenance of high and stable levels of economic growth and employment. These aims are enshrined in planning policy and manifested in guidance on a number of issues such as location and design of development, the promotion of sustainable modes of transport, sustainable communities, biodiversity and open space and economic development, and flood risk and renewable energy provision to name but a few examples.
- 5.47 Developments should encourage sustainable transport (South East Plan policy SP2, local plan policies TR1, TR2, TR3, TR4, TR5, TR7, TR8, TR11-19 and guidance SPG4).
- 5.48 As the evidence of David Frisby demonstrates, the overall package of improvement measures and section 106 obligations will acceptably mitigate the transport impacts of the development and improve accessibility to the site by sustainable modes of travel (see section 6). The very comprehensive TSO CG sets out the agreed position with the Council (see TSO CG section 4, paragraph 4.1.5).
- 5.49 National planning policy, namely PPS1 [CD4/1.1], and the South East Plan [CD7/1], advises that developments should incorporate measures to adapt to climate change (PPS1, South East Plan Policies CC1, CC2, CC3, NRM11 and NRM12).
- 5.50 The development has been designed to incorporate best practice in sustainability as demonstrated by Chapter 21 of the ES 'Sustainability' (paragraph 21.184 to 21.186, page 49 to 51). This includes detailed consideration of the building design in terms of siting and layout (see ES section 21, paragraph 21.185).
- 5.51 In reporting to committee officers concluded that the proposed development would, subject to exploration of a number of matters, be acceptable in terms of sustainability and generally be in accordance with the policy objectives (page 145 [CD3/1.1]).

- 5.52 Development should support the establishment of sustainable communities, which includes access to parks, open spaces, and recreation and cultural facilities. (PPG17, South East Plan Policy S1, and Local Plan Policy HO21).
- 5.53 My evidence in section 7, supported by the evidence of Bob Allies (section 8.6) and Iain Reid (sections 5, 6, 7 and 8), and the Design and Access Statement, particularly Volume 3 [CD2/7.2], explains how appropriate recreation provision will be delivered on-site and off-site secured by a section 106 obligation and that the marina currently contains and is surrounded by a plethora of recreational opportunities and that a substantial financial contribution, secured by the section 106 obligation, will enhance a range of off-site opportunities and improve access to them.
- 5.54 A net loss of biodiversity should be discouraged and opportunities to maximise beneficial biodiversity should be taken when considering development proposals (PPS9, paragraph 14 [CD4/4] and South East Plan policy NRM5 [CD7/1]).
- 5.55 The marina is currently devoid of any land-based biodiversity (see ES Chapter 18, paragraph 18.57 [CD2/7.1]). The proposed development will introduce a positive net gain in biodiversity to the marina and including the following benefits (see ES Chapter 18, paragraph 18.121 to 18.144, and the committee report, pages 154-159 [CD2/7.1]):
- a) 50 new trees and 0.2 ha of amenity lawn to provide new habitats for invertebrates, song birds and bats;
  - b) provision of bird and bat boxes (see proposed planning condition 22, Section 7, SOCG, page 52);
  - c) new deciduous planting along the southern edge of the cliff.;
  - d) creation of green walls on the northern elevation of the cliff site and the replacement filling station; and
  - e) green roofs comprising vegetated shingle, grassland and cliff scree.
- 5.56 In reporting to committee in December 2008 [CD3/1.1] officers concluded that *“Overall, it is considered that the net ecological effects of the proposed development should be positive in a city context in keeping with national policy on biodiversity in development (PPS9). This prediction is possible due to the promotion by the applicant of on-site ecological enhancement and biodiversity in order to achieve the scheme’s wider aspirations of environmental and social amenity”* (see page 159).

### **Enhancing the Brighton Marina District Centre**

- 5.57 Part of the appeal site is a designated district centre where mixed use higher density development is encouraged (PPS6, paragraph 1.5 and 2.20, draft PPS4 policy EC5.1 (5a) and (10) and local plan policy SR5).

- 5.58 The appeal scheme involves the renewal and enlargement of the existing Asda superstore (3,112 sq.m increase), and the introduction of new retail (2,695.5 sq.m) and office uses (421 sq.m). At present many of the retail units are occupied by discount/outlet operators who rely on visitor demand as distinct from residents demand and X-Leisure advise that the current vacancy rate is approximately between 15-20 per cent. This makes the retail offer highly seasonal and hence vulnerable as evidenced by the number of empty units. New investment in retail facilities and an increased resident population within the marina will serve to increase demand for retail and other uses to support such a population, which will significantly improve the operation of the district centre (see Retail Impact Assessment, section 6, page 28 [CD2/9]). This will have benefits not only for occupiers of the development but also for existing residents and visitors. As such, it will improve the wider role of the marina in providing for leisure and tourism and will support future planned regeneration at Black Rock and the gas works site (emerging Core Strategy, June 2009, draft policy DA2 [CD8/2.2]).
- 5.59 The appeal scheme will help to realise the vision set out within SPG20 (volume 2, page 29) which is *“to enhance the marina environmentally, visually, functionally, commercially and to transform it into an exhilarating sustainable location of international quality and renown”*.
- 5.60 The appellant’s Retail Impact Assessment [CD2/9] recognises the current deficiencies of Brighton Marina as a district centre and largely attributes this to its incoherent, disjointed layout and design and its poor standard of architecture (paragraph 4.32 to 4.34, also see GVA Study, paragraph 11.44 [CD9/8]). It concludes that the appeal scheme will significantly help to overcome many of the existing weaknesses of the marina. Together with the improved shopping environment and the increased population, the proposals will support additional local shopping and other district centre facilities (paragraph 6.2). Furthermore the proposals will not have any significant effect on the vitality and viability of any other shopping centre in the area (paragraph 6.5).
- 5.61 In reporting to committee in December 2008 [CD3/1.1] the officers concluded that the scheme would enhance the role of the marina as a district shopping centre and would not compromise the role of existing shopping centres in the city (page 101).

### **Ensuring the adequate provision of community facilities**

- 5.62 Policy advises that adequate infrastructure provision, including schools, should be provided (South East Plan policies S3 and CC7 [CD7/1], local plan policy H021 [CD8/1]).

5.63 Section 10 of the ES [CD2/10] demonstrates that sufficient community services exist to serve the development (see paragraph 10.208 and Planning Statement, paragraph 5.65 to 5.79 [CD2/11]).

#### **Existing Community and Health Facilities**

5.64 Section 10 of the ES found:

- (a) BHCC confirmed nursery provision to support the proposed development was adequate. Provision also exists within the marina in the Asquith nursery and crèche in the David Lloyd Centre.
- (b) GP provision in the vicinity of the marina was oversubscribed and this would need to be addressed by the development.
- (c) Hospital provision exists at the Royal Sussex County Hospital (2.1km north west of the site).
- (d) The Primary Care Trust (PCT) confirmed that dental provision is adequate. A dentist's surgery now operates in Marina Village (Marina Dental Care).
- (e) There are a large number of places of worship in the vicinity of the marina.
- (f) Library facilities exist in Whitehawk and the Jubilee Library in Brighton City Centre.
- (g) There are a number of community centres within the vicinity of the marina.

#### **Proposed Community Facilities**

5.65 Community facilities provided in the development include:

- a Healthy Living Centre/GP surgery situated in the Octagon comprising 516 sq.m which could accommodate multi-agency health professionals and/or a GP;
- a community centre comprising 342 sq.m located at the Cliff Site, which will be available to and managed by a local community group and would be available for future residents of the marina;
- funding for a sports co-ordinator who will operate out of a dedicated office intended for this purpose comprising 118 sq.m, and will ensure efficient use of the on and off-site recreational opportunities;
- a financial contribution of £1,045,000 towards enhancing local off-site recreation provision (see section 7 of this proof);
- a financial contribution of £594,000 towards local educational provision; and
- the 24-hour pharmacy in the Asda store reprovided in the new store.

- 5.66 In addition the adjacent Brunswick development will provide the following community facilities which would be accessible to future residents:
- a public viewing gallery and foyer space (188 sq.m) visitor centre including café, community room and internal area for children (186 sq.m);
  - a performing arts area adjacent to the West Quay public house (211 sq.m);
  - a 260 sq.m yacht club/community facility;
  - a 155 sq.m health facility (doctor, dentist or drop-in health centre); and
  - a crèche (61 sq.m) adjacent to a children’s play area (154 sq.m.).
- 5.67 In reporting to committee in December 2008 (page 165) officers acknowledged that the appeal scheme would:
- “...meet the demand it creates for infrastructure including education, transport, health and community facilities and public art.”*
- Achieving a high quality of design**
- 5.68 Developments should create high quality built environments which promote a sense of place, are accessible, safe and secure (PPS1, South East Plan policy CC6, local plan policy QD1, QD2, QD3, QD4, QD5 and QD7).
- 5.69 The evidence of Bob Allies shows that the development will create in every relevant respect a high quality environment, and that the scheme embraces best practice in urban design to ensure the marina becomes a safe and secure destination for the city and provides the marina and its associated district centre with a positive identity and sense of place (sections 6 - 8). This is supported by the technical reports of Dr Paul Littlefair who considers sunlight and daylight matters (Appendix 10) and Gordon Breeze who considers wind matters (Appendix 11).
- 5.70 In reporting to committee in December of 2008 [CD3/1.1] (page 165) the officers stated that the development would be a good quality design and incorporate landmark architecture. It is noteworthy that neither CABA nor English Heritage has objected to the proposed scheme.
- 5.71 The Design and Access Statement [CD2/7.1 to 7.3] comprehensively considers the existing site and addresses the constraints of the marina through a masterplan approach which has regard to the existing fabric, the future development opportunities and the role of the marina for the city. The proposed development will introduce high quality architecture and public realm. This is fully considered throughout the Design and Access Statement, Volume 1

to 3 [CD2/7.1 to 7.3] and is explained further in the evidence of Bob Allies (section 6 to 8) and Iain Reid (section 6).

### **Ensuring that development is sustainable and responds to climate change**

- 5.72 Development should incorporate measures to adapt to climate change (South East Plan policies CC1, CC2 and CC3, NRM11 and NRM12).
- 5.73 The development has been designed to incorporate best practice in sustainability as demonstrated by section 21 of the ES 'Sustainability' (see paragraph 21.184 to 21.186, page 49-51 [CD2/10.1]). This includes detailed consideration of the design in terms of siting and layout.
- 5.74 The development will make effective and efficient use of an underutilised brownfield site within the city's urban limits. When fully assessed against SPG21 'Sustainability Checklist' and SEEDA's Checklist South East, the proposed development may be seen to adhere to good practice guidance and sustainability measures. SPG21 was applicable prior to determination of the application but was not 'saved'. The sustainability credentials of the scheme are set out in the SOCG at section 6(o) page 42 to 43.
- 5.75 In the December 2008 committee report [CD3/1.1], BHCC concluded that the appeal scheme was considered to be acceptable in terms of sustainability and generally in accord with policy objectives (see page 145).

### **Ensuring Sites of Nature Conservation Interest, Sites of Special Scientific Interest and sites of archaeological interest are protected**

- 5.76 The SSSI cliffs are protected under policy NC2 as a Site of Nature Conservation Interest (SNCI). This designation is predominantly based on the cliffs geology, but also has regard to its ecology. The Brighton Marina SNCI comprises the inner and outer harbour and policy NC4 seeks to protect such sites (PPS9, South East Plan policy NRM5 and local plan policies NC2, NC4, QD17 and QD18).
- 5.77 The Council, in the SOCG (section 6(s) page 47), has confirmed that the development is in accordance with local plan Policy HE12. There is no archaeological impact other than a small area north-west of the Cliff Site, and appropriate mitigation is secured via planning conditions (see conditions 16 and 17, section 7, page 51 to 52, SOCG).
- 5.78 Natural England do not object to the development subject to adherence with a number of conditions (see correspondence with Natural England at Appendix 9 and the SOCG at section 7).

### **Ensuring minimal impact on the AONB and proposed South Downs National Park**

- 5.79 Developments should respect, and where appropriate enhance the character and distinctiveness of settlements and landscapes. The proposed South Downs National Park is a material consideration in the determination any planning decisions (South East Plan Policy C2 and CC6, and local plan policy QD4).
- 5.80 The proposed National Park is also covered by the nationally important AONB designation (see Appendix 5) which has been thoroughly assessed in terms of impacts on views from the AONB and hence also the proposed National Park. The evidence of Richard Coleman demonstrates that the development will not harm the AONB and that the quality of the design and elegance of the tower will enhance the public enjoyment of seeing the city from the AONB and hence enhance views out of it (section 8.8, paragraph 8.8.24). In relation to the National Park, Richard Coleman concludes that visibility of the city from the South Downs is an acceptable and delightful phenomenon (sub-section 8.9, paragraph 8.9.3).
- 5.81 High priority is given to the conservation and enhancement of Areas of Outstanding Natural Beauty (AONB) and planning decisions should have regard to their setting (South East Plan policy C3, local plan policy QD4).
- 5.82 In reporting to committee in December 2008 [CD3/1.1] officers concluded that the development would be well designed and would have an acceptable visual impact on the character and appearance of the locality views of strategic importance, including the setting of the conservation areas, listed buildings and gardens and the AONB (see page 3).

### **Ensuring the setting of listed buildings and conservation areas are preserved**

- 5.83 Designated historic assets should receive the highest level of protection (PPG15 [CD4/11], South East Plan policy BE6 [CD7/1], and local plan policy QD4 [CD8/1]).
- 5.84 The impact of the proposed development on the conservation area was assessed within Chapter 9 of the ES 'Townscape and Visual Impact Assessment', which concludes that "*the development will not harm the setting of any listed buildings or any conservation area. Neither will it harm established strategic views, vistas or parks and open spaces*" (see paragraph 12.4).
- 5.85 This conclusion was accepted by officers when they reported to committee [CD3/1.1] and confirmed that "*the proposal would have an acceptable visual impact on the character and appearance of the locality and views of strategic importance, including the Conservation Areas, Listed Buildings and Gardens and the Sussex Downs Area of Outstanding Natural Beauty*" (page 3).

5.86 This is considered further in the evidence of Richard Coleman in section 10 of his proof of evidence. At section 10.10, paragraph 10.10.01 Richard Coleman concludes that effects of the scheme on heritage assets are acceptable.

### **Minimising flood risk**

5.87 Developments should be consistent with the requirements of PPS25 in terms of development and flood risk (PPS25 [CD4/9], South East Plan [CD7/1] policy NRM4, local plan [CD8/1] policy SU4 and SU7).

5.88 The application was accompanied by a Flood Risk Assessment [CD2/8] which demonstrated that the requirements of PPS25 have been met. The Council's Strategic Flood Risk Assessment [CD9/11.1] also concludes that the terms of PPS25 have been met in relation to development at the marina.

5.89 Furthermore, the Environment Agency (EA) in a letter dated 2 December 2008 (Appendix 12) confirmed that the sequential and exception tests required by PPS25 have been passed.

5.90 In relation to the sea defences at the marina, the EA confirmed that they would remove their holding objection on the basis that the sea defence upgrades identified within the Flood Risk Assessment at paragraph 5.16 and 5.18 were incorporated into a section 106 obligation. Explore Living is committed to these obligations which are reflected in the unilateral undertaking, which will be provided to the inquiry.

5.91 It should be noted that BHCC have agreed to abandon reason for refusal number 6, which related to flooding because there was no technical objection and they "*recognised that the Environment Agency reached a qualified position of not objecting*" subject to "*prior agreement of suitable wording for insertion in the S.106 obligation*" (committee report of 2 September 2009 [CD3/1.1]).

5.92 The EA also proposed nine planning conditions which are set out within their letter (Appendix 12). These are aimed at securing the maintenance of the current sea defences and the provision of future sea wall upgrades, are reflected in the unilateral undertaking provided to the inspector and are included in the SOCG at section 7, identified as conditions numbers 48 to 51 (see pages 56 to 57).

### **Conclusions on policy**

5.93 My assessment shows that the appeal scheme complies with the statutory development plan and BHCC's non-statutory policy and guidance. It will deliver regional and local plan objectives and more specifically the aims and objectives of BHCC's established policy framework for the marina, which seeks to secure the regeneration of its western area. More specifically the appeal scheme will:

- (a) contribute to delivering the aims of both the South East Plan and the Regional Economic Strategy by encouraging sustainable development on previously used land at a location well served by public transport within the regional hub of Brighton (see paragraphs. 5.29 to 5.33 above);
- (b) make full and best use of previously developed land with a high quality landmark architectural scheme at a location where regeneration for high density including tall buildings for mixed-use development is planned to take place (see paragraphs. 5.34 to 5.41 and 5.68 to 5.71 above);
- (c) deliver urgently needed housing and assist the Council in meeting its housing targets within the South East Plan and its own locally identified housing needs (see paragraphs. 5.42 to 5.45 above);
- (d) provide 40 per cent of affordable housing (see paragraph 5.44 above);
- (e) provide for development at a location already well served by public transport but which will be enhanced (see paragraph 5.46 to 5.48 above);
- (f) include appropriate community infrastructure and through a financial contribution enhance existing school provision; it already has convenient access to parks and open spaces, and provides for amenity and recreational open space on site, and through a financial contribution will enhance locally accessible off site provision (see paragraph 5.62 to 5.67 above);
- (g) protect sites of nature conservation interest, enhance the biodiversity on the site and preserve the archaeology (see paragraph 5.76 to 5.78 above);
- (h) enhance the role and function of the district centre (see paragraph 5.57 to 5.61 above);
- (i) deliver high quality architecture, urban design and public realm (see paragraph 5.68 to 5.71 above), as Bob Allies (at section 6, 7 and 8) and Iain Reid (sections 6 and 7) show in their proofs; and
- (k) not harm the setting of any listed buildings or conservation area or the adjacent AONB as Richard Coleman shows in his proof (see paragraph 5.79 to 5.86 above).

5.94

A cornerstone of government policy is sustainable development evidenced in the South East Plan and local plan. The appeal scheme will deliver sustainable development by using previously developed land, at a location well served by public transport in a way which, as Bob Allies shows (section 6 to 8), provides a high quality design and safe environment. The provision of 40 per cent of all units affordable will make it inclusive, it provides for the needs arising for community infrastructure (SOCG section 6(h), paragraph 6.43, page 35) and it will not have an adverse impact on the AONB or the proposed South Downs National Park.

## 6.0 National policy and guidance

6.1 In this section of my evidence I briefly review the appeal proposals against applicable government policy and guidance to show that the proposals are in complete accord with the policy and guidance. I consider the following:

- PPS 1 – Deliverable Sustainable Development (2005)
- PPS 3 – Housing (2006)
- Draft PPS 4 – Planning for Prosperous Economies (2009)
- PPS 6 – Planning for Centres (2005)
- PPS 9 – Biodiversity and Geological Conservation (2005)
- PPG 13 – Transport (2001)
- PPG 15 – Planning and the Historic Environment (1994)
- Draft PPS15 – Planning for the Historic Environment (2009)
- PPG 16 – Archaeology and Planning (1990)
- PPG 17 – Open Space, Sport and Outdoor Recreation (2002)
- PPG 20 – Coastal Planning (1992)
- PPS 22 - Renewable Energy (2004)
- PPS 25 – Development and Flood Risk (2006)

*Planning Policy Statement 1 (PPS1): Delivering Sustainable Development (2005)*

6.2 PPS1 [CD4/1.1] seeks to develop strong, vibrant and sustainable communities and promote community cohesion (paragraph 14). Planning authorities should recognise that economic development can deliver environmental and social benefits, recognise the wider sub-regional or national benefits of development and consider these alongside any adverse local impact, actively promote good quality development and ensure sufficient, good quality new homes (including affordable) in suitable locations (paragraph 23). In general, authorities should promote national, regional, sub-regional and local economies in support for the Regional Economic Strategy and provide a positive planning framework for sustainable economic growth; promote regeneration and improve the well-being of communities that are inclusive, healthy, safe and crime free; provide improved access to jobs, health, education, shops, leisure and community facilities, open space, sports and recreation; focus developments that attract large numbers of people in existing centres to promote their vitality and viability; reduce the need to travel and encourage accessible transport provision; promote the more efficient use of land through higher density, mixed use development and the use of previously developed land; enhance and project biodiversity, natural habitat, the historic environment and landscape and townscape character; and address climate change through the minimisation of impacts from the management and use of natural resources (paragraph 27).

6.3 PPS1 advises that good design ensures attractive, usable, durable and acceptable places and is a key element in achieving sustainable development (paragraph 33).

- 6.4 The proposed development will make effective and efficient use of previously developed urban land and introduce a mix of uses, including good quality homes, suitable to its district centre status, which will regenerate the western sector of the marina to create a vibrant, inclusive and sustainable community. The development will deliver social, environmental and economic benefits as set out in section 4 above, all of which will help to meet the objectives of the Regional Economic Strategy. The merits of the appeal scheme in this regard is recognised by SEEDA (see Appendix 6) and in the evidence of Tony Mernagh on behalf of the Brighton and Hove Economic Partnership.
- 6.5 As addressed elsewhere in my evidence (in paragraphs. 5.67 – 5.70 above), the appeal scheme has been designed to respond to best practice and guidance in sustainable development.
- 6.6 As demonstrated in the evidence of Bob Allies (section 6 to 8) and Iain Reid (section 6 and 7), the architecture and public realm will be of the highest standard, compatible with the site’s context and surroundings. It will enhance the site’s function, will enhance the recreational and visual amenity and biodiversity value of the marina.

*Planning Policy Statement 3: Housing (November 2006)*

- 6.7 PPS3 [CD4/2] seeks to achieve a wide choice of high quality homes, both affordable and market housing, and create sustainable, inclusive mixed communities (paragraph 9). It advises that the planning system should deliver high quality housing that is well designed and built to a high standard (paragraph 10); creating streets and spaces which meet the needs of people, are visually attractive, safe, accessible, functional, inclusive and have their own distinctive designs and layouts which make efficient use of land (paragraph 14).
- 6.8 When deciding planning applications regard should be had to achieving high quality housing; ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups; the suitability of a site for housing, including its environmental sustainability; using land effectively and efficiently; and ensuring the development is in line with housing objectives, reflecting the need and demand for housing in the area.
- 6.9 PPS3 encourages the effective use of land by re-using previously developed land (paragraph 40) and efficient use of land whereby minimum densities of 30dph are identified (paragraph 47).
- 6.10 The appeal scheme will introduce 1,301 residential units, 40 per cent or 520 of which are affordable and available to key working housing and those in need. As detailed elsewhere in my evidence (in paragraphs. 5.34 to 5.41 and 5.68 – 5.71 above) the development will make effective use of a brownfield site and introduce a high quality mixed use development at a density appropriate to its context. It will enhance the function of the marina and will both sustain and be

sustained by the physical and social infrastructure, without creating pressures on existing services and facilities which they could not sustain.

6.11 The suitability of the marina for regeneration including a substantial quantity of new housing is recognised by virtue of its district centre status and its good accessibility by public transport (SPG20 volume 2, page 55 [CD8/9.2], PAN04 paragraph 3.2, page 5 [CD8/12] and the emerging Core Strategy, June 2009 (draft policy DA2 [CD8/2.2])).

6.12 The Housing Statement [CD2/12] explains that the mix and tenure of housing proposed was guided by advice from BHCC and responds to locally identified housing need (page 1).

*Draft Planning Policy Statement 4 (PPS4): Planning for Prosperous Economies (2009)*

6.13 It is anticipated that draft PPS4 [CD4/16] will be formally adopted as national guidance in the autumn of 2009. It is intended that it will replace policies contained in PPG4, PPS7 and PPS6.

6.14 Draft PPS4 seeks to achieve sustainable economic growth; raise the productivity growth rates for the UK – by “promoting investment, innovation, competition, skills and enterprise and providing job opportunities for all”; build prosperous communities by improving the economic performance of cities, towns, regions, sub-regions and local areas, and by promoting regeneration and tackling deprivation; deliver sustainable patterns of development; promote high quality and inclusive design; improve accessibility by a choice of means of transport; promote vitality and viability of town and other centres; and promote social inclusion (paragraph 6).

6.15 Draft policy EC5.1 seeks to strengthen existing centres that are in decline by focussing a range of uses as appropriate above ground floor retail, leisure and other facilities where appropriate, high density development within existing centres accessible by public transport (Policy EC5.1, 5a, 10 and 14 page 22-24).

6.16 The appeal scheme seeks to regenerate an underutilised and unprepossessing brownfield site and introduce a mix of uses which are suitable to its existing district centre status. The mix of uses, including residential, will introduce a critical mass to the marina which will improve the vitality and viability of this declining centre whilst also introducing a range of job opportunities and construction skills training (see paragraph 4.27 above).

6.17 The proposals introduce a high density mixed use development with residential units above ground floor uses. It has been designed to make efficient use of the site by introducing a high quality scheme which is of a density appropriate to its existing district centre status.

*Planning Policy Statement 6 (PPS6): Planning for Town Centres (2005)*

- 6.18 PPS6 [CD4/3] sets out the government's planning objectives for the future of town centres which are based on the principles of sustainable development and the need to sustain and enhance the role of town centres (paragraph 1.1). It seeks to promote the vitality and viability of town centres by focusing a wide range of services in a good environment, accessible to all (paragraph 1.3). It notes that developments which are likely to generate high levels of travel should be located in existing town centres. The development of sites for retail and major leisure uses should be plan led.
- 6.19 It seeks to promote social inclusion, ensuring communities have access to a wide range of town centre uses; to encourage investment to regenerate deprived areas, creating additional employment opportunities and an improved physical environment; promote economic growth; to deliver sustainable patterns of development ensuring that locations are "fully exploited through high-density, mixed-use development and promoting sustainable transport choices"; and to promote high quality inclusive design (paragraph 1.5). It advises that housing is an important element in most mixed-use, multi-storey developments (paragraph 1.9).
- 6.20 The proposed development will regenerate the western sector of the marina by introducing a high density mixed-use scheme, designed to a high standard and including residential units, within an existing, underutilised and ailing district centre.
- 6.21 The GVA Retail Study [CD9/8] commissioned by BHCC considered that the Marina was:  
  
*"seriously deficient environmentally, visually, functionally, and economically and is in need of substantial investment, development and improvement"* (paragraph 11.44).
- 6.22 As the evidence of Bob Allies demonstrates, the development will provide a well designed and inclusive urban environment (see section 6 - 8), which seeks to make efficient use of the site by introducing a high-density, mixed-use development, whilst respecting its surrounding context.
- 6.23 The development will create a vibrant and viable district centre without harm to other local centres (see Retail Impact Assessment section 6, paragraphs 6.1 to 6.5, page 28).
- 6.24 The development will enhance the role of the district centre through the introduction of significant new investment in retail, housing and an office use. The marina is already very well served by public transport and this will be enhanced.

*Planning Policy Statement 9 (PPS9): Biodiversity and Geological Conservation (2005)*

- 6.25 PPS9 [CD4/4] seeks to promote sustainable development by ensuring that biological and geological diversity are conserved and enhanced. Developments should conserve, enhance and restore diversity of wildlife and geology by sustaining and where possible improving the quality and extent of natural habitat and geological and geomorphological sites. Developments should enhance biodiversity and recognise that biodiversity contributes towards the quality of environments (page 2).
- 6.26 In relation to SSSIs, PPS9 advises that they should be given a high degree of protection under the planning system (paragraph 7). It also advises that local planning authorities should use conditions and/or obligations to mitigate the harmful aspects of the development (paragraph 8).
- 6.27 The appeal site is currently devoid of many areas of semi-natural habitat (see committee report page 155 [CD3/1.1] and ES section 18 paragraph 18.57 [CD2/10.1]). The appeal scheme will introduce a positive net increase in biodiversity features on-site as set out elsewhere in my evidence at paragraph 5.55.
- 6.28 The appellant, through detailed negotiation with Natural England, introduced a number of different viewing areas into the scheme (see elsewhere in my evidence at paragraph 5.76 to 5.78). Natural England did not object to the appeal scheme, on the understanding that appropriate commitments and requirements were imposed in the form of conditions or obligations (see Appendix 9). These controls are reflected in section 7 (see proposed conditions 16, 17, 23, 24, 25, 26, 30, 43, 45 and 47) and section 8 of the SOCG.

*Planning Policy Guidance Note 13 (PPG13): Transport (2001)*

- 6.29 PPG13 [CD4/10] highlights the need to promote sustainable patterns of development; promote accessibility to jobs, shopping, leisure facilities and services, key public transport, walking and cycling; reduce the need to travel, especially by private car (paragraph 4).
- 6.30 It advises that urban growth should be actively managed to fullest use of public transport and that housing and other uses should be intensified at locations which are highly accessible. Parking policies and other transport measures should be used to promote sustainable transport choices and reduce reliance on the car. Priority should be given to people over traffic movement and the design and layout should seek to reduce crime and the fear of crime, and meet the needs of disabled people.

- 6.31 The appeal scheme encourages a mix of uses on a brownfield site which has good transport links (see TSOCG paragraph 2.2). The development will provide car and cycle parking in accordance with standard (see consideration of SPG4 contained in the policy matrix at Appendix 7), along with a range of transport measures to improve accessibility at the marina (see the proof of evidence of David Frisby at section 6).
- 6.32 It will introduce Harbour Square, which is designed to give pedestrians greater priority over the car and it has been designed to reflect appropriate safety standards (see sections 4.4 and 7.8 of the TA and section 3.5 of the TSOCG).
- 6.33 Overall, it was acknowledged in the committee report of December 2008 [CD3/1.1] that “*highway officers are satisfied that the local highway network would have sufficient capacity to accommodate the additional traffic generated if the Explore Living, Brunswick and BIA schemes were to go ahead*” (page 125).
- 6.34 It is noteworthy that BHCC did not include any highways-related or transport objections in their reasons for refusal.
- 6.35 A comprehensive TSOCG has been completed. David Frisby deals in his evidence with the significant transport benefits of the proposals and with the transport matters raised by third parties (see section 6 and 7).

*Planning Policy Guidance Note 15: Planning and the Historic Environment (1994)*

- 6.36 PPG15 [CD4/11] restates the statutory requirement for local planning authorities to have special regard to the desirability of preserving the setting of listed buildings (paragraph 2.16). It also states that special attention will be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a Conservation Area. The deliverability of preserving or enhancing the area should also be a material consideration in the local authority’s handling of development proposals which are outside the Conservation Area but would affect its setting, or views into or out of the area (paragraph 4.14).
- 6.37 The evidence of Richard Coleman and the Townscape and Visual Impact Assessment [CD2/10.3] fully address the effects on nearby Kemp Town with its concentration of listed buildings and its Conservation Area and concludes that there will be no harm to the setting of the listed buildings or the conservation area (see paragraphs 5.79 to 5.86 above).

*Draft Planning Policy Statement 15 (PPS15): Planning for the Historic Environment (2009)*

- 6.38 Draft PPS15 [CD4/17] will replace the current guidance in PPG15 and PPG16 and will set out the aims for conservation and enhancement of the historic environment. It seeks to move beyond the distinction between buildings and

archaeology to embrace all of the historic environment (paragraph 1.9) as opposed to the separate approach within PPG15 and PPG16. It states that local planning authorities should aim to ensure that new developments are designed in a way that respects their setting and reinforces the distinctiveness of heritage assets they stand alongside in terms of scale, height, massing, alignment and use of material (paragraph HE9.6). The guidance indicates that for development within the setting of a heritage asset, local planning authorities should treat favourably applications that preserve or enhance those elements of the setting that enhance the significance of the asset. When considering applications that do not do this, local planning authorities should weigh up the loss against the wider benefits of the application (paragraph HE11.1). The evidence of Richard Coleman (see section 10.10, paragraph 10.10.1) concludes that the effects of the scheme on heritage assets are acceptable (see paragraph 5.79 to 5.86 above).

*Planning Policy Guidance Note 16 (PPG16): Archaeology and Planning (1990)*

- 6.39 PPG16 [CD4/12] sets out advice on archaeological remains and how they should be preserved or recorded both in an urban setting and the countryside. It advises that the case for the preservation of archaeological remains must be assessed on the individual merits of each case (paragraph 27) and, where appropriate, planning conditions can be imposed to secure the provision of archaeological excavation and recording (paragraph 30). The proposed development will have no archaeological impact other than on a small area to the north-west of the Cliff Site. The impact will not be harmful. A programme of archaeological work is proposed which will be secured by a planning condition (see SOCG section 7, conditions 16 and 17, and the December 2008 committee report page 160 [CD3/1.1]).

*Planning Policy Guidance Note 17 (PPG17): Open space, sport and outdoor recreation (2002)*

- 6.40 PPG17 [CD4/13] seeks to ensure effective planning for open space, sport and recreation (paragraph 1).
- 6.41 It emphasises the importance of well designed and accessible sports and recreation facilities in improving people's health and wellbeing. It states that the provision of such facilities must be easily accessible by public transport and soft transport modes, should encourage social inclusion and must take account of the needs of local communities (see Foreword: Planning objectives) [CD4/13].
- 6.42 Local planning authorities should seek to improve the value of existing facilities and advises that planning obligations may be used to meet identified needs (paragraph 18). Local authorities will be justified in seeking planning obligations where the "quantity or quality" of provision is inadequate or under threat (paragraph 33).

- 6.43 PPG17 advises in its Annex at paragraph 1 that open space should mean all open space of public value, including not just land, but also areas of water, which offer important opportunities for sport and recreation and can also act as visual amenity.
- 6.44 The appeal scheme provides an appropriate amount and disposition of recreation and amenity space on site, whilst also committing to a planning obligation to secure the upgrade of and enhanced access to local facilities. This is considered further in section 7 below.

- 6.45 It is noteworthy that BHCC has not cited PPG17 in its reasons for refusal.

*Planning Policy Guidance 20 (PPG20): Coastal Planning (1992)*

- 6.46 This document [CD4/14] acknowledges that the coast is an important national resource and similarly acknowledges that a range of economic and social activities depend and thrive on coastal location. Concerns over sea level rising and the need for sustainable development are also afforded attention (paragraph 1.1).
- 6.47 PPG20 recognises the importance of the planning system to reconcile development requirements with the need to protect, conserve and, where appropriate, improve the landscape, environmental quality, wildlife habitats and recreational opportunities of the coast (paragraph 1.2).
- 6.48 The coast is one of Brighton's greatest assets and contributes significantly to the tourism industry. The development will serve to repair and rejuvenate this part of Brighton which is at present dysfunctional and incoherent. It will regenerate the marina physically, socially, economically and aesthetically. It will stimulate and assist the holistic revival of the area through a scheme which is deliverable. It will set a practical example for the progress of the urban renaissance both in the marina, in Brighton and beyond.

*Planning Policy Statement 22 (PPS22): Renewable Energy (2004)*

- 6.49 PPS22 [CD4/7] sets out the government's policies for maximising energy efficiency and increasing renewable energy sources, to achieve the target reductions in carbon dioxide emissions set out in the Energy White Paper (2003). The objective is for the UK to cut its carbon dioxide emissions by 60 per cent by 2050 and to maintain reliable and competitive energy supplies (page 4). It notes that positive planning which facilitates renewable energy developments can help meet these objectives (The Government's Objective, page 6).
- 6.50 The appeal scheme minimises energy consumption through the design of the buildings' form and orientation, and the use of low energy lighting and appliances. The majority of residual energy demand will be met through a combination of a gas-fired Combined Heat and Power and biomass boilers.

This equates to a 46 per cent saving in CO<sub>2</sub> emissions overall compared to the Target Emission Rate (see ES section 21, paragraph 21.50 to 21.63) [CD2/10.1].

*Planning Policy Statement 25 (PPS25): Development and Flood Risk (December 2006)*

- 6.51 PPS25 [CD4/9] seeks to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk from flooding, and to direct development away from areas at highest risk (paragraph 5). It advises at paragraph E5 (page 31) that local planning authorities should prepare Strategic Flood Risk Assessments (SFRA) to inform their LDF.
- 6.52 BHCC's SFRA (paragraph 7.2 [CD9/11.1]) advises that the marina is included in Flood Zone 3a and as such less vulnerable and water compatible development can be built subject to demonstrating compliance with sequential and exception tests, which the report acknowledges has been done in the present case. BHCC have acknowledged that the exception and sequential tests for development at the marina, in terms of PPS25, have been satisfied [CD9/11.2].
- 6.53 The Environment Agency (EA) does not object to the appeal scheme subject to appropriate conditions/obligations (see Appendix 12). These are reflected in proposed conditions set out in the SOCG at section 7. These will also be reflected in the unilateral undertaking which will be provided to the inquiry.
- 6.54 BHCC has now decided to abandon reason for refusal 6 in the light of the EA's clear position on this matter.

### **Conclusion on compliance with national policy and guidance**

- 6.55 The above assessment shows that the appeal scheme complies with national policy and guidance as follows.
- PPS1 sets out the overarching planning policies on the delivery of sustainable development through the planning system. The proposed development will make efficient and effective use of previously developed land, will deliver social, environmental and economic benefits and has been designed to respond to best practice and guidance on sustainable development (see paragraphs 6.4 to 6.6 above).
  - PPS3 outlines the Government's strategic housing policy objectives to ensure that everyone has the opportunity to live in a decent home, which they can afford in a community where they want to live. The appeal scheme introduces 1,301 residential units of which 40% (520 units) will be affordable and available to key working housing and those in need (see paragraphs 6.7 to 6.12 above).

- Draft PPS4 sets out the Government's policy framework for planning for sustainable economic development in urban and rural areas including town centres. The proposed development will regenerate and make efficient use of an underutilised and unprepossessing brownfield site through a mix of uses which will improve the vitality and viability of the centre (see paragraphs 6.13 to 6.17 above).
- PPS6 seeks to promote the vitality and viability of town centres through planning for the growth and development of existing centres and enhancing existing centres by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all. The proposed development will create a vibrant and viable district centre through significant new investment in retail, housing and office use (paragraphs 6.18 to 6.24 above).
- PPS9 promotes the protection of biodiversity and geological conservation. The proposed development will introduce a net increase in biodiversity features on site and introduce a number of different viewing areas at the Cliff Site (see paragraph 6.25 to 6.28 above).
- PPG13 outlines the Government's objectives to integrate planning and transport to promote more sustainable transport choices. The proposed development will create a mix of uses on a brownfield site which has good transport links and provides car and cycle parking in accordance with standards. The development will introduce a number of transport measures to improve accessibility at the marina (see paragraphs 6.29 to 6.35 above).
- PPG15 sets out the Government's approach to the historic environment. The proposed development will not harm the setting of the listed buildings or the conservation area (see paragraph 6.36 to 6.37 above).
- PPG17 sets out the Government's objectives for open space, sport and recreation. The appeal scheme provides an appropriate amount and disposition of recreation and amenity space on site and the appellant is committing itself through a planning obligation to secure the upgrade of and enhanced access to local facilities (see paragraph 6.40 to 6.45 above).
- PPG20 provides guidance on the role of the planning system to reconcile development requirements with the need to protect, conserve and, where appropriate, improve the landscape, environmental quality, wildlife habitats and recreational opportunities for coastal areas for England and Wales. The appeal scheme will serve to repair and rejuvenate this part of Brighton, regenerating the marina physically, socially, economically and aesthetically (see paragraph 6.46 to 6.48 above).
- PPS22 sets out the Government's policies for renewable energy. The appeal scheme minimises energy consumption through design of buildings

orientation and form, use of low energy lighting and a gas-fired Combined Heat and Power and biomass boilers (see paragraph 6.49 to 6.50 above).

- PPS25 seeks to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk from flooding. BHCC have acknowledged that the appeal scheme is acceptable having regard to the policy in PPS25, and satisfies the exception and sequential tests for development at the marina (see paragraphs 6.51 to 6.54 above).

## 7.0 Reason for refusal 4

7.1 Reason for refusal 4 as “clarified and amplified” following the planning committee meeting of 2 September 2009 states:

*“The applicant has failed to demonstrate that the proposed development would result in a scheme with adequate design and provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policies QD1, QD2, QD3, HO4 and HO6 of the Brighton and Hove Local Plan and PAN04 in particular paras 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3 of the Brighton Marina Masterplan.”*

7.2 BHCC’s Rule 6 statement identifies the concerns of the Council as being:

- (a) an alleged failure to provide sufficient amenity space and outdoor recreation space of an acceptable quality both on-site and off-site to meet the needs of the community; and
- (b) an allegedly inadequate off-site financial contribution to meet the needs of the community.

7.3 In addressing these allegations in his evidence Bob Allies addresses the design aspects of the open spaces within the development, showing how they have been selected and integrated with buildings (see section 6, particularly sub-section 6.2, and section 8, particularly sub-section 8.4 and 8.5), and Iain Reid describes the proposed amenity and recreation facilities and deals with their quality and functionality (see section 7). Thus those two witnesses address policies QD1, QD2, QD3 and HO4 and as far as it is relevant PAN 04 (particularly paragraphs 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3).

7.4 In this section I focus on the background to the appeal scheme’s on-site and off-site recreational open space provision, and address policy HO6 and the operational guidance provided in draft SPG 9 “A Guide for Residential Developers on the Provision of Outdoor Recreation Space”. It should be noted that policy HO6 and draft SPG9 are based upon the National Playing Field Association’s (NPFA) ‘The Six Acre Standard’. However, this standard has been superseded by the Fields in Trust (formerly NPFA) guidance ‘Planning and Design for Outdoor Sport and Play’ [CD12/7].

### **Proposed on-site recreational open space provision**

7.5 The overall provision of recreational open space on-site is shown on at Appendix 13 and in the DAS Volume 3, Appendix 6, section 7.4, sub-sections 7.4.5, 7.4.6, 7.4.9, and 7.4.12. It comprises:

#### **(i) Casual or informal play spaces or Local Areas for Play (LAP)**

Draft SPG9 and the Fields in Trust guidance define a LAP as an unsupervised area for children up to the age of 6 for play areas close to

where they live and should be a minimum activity area of 100 sq.m and appropriate for low-key games and provide seating. They should ideally be located 1 minute walking time (100 metres) from the dwelling it serves.

Four of the private courtyards within the Cliff Site will each contain a LAP comprising in total some 800 sq.m. In addition the sea wall and the Quayside Building will each contain a LAP for informal children's play comprising 100 sq.m each (see DAS volume 6, Appendix 3, section 7.4.14 and section 8.4 page 151).

This is considered in the evidence of Bob Allies at section 8.6.20.

**(ii) Local Equipped Area of Play (children up to 8 years) (LEAP)**

Draft SPG9 and the Fields in Trust guidance advises that LEAPs should provide for early school age children (4 to 8 years) and have a minimum activity area of 400sq.m with at least five types of play equipment and seating for adults, be positioned along a pedestrian route and ideally located within 5 minutes or 400 metres of dwellings it serves.

Two LEAPS are proposed, one within the Cliff Park comprising 430sq.m and the other within Park Square comprising 400sq.m, and both are within a convenient distance of the residential units.

The undercliff walk is already a pedestrian route and the Cliff Park LEAP is situated adjacent to it. The Park Square LEAP is within a public area adjacent to a pedestrian route. Both facilities are compliant with the standards.

This is considered in the evidence of Bob Allies at section 8.6.6 and 8.6.18.

**(iii) Neighbourhood Equipped Area of Play (a play area for older children 8-14) (NEAP)**

Draft SPG9 and the Fields in Trust guidance defines a NEAP as an unsupervised area for older children (8 to 14) with at least eight types of play equipment plus kickabout area with a minimum activity area of 1,000sq.m. They should ideally be located within a 15 minute or 1,000 metre walking distance of residential properties.

Wherever possible a LEAP and NEAP should be located close together.

A NEAP is proposed within the Cliff Park, comprising an area of 1,100 sq.m and adjacent to the LEAP. The proposed NEAP will comprise undulating grass mounds providing visual interest and a stimulating environment for informal play. Within this zone an amphitheatre feature has been incorporated along with various play equipment (eight items) (see section 7.4, sub-section 7.4.5, DAS Appendix 6, Volume 3, page 112 and 113).

Draft SPG9 advises that NEAPs should ideally be located within a 15 minute or 100 metre walking distance of residential units.

The NEAP located in the Cliff Park meets these recommended standards.

Thus all of the proposed residential accommodation will have convenient access to children's play facilities. The detailed design of these spaces is dealt with by conditions 23, 43 and 44 (SOCG section 7).

This is considered in the evidence of Bob Allies at section 8.6.6.

**(iv) Adult/youth outdoor sports facilities.**

The appeal scheme provides for adult and youth recreation as follows:

- an Urban Sports area, including a five-a-side court, comprising 1,850 sq.m. (see DAS, section 7.4, sub-section 7.4.9, Appendix 6, Volume 3, page 120 to 123);
- a climbing area beneath the access ramps comprising some 745 sq.m (see DAS, section 7.4, sub-section 7.4.9, Appendix 6, Volume 3, page 120 to 123); and
- activity spaces within Marina Village which can be used for different activities; the proposed activities are petanque (225 sq.m); pilates (285 sq.m); and chess (129 sq.m) (see DAS, section 7.4, sub-section 7.4.12, Appendix 6, Volume 3, page 130 to 131).

This is considered in the evidence of Bob Allies at section 8.6.13 to 8.6.17.

- 7.6 The appeal scheme provides a total area of 6,164 sq.m of recreational open space which will meet the needs generated by a wide cross section of age groups. This equates to 9 per cent of the requirement of draft SPG9 excluding general amenity and open space provided on site.
- 7.7 The calculation of outdoor recreation space is contained in the SOCG at section 6(l) (page 39 to 41) based upon guidance in draft SPG9 [CD8/7]. It should be noted that the 9 per cent mentioned above is greater than the area of on-site recreation provision identified in Table 7 of the SOCG (page 40) which omitted the LAPs and their associated areas.
- 7.8 The area of recreational open space required based on the requirements in draft SPG9 equates to 6.7ha. Given that the total site is 12ha (and the total building footprint approximately 5ha) this would require at full provision approximately 56 per cent of the total site area to be given over to recreational open space. Such a requirement is both impractical and inappropriate if a sustainable development at an appropriate density to make best use of this

important urban site is to be delivered. This matter is considered by Bob Allies in his evidence (see section 8, sub-section 8.3).

### **Existing On and Off-site Recreation Provision**

- 7.9 In considering whether future residents would have access to adequate outdoor recreation provision it is important to recognise that the marina is not located in an area of recreational open space deficiency. On the contrary it is one of the better served areas of Brighton (see the plan at Appendix 14 and 15). When the South Downs National Park is finally approved, the National Park will be directly adjacent to the eastern boundary of the marina (see Appendix 4 and 5), which will further increase opportunities to enjoy access to the countryside and to open space.
- 7.10 The plan at Appendix 14, which is from BHCC's Open Space, Sport and Recreation Study (October 2008) demonstrates this point as does Plan 5 (Appendix 15).
- 7.11 The Fields in Trust provides guidance on accessibility to a range of outdoor recreation facilities which are as follows:
- |                      |                                 |
|----------------------|---------------------------------|
| (a) Playing pitches  | 1.2 kilometres of all dwellings |
| (b) Athletic pitches | 30 minutes drivetime            |
| (c) Tennis courts    | 20 minutes walking              |
| (d) Bowls            | 20 minutes walking.             |
- 7.12 Plan 5 illustrates the proximity, accessibility and provision of recreational open space in the vicinity of the marina having regard to the above.
- 7.13 Local recreational facilities include:
- Within 10 – 15 minutes walk from the marina (1200m) are:***
- East Brighton Park (held in the ownership of BHCC) which comprises 60 acres including 5 football pitches, 1 cricket ground, 5 tennis courts, grass athletics track and a play area;
  - Stanley Deason Leisure Centre (gym, multi-purpose sports hall, 2 large football pitches, squash court, indoor climbing wall, 5 outdoor multi-purpose tennis courts/football pitches);
  - East Brighton Golf Club (18 holes);
  - the miniature golf course at Roedean;
  - Whitehawk Community Centre, indoor bowls;
  - Brighton beaches, which constitute a significant open space in terms of size and range of recreational activities in Brighton;

- the Black Rock beach, which provides access to the sea for water based active recreation including boating, kayaking, canoeing and surfing;
- dedicated footpaths (numbers 36 and 32a) which provide opportunities for walking in the open countryside;
- to the north of the site:
  - Route 2 of the National Cycle Network
  - the South Coast Cycle Route between Dover and Southampton
  - the coastal path which provides a link to the South Downs Way, a long distance footpath and bridleway; and
- to the east of the marina the recently approved South Downs National Park whose purpose is to facilitate access to the countryside within the Park and over time should enhance opportunities to enjoy walking and cycling.

7.14

All of the above recreational facilities are conveniently accessible from the marina via footpaths and by cycle as is shown on Plan 5 at Appendix 15. If BHCC formally reintroduces a cycle route to the undercliff path this will further improve access to the recreational opportunities within the immediate vicinity of the marina.

***Within 20 - 25 minutes walk from the marina (2000m) are:***

- the Peter Pan children's playground on Madeira Drive;
- Yellowwave beach sports which included volleyball;
- Manor Road Gym; and
- Kemp Town indoor bowls club.

***Within 30 minutes drivetime is:***

- the Brighton and Hove City Athletics Club based at the Withdean Sports Complex (8 lane, all weather synthetic 400m track with complete field event facilities and floodlit). This facility can also be reached by bus.

7.15

Within the marina itself there are a number of existing recreation facilities which would be accessible to future residents and include:

- the David Lloyd Leisure Centre, with its health and fitness facilities and a 25 metre indoor swimming pool and kids' indoor splash pool;
- the Bowlplex, a multi-lane bowling alley;
- marina-related recreation opportunities which include:
  - sailing
  - scuba diving
  - sea fishing from the eastern breakwater
  - boats for hire from the marina for sea fishing
  - surfing; and

- walking routes along the undercliff path and along the western and eastern breakwaters providing informal walking/jogging routes, access to the seafront (beach and water) and beyond, including the South Downs Way.

7.16 It should also be noted that the adjacent Black Rock site is proposed for leisure and recreational use. Current proposals include a multi-purpose indoor arena with public ice skating which will be available to marina residents.

7.17 The Brunswick scheme will also provide recreational facilities including a boules pitch (125 sq.m), a bowls area (237 sq.m), a children’s play and a multi-use court, some of which could be available to occupiers of the marina.

**Enhanced access to off-site recreation**

7.18 The appeal scheme proposes the following enhancements to recreational open space provision:

- (i) East Brighton has generous provision of open recreational space within easy walking and cycling distance of the marina. The appeal scheme will fund an endowment for a sports co-ordinator based on the site who will ensure that best use of the on and off site recreational facilities including those in East Brighton is made. This will be secured by a section 106 obligation (see SOCG, section 8, page 58).
- (ii) The sports co-ordinator will be permanently based at a unit within the Cliff Building located in a position overlooking the under ramp recreation areas (see DAS section 7.4, sub-section 7.4.9, Appendix 6, volume 3, page 120 to 121). This will be in a prominent position along the route of the RTS and adjacent to the active ground floor Asda store.
- (iii) Associated within this sports office will be an area for the storage of trolleys used for the transportation of marine/beach related equipment, which will support water based recreation at the marina.

7.19 Through improved physical linkages provided as part of the appeal scheme, access to the off site recreational facilities will be enhanced. The proposed measures include these:

- (i) The “western promenade”, a pedestrian route along the Western Breakwater, will be improved and made more attractive as a consequence of the “Sea Wall” development adjacent to it. Steps and lifts through the sea wall site will connect the western breakwater with Park Square, providing a link from the marina to Black Rock beach and beyond. This will be facilitated by the proposed Brunswick bridge link which will be secured through the Brunswick section 106 obligation.

- (ii) Between the Cliff Site and the cliff top a new high level bridge will connect the marina with the off-site pedestrian network. This will provide access to the cliff top coastal path which in turn will provide access to the open countryside including the South Downs Way, and the proposed South Downs National Park.
- (iii) A new at grade access route will provide direct access for pedestrians and cyclists to Brighton beach and seafront, Black Rock and Madeira Drive, with its numerous open air recreational facilities.
- (iv) Funding for a new pedestrian crossing of the A259 to provide a safe crossing and allow convenient access to the facilities in East Brighton Park from the marina (section 8.0 of SOCG, page 58).

7.20 While not provided as part of the appeal scheme the Brunswick development includes a purpose bridge included in their section 106 obligation which will link the eastern breakwater to the development. This will be accessible from the appeal scheme and provides the opportunity to establish a marina circular walking/jogging route some 2km in length.

#### **Enhanced off-site opportunities**

7.21 A number of local off-site opportunities have been identified for enhancement in consultation with the Council's Sports and Development Manager, which fall within the catchment area of the marina. Financial contributions to secure the enhancement of these facilities (or others so desired by the Council) amounting to £1,045,000 is included in the section 106 obligation.

7.22 These opportunities are described in the Design and Access Statement (Appendix 6, Volume 3 at Section 9, sub-section 9.1.1 page 156 to 159). They are identified on Plan 6 at Appendix 16. They comprise:

- (i) the introduction of feature lighting to a stretch of seafront on **Madeira Drive** close to the entrance to the marina to mark this key recreational route to the marina and improve safety and security along this promenade during the evenings;
- (ii) improvements to **Rottingdean terraced gardens**, including surface treatments, seating, landscaping and the introduction of informal activities such as boules;
- (iii) improvements to **Rottingdean beach** (informal sports area), including new surface treatment and the introduction of new basketball hoops;
- (iv) enhancements to the tennis court and football pitches at **East Brighton Park**, including new lighting, resurfacing footpaths to improve linkages to and from the park, fencing, seating and improvements to the football pitches to improve drainage and levels;

- (v) improvements to the **Manor Road Gym**; and
- (vi) improvements to facilities at **City College**.

### **Compliance with policy H06 and draft SPG9**

- 7.23 I have shown that residents of the proposed development will have access to on-site recreational facilities which will cater for a wide range of age groups and in particular will meet the needs for play facilities for young children who require accessible recreational open space. I have also shown that the marina is well served by a range of off-site recreational open space and indoor active recreational facilities. Access to these will be improved as a result of the new at grade secondary access and high level bridge link and the above improvements, to be funded by the appellant, will all, in addition to providing access to recreational facilities, have a wider public benefit.
- 7.24 As Bob Allies shows in his evidence, the western area of the marina is already highly defined by virtue of the access ramps, multi-storey car park and road network and is planned to be redeveloped at high density incorporating residential led mixed use development (see section 7). The provision of large land using open recreational facilities such as sports pitches is impractical within the context of the marina and will prevent the regeneration and attendant benefits from being developed. Such a situation is however explicitly recognised in policy H06 where if all or part of the outdoor recreation space requirement cannot be met on site then contributions may be acceptable. The policy states:
- “Where it is not practicable or appropriate for all or part of the outdoor recreation space requirements to be provided on site, contributions to their provision on a suitable alternative site, may be acceptable...”*
- 7.25 Such an approach is consistent with government advice in PPG17 “Planning for Open Space, Sport and Recreation”, which advocates section 106 contributions as a means to remedy local deficiencies in the quantity or quality of open space, sports and recreation provision (paragraph 33).
- 7.26 It is also consistent with guidance in draft SPG9, which specifically allows for exceptions to meeting the standard (see page 9):
- “Only in very exceptional circumstances will alternative provision be considered. For example, within very high density areas on sites with no means to provide outdoor recreation space, but where the site is ideally situated in all other respects, such as, its proximity to public transport, services etc and where additional housing can be justified by virtue of the needs. In such circumstances alternative recreational facilities must be provided to the satisfaction of the Council. For example, the provision of safe indoor facilities or recreation space on roofs, where appropriate.”*

- 7.27 The Council's Open Spaces and Recreation Study [CD9/14] further recognises that:
- "In many circumstances it will not be possible to provide any or all of the types of open space that are required on-site" (paragraph 14.31, page 183).*
- 7.28 Recognising this the study recommends that approximately 20 per cent of the site area should be earmarked for on-site open space, sport and recreation facilities.
- 7.29 Within the appeal boundary approximately 24.9 per cent of land is identified for open space, sport and recreation facilities, which complies with the above guidance.
- 7.30 The Fields in Trust 'Planning and Design for Outdoor Sport and Play' [CD12/6] recognises that there is a tension between meeting on site standards for recreation open space and making best and efficient use of land when it states (paragraph 1.3.2):
- "The provision of outdoor playing space and facilities for outdoor sport and play need to be assessed in the context of sustainability issues.*
- ...
- *The recognition of the more efficient use of land through higher density development but also ensuring adequate provision of open space at all times."*
- 7.31 Very exceptional circumstances clearly do exist at the marina to justify a relaxation from the standard set out within draft SPG9 and an appropriate level of financial contribution has been made. Both BHCC's officers and Sport England were satisfied with the level of provision proposed.
- 7.32 In the officers' report to the December 2008 committee [CD3/1.1] it was accepted that there would be circumstances where the standard for provision could not be met when it was stated (page 139):
- "...It is not unusual for a high density scheme to fall short of the full on site provision that would be required by policy. In such instances, a financial contribution is sought in the terms of a Section 106 planning obligation for provision of offsite open space and recreational facilities related to the proposal..."*
- 7.33 Following negotiations on a commuted sum of £1,045,000, the officer stated (page 141):
- "...The contribution now proposed is considered reasonable and acceptable..."*
- 7.34 BHCC's Development Manager was also satisfied with the overall provision. She stated:

*“...The Council’s Development Manager, (Sport and Leisure Projects) considers that the applicant has significantly improved the on and off site provision of sport and recreation to meet the needs of residents across the different age groups. The Development Manager indicates that the proposal reflects the Sports Strategy objective of promoting access to a range of sport and recreation opportunities...”.*

7.35 Sport England, in its letter dated 1 December 2008 (at Appendix 17), expressed satisfaction that the off-site provision was acceptable in relation to the amount of development proposed and reflected local need. In their letter they state:

*“Thank you once again for consulting Sport England on the above. I write further to our original response, dated 21<sup>st</sup> October 2008, in which Sport England raised an objection to the application. Since raising this objection we have considered additional information which was submitted to us by the applicant.*

*Consequently, Sport England is now satisfied that the applicant has provided adequate justification for the choice of on site sport and recreation facilities. This is detailed in the applicant’s Design and Access Statement and presents the public realm master planning that has been undertaken which has incorporated our active design principles. The statement also indicates that extensive consultation has been undertaken with, amongst others, local community groups and schools and the results of these exercises has informed the types of sports facilities proposed and therefore led to the scheme undergoing numerous iterations.*

*The applicant has also provided further information relating to the off site sport contributions. The applicant refers to the fact that they have focussed on identifying projects which would enhance the sport and recreation needs of the East Brighton community, given there are a number of major sports and recreational projects planned for other parts of the city. The local community has been consulted regarding the types of off site provision required in the local area. Discussions have also been held with the Council’s leisure officers and subsequently the applicant has proposed a further £200,000 for sport and recreation provision which includes £100,000 of additional funding for the on site sports coordinator and £100,000 for other off site provision. Further to receiving this additional information Sport England is now satisfied that the off site provision is acceptable in relation to the amount of development proposed and reflecting the local need.*

*Given the above, Sport England is now content to withdraw its previous objection to this application...”.*

7.36 It should also be noted that in relation to the Brunswick scheme, officers concluded and BHCC accepted that the scheme included a “significant and appropriate” level of provision to meet outdoor children’s play and adult youth sport provision (see section on Outdoor Sports and Recreation) based upon the following provision:

- children's play area (154 sq.m)
- multi-use court (446 sq.m)
- bowling pitch (237 sq.m) and boules pitch (125 sq.m)
- youth space
- £25,000 to enhance play facilities in East Brighton Park
- £507,000 to upgrade the seafront walkway between the site and the Peter Pan Playground.

7.37 It is thus clear just three years ago and on a site adjacent to the appeal site, BHCC concluded that there were very exceptional circumstances to justify a relaxation from the recreational open space requirements of draft SPG9 and Policy HO6.

### **Conclusion**

7.38 The appeal scheme makes on site provision which will meet the needs of a wide range of age groups and in particular the need for children's play facilities. The marina is situated at a location well endowed for future residents with appropriate and accessible recreational facilities including sports pitches. Improved linkages from the appeal site will enhance access to these facilities. As Bob Allies shows in his evidence (sections 8.5 and 8.6), the western sector is a highly defined and constrained location which could never provide for large recreational open spaces such as football pitches, nor is it appropriate to do so if it is to be regenerated to provide for high density mixed use development (see section 8.3). Iain Reid shows in his proof that all of the on-site provision will be well designed, functional and well related to proposed buildings (see section 7).

7.39 Policy allows for reduced provision where exceptional circumstances apply. Such circumstances apply at the appeal site. Both on and off-site opportunities have been identified with the Council to enhance access and to upgrade existing recreational facilities which will be funded by the appellant and will benefit both existing and future residents and visitors to the marina.

7.40 Against the above background I do not accept the Council's allegation in reason for refusal 4. Future residents will have access to adequate and attractive recreational open space and, in view of the circumstances obtaining in the case of the appeal site and the need for its effective and sustainable regeneration, it cannot reasonably be argued that there is here any conflict with policy HO6.

## 8.0 Reason for refusal 5

8.1 This reason for refusal, which was not clarified or amplified by the Council, states:

*“The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy HO21 of the Brighton and Hove Local Plan”.*

8.2 Policy HO21 is concerned with the provision of community facilities, of which education is one component. Other proposed community facilities are described in my evidence at paragraph 5.58, the ES section 10, pages 40 – 45, paragraphs 10.156 to 10.176 and the Planning Statement pages 63 – 66. In this section I focus specifically on educational provision as this is the single matter raised in the reason for refusal.

8.3 The ES, in section 10 “Socio-Economic and Community Impacts” (paragraphs 10.82 – 10.97, page 22-25) [CD2/10.1]), assessed both primary and secondary school needs arising from the development and demonstrated that adequate educational provision existed or could be provided consistent with the scale and nature of the proposed development.

8.4 Estimates have been made of the future number of pupils (the child yield) arising from the development. These estimates were subsequently updated following discussions with BHCC on the SOCG. This revision was largely carried out to address inconsistencies in the original Census data and the agreed position can be found within the SOCG (see section 6(q)).

8.5 A review of existing capacity in local primary and secondary schools was also undertaken in the ES which concluded that in terms of overall primary provision, schools within an acceptable statutory catchment distance of the marina had a surplus capacity of school places with the greatest surplus occurring within the Whitehawk Primary School, which is within walking distance of the appeal site.

8.6 This conclusion was confirmed in the officers’ report to BHCC’s planning committee [CD3/1.1] in December 2008, in which they stated (on page 151):

*“As of July 2007, there was an oversupply of 274 primary school places in the nearest 3 primary schools, 264 of which are in Whitehawk Primary School. However, it needs to be considered that parents may not necessarily choose a primary school in their area and persistently oversubscribed schools may benefit from funding to supply additional resources to counter this.”*

8.7 In the SOCG (paragraph 6.110) it is confirmed that, at August 2009, within the three nearest primary schools to the appeal site there was an oversupply of

258 primary school places, although not in all school years; 228 of these were in Whitehawk Primary School.

- 8.8 The three primary schools within 1.5 miles (2.4km) of the appeal site are shown on Plan 7 in Appendix 18 and include:
- 1 St Mark's (Church of England) which is 0.78 miles (1.2km) by foot
  - 2 St John the Baptist (Roman Catholic school) which is 1.5 miles (2.4km) by foot
  - 3 Whitehawk Primary School which is 1.1 (1.7km) miles by foot.
- 8.9 All of these schools are within walking distance of the marina (15 – 30 minute walk) and are accessible by local bus routes (Route 1, 7 and 14c) with stops in or in close proximity to the marina.
- 8.10 The statutory walking distances for schools are contained in the Education Act 1996 (S.444(5)). For under 8 year-old children, this is two miles and for those over 8 years it is three miles. The measurement of the 'statutory walking distance' is not necessarily the shortest distance by road but rather the shortest route along which a child, accompanied as necessary, can walk within reasonable safety and hence can include footpaths, bridleways and other paths.
- 8.11 All of the nearby primary schools fall within the statutory walking distance. Sufficient primary school places exist to meet the needs of the residents of the proposed development and, through section 106 funding, some of these three schools could provide additional school places to meet the needs arising from the development.
- 8.12 Secondary school provision is spread unevenly across the city. However, it is not unusual for secondary school pupils to have to travel longer distances and, overall, surplus capacity exists within the city to meet the needs of the proposed development (see Plan 7 at Appendix 18).
- 8.13 I have assessed the current capacity of the nine secondary schools in Brighton and Hove in conjunction with the BHCC Programme Services Department. The calculation of capacity is contained in Appendix 19 and shows that in the summer of 2009 there are 371 surplus secondary school places across Brighton and Hove.
- 8.14 It is important to remember that the Council has a duty to provide free transport between home and school for children of secondary school age who live over three miles from a school within their catchment area.
- 8.15 As the evidence of David Frisby shows (in his proof at paragraph 4.7.1) the marina is very well served by public transport. As identified in Plan 7 (Appendix

18) most of the nearest secondary schools linked to the marina by bus either directly or indirectly.

- 8.16 In terms of its estimated child yield, the appeal development does not justify on-site provision of either a primary or secondary school. Indeed, the Council has never requested such provision, nor that a land allocation be made for a new school and it has consistently supported off-site provision.
- 8.17 The development will generate some demand for school places from new residents and in line with local plan policy HO21 'Provision of community facilities in residential and mixed use schemes' a financial contribution of £594,000 has been made towards enhancing education facilities both locally and within the city, consistent with the scale and nature of the proposed development (also see SOCG, section 8, page 59). This will be included in the planning obligation which will be produced at the inquiry.
- 8.18 In reporting to committee in December 2008 [CD3/1.1] the appellant's proposed scale of educational contribution was accepted by the Council's Head of Capital Strategy and Development Planning. In reporting to committee, he stated (page 152):
- ".....This amount is now considered reasonable having regard to other comparable developments, such as the Brunswick scheme, approved in the outer harbour of the marina and the contribution is considered proportionate with this scheme. In the case of the Brunswick scheme, an education contribution of £300,000 was agreed, although the estimated S106 contribution was £1.6 million."*
- 8.19 It is important to emphasise here that Circular 05/05 on Planning Obligations [CD6/3] makes clear that obligations should be fairly and reasonably related in scale and kind to the development and should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development (paragraph B9).
- 8.20 The same Circular also notes that policies on types of payment should be set out in Local Development Frameworks and that the local authority's generic policies on payment types should be contained in Development Plan Documents, and the details of their application in Supplementary Planning Documents (paragraph B17). No such guidance is available from BHCC.
- 8.21 The Council's planning officers stated in reporting to the December 2008 committee meeting (page 152):

*“.....The objections received concerning the lack of school places in the area and the pressure on secondary schools in the area following the closure of Comart are noted. However the applicants are now proposing a significant contribution towards education and the lack of school places in the area would not in itself be a reason for refusal. As stated earlier there are places available in the City although it is recognised that it is not ideal if pupils have to travel some distance to school.”*

- 8.22 In summary it has been agreed with the Council’s officers that:
- (a) primary school provision locally has a surplus which could quantitatively meet the requirements arising from the development and the appeal scheme is within an appropriate catchment area of this surplus provision;
  - (b) there are surplus secondary school places in the city but pupils would have to travel some distance to them; however, this is not unusual in the context of secondary provision; and
  - (c) the marina is a location well served by public transport with good bus connections serving the city and secondary schools within it.
- 8.23 From the Council’s Rule 6 statement it appears that the only matter behind reason for refusal 5 is the level of financial contribution sought towards off-site education provision.
- 8.24 It is not clear how the position has changed on this issue since the planning officers prepared their report to committee when the appeal application was being determined. No explanation is provided in the minutes of the committee meeting dated 2 September 2009 [CD3/3.2] as to why this amount was no longer acceptable; nor has any alternative basis for calculating the educational contributions been provided or an alternative educational contribution been requested and justified.
- 8.25 There are differences in the approach to estimating the level of child yield for the appeal scheme between the appellant and the Council due to the assumptions used to estimate the average number of children per dwelling. The Council apply an estimate based on averages across the entire city which produces a maximum figure, whereas the appellant believes that specific factors applicable to the marina should be taken into account. In agreeing the level of the educational contribution on the adjacent Brunswick scheme, these specific factors were taken into account by the Council and have also been used by the appellant in calculating the child yield.

8.26 The different estimates made by the appellant and BHCC are set out in the SOCG, section 6 and are summarised as follows:

	<b>Primary Age Children</b>	<b>Secondary Age Children</b>
<b>BHCC</b>	130	113
<b>Appellant</b>	58	31

Table 3 Estimated Child Yields for Appeal Scheme

8.27 The assumptions used in the appellant's estimate are:

- (a) as is apparent in Census 2001 figures, there are proportionally more second homes in the marina than across the city;
- (b) vacancy levels of dwellings in the marina are double those in the city as a whole, largely due to more units in the marina being used as second homes or for occasional use only;
- (c) it is possible that given the nature of the scheme and its likely occupants a high proportion of children in it may attend non-state schools than is the case across the city as a whole;
- (d) the predominance of smaller flats and lack of gardens within the proposed development mean that it is likely to accommodate overall fewer families with school age children;
- (e) BHCC does not house families with children in units above the fifth floor; and
- (f) based on the 2001 Census, and as a result of the above factors, dwellings in the marina typically contain fewer children than average.

8.28 Given that Brighton Marina clearly has quite different characteristics and demographic profile from the rest of the City, which includes suburban residential areas, it is difficult to believe that the type of development provided by the appeal scheme and within the marina area will attract a similar proportion of families with young children as the rest of the city, and that the child yield arising from the appeal scheme will not be lower than might be expected elsewhere in the city. The appellant therefore believes its assumptions remain applicable in calculating child yield and their estimate is more realistic than that of BHCC.

8.29 In any event, it is not clear how relevant any difference between the BHCC and the appellant's estimates of child yield will be to this reason for refusal. Not only do sufficient school places exist even taking the Council's higher child yield estimates into account but the appellant negotiated what it believes to be an acceptable and appropriate level of educational contribution, which was accepted by Council officers presumably with advice from officers in the Local Education Authority. Therefore, on the basis of professional advice from within

the Council, the appellant's proposed educational contribution must be considered to be adequate to meet the educational needs arising from the appeal scheme.

- 8.30 It is also important to emphasise that no guidance is provided by BHCC on the formula for calculating financial contributions within any policy within the development plan, nor in any adopted BHCC supplementary planning guidance. In the absence of such statutory and non-statutory guidance it is difficult to see how the proposed amount of educational contribution can be said to be inadequate, or what relevance any difference between the BHCC and the appellant's estimates of child yield would have to this amount.
- 8.31 If the reason for refusal cannot be supported by professional advice from within BHCC or by any BHCC policy document or supplementary planning document, I cannot see that this reason for refusal is anything more than simply an expression of BHCC members' views, unsupported by any professional or policy foundation. On this basis, this reason for refusal based on insufficient educational facilities being provided by the appeal scheme is simply not substantiated and cannot be a valid or reasonable reason for refusal of the appeal application.

## 9.0 **Planning matters raised by Rule 6 parties and other third parties**

9.1 Rule 6 status has been granted to the following parties:

- a) Brighton Marina Residents' Association
- b) Save Brighton
- c) The Kemp Town Society
- d) The Marine Gate Action Group
- e) Sussex Police

In this section, I have had regard to those parties' Statements of Case.

9.2 In addition, a number of third parties have made written submissions on the appeal scheme. Where such representations are relevant to the proposals they are capable of being a material consideration and for this reason I have reviewed the representations by grouping them into discrete topics or issues which are relevant to the proposals, briefly commenting on them where I am able.

### ***Transport Matters***

9.3 As is effectively demonstrated in the TSOCG, now formally agreed with BHCC as the highway authority, there is no force in the third party objections on transport grounds. There will be no unsustainable effects on either the local or the wider transport infrastructure. David Frisby considers these matters further in his evidence (see section 5.3).

### ***Policing***

9.4 The proposed development will make a significant contribution to the levels of security at the marina, which will create a safe environment for all who use it. These measures are contained in the Design and Access Statement (Appendix 5, Volume 2, page 66 to 71 [CD2/7.2]) which addresses in detail how the development complies with the principles included in Secure by Design and I repeat them here:

- 24 hour security will be provided, supported by CCTV which can be linked into a city wide network if requested;
- 24 hour concierge facilities will be provided for the residential buildings;
- All residential units will have access control, video entry, containment and wiring for apartment intruder alarms
- A site-wide lighting strategy incorporating best practice in urban design, which will enhance natural surveillance.

9.5 This provision was accepted by officers in the committee report of December 2008 (page 137 [CD3/1.1]):

*“The applicant’s response to the police states that the request for a financial contribution fails to recognise the merits of the proposed regeneration and the significant resources that have been invested in both design development and security measures. These measures include concierge, CCTV cameras, access control, video entry, containment and wiring for apartment intruder alarms / networked security systems linking to the Brighton Marina Estates Office for example. The associated cost of the proposed security measure amounts to some £2.1m. Given that the police calculations are based on a draft SPD that has not been approved by the council, coupled with the amount of security measures incorporated in the scheme, it is not considered reasonable in this case to ask for a contribution.”*

9.6 It should be noted that a financial request for contributions towards police infrastructure is not established in adopted policy or in any BHCC Supplementary Planning Guidance.

9.7 Whilst we note that Policy CC7 of the South East Plan [CD7/1] includes police infrastructure, it also advises that *“To provide clarity for landowners and prospective developers, local authorities should include policies and prepare clear guidance in their LDDs”* (page 37). There is no adopted LDD to guide developers on this matter.

9.8 So far as I am aware such a request for financial contributions towards policing has not been successfully applied to other schemes in Brighton. I do not therefore accept that the request of Sussex Police can be substantiated at the marina, particularly taking account of the appellant’s scheme design and integral crime prevention measures.

***The height, scale and density of development, its relationship to existing development, relationship to the cliffs, quality of architecture, overshadowing, overlooking, loss of daylight and loss of amenity to existing residents.***

9.9 The evidence of Bob Allies (see section 7) demonstrates that the height, scale and density of the development is acceptable in relation to its surrounding context, including the cliffs, and that the general quality of architecture, and in its effects on the living conditions of existing and future residents, is acceptable.

***Effects on important views from Kemp Town and the surrounding countryside***

9.10 The evidence of Richard Coleman demonstrates that the development will not harm the setting of any listed buildings or any conservation areas (section 10, particularly paragraph 10.10.1). Neither will there be harm to established strategic views, vistas or parks and open spaces (see paragraphs 12.4 of ES section 9 ‘TVIA’ [CD2/10.3]). This is also considered in paragraphs 5.79 to 5.86 above.

***The alleged lack of provision of community (educational, medical, crèche) and recreational facilities***

- 9.11 Provision of educational facilities and recreation space is dealt with in section 8 of my evidence. Section 10 of the ES in paragraphs 10.96 to 10.97 (page 25 [CD2/10.1]), considers the impact of the proposed development on crèche provision and in the committee report it is confirmed that the crèche within the marina has capacity (page 151) and this remains the case (as of September 2009).
- 9.12 Regarding the allegation that there is inadequate medical provision. I would draw your attention to the appellant's proposal to convert two retail units in the Octagon into a Healthy Living Centre (516 sq.m), which could accommodate a GP and/or other multi-agency health professionals. This facility will either be occupied by the PCT, should they so desire, or a private practice.
- 9.13 Other community facilities are set out at paragraphs 5.62 to 5.67 above and include recreation facilities (on and off site, see section 7 above), a recreation co-ordinator and associated premises, a community hall and cliff viewing opportunities.
- 9.14 At the December planning committee officers considered (page 103, [CD3/1.1]) that "*the proposals are in accordance with policy and the aims of SPGBH20 and PAN04, in proposing a number of specific community facilities to benefit marina residents and those living in, or visiting from, the wider area*".

***The alleged impact on the operation of the marina***

- 9.15 As I have explained in paragraph 5.58 above, the proposed development will enhance the operation of the marina and will help to create a thriving, viable district centre and working marina which will benefit existing residents, visitors and future occupiers. The SOCG (at paragraph 6.44) confirms that existing moorings will not be affected.
- 9.16 It should be noted that this did not form one of the Council's reasons for refusal and the proposals are in line with the vision of the marina set out in SPG20.

***Alleged impacts (noise and air quality) during construction***

- 9.17 Section 16 'Noise and Vibration' (paragraph 16.65) and 17 'Air Quality' (see paragraph 17.52) of the ES [CD2/10.1] demonstrate that the appeal scheme is acceptable in terms of noise and air quality.
- 9.18 The mitigation identified will be secured in a Construction Environmental Management Plan (CEMP) which in turn will be secured via a planning condition. This was accepted by the Council and is reflected in the SOCG in sections 7 and 8.

9.19 It is noteworthy that the Council do not cite any of these impacts in their 'amplified' reason for refusal.

***The alleged increased risk of flooding***

9.20 This matter is addressed elsewhere in my evidence at paragraphs 6.51 to 6.54 and in correspondence from the Environment Agency (Appendix 12). The Council have abandoned this reason for refusal at the inquiry.

## 10.0 **Planning assessment**

10.1 In this section I provide an overall assessment of the appeal scheme based on:

- (i) those matters which have been agreed between the appellant and the Council having regard to the SOCG;
- (ii) an identification of what I believe to be the planning issues between the parties and show how these have been addressed by the appellant;
- (iii) my assessment of policy compliance contained in sections 5 and 6 of my proof; and
- (iv) the significant benefits the scheme will generate including the delivery of development plan and other policy aims and objectives and conclude that this demonstrates conclusively that a compelling case exists for the grant of planning permission.

### **Matters which have been agreed between the parties**

#### **The principle of the proposed development and land uses**

10.2 Both development plan policies and Central Government policy and guidance emphasise the need to make effective and efficient use of land in urban areas subject to meeting a number of criteria (SOCG paragraph 6.3).

10.3 Supplementary Planning Guidance in SPG20 “Brighton Marina – A Master Plan for Enhancement” identifies the marina as a suitable location for high density mixed use development and identifies the marina as one of five areas in the city where tall buildings are acceptable subject to meeting various criteria (SOCG paragraph 6.4).

10.4 The emerging LDF identifies Brighton Marina as one of the city’s seven strategic locations for mixed use development, including residential (SOCG paragraph 6.4).

10.5 The proposed mix of uses is acceptable in principle in the marina and is consistent with its status as a designated district centre (SOCG paragraph 6.5).

#### **Density of development**

10.6 Central Government policy guidance in PPS1 and PPS3 encourages sustainable development. This includes higher density development subject to a high quality of design, the site being well served by public transport and local services, where a mix of dwelling types is provided and appropriate provision made for social infrastructure. PPS1 promotes the efficient use of land through high density, mixed use development (SOCG paragraph 6.7).

- 10.7 SPG20 identifies the marina as a suitable location for high density mixed use development subject to a high quality of design (SOCG paragraph 6.8).
- 10.8 New development should accord with local plan policy HO4 which requires full and effective use of available land. Residential development will be permitted at higher densities than those typically found in the locality subject to a high quality design, providing a mix of dwelling types to meet local needs, is well served by public transport, walking and cycling routes, local services and community facilities and respects the capacity of the local area to accommodate additional dwellings (SOCG paragraph 6.9).
- 10.9 The appeal site is well served by public transport, including high frequency bus services (SOCG paragraph 6.10 and TSO CG, section 2.2).
- 10.10 The density of the development equates to 163 dph which is lower than other approved schemes in the city and at a lower density than the approved adjacent Brunswick scheme, which equates to an overall net density of 310 dph (SOCG paragraph 6.11).

#### **Height, scale and design**

- 10.11 SPG20 and SPG13 and PAN04 identify the marina as a location for tall buildings (SOCG paragraph 6.12).
- 10.12 The western area of the marina exhibits a different character and scale of buildings to those in the east (SOCG paragraph 6.14).

#### **Regeneration and the economy**

- 10.13 PAN04, SPG20 and the emerging Core Strategy (Proposed Amendments, June 2009) acknowledges the existing shortcomings of the marina, including poor environment and poor quality architecture, lack of identity and sense of place, poor public transport access and limited land uses (SOCG paragraph 6.24).
- 10.14 Both the Regional Economic Strategy (RES) and the South East Plan identify Brighton and Hove as a Diamond for investment and growth which has the potential to use its concentrations of people, environment, knowledge and built assets to become an economic catalyst for the region. The existing marina currently has limited retail and office floorspace. The proposed development will provide opportunities for jobs, both during construction, and within the non-residential uses proposed, and in roles that support the residential uses (SOCG paragraph 6.25).
- 10.15 The proposed development will generate up to 3,670 temporary jobs or the equivalent of 2,800-3,600 person years of construction work spread over seven years. This will be accompanied by training in construction skills and a policy of local recruitment where possible. Once the development is completed there will be an increase of 312 new jobs on the site. The majority of jobs created will be in the retail and hospitality sector (SOCG paragraph 6.26).

10.16 Retail is a key sector for the city economy and is identified within the Community Strategy [CD9/7] as a sector which needs boosting. An increase in provision of such jobs, closely located to an area of high deprivation such as East Brighton, is likely to mean that people with lower level skills would stand more chance of securing employment within the sector. The appeal scheme will result in over £300m of investment in the city (see ES section 10 'Socio-Economic' page 10.141 and SOCG paragraph 6.27).

### **Residential Use**

10.17 Residential use is actively promoted at the marina in SPG20, PAN04 and the emerging Core Strategy. PPS3 promotes housing to address national and regional needs and emphasises that priority should be given to brownfield over greenfield land (SOCG paragraph 6.28).

10.18 Development should incorporate a mix of dwelling types/sizes that respond to local needs (SOCG paragraph 6.29).

10.19 The 2005 Housing Needs Survey [CD9/2] concludes that the overall level of housing need in the city is higher than the national average, and affordable housing is in particularly short supply (SOCG paragraph 6.30).

### **Affordable housing**

10.20 There is no policy requirement for affordable housing to meet a certain unit size in terms of area (SOCG paragraph 6.34).

10.21 Policy H02 advises that for schemes of ten dwellings or more, the local planning authority will negotiate with developers to secure a 40 per cent element of affordable housing (SOCG paragraph 6.35).

### **Retail use (Class A)**

10.22 SPG20 recognises that the retail potential of the marina and its contribution to creating a vibrant mixed-use environment. There should be a significant amount of additional commercial (retail and leisure) use provided at ground floor level for vitality and to sustain the role of the marina as a District Shopping Centre (SOCG paragraph 6.38).

10.23 The Retail Impact Statement [CD2/9] demonstrates that the level of 'retail' proposed cumulatively would not cause detriment to the vitality or viability of established shopping centres in Brighton and Hove. The proposed retail provision is consistent with local plan policies SR1 and SR5 (SOCG paragraph 6.40).

### **Community facilities**

10.24 Existing moorings will not be affected by the proposed development. Overall, there will be a net gain in local community facilities (SOCG paragraph 6.44).

### **Outdoor recreation space**

- 10.25 Local plan policy HO6 acknowledges that where it is not practical or appropriate to provide outdoor recreation space on site contributions to their provision on a suitable alternative site may be acceptable.
- 10.26 Draft SPG9 supports the approach of policy HO6 in principle (SOCG paragraph 6.86).
- 10.27 Draft SPG9 advises that only in “*very exceptional circumstances will alternative provision be considered. Such an exception would be within very high density areas on sites with no means to provide outdoor recreation space, but where the site is ideally situated in all other respects*” (page 9) (SOCG paragraph 6.86).

### **Planning conditions**

- 10.28 A total of 51 planning conditions have been agreed (SOCG paragraph 7.1).

### **Planning obligations**

- 10.29 All of the planning obligations previously considered by the Council are agreed (SOCG paragraph 8.1).

### **Planning issues between the appellant and the Council and how the appellant has addressed them**

- 10.30 It will be clear that there are many areas where the appellant and the Council have agreement. In the following paragraphs I focus on the planning issues between the two parties and indicate how these have been addressed by the appellant. In doing so I have regard to the resolution of the 2 September 2009 planning committee meeting [CD3/3.2] which sets out the issues in dispute as well as “*clarifying and amplifying*” the Council’s earlier reasons for refusal, along with the Council’s Rule 6 statement.
- 10.31 Each of the issues are summarised with a response on how it has been addressed.

#### **(a) The quality of the scheme design in terms of its architecture, siting, layout and height and relationship to physical and natural features within and outside the site.**

- 10.32 The appeal scheme has been designed by one of the country’s leading architects against a background of exhaustive technical studies contained in the ES, consultation with both technical stakeholders and the community, which has resulted in a sequence of design iterations evidenced in the DAS. The evidence of Bob Allies, Richard Coleman and Iain Reid demonstrates that in all respect the design of the appeal scheme is of the highest quality and responds appropriately to all physical and natural features both within and outside the site, and as such is in compliance with the policies relied on by the Council (see Bob Allies’ proof of evidence at section 7, particularly sub section

7.1, Richard Coleman's proof of evidence at section 10 and Iain Reid's proof of evidence at section 6).

**(b) The effect of the development on the setting of Kemp Town, the AONB and the Cliff**

10.33 The scheme has been designed based on a very detailed and exhaustive visual impact assessment using a methodology agreed with the Council which has resulted in design iterations to address issues which have arisen during the design stage. The evidence of Richard Coleman demonstrates that in visual terms the scheme will not adversely affect Kemp Town, the AONB or the cliff nor be in conflict with the policies relied on by the Council (see Richard Coleman's proof of evidence at section 10 and 11). In several respects the development will serve to enhance both the historical and the natural environment.

**(c) The quality of the residential accommodation within the scheme**

10.34 All of the residential units will be of an acceptable standard, as is demonstrated in the evidence of David Bean and Bob Allies and there is no conflict with the policies relied on by the Council (see Bob Allies' proof of evidence at sub-section 8.8 and David Bean's evidence at paragraph 6.2).

**(d) The contribution the proposed residential accommodation will make to meeting of housing needs of the City**

10.35 The residential content of the appeal scheme will make an extremely valuable contribution to meeting the housing needs of Brighton which it is acknowledged (SOCG paragraph 6.30) has an overall higher level of housing need than the national average and affordable housing is in particular short supply. This is demonstrated in the evidence of Matthew Spry (see paragraph 5.49).

**(e) The proposed provision for outdoor amenity and recreational open space**

10.36 Section 7 above addresses the provision of outdoor amenity and recreational open space and demonstrates that the residents of the proposed development will have access to appropriate on-site and off-site provision and that the scope for sensible consideration to be given to the specific circumstances of the marina is embraced in policy HO6 and draft SPG9. There is no policy conflict here.

10.37 Iain Reid in his evidence (see section 6) demonstrates that the amenity and recreational open space that will be delivered is of good quality and in all respects is functional and will meet the need for a wide cross section of age groups. Section 8 of Bob Allies' evidence should also be referred to.

**(f) The proposed provision for the needs of the community and the proposed financial contribution to education facilities**

10.38 Section 8 above addresses educational provision and shows that adequate primary and secondary school provision exists to serve the development and a financial contribution included in the section 106 obligation in line with policy HO21 will be made towards enhancing educational facilities consistent with the scale and nature of the proposed development.

10.39 In the light of the Council's Rule 6 statement the only issue appears to be the level of the educational contribution proposed by the appellant. No justification has been provided by the Council for seeking a larger financial contribution, nor indeed what that contribution should be. The amount proposed to be delivered in the section 106 obligation is based on robust assumptions relating to child yield and has previously been agreed with the Council. There is no conflict with policy. The objection persisted in by the Council is unreasonable.

**Policy compliance**

10.40 Section 5 above shows that the appeal scheme is in accordance with the statutory development plan and the BHCC non statutory policy and guidance. It will deliver regional and local plan objectives and more specifically the aims and objectives of BHCC's established policy framework for the marina, which seeks to secure the regeneration of its western area. Section 6 above shows that the appeal scheme complies with national policy and guidance.

**The benefits of the appeal scheme**

10.41 In this section I set out what I believe to be the benefits which the appeal scheme will deliver having regard to previous sections of this proof of evidence, the SOCG, the evidence of the appellant's witnesses and in the observations made by a former Secretary of State for the Environment in his letter dated 2 October 2009 (Appendix 20).

- (a) Brighton Marina was a visionary project of the 1960s. It ran into financial difficulties which led over time to a piecemeal, haphazard and unplanned environment. The appeal proposals provide a rare and historic opportunity to reverse the decline in a coherent and planned way and regenerate the western area of the marina, establishing a new urban quarter of the city while delivering a substantial quantum of new housing.
- (c) There is an urgent need to increase the supply of housing and affordable housing, in particular in Brighton. A total of 1,301 units, of which 40 per cent or 520 will be affordable and available to key workers. This will greatly assist Brighton to meet its housing obligations but more fundamentally respond to the pressing needs of its residents.
- (d) Brighton has few choices in where it secures future housing given its constrained boundaries and limited legacy of brownfield sites. The marina is a highly sustainable location for new housing given the opportunity to

utilise previously developed land, its excellent public transport accessibility and links to walking and cycling routes, its district centre, its access to open space and recreational facilities with no risk of flooding.

- (e) The appeal scheme draws on the above attributes and, as Bob Allies and Iain Reid show, will deliver high quality architecture, urban design and public realm, with a mix of dwelling types to meet local needs, inclusive affordable housing and provision for social infrastructure without harm to nature conservation or archaeology or users of the marina.
- (f) The proposed development will make best and effective use of land in an urban area at an identified strategic location which is planned to accommodate new development and one suitable for high density mixed use development including tall buildings. In doing so it will not only comply with national and local policy but it will deliver the aims and objectives of the long established planning framework for the western area of the marina contained in the local plan, SPG20 and more recently in PAN04.
- (g) The proposed development will not only repair a fragmented environment but it will also better integrate it into the fabric of the city by making it more welcoming and accessible for residents and visitors on foot and bicycle through a new cliff access route and bridge and an at-grade route connecting the marina with Madeira Drive, one of the city's most important seafront and beach routes.
- (h) The marina's district centre has fundamental problems due to its seasonal pattern of demand. The appeal scheme will significantly improve this without harm to other centres through the introduction of a larger and improved superstore, new retail units and an improved pedestrian circulation and environment. This will benefit existing occupiers, future residents and visitors.
- (i) The proposed development of the marina will not only be sustainable in its own right but it will sustain the momentum of regeneration, namely at the adjacent Black Rock and gas works sites in this part of Brighton. Their regeneration will be supported by an enhanced marina which will provide a hub around which those developments will have the best prospects of being successful and sustainable.
- (j) The proposed development will support the aims of the South East Plan by optimising the use of previously developed land but will also support its social and economic aims, which are to encourage inward investment to the coastal towns, of which Brighton is a key focus. It will do this through an investment of £300 million, will create both temporary construction jobs over a seven year period, estimated to be 3,760, and permanent new jobs, of which 312 will be direct and 400 indirect.
- (k) The marina and the western area in particular are devoid of any significant biodiversity. The appeal proposals will change this, introducing new planting, habitat creation and green roofs and walls.

## **Conclusion**

10.42

In this section I have shown that many aspects relating to the appeal scheme are agreed, that drawing on sections 5 and 6 that the proposals comply with all relevant policies, and will deliver the aims and objectives of the extant planning framework for the western area of the marina, that the issues raised by the Council have been fully addressed and that the appeal scheme will deliver significant planning benefits. Against this background I believe there are compelling reasons why planning permission should be granted and none to suggest a different outcome.

## Conclusions

My evidence has addressed the town planning aspects of the appeal scheme and draws the following main conclusions:

- (a) Brighton Marina was a visionary and ambitious development of the 1960s. This vision was not realised due to mixed market fortunes which in turn has contributed to the haphazard, unplanned and piecemeal development at the western area of the marina which the appeal scheme has had to address. There is now a rare and historic opportunity to secure through private sector investment, in a planned way, the regeneration of an important part of the city on previously developed land at a sustainable location and in a way which will deliver the aims and objectives of the established planning policy framework for the marina.
- (b) The proposed development, through the introduction of mixed use high density development including tall buildings will make full and effective use of previously developed land, without harm to the effective functioning of infrastructure, services and facilities in this part of the city and at a location well served by public transport, walking, cycling and with access to community services and in a manner compatible with the surrounding natural and historic areas. Making the best use of land such as this is not only a central plank of government and local planning policy, but in the particular constrained circumstances of Brighton, with its shortage of previously developed land, it must surely be an urgent necessity.
- (c) The proposed development will address the identified shortcomings of the western area of the marina. It will provide landmark high quality architecture and public realm within a masterplanned approach, giving coherence and a strong identity and sense of place to the marina. As such it will secure and stimulate the physical, social, economic and aesthetic regeneration of the marina, adding momentum to the urban renaissance in Brighton and the wider sub-region.
- (d) The proposed development will deliver 1,301 housing units of which 520 or 40 per cent will be affordable. This is a very substantial amount of new housing in a mix of dwelling types and sizes in an area where there is considerable identified need for both private and affordable housing at a location actively promoted for such a use. Affordable housing is in particularly short supply and the proposal that 40 per cent of all residential units be affordable is providing the maximum level sought by the Council.
- (e) New investment in housing, retail and commercial development and transport will enhance the role of the ailing marina district centre which will benefit existing occupiers, visitors and new residents, without harm to any other centres within Brighton or the function of the yachting marina itself which will surely benefit from a more viable and vibrant district centre.

- 11.2 I have assessed the proposals against the statutory development plan and non-statutory policy and guidance issued by BHCC to supplement the local plan, drawing on the planning application documents, the SOCG, Rule 6 statement of BHCC and the appellant's evidence and conclude that the proposed development will be in accord with the statutory development plan and comply with and fully support the aims of government policy and guidance.
- 11.3 In particular the appeal scheme will support the aims of the statutory South East Plan by optimising the use of previously developed land, providing good quality new homes and through an investment of over £300 million create new job and training opportunities in an area identified as a regional hub and a Diamond for Investment and Growth where new investment is strongly encouraged.
- 11.4 The provision of recreational and amenity space for residents on site is at an appropriate level and is good quality and functional. The marina is extremely well located in relation to large areas of high quality, conveniently accessible recreational open space which will benefit from improved physical linkages from the marina, a benefit which will extend to existing residents, marina users and visitors. A financial contribution by the appellant will enhance existing facilities previously identified with the Council in the immediately surrounding area. Both Policy HO6 and draft SPG specifically allow for such off-site contributions where appropriate. Such circumstances as the policy contemplates are clearly applicable to the appeal site and scheme.
- 11.5 The proposed development will generate demand for primary and secondary school places. Primary school capacity exists within an acceptable local catchment, as does secondary school provision within a wider catchment area. A financial contribution is to be made, previously agreed with the Council, to enhance education provision commensurate with the scale of the proposed development.
- 11.6 Having considered reasons for refusal 4 and 5 I do not accept the Council's assertions and strongly believe the proposed development will take place in a highly sustainable manner and without harm but indeed with benefit to the functioning of community infrastructure.
- 11.7 I therefore believe there to be compelling reasons why planning permission for the appellant's proposed development should be granted.