

BRIGHTON MARINA REGENERATION PROJECT

PLANNING APPEAL REFERENCE: APP/Q1445/A/09/2102048/NWF

PLANNING APPLICATION REFERENCE: BH2007/03454

CLOSING SUBMISSIONS FOR THE APPELLANTS

Preamble

1. This is not a travel with anybody's aunt, nor any other kind of fantasy journey like that. In fact, it is not fiction at all.
2. But, in deference to Graham Greene, the author also of "Brighton Rock", one ought perhaps to start with him. Here is his "Boy" – a visitor to a part of this fine city he did not want to come back to see after being away not quite long enough:

"He was scared, walking alone back towards the territory he had left – oh, years ago. The pale sea curdled on the shingle and the green tower of the Metropole looked like a dug-up coin verdigrised with age-old mould. The gulls swooped up to the top promenade, screaming and twisting in the sunlight, and a well-known popular author displayed his plump too famous face in the window of the Royal Albion, staring out to sea. It was so clear a day you looked for France."

Introduction

3. This case is about regeneration. One could say that it is about making Brighton Marina, a different place from what it is today, a place that is no longer degenerating, but one that has a sustainable community and a sustainable future. Greene (and the "Boy") would surely approve.
4. The Secretary of State has before him in this appeal an opportunity to support and secure the regeneration of Brighton Marina as a sustainable community. It is a real opportunity. It is an unprecedented opportunity. And it is an opportunity not likely to come back very soon.

5. The concept of regeneration is scarcely apparent in the 107 pages of closing submissions made by counsel for the City Council. Those submissions are profoundly disappointing for their near total lack of grasp of that, the central theme in this appeal. Virtually every sentence in them contains a negative sentiment or thought. They do not begin properly or fairly to engage with the regenerative benefits of the proposed development, and then only grudgingly at the end. The difficulty with them, of course, is that they prove far too much. They read and sound as they are: a protracted litany of criticism and complaint about a scheme on which the City Council's own officers – not only its planning officers, but also the responsible teams for housing, highways and transport, education, recreation and leisure, ecology, arboriculture and so forth – spent not merely months but years of hard work with the appellants and their professional advisers to assist them in the positive effort of bringing sustainable regeneration to Brighton Marina. Every aspect of responsibility for community life in the city of Brighton and Hove is represented in the consensus that emerged in that constituency of professional judgment. But perhaps the hope on the other side is that the Secretary of State will let all that be as it may, and pick on something, anything, that might have been done differently and turn aside all this co-operation, all this investment, all this housing, all this affordable housing, all this benefit – in the naïve belief that one will only have to dream it back to bring it back.
6. After all, why should it come back? Why should anybody put the energy, effort and expense that these appellants have for the past four years into an endeavour in which all the requirements of our modern planning process are responsibly met when that endeavour might fail because it cannot put right all at once the many ills afflicting the marina today?
7. If the regeneration of the marina is going to happen at all it will only be achieved if a venture with the commercial clout and experience on which the appellants are able to draw is prepared to take the risk of having a go. This is not one of those sites in which a public authority is ready and able to get things moving through compulsory purchase backed by a development agreement. That it is

clearly not the way in which the City Council as landowner, or as local planning authority, thinks about this site. So the business of the urban renaissance here has been left in the hands of private sector concerns to start and to progress. Once that is grasped one finds oneself not in the land of fantasy where the City Council's case in this appeal seems to have been conceived, but in the real world where real developers have to make real decisions about real development and real risk. In good economic times as well as in bad, that is what the real world is like.

8. Trite as those remarks might be, they do have to be made. The reason why they have to be made is not that they underscore the merit of the proposals the appellants have produced – though of course they do. It is that they serve to sharpen a focus on the question the Secretary of State may think is at the heart of the issues in this appeal. That question is this. Can it really be said that any of the concerns the City Council has found itself putting forward through its evidence and submissions at this inquiry, or indeed any of the other matters ventilated by third parties, amounts to a cogent enough basis for turning these proposals away and, with them, the only opportunity there is likely to be, either now or for as far ahead as one can see, to secure the benefits this development will certainly bring?
9. To that question the answer plainly is “No”.
10. Even now, as is clear both from the evidence the inquiry has heard and from the submissions made in closing for the City Council and for the rule 6 parties, the benefits are not in serious dispute. Nor could they be. They are largely matters of fact. The appellants have put forward, for a site entirely composed of previously developed land, a scheme of mixed uses, designed by one of the nation's leading architects, in which a very large amount of new housing – two fifths of which will be available for those who cannot afford to buy their own homes – and also a large number of new jobs will be created, in a development that will bring a physical coherence and a vitality to the western end of Brighton Marina, establishing the momentum for the urban renaissance in this part of the city, marking the city's eastern edge in a confident way, reinforcing the role of the

marina as a district centre, and generating a sustainable community in a place where this has not so far been done. The genesis of all this lies in several years' active and collaborative effort in the preparation, in parallel with the preparation of the local plan for the city (the now "saved" Brighton & Hove Local Plan 2005)¹, of a clear site-specific policy matrix in supplementary planning guidance² and in the master plan for this sector of the city published by the City Council in March 2008 in the form of PAN04³. In this sense the proposed development is no less a plan-led project than it would have been if the marina or parts of it had been the subject of a specific allocation or proposal in the development plan, which it will eventually be when the City Council's local development framework is adopted.

11. Against this positive prescription for the regeneration of the marina, in the form of an application for full planning permission for the redevelopment of the 12 or so hectares of land and buildings embraced within its boundaries, the City Council's evidence and submissions at this inquiry have nothing to offer but negative assertion, much of it of a nit-picking kind, entirely devoid of any kind of constructive critique, let alone any tangible or viable alternative to what the appellant has proposed. One can fairly apply that observation to all the main elements of the City Council's case, as the following submissions will show.

12. The contrast between positive and negative has never been starker than it is now, at the very end of the inquiry, the closing submissions for the City Council having just been made. As a catalogue of largely synthetic and unreasonable complaint those submissions could hardly be bettered. As an attempt at this stage of the process to invest with significance or substance objections presented to the Secretary of State as a pretext for asking him to refuse planning permission they are superficial and weak, finding support neither in policy nor in principle, and lacking any provenance as material concerns raised squarely with the appellant by the City Council through its officers in the course of three years of discussion, consultation and revisions to the proposals. And as an exposition

¹ CD8/1

² SPG20 of January 2003 (CD8/9.1 and CD8/9.2) and SPG15 of January 2004 (CD8/8)

³ CD8/12

of the City Council's vision for Brighton Marina – if this is what they purport to be – they leave one completely in the dark.

13. That aside, no vision for the regeneration of the marina will ever be more than an idea unless it is taken up by somebody who has the experience and the wherewithal to get the job done.

14. The Secretary of State will note that none of the opponents of the appellant's proposals has said that the development, in the hands of the appellant, is undeliverable or that it will not be delivered if permission for it is granted. Ironically enough, the City Council's position on this aspect of the case, so far as one can discern it from the fragmentary and shallow treatment it has received in their evidence and their counsel's closing submissions, is in effect, that far from being undeliverable the development is more deliverable than it ought to be. This makes a striking contrast with the usual refrain in cases where major development proposals are put to the test. In a time of severe economic recession, when one might expect a developer's continuing commitment to a project such as this to be the topic of scrutiny, it is nothing less than bizarre. Anyway, what the Secretary of State can take from this is something that is obvious enough when one thinks about it for a moment or two. If there is a good enough incentive in profit for taking a very considerable risk, and for carrying that risk for a very considerable time, the risk is more likely to seem worth it. And if the risk is seen to be worth it the prospect of the scheme's benefits coming to fruit will be better. That this point is so patently true, and so patently important as well, is no excuse to ignore it. Yet it has not been mentioned at all in the submissions the other side's advocates have chosen to make.

15. In spite of the comprehensive analysis of the scheme by the City Council's officers in their report to committee⁴, which led them to their unequivocal recommendation that planning permission should be granted, the members decided to refuse permission on grounds relating to visual impact, the quality of living accommodation, the tenure composition of the affordable housing proposed, the amount of outdoor amenity and recreation space in the scheme

⁴ CD3/1.1

and the adequacy of educational facilities to meet the needs of the residents of the proposed development (as well as the assertion of unacceptable flood risk in the now abandoned sixth reason for refusal). Neither the officers who endorsed the scheme nor the members who did not have given evidence at this inquiry to defend the committee's decision.⁵ Instead, the task has fallen to a team of witnesses assembled at the end of July 2009 as the inquiry drew near⁶.

16. As appears from the report submitted to the City Council's Planning Committee for its meeting on 2 September 2009 (and as was confirmed by Mr Roake in cross-examination), at a consultation with counsel on 24 July 2009 a discussion took place about the reasons for refusal, and on the advice of counsel and in agreement with the witnesses it was decided to propose the "amplification and clarification" of the contents of the statutory decision notice⁷, as Mr Roake put it, to "correct" them.

17. To say that the report the Planning Committee eventually received for its meeting on 2 September 2009 is light in its analysis would be an understatement. Certainly it does not demonstrate any change of mind on the part of the officers. It would have been astonishing if it did. The members received a presentation from Mr Goodwin. However, the minutes do not reveal the discussion of any analysis proffered to the members by any of the other three witnesses who have given evidence to the inquiry on the City Council's behalf. There seems to have been none. Although in the minutes of the September 2009 committee meeting, when the members voted to endorse the new reasons, they were referred to as "clarified and amplified", the changes are not merely the result updating the references to policy in light of the adoption of the South East Plan and the abandonment of the sixth reason for refusal (relating to flood risk), as Mr Goodwin sought to assert in his oral evidence. On the contrary, new matters were included to add to the case disclosed in the City Council's decision notice

⁵ Very late in the course of the inquiry Councillor Mears submitted her own representations, but, for reasons that have not been shared with the inquiry, did not come to have her evidence and her understanding of the issues she mentions tested by cross-examination.

⁶ As emerged in the evidence of Messrs Roake, Allen and Goodwin, and as was explored in cross-examination

⁷ See CD3/3.2 at paragraph 3.3.

issued some nine months before. One example of this is the inclusion of the word “design” in first reason for refusal. In December 2008, the members did not reject the scheme on the basis of design as such. Nevertheless, it formed a part of the City Council’s case at the inquiry. Seeking to justify this change, Mr Roake stated in cross-examination that he suspected that the City Council had been remiss in omitting the word “design” from the first reason for refusal. He went so far as to say that the reasons for refusal were drafted in haste, and that he suspected they showed, in this respect, “a mistake”. Another example of the late expansion of the City Council’s case was the complaint about the quality (as well as the quantity) of the provision of outdoor recreation space and the public realm, and the drawing in of other matters raised in PAN04, which made it necessary for the appellants to provide the evidence that has been given by Mr Reid on this aspect of the case.

18. After a process that occupied more than three years this kind of thing is particularly unsatisfactory.

19. One short point more will complete this simple concluding outline of what the case has really been about. It is, in fact, a corollary of the last. Viewing the evidence before him as it now stands, at the end of an inquiry that has lasted 23 sitting days, the Secretary of State will be aware that, like many cases of its kind, the present appeal requires from him as decision-maker a fair-minded and realistic approach. Now, at a stage of the democratic planning process when the pressures of local politics can be put to one side, he must ask himself whether in the wider public interest there is any good reason for rejecting a scheme which responds so well to the local and national policies and guidance relevant in this case. It is, of course, as it has to be, a pragmatic response. For here, as everywhere else, delivering the urban renaissance is very much the art of the possible. But it is also an exemplary response to the issues that have to be faced. It is as sound and secure a scheme of regeneration for Brighton Marina as anyone could rightly expect to see.

The structure of these closing submissions

20. These closing submissions address, in the order in which they were listed, the main issues identified at the outset of the inquiry. Those issues were:

- (i) the appearance and visual impact of the development – including its design, height, siting and layout, its effect on the rest of the marina, and its effect on the surrounding area, including the Kemp Town Conservation Area and on the South Downs Area of Outstanding Natural Beauty (“the AONB”);
- (ii) matters relating to residential amenity – the size of the proposed dwellings, the quality of living conditions in them, and the impact on neighbouring occupiers;
- (iii) housing matters – whether the mix of housing types – especially the preponderance of small units – meets current needs, and the appropriateness of the affordable housing provision; and
- (iv) infrastructure matters – whether the demands that occupiers of the development would make on existing infrastructure will be adequately mitigated, with particular regard to education, outdoor amenity and recreation space, and policing.

Main issue (i): the appearance and visual impact of the proposed development

Design, height, siting and layout

Design

21. The design of the appeal proposals ascends to a level far above adequate. It is in all essential respects excellent. No convincing criticism of it has been shared with the inquiry. Neither the City Council nor the third parties who have taken an active part in the appeal have come up with any convincing alternative approach, let alone one that might be viable and deliverable, let alone one around which some consensus of approbation might crystallize. When one looks at the third parties’ evidence, there has no discernible effort in that direction, beyond the sort of remarks one heard from Ms McKay, who suggested that it would be better if

the buildings were “ground-hugging”⁸: not a concept that leaps off the page in any of the policy documents relevant to the regeneration of the marina, in which the recognizable themes are development at high density in a place where the City Council has deliberately planned for tall buildings. In the City Council’s evidence on design – and hence now in its closing speech – there is a complete deficit of positive thinking, no meaningful alternatives for the basic form and disposition of buildings and space, no specific indication of how the detailed design of the public realm might have been handled in a different way, not even a sketch. Three years of co-operative process culminated in a refusal of planning permission not only against the City Council’s planning officers’ pellucid and thorough advice that the proposals represent a policy-consistent and sustainable design but also in the absence of objection from any other department of the City Council as a unitary authority. After all that it is simply not good enough for the City Council to turn up at this inquiry without even calling a member to explain both why it is said, by the City Council as local planning authority, that the appellants ought to have tackled the design in some other way and how this could and should have been done, resorting instead to the convenient mantra that it is not up to the City Council to tell the appellants how it improve their scheme, or in what way they ought to have gone about designing this, that or the other part of it in another way. This is not merely a pathetically feeble case to pursue. It brings discredit to the planning process itself. How, in this situation, can a developer possibly have confidence in the process when its outcome is not just unpredictable but, worse still, a vacuum of intelligent thought?

22. It is necessary to begin by reminding oneself that in its statutory decision notice, the City Council did not refuse permission for this scheme on the grounds that its design was unacceptable. This assertion was included later, in the clarified and amplified reasons for refusal. Policies QD1, QD2, QD3, and QD4 of the local plan, all of which in one way or another concern the design of development, are said to be offended (in the clarified and amplified first reason for refusal).

23. Between them those four policies encapsulate the following principles:

⁸ IP/33

- (i) New buildings must demonstrate a high standard of design (policy QD1 of the local plan).
- (ii) Replication of existing styles and the use of pastiche designs will be discouraged (unless a development proposal is within an area featuring a distinctive historic style of architecture) (policy QD1 of the local plan).
- (iii) The overall standard of urban design ought to be raised and more innovative and distinctive design encouraged. New urban developments must be designed to much higher standards than hitherto, and priority should be given to high architectural standards and to the design of public spaces between buildings (policy QD1 and paragraph 3.3 of the local plan)
- (iv) The design policies (policies QD1, QD2, QD3 and QD4 of the local plan) do not seek to restrict creative design provided that new development can still be integrated successfully into its context. Modern designs using contemporary and sustainable materials will be welcomed, particularly in areas of characteristically drab and uninteresting design. Architects and developers will have much more creative freedom to originate new design solutions (policy QD1 and paragraph 3.4 of the local plan)
- (v) It is possible to integrate modern developments with their surroundings whilst respecting the character of areas that are attractive and worthy of preservation (policy QD1 and paragraph 3.4 of the local plan).
- (vi) All new development should be designed to emphasize and enhance the positive qualities of the local neighbourhood (policy QD2 of the local plan).
- (vii) New development will be required to make efficient and effective use of a site. To achieve this proposals will be expected to incorporate an intensity of development appropriate to the prevailing townscape; the needs of the community; the nature of the development; and the proposed uses. Higher development densities will be particularly appropriate where the site has good public transport accessibility, pedestrian and cycle networks and is close to a range of services and facilities (policy QD3 of the local plan). The desire of “many people” for “high densities in order to protect the countryside” is noted (paragraph 3.15 of the local plan), as is the objective of “efficient and effective use of brownfield sites” (paragraph 3.14).
- (viii) When applying policy QD3 of the local plan the local planning authority will seek to secure the retention of existing and the provision of new open

space, trees, grassed areas, nature conservation features and recreational facilities within the urban area (policy QD3).

(ix) To preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings, all new development should display a high quality of design (policy QD4 of the local plan).

24. All of those principles are respected by the appeal proposals.

25. The scheme indubitably displays a high quality of design. Indeed, it is a paradigm of innovative and distinctive design. The proposals manifest the approach of emphasizing and enhancing the positive qualities of the local neighbourhood (for example, by responding to the topography of the appeal site and its surroundings, in particular the disparity in ground levels marked by the cliffs running along the northern side of the site, and to the features of the marina that are worthy of retention, such as the boardwalk). The development will transform the appearance of what is today visually a desolate scene. It will provide well considered new buildings and spaces in a coherent layout and disposition of uses. It will bring to the western part of the marina an appropriate density of development. And it will do much more than simply to make efficient and effective use of a site chronically unsustainable in its arrangement of uses – highly sustainable though its location may be – a site that has waited far too long for its metamorphosis into a confident new district of the city. It is urban design, not merely urban architecture, of very high calibre indeed. The proposals are in accordance with the relevant parts of policies QD1, QD2, QD3 and QD4 of the local plan.

26. In the “clarified and amplified” first reason for refusal 1 the City Council also calls in aid policies CC1, CC6, CC8 H4 and BE1 of the South East Plan⁹.

27. Policy CC1 is a general aspirational policy, which identifies objectives relating to “Sustainable Development”. It does not contain any development control test. However, its “priorities” are matched and supported by the appeal proposals. The analysis here ought to be this:

⁹ CD7/1

- (i) If previously developed (or “brownfield”) land is a “resource”, the proposed development will achieve a sustainable level of its use (priority (i)).
- (ii) The development will conserve the “physical and natural environment” (priority (ii)).
- (iii) In making full and effective use of a site which is, and is acknowledged to be, in a highly sustainable location for transport, the development will play what part it can in “reducing greenhouse gas emissions associated with the region” (priority (iii)).
- (iv) The same proposition is relevant to the aim of “ensuring that the South East is prepared for the inevitable impacts of climate change” (priority (iv)).
- (v) By creating, in a highly sustainable location, a very large number of new homes, a substantial proportion of which will be in the form of affordable housing, the development will help to achieve “safe, secure and socially inclusive communities across the region, and ensuring that the most deprived people also have an equal opportunity to benefit from and contribute to a better quality of life” (priority (v)).

28. Policy CC6 is also a policy of general aspiration and promotion. It concerns “Sustainable Communities and [the] Character of the Environment”. It does not contain any development control test. Paragraph 5.18 acknowledges the “high degree of development pressure” in the South East as well as the region’s “high quality environment with a rich heritage of historic buildings, landscapes and habitats”. The proposed development will serve to accommodate some of the “development pressure” without compromise to this “rich heritage”. This is an unusually challenging balance to strike in the city of Brighton and Hove, which is a large urban settlement with the sea to its south and highly protected landscape to its north and west and east, and which contains extensive areas of protected heritage assets, there being no fewer than 33 conservation areas within its boundaries¹⁰. It must be acknowledged too that “development pressure” is, in principle, best absorbed on previously developed land, and that previously developed land can only be regenerated where it lies.

¹⁰ See paragraph 8.21 on p. 230 of the local plan (CD8/1).

29. The proposed development will help achieve the aim in policy CC6 to create sustainable and distinctive communities. It will do so in a way which both respects and enhances “the character and distinctiveness” of the city of Brighton and Hove (Part (i) of the “local shared vision” referred to in the policy), and by its use of design “to create a high quality built environment which promotes a sense of place” (Part (ii) of the “local shared vision”).
30. Policy CC8 is concerned with “Green Infrastructure”. It is another aspirational policy. It begins by stating: “Local authorities and partners will work together to plan, provide and manage connected and substantial networks of accessible multi-functional green space.” No development control test is created by this policy. And the City Council has presented no evidence to the inquiry to demonstrate how the proposed development might impede the achievement of what the policy seeks to achieve. No such harm will occur. Policy CC8 is not offended by the appellants’ proposals.
31. Policy BE1 of the local plan is concerned with “Management for an Urban Renaissance”. This too is a policy expressed in the form of an aim and an intent; it says what local authorities and their partners will do. Again, no development control test is created.
32. Four parts of this policy – parts (iv), (v), (vi) and (vii) – seem relevant in the present appeal.
33. Part (iv) of the policy is concerned with the implementation of “public realm and open space strategies”. There is no such strategy formally in place. Draft SPG9 might once have qualified as one. But, as Mr Reid explained¹¹, after the emergence of the PPG 17 study for the city¹² that document is now a policy anachronism and will never be adopted.

¹¹ In his evidence-in-chief on 8 December 2009

¹² CD 9/14

34. Part (v) of the policy refers to the promotion of and support for “design solutions relevant to context and which build upon local character and distinctiveness and sense of place...”. The appeal proposals are consistent with this objective.
35. Part (vi) of the policy speaks of supporting and identifying “opportunities for appropriate higher density and mixed-use development schemes”. The City Council has done just this in planning for the regeneration of Brighton Marina in SPG20, SPG15, and PAN04. The proposed development will convert this opportunity into reality.
36. Part (vii) of the policy refers to the drawing up of “design-led supplementary planning documents to help implement development briefs, design codes and master plans for key sites in consultation with key stakeholders”. This has been done – and fully done – for Brighton Marina, in the form of SPG 20, SPG 15 and PAN 04.
37. Paragraph 12.2 of the local plan states that the “concept of urban renaissance is a building block for the South East Plan” and that this is “about making our towns and cities places where people will choose to live, work and spend their leisure time”. The proposed development will help the City Council to achieve this objective in Brighton and Hove. Perhaps more than any other single project likely to come under consideration in the course of the next ten to fifteen years it will promote the urban renaissance in the city of Brighton and Hove.

The architecture of the proposed development

38. Allies and Morrison rank among the most accomplished and most highly regarded architects and urban designers of the day. The architecture of the proposed development exemplifies their skill and their ingenuity very well indeed. Brighton Marina as it is today is not an easy site to reform. Most architects would not begin to get to grips with its challenges. But Mr Allies has. His is a design of exceptionally high quality, which will reorganize the western part of the marina, purging it of the disjointed and the drab, and enabling it to make its own distinctive contribution to the developed stretch of coast that completes the urban

scene in this part of Brighton. Even Mr Roake, the City Council's witness on design, could not refrain from describing¹³ the architecture of the appeal scheme as "elegant and convincing", adding, with candour, "I rather like it". He also gave the scheme the highest score of 1.0 in his Building for Life analysis¹⁴. Mr Froneman, the conservation witness for the City Council, confirmed that he agreed with Mr Roake's opinion, as did Mr Allen, the City Council's landscape witness, who stated¹⁵ that he understood why Mr Coleman (the appellants' townscape consultant) sees the scheme as one of great architectural merit. The officers reporting to committee in December 2008 said the development would exhibit "landmark architecture"¹⁶. They were right.

39. Mr Powell, of the Marine Gate Action Group, has criticized the architecture of Marina Point. Mr Coleman, who has immense professional experience – which he has gathered over some 25 years – of making design and townscape judgments, considers that "The Marina Point tower in particular is a likely contender for becoming a listed building in the future"¹⁷. Much calumny has been piled on Mr Coleman's head at this inquiry by those who say they do not share his judgements or understand or accept the means by which he came to them or the way in which he presented them in the TVIA. The criticism was entirely misplaced, and unfair. Much of the language in which it was presented was extravagant, some of it bordering on the hysterical. But when one stands back from all this one can see that none of the intemperate things that have been said about Mr Coleman and his work go beyond the shallow level of asserting that the development is too big or that too much of it can be seen when one looks towards it from one location or another. No comprehensive assessment of the impacts of the architecture of the development or of its effects on the local or wider landscape and townscape has been provided by any party to the inquiry to set alongside Mr Coleman's for comparison. Reactive commentary is not the same thing as independent and thorough assessment. Of the latter there has been none apart from Mr Coleman's own.

¹³ In his cross-examination

¹⁴ See Appendix 4 to Mr Roake's proof of evidence: criterion 7.

¹⁵ In his evidence-in-chief

¹⁶ CD3/1.1: p. 165

¹⁷ See paragraph 12.3.2 of Mr Coleman's proof of evidence.

40. Mr Coleman’s evidence gained in strength through cross-examination, enabling him to expand and emphasize the analysis contained in the TVIA. For example, he was able to elaborate his judgment a little in the course of his cross-examination by Mr Powell for the Marine Gate Action Group (“the MGAG”), observing that he believed the design of Marina Point displays very high architectural qualities, the definition and layering in its facades emphasizing the three dimensions of its surfaces. He continued:

“It is a very skilful composition, comprising ... a counterpoint between rectilinear forms and curvature.”

41. CABE also reacted warmly to the architecture of the scheme as a whole and Marina Point in particular, stating in their letter of 29 February 2008 to Maria Seale of Brighton and Hove City Planning that “it has the potential to be an elegant building”. Their concern about the breaking of the horizontal continuing of the balcony line (in their letter of 3 October 2008 to Sue Dubberley) was convincingly answered by Mr Coleman (In his cross-examination by Mr Powell). He pointed out that the regularity of the balconies will lend elegance to the physique of the building¹⁸.

42. No attack that goes beyond the subjective and, in some instances, the downright idiosyncratic has been offered by any party – certainly no challenge with any serious analytical thought behind it – to the architectural quality of any of the other buildings in the scheme: the Cliff, Quayside, Sea Wall and Inner Harbour buildings. All of these buildings will be well scaled and well expressed additions to the urban scene. Each will sit in comfortable juxtaposition to its neighbours: spaced well, aligned well, varied in form and height. What results will be much more than but a group of fine new elements of fabric for the city. This is as far removed from such a concept as one could wish. It will be a composition of confident buildings, fit for their context, neither hidden nor overly dominant when viewed from close range or further away. It is just what this site cries out to have. To stigmatize it, as the City Council tries to do, as some kind of compromise is daft.

¹⁸ The CABE correspondence is to be found Appendix D from p. 55 of the appendices to Mr Coleman’s proof.

The design process

43. The design of the development was meticulously and conscientiously carried out over a period of no less than two and a half years¹⁹ (between March 2006 and September 2008). Opinions on the various iterations of design were obtained and taken into account. These have come from a multitude of consultees, including members of the public, groups, societies and other bodies. A good deal of useful comment came in the course of the appellant's design team's discussions with officers of BHCC²⁰. The fact that the appeal proposals were the subject of an extended and intense process of consultation and design development not only demonstrates good practice. It made it inevitable that that the scheme was prepared with a full understanding both of the relevant policy context and of the constructive and not so constructive comments expressed in the course of consultation²¹. The deep level of thinking that has been applied to the making of the design in this case is itself an indication of its quality²².

CABE's position

44. CABE recognized the thoroughness of the design process as early as 27 November 2006 (following the first presentation to their design review panel on 1 November 2006). They said:

“We applaud the aspirations of this scheme, and the quality of thinking that has gone into it so far. We are optimistic that it can be the basis for developing a high quality environment”.

And they added:

“We are aware that many of the issues we have raised are already under active consideration by the architects, and we look forward to seeing the scheme again when it has evolved further.”

45. CABE have always been positive and encouraging in their attitude towards and their treatment of the scheme. To suggest that CABE see their role as being

¹⁹ Paragraph 7.6.4 of Mr Allies' proof of evidence

²⁰ See paragraph 7.6.4 of Mr Allies' proof; paragraph 3.3 of Mr Reid's proof: and Volume III of the DAS, Appendix 6, section 5.

²¹ See paragraph 3.3 of Mr Reid's proof.

²² See paragraph 12.3.2 of Mr Coleman's proof.

merely to confer saccharine platitudes and praise upon the designs that come before them is fanciful. Such a notion is an insult to CAGE. If CAGE did not go about their job as advisers to the Government conscientiously and rigorously the Government would have stopped paying attention to what they to say a long time ago. As has been remarked by Mr Reid and by Mr Coleman, both of whom have substantial experience of working on proposals with which CAGE have become involved, the idea that CAGE are a pushover is nonsense. One can see this in the present case, in the care CAGE have taken to add their own thinking to the improvement and refinement of a design that enthused them from the outset. CAGE are, of course, well aware that the views they express carry significant weight in development control decisions and they are conscious too of the very great responsibilities they bear in that context²³. They are not frightened to say a scheme's design should be abandoned if it is not up to the exacting standards they set, and are expected by the Government to keep to. And they will not "pussyfoot around"²⁴. As Mr Reid said (In his evidence-in-chief), if CAGE do not like a scheme they get the chance to look at, or if they regard it as misconceived, they do not stint to say so.

46. The lack of an objection by CAGE therefore carries significant weight. And what has happened in this case is as far from that kind of reaction as one could imagine. As both Mr Allies and Mr Roake have confirmed, the feeling one gets on reading the letters CAGE have submitted is that they are, from start to finish, essentially a positive piece of feedback on the appellants' application and that CAGE were happy with the principle of the development and with the principle of its being approved subject to conditions by which the final detailed stage the design process would be guided and controlled.

47. The pre-application presentation on 1 November 2006 was CAGE's opportunity, if they thought then that there were fundamental flaws with the scheme's design, to make them known to the appellants' design team, to save wasted time and expense. No such concerns were expressed. On the contrary, CAGE stated:

²³ As was accepted by Mr Roake in cross-examination

²⁴ As Mr Coleman put it during his cross-examination by Mr Powell

“This scheme strikes us as a skilful and thoughtful piece of design, particularly given the difficult site context. We welcome the mix of uses proposed and the intention to include a substantial amount of residential accommodation to support the marina’s role as a district centre. We think the proposals represent a significant step forward in terms of stitching back together what is currently a fractured public realm.”

There were then added a series of constructive comments “in the hope that they can inform further development of the design”.

48. True it is that CABE’s letter of 27 November 2006 relates to the design of the scheme as it was at that time. However, CABE have never resiled from the clear view they stated, at the beginning of the whole exercise. They acknowledged then the skilfulness and thoughtfulness of the design as the scheme has developed and progressed, which, of course, it has largely in response to CABE’s comments, for example in the replacement of the lagoon between the Cliff building and the cliff with a planted garden²⁵. Several stages of review ensued. Ample opportunity was given to CABE to express any radically revised view should they have wished to do so, right up to their most recent letter to Mr Allies of 25 October 2009²⁶. They never did. In any event, as Mr Roake acknowledged, in all its fundamentals, the scheme design has not changed since CABE’s initial comments in November 2006.

The appellants’ master plan

49. The future vision of the marina as a whole has played a central part in the design process. CABE saw, and remarked from the outset, that the scheme was the basis for developing a high quality environment across more of the marina site²⁷. To that end, they suggested that the production of a master plan would be a very positive step.

50. In consultation with BHCC officers, Allies and Morrison have prepared a master plan framework, to address the whole of the western end of the marina, and to

²⁵ See CABE’s letter of 27 November 2006.

²⁶ See Appendix 2 to Mr Allies’ rebuttal proof of evidence.

²⁷ See CABE’s letter of 27 November 2006.

steer its further regeneration, including its evolution when the existing leisure sheds reach the end of their useful lives²⁸. This work has, of course, been done in the light of the principles and guidance contained in SPG 20, SPG 15 and PAN04.

51. That is the holistic frame in which one has to view the appeal scheme and judge the strength of its design.
52. Although this was not explicitly part of the City Council's case, that is to say in anything approaching a clear-cut objection either in its statutory decision or in its "clarified and amplified" reasons for refusal, Mr Roake thought it right to criticize the scheme for not embracing additional land in order to be comprehensive.²⁹
53. That is a bad point. It has never been, nor could it sensibly be, the objective of the City Council to insist on the entire regeneration of the western part of the marina being undertaken all at once. When one thinks about this for a moment one can see that it would be a prescription for inactivity and delay.
54. What a strange thing it would be if the City Council, having eschewed the initiative of compulsory purchase, were now to say that all the hard work that was done in the preparation of SPG20 and PAN04 had resulted not in a stimulus to the private sector to get moving with the regeneration of the marina but a charter for doing nothing at all until the moment when it was possible to do everything in a single magnificent sweep. Had this been the City Council's thinking one might have expected to see it written down somewhere in PAN04. It is not. Nothing like it is to be found in the relevant policy documents. Comprehensive regeneration will only be achieved in the marina if it is understood and accepted that one has to start somewhere with enough mass of development to give the whole endeavour the momentum it must have. The present proposals have that gravity to them. That they are not more ambitious than the appellants can manage for the time being does not begin to condemn them as compromised or as piecemeal development. What a grotesque miscalculation that is as an evaluation of this

²⁸ See paragraphs 5.6.1 to 5.6.7 of Mr Allies' proof of evidence.

²⁹ In evidence-in-chief

scheme. Forensically opportune it might have seemed. And, for some reason, the City Council's counsel appear still to find it so. Their closing submissions betray something near an obsession with it. But actually it is nonsense. The truth is different. The present proposals are, rather, a realistic response to a mature judgment about what can be done at this stage. This is the only available approach to regeneration of the marina. The City Council does not apparently wish to involve itself in some form of partnership to promote the regeneration of the marina all in one go. Nothing that has been said in its evidence and submissions at this inquiry suggests it has any desire for that kind of proactive step. Much of the land at the western end of the marina is not derelict or commercially inactive. The initiative has been left with private sector investors to get things done. The City Council's policies for regeneration here are all about reality, not fantasy. They aspire to progress, not inaction. If at this stage City Council will do no more than adopt the basically reactive role it has chosen – the role it has in the sphere of development control decision-making on proposals for the regeneration of the marina – rather than leading that process by actions of its own, it cannot be heard to complain that a scheme for a site of some 12 hectares is not a good enough start, or that the scheme it receives for that site does not turn its back on its boundaries but, on the contrary, anticipates a spread of new development beyond those limits.

55. What the appellants have done, is to subscribe to a design that is not only deliverable and functional in its own right, without depending on other schemes yet to emerge, but will also encourage and facilitate the complete regeneration of the marina over a much longer period³⁰. Thus the scheme will lay in place the foundation for the future regeneration of the marina and for wider regeneration of the eastern end of the city as is planned for in PAN04. This has been achieved in several ways. For example:

- (i) The wide distribution of the six sites across the western part of the marina provides an opportunity to make an impact on the regeneration of the marina as a whole, particularly where the new buildings are able to work together to give shape and identity new public spaces³¹.

³⁰ See paragraph 5.7.2 of Mr Allies' proof.

³¹ See paragraph 5.2.3 of Mr Allies' proof.

- (ii) Although the buildings will stand independently of each other on their own self-contained sites and will have an architectural language appropriate to the different characters and roles of each context, the choice of materials and the manner in which the buildings engage with the public realm will afford a level of consistency that will start the process of binding the currently very disparate elements of the marina together³². Integration of one part of the appeal site with another and between the site and its surroundings will thus be achieved.
- (iii) Existing successful commercial operations – the Asda supermarket, the McDonalds fast food outlet and the petrol filling station – will be given new accommodation, in accordance with SPG 20³³, thus preserving customer loyalty and promoting the future economic vibrancy of the marina³⁴.
- (iv) The buildings and spaces proposed in the present scheme have been designed so as not to prejudice the future coming forward of other elements of the master plan and will be able to accommodate change³⁵.
- (v) The design process has responded to the major development proposals for adjacent sites: the major scheme contemplated by the City Council for its own land at Black Rock and the Brunswick development (which was approved in June 2006 and has been lawfully implemented)³⁶. In its form and layout the proposed development has been designed to harmonize with the Brunswick development, and plainly will do so. However, it would also be able to stand alone in the event that that scheme did not come forward³⁷.

Turning constraints into opportunities

56. As Mr Allies has said³⁸, the marina is not a “tabula rasa”. Necessarily, as in all major projects, the architect has had to work with certain site constraints. There is nothing odd about this. And in the present case the constraints have been

³² See paragraph 7.13.5 of Mr Allies’ proof.

³³ Volume 2, p. 43

³⁴ See paragraph 5.3.2 of Mr Allies’ proof.

³⁵ See paragraphs 5.6.6 and 5.6.7 of Mr Allies’ proof.

³⁶ See paragraphs 5.5.1 to 5.5.4 of Mr Allies’ proof.

³⁷ See paragraph 5.5.2 of Mr Allies’ proof and paragraph 7.11 of Mr Coleman’s.

³⁸ In cross-examination by counsel for the City Council

neither abnormal nor insuperable. Mr Allies highlighted³⁹ as an illustration of the normality of this situation that the developers of the Kings Cross site published a document as part of the consultation process highlighting all the constraints. As Mr Allies said⁴⁰, if developers do not work with constraints and use them as opportunities, nothing happens. This is precisely the opposite of what the City Council and their policies require of the marina.

57. The particular constraints operating at the marina are recognized in section 8 of PAN 04 as being:

- (i) environmental constraints (flood risk and geology);
- (ii) conservation constraints;
- (iii) transport constraints (the access ramps, the RTS, emergency vehicle access, the roundabout);
- (iv) physical and ecological constraints (including a lack of open space);
- (v) levels; and
- (vi) landownership and leases.

Given these constraints the authors of PAN04 would have been most unwise to try to describe or define a minimum area as a suitable quantity of land for development or to dictate any particular layout of buildings and space. They did not do that. Reasonable flexibility was left in the master plan.

58. The architects have addressed all of these constraints and have succeeded in turning such constraints into opportunities for the regeneration of the marina, both now and in the future⁴¹. No doubt about these constraints has been present in the designers' mind. The ones needing to be dealt with are plain. They always have been. The suggestion made by the City Council during this inquiry that local constraints have stifled a high quality design is demonstrably ill-founded.

59. From the beginning of the whole process the appellants gave Allies and Morrison a good deal of latitude in working up a high quality design. Mr Allies' cross-examination allowed him to explain how this began with the brief he and the

³⁹ In re-examination

⁴⁰ In re-examination

⁴¹ As Mr Allies said in re-examination

design team were given⁴². The brief was sensible and feasible. One can test that proposition by asking oneself whether the objectives set out in section 7 of the brief have been achieved. They have. As Mr Allies made clear⁴³, there was no financial straightjacket. The brief made clear⁴⁴ that the number of dwellings to be provided could go up as well as down and, as Mr Allies confirmed⁴⁵, there has always been elasticity in the number of units to be provided and the scope to make changes as the scheme progressed.

Density

60. Policy HO4 of the Local Plan (under the heading “Dwelling densities”) cited in the “clarified and amplified” first reason for refusal (as corrected at the pre-inquiry meeting) provides:

“To make full and effective use of the land available (in accordance with Policy QD3), residential development will be permitted at higher densities than those typically found in the locality where it can be adequately demonstrated that the proposal:

- a. exhibits high standards of design and architecture;
- b. includes a mix of dwelling types and sizes which reflect local needs;
- c. is well served by public transport, walking and cycling routes, local services and community facilities; and
- d. respects the capacity of the local area to accommodate additional dwellings.

Those four criteria are all satisfied by the appeal proposals. Implementation of policy HO4, it states, “will be informed by the results of the ‘Urban Capacity Study’ and assessments of public transport accessibility.”

61. It should be noted that paragraph 4.37 of the local plan, explaining policy HO4 makes clear that this policy is a “positive planning response to make the best use of the limited amount of land that is available for housing in Brighton and Hove.” The corollary of this is that to advocate an apparently arbitrary restraint on further residential development on this site – the limit of 650 new dwellings promoted by

⁴² CD 13/16

⁴³ In re-examination

⁴⁴ In paragraph 7.1.5

⁴⁵ In re-examination

the City Council through its draft Core Strategy, which, on 10 December 2009 was increased to 1,000 dwellings, within a total increase of 2,000 dwellings for the gas works and marina sites – without any transparent, let alone cogent, justification for this level of development showing it to be commensurate with the full and effective use of the land, is the worst kind of compromise one could have.

62. PAN04, which is not cited in the reasons for refusal in this context, should also be considered here. Section 12 of it deals with “Capacity, Density and Open Space”. It states⁴⁶:

“The [Brighton and Hove] Local Plan makes it clear that future development will be located within the existing urban area, and no urban extensions are planned. This policy approach will encourage maximum and best use of currently developed land (brownfield sites) with associated density levels increasing within urban areas such as the Marina. The focus on growth at higher densities within the urban area could have both positive and negative effects on infrastructure of the city. (Footnote: It is to be noted that no negative effects on densities within the urban area are alleged by the City Council in the present case.) Higher densities and mixed uses have the potential to reduce the demand for travel as well as more economical provision of services, with jobs, housing and retail uses close together. However, higher density development ... must be planned for. More people living and working in the same space could result in increased stress on the existing services and infrastructure.”

Paragraph 12.2 continues:

“Fundamental to the Masterplan vision is the provision of mixed use development at a density that helps achieve a vibrant and sustainable place [f/n 14: see p. 54 of SPGBH20 and Draft Area Based Assessment for Brighton Marina] in order to reach a scale of development such that key public transport, pedestrian, community and service improvements can be made to the Marina. SPGBH15 also identifies the Marina as a location which may be suitable for tall buildings. However, SPGBH15 defines tall buildings as buildings of 6 storeys or more and therefore it should not be presumed that all development proposals will be of higher density. Density levels put forward by developers for the Masterplan area should therefore, be a product of a robust and tested design process.”

63. There is no defined or indicated density range for residential development in Brighton and Hove generally, or specifically for the marina. This contrasts with

⁴⁶ At paragraph 12.1, under the heading “Capacity”

the position in other places, such as London and its individual boroughs. Thus, in Brighton and Hove, the approach to density has to be applied on a case-by-case basis. If the design is appropriate for a major development in an accessible location, the density will generally be an appropriate one. In other words, density is not a measure of the acceptability of development; it is a product of the acceptability of development.

64. Assessments of residential density are often problematic as different assumptions can be made about the area of the land that should legitimately be included⁴⁷.

65. The appellants have therefore provided the Secretary of State with a range of density calculations based on different assumptions. In the application for planning permission⁴⁸, density calculations were prepared, based on the area within the red line boundary, but excluding the land occupied by existing buildings. This gave a density of 163 dwellings per hectare. If, however, density calculations for the appeal scheme were carried out including the whole of the area within the planning red line boundary an average density of 106.6 dwellings per hectare emerges. If the calculation included in the site area the whole of the western end of the marina, this figure would fall to 100.9 dwellings per hectare. None of those densities is said by the City Council to be too high.

66. Finally, if an overall density were to be calculated for the marina as a whole, the level would drop to 95.9 dwellings per hectare. This is an important figure, for, in the perception of the intensity of development, the relative proportions of built form and open space are surely significant, and in this exercise for the marina one must include areas of water as well as of land. The generous pools of water at the heart of the Barbican – a development that informed the thinking of Allies and Morrison in designing the present proposals – are an example of this⁴⁹.

⁴⁷ See paragraph 7.3.1 of Mr Allies' proof.

⁴⁸ Planning Statement paragraphs 5.24 and 6.36

⁴⁹ See sub-section 7.3 of Mr Allies' proof.

67. The principle of introducing an increased scale and density of development at the western end of Brighton Marina:

- (i) is entirely appropriate to the regeneration objectives of the project⁵⁰;
- (ii) is a logical continuation of the potential transformation promised by the Brunswick development⁵¹;
- (iii) is necessary to generate sufficient value from the project to subsidize the scale of investment in both infrastructure and replacement facilities that are proposed⁵²;
- (iv) is supported by development plan policy⁵³; and
- (v) is given express encouragement by SPG 20, which identifies the marina as being appropriate for higher densities⁵⁴ and states:

“There has to be a form and level of development [at the marina] which ... will be able to fund the associated visual and functional improvements necessary to deliver the genuinely high quality scheme merited by the site and its location”.

Without a development of the scale and extent of that proposed by the appellants – one sufficiently large to justify the replacement of the existing poor quality buildings and landscape – the degree of transformation, of regeneration, currently required at the marina would be unachievable⁵⁵. But this is not all. Any development on this site must be able to generate sufficient financial return to allow for the complete replacement of the Asda supermarket, the McDonalds and the petrol filling station in accordance with SPG 20⁵⁶ and, in the case of the Asda store, will enable it to remain operational throughout the construction of the development⁵⁷.

⁵⁰ See paragraph 7.2.4 of Mr Allies' proof.

⁵¹ See paragraph 7.2.4 of Mr Allies' proof.

⁵² See paragraph 7.2.2 of Mr Allies' proof.

⁵³ See policies SP1, SP2, SP3, H2 and H5 of the South-East Plan, and local plan policies QD3 and HO4; and paragraph 5.36 of Mr Gavin's proof.

⁵⁴ See Volume 2 of SPG 20, pp. 53 and 54.

⁵⁵ See paragraph 7.13.2 of Mr Allies' proof.

⁵⁶ See Volume 2 of SPG 20, p. 43.

⁵⁷ See paragraphs 5.3.1 to 5.3.3 of Mr Allies' proof.

The design of individual parts of the proposed development

68. The design of each of the six development sites is described in detail in Volume I of the DAS⁵⁸ and is assessed in the TVIA⁵⁹ and by Mr Coleman in his proof of evidence⁶⁰. These submissions need focus only on the small number of individual components, whose design has proved contentious during the inquiry: the retention of the access ramps, the Cliff Building arrival space, Harbour Square (the latter two under the heading “Layout”). Leaving aside the force of such points as have been raised on these aspects of the scheme, the relatively small number concerns raised by the City Council must be weighed against the absence of any cogent complaint about the fundamental design of the scheme and most of its detail, very fully described as it is in the DAS. And when one examines the City Council’s design case one can see that it is not soundly based. It is not supported by a fair assessment of the design process lying behind the scheme as presented now to the Secretary of State, nor by a sound appreciation of the role of conditions as a means of securing the quality apparent in the drawings and descriptions included in the application material and as a means of honing the design to address the residual concerns of CABE.

The access ramps

69. Mr Roake suggested that the appellants’ decision not to propose the removal of the access ramps is a fundamental flaw in the scheme⁶¹. He was wrong. This is not a concern shared by CABE, who have expressly acknowledged that “in the short term at least, there is little prospect of [the ramps’] removal”⁶².

70. There is, as Mr Frisby noted⁶³ a difference in levels of about 25 metres between Madeira Drive and the marina. This is not going to change. As Mr Frisby said⁶⁴

⁵⁸ See sub-sections 6.4 to 6.8 of Volume I of the DAS and paragraphs 7.7 to 7.11 of Mr Allies’ proof.

⁵⁹ CD2/103: in section 5.0, p. 12

⁶⁰ In paragraphs 7.3 and 7.8 of his proof

⁶¹ In paragraph 2.32 of the proof of evidence

⁶² See the second paragraph on p. 2 of CABE’s letter of 27 November 2006.

⁶³ In his evidence-in-chief

⁶⁴ In his evidence-in-chief

there is no prospect of the difference in levels being reduced or of the adjacent road infrastructure being reconfigured. So, for vehicles to get down into the marina, some form of sloping roadway will inevitably remain. One may as well call that a ramp.

71. The existing ramps are the means by which the marina and the public highways to the north of it were originally connected. The basic rules of physics are engaged here. Cutting the length of the ramps or tightening their curve would inevitably sharpen the angle of their descent.

72. For the City Council Mr Goodwin stated⁶⁵ that the removal of the ramps would depend on a developer funding it. No public money is in prospect for this. It could only happen if a developer chose or was forced to pay for it. He could not be forced to pay for it. Contrary to the impression the City Council has tried to convey, current policy and guidance carries no onus for a developer to demonstrate that it is not feasible to get rid of the ramps. He is not under any obligation to do that. Even if he were, the cost of doing it would be likely to reduce the amount of money he would be able or at least willing to devote to more obviously pressing planning needs, such as the need for affordable housing. No evidence has been presented as to what size and type of scheme would be able to bear the burden of replacing the ramps. Mr Goodwin did not appear confident that any future scheme would be able to do this. He intimated that, for the appellants to manage it, they would have to go back and appraisal of the present scheme afresh. For this notion there is absolutely no support in any relevant policy or guidance.

73. What SPG20 says is that it is desirable “to remove the existing access ramps and to reduce the dominance of the entrance to the roundabout as a barrier to pedestrian movement”⁶⁶. It shows an alternative arrangement⁶⁷. The framework diagram obviously is, and is referred to as being, “indicative only”. Mr Frisby, who

⁶⁵ In answer to a question put to him by the Inspector

⁶⁶ SPG20, Volume 2, p. 38

⁶⁷ In the framework diagram on p. 67

is the only highway engineer who has given evidence to the inquiry, pointed out⁶⁸ that the suggested access in that diagram “is not a feasible highways proposal”. This is because the roundabout is so close to the cliff face that the resulting gradient of the ramp leading down from the A259 would be one in six or one in five. An appropriate gradient for such a ramp, Mr Frisby said, is one in ten or one in 12. Mr Frisby was not challenged on this point. He also said that, if the removal of the existing access ramps were to be contemplated, a radical solution such as is illustrated in the SPG20 diagram is not going to be feasible in engineering terms. On this point too he was not challenged. Any replacement ramps, he said, are more likely to be similar to those which are already there. Again, he was not challenged. And it is not in dispute with the City Council either as local planning authority or as highway authority, that the ramps do not unduly constrain the capacity of the marina to receive the scale of redevelopment promoted by the appellants.

74. It was efficient engineering that led to the construction of the ramps on the alignment and at the gradient they retain today. Opinion on their aesthetics may divide. Some can admire their sculptural vigour; others may call them brutal; others still may find their very starkness appealing. Nobody, however, has come up with a more efficient engineering solution than this.

75. As Mr Frisby explained⁶⁹, what the City Council has termed the “Roake/Goodwin suggestion” for shortening the ramps is not a workable solution. It is also a distinctly odd thing to suggest. Mr Frisby⁷⁰ told the inquiry that he had never seen this concept represented in either two or three-dimensional form. Before the inquiry began it had never been canvassed by the City Council. Anyway, just what would be the point of all the disruption and delay entailed in ripping out the existing ramps – and this would be more or less the whole lot – only to build in their place ones that are shorter and steeper? That really would be crazy.

⁶⁸ In his evidence-in-chief

⁶⁹ In cross-examination and in re-examination

⁷⁰ In re-examination

76. At a meeting with the City Council on 22 June 2007, before the preparation of PAN04 but after the production of the guidance in SGP20⁷¹, careful consideration was given to whether the ramps should stay or go. It should be noted that, as he stated⁷² and as he confirmed⁷³, Mr Frisby was present at that meeting, although his name has been omitted from the minutes.
77. The purpose of that workshop was to discuss a framework for the development of the marina in the future, which would then lead into forming PAN04. The following points (among others) were noted:
- (i) There are financial restraints which could severely hamper the removal of the ramps as well as physical complications. Mr Frisby confirmed⁷⁴ that he was not instructed to cost the demolition and re-provision of the ramps, but told the inquiry that he knew that the structural engineers had costed this at something in excess of £15million.
 - (ii) The SSSI status of the cliffs and their instability are factors militating against removing the ramps.
 - (iii) The ramps are structurally sound and in good condition. In this sense their removal would be premature.
 - (iv) The City Council would be adverse to the construction of new ramps at either the eastern or western end of the marina. Mr Frisby confirmed⁷⁵ that access at the eastern end of the marina would also involve negotiating approximately the same change in levels. And introducing an access at the eastern end, near the existing residential development and boatyard, would make little sense if what one was really about was providing access to the western end of the marina. Nor had Mr Frisby, in the whole of his three years of active involvement in the project, ever seen any illustration of such an arrangement. None has been presented to the inquiry.
 - (v) An alternative route to the marina could be provided by the safeguarded path of the RTS along Madeira Drive, but there would be serious constraints on its construction, in the form of Dukes Mound and in its proximity to the Kemp

⁷¹ See Appendix K to Mr Frisby's proof.

⁷² In his evidence-in-chief

⁷³ When, somewhat surprisingly, he was cross-examined about this

⁷⁴ In his evidence-in-chief

⁷⁵ In his evidence-in-chief

Town Conservation Area. Mr Frisby confirmed⁷⁶ that Dukes Mound has an unusual junction arrangement, which would need to be enlarged to accommodate all movements of traffic. In any case the levels of traffic that would then have to pass through the Conservation Area were themselves a reason for discounting this option.

(vi) The programme of events held throughout the year on Madeira Drive would also stand in the way of access into the marina being taken along this route. It was not clear how these could be overcome. The removal of the ramps and reliance on Madeira Drive as the channel for incoming and outgoing vehicles is therefore not a realistic option.

78. The discussion at the workshop led to this position:

“It is difficult to see what alternatives could replace the ramps given the significant change in levels. On balance, the ramps are probably in the right place.”

It concluded with recommendations for the master plan, all of which focused on assessing and mitigating the effects of the ramps being retained. There was no recommendation for their removal. Nor does it appear to have been the view of the City Council that less than thorough and realistic consideration had been given to this issue by this stage. Whilst the meeting took place in the stream of work being done in the preparation of PAN04, it clearly was not an exercise which could have ignored the fact that the Brunswick scheme had by then received planning permission and that the appellants' proposals were in the offing.

79. PAN04 reflects the outcome of that meeting. It requires developers of major schemes “to demonstrate that they have given the removal of the ramps due consideration”⁷⁷. After referring to SPG20 it continues⁷⁸:

“While the removal of the ramps remains an aspiration of the LPA for the longer term future of the Masterplan area, there is recognition that this may not happen in the short to medium term.”

⁷⁶ In his evidence-in-chief

⁷⁷ P. 10

⁷⁸ On p. 14, under the heading “Vehicle Access”):

It continues by acknowledging the difficulties identified at the workshop. Above all, however, it is to be noted that neither PAN04 nor SPG20 says that development at the marina is unacceptable unless the ramps are removed, or that planning permission should be withheld until the developer has shown his development would be unviable if he were forced to put in some alternative – though still unidentified – access arrangements, or that, in engineering terms there was positive proof that no other infrastructure than the existing would work. Yet this has been the thrust of the City Council’s closing submissions on this aspect of the case. It is untenable.

80. In considering what is the right thing to do with the ramps, the more mature and detailed guidance in PAN04 should plainly be given greater weight than that in SPG20. Although SPG20 has perhaps a higher status as supplementary planning guidance adopted by the City Council, this is a case when the later, more detailed and realistic recognition of the practical position in PAN04 should be accorded more weight⁷⁹. Indeed, sub-section 10.1 of PAN04 notices the statement in SPG20 that it is “desirable” to remove the existing ramps before going on, immediately after this, to recognize the practical obstacles standing in the way of this desire being achieved, and then urging that there are

“... many opportunities in the short to medium term for improvements to be made to the visual appearance of the ramps. Developers must demonstrate that they have addressed this issue by thinking creatively and exploring the physical (e.g. re-cladding, etc.), environmental (e.g. green walls, roofs etc.) or public art (e.g. lighting, murals etc.) solutions to reduce the visual ugliness and dominance of the ramps.”

This guidance has been well reflected in the appellants’ proposals⁸⁰.

81. With the benefit of the analysis presented in the DAS⁸¹ and the evidence the inquiry has been given on this topic, therefore, the Secretary of State can and should conclude appellants have demonstrated that they have given due

⁷⁹ Mr Reid’s comments on the respective weight to be given to SPG20 and PAN04 in his evidence-in-chief, though made in a different context, are germane in this one as well.

⁸⁰ See Public Art Statement (CD2/3.1) and Public Art Statement Addendum (CD2/3.2), section 7.4 of Volume I of the DAS

⁸¹ See paragraphs 5.1.1 and 11.1.3 of the DAS.

consideration to the removal of the ramps in accordance with the advice in sub-section 8.3 of PAN04.

82. The Transport Assessment (“the TA”) builds in the impact of the proposed development, and its cumulative impact with Brunswick development, on the capacity of the ramps, as recommended in the minutes the 22 June 2007 transport workshop⁸². It concludes⁸³ that there is a further 46% capacity available.

83. The TA also puts forward suitable measures to control the speed of vehicles on the ramps⁸⁴.

84. The appellants’ proposals respond to the need to improve access to the marina and enhance legibility of the site in general to reduce the burden of vehicular movement on the ramps by providing:

- (i) a significant financial contribution for the RTS;
- (ii) a new pedestrian footbridge from the cliff top to the Cliff site arrival space;
and
- (iii) improvements to pedestrian and cycle routes within the marina itself, including Harbour Square.

The ramps will not be a barrier to any of these improvements. As Mr Frisby confirmed⁸⁵, keeping the ramps in place will not act as a constraint to access into the marina. It is, in every way, the most sustainable option one has.

Building for Life

85. In an Appendix to his proof of evidence, the City Council’s design witness, Mr Roake, purported to carry out a CABE Building for Life (“BfL”) “assessment” of the appeal scheme. It has now become clear from CABE, however, that “this does not represent a Building for Life assessment”⁸⁶ because it has not been

⁸² See Mr Frisby’s Appendix K.

⁸³ In Table 9.3

⁸⁴ See paragraphs 4.5.4 – 4.5.10.

⁸⁵ In his evidence-in-chief

⁸⁶ See CABE’s letter of 19 October 2009, in appendix 2 to Mr Allies’ rebuttal proof.

undertaken by an accredited assessor with formal responsibility for assessing this proposed development. Mr Roake⁸⁷ decided to refer instead to it as a BfL “analysis”. This does not make it more than it is.

86. The fact remains that there has been no formal BfL assessment in this case. No officer of the City Council has been appointed to that role. Not surprisingly, therefore, the City Council’s decision as local planning authority was not taken on the basis of any such assessment, which the Members accepted⁸⁸. Mr Roake’s BfL scores have not been shared with CAGE who, therefore, have not provided any endorsement of its content; nor could they.

87. At the suggestion of CAGE⁸⁹, Mr Allies has prepared his own analysis, making use of the 20 BfL criteria, in his rebuttal to Mr Roake’s proof of evidence⁹⁰. As CAGE have confirmed⁹¹, “any statement [prepared by Bob Allies] that is structured in terms of the scheme’s performance against the 20 criteria would have equal status to the document produced by Adam Roake”.

88. The appellants cannot fairly be criticized for not having provided sooner than they did (through Mr Allies’ evidence) their own response to questions posed in the BfL criteria. PPS3 makes it clear⁹² that BfL is a tool for assessment and negotiation, to be used by local planning authorities – not developers. BHCC do not have a qualified BfL assessor and do not appear to have taken any steps to nominate a member of their staff to undertake BfL training⁹³. Never has the City Council asked the appellants to provide a BfL assessment. There was no mention at all of BfL in the September 2009 committee report when the reasons for refusal were “clarified and amplified”, nor in the City Council’s pre-inquiry statement. The first the appellants knew of the City Council’s new-found interest in BfL was when they received Mr Roake’s proof of evidence on 6 October 2009, despite the fact, which Mr Roake admitted in cross-examination, that he had

⁸⁷ In cross examination

⁸⁸ This fact was acknowledged by Adam Roake.

⁸⁹ In their letter of 19 October 2009

⁹⁰ Mr Allies’ analysis is contained in Appendix 1 of his rebuttal proof of evidence.

⁹¹ Ibid.

⁹² at paragraph 18

⁹³ As Mr Roake confirmed in cross-examination

been preparing his own BfL analysis since he was first instructed by BHCC in July 2009.

89. Mr Roake conceded⁹⁴ that in making his BfL judgments, he had considered the appeal scheme in isolation, as if the marina were a blank canvas. He had deliberately shut his mind to the present condition and functionality of the marina, and existing constraints. This is not a realistic approach. The BfL considerations are indeed framed as a series of objective questions and tests. However, the terms of certain questions do require consideration of how the proposals relate to what already exists, as was said by Mr Allies⁹⁵.

90. Mr Allies has given the proposals a BfL score of 18 out of 20. Of course, as with any assessment, there will be a margin of error, particularly so when a scheme is yet to be built⁹⁶. However, Allies and Morrison designs for other schemes have obtained high BfL scores: for example, the Arsenal Stadium redevelopment, which was given a score of 16 by Mr Church of CABE.

91. Mr Allies' reasoning for giving the appeal scheme a score of 18 points is sound. The substance of it is set out in more detail below. However, for present purposes, the following summary of Mr Allies' evaluation will perhaps assist an understanding of his high BfL score for the proposals.

(i) Environment and community (criteria 1 to 5)

Mr Allies and Mr Roake agree that the scheme scores a full point for criteria 1, 2, 4 and 5. There is a divergence of view on criterion 3 ("Is there a tenure mix that reflects the needs of the local community?"), for which Mr Roake gave the scheme nothing. This is absurd. It fails to have regard to the undisputed fact that the primary division between affordable and market housing (40% affordable) meets the City Council's policy aspirations. Mr Allies has given a score of 0.5 to recognize the fact that the split between social rented and shared equity (35%:65%) is lower

⁹⁴ In his evidence-in-chief

⁹⁵ In response to one of the Inspector's questions of him

⁹⁶ As Mr Allies observed in cross-examination by counsel for the City Council

than that preferred, though not required by any settled statutory policy for the city (55%:45%), in accordance with the BfL guidance of 2008 which states that a score of 0.5 should be awarded where “there are specific areas where the proposed design performs well against the criteria but there are also others where it fails to do so” (See CD12/51).

(ii) Character (criteria 6 to 10)

Mr Allies and Mr Roake agree that a full score of 1 should be awarded for criterion 6 (“Is the design specific to the scheme?”). They disagree on the scores for the other criteria. However, the Secretary of State can and should conclude that Mr Allies’ scores of 1 for criteria 7 to 10 are appropriate, because:

- (a) The scheme does exploit existing buildings, landscape and typography (criterion 7). Throughout the site, the scheme draws the existing buildings, landscape and typography into new relationships with each other: for example, the new connections from the cliff to Harbour Square and from the beach to Park Square; the formal correspondence between the Cliff building and the access ramp; and the precisely designed interfaces between the existing buildings and their new neighbours. The phenomenological significance of the space below the cliff is acknowledged in the scheme by its treatment as a landscaped space, rather than as part of the urban fabric.
- (b) The development does feel like a place with a distinctive character (criterion 8). It will completely transform the character of the western end of the marina, replacing the present incoherent environment with a carefully planned urban structure that both engages with the buildings that are to be retained and makes provision for further change to take place in the future. The scheme will provide the marina with a strong sense of identity appropriate to its unique status. The romantic idea of a return to the pure concept of the original marina master plan, which seemed to be the thesis of Professor Watts’ evidence⁹⁷, diverting as it may be, is not an option any more and has not been for many years. Today, it is antithetical to the imperatives of

⁹⁷ IP/40

urban regeneration and the delivery of housing in the modern city of Brighton.

- (c) The buildings and layout of the proposed development will make it easy to find one's way around (criterion 9). The buildings will define the public realm, and the public realm will bind and unite the whole composition. A clear hierarchy is established in the scheme, with the two main spaces given particular significance, and the status of Palm Drive enhanced. The colonnade at the base of the Cliff building will articulate the route from Harbour Square to the Asda supermarket and mark the importance of this connection to the beach and Madeira Drive. The large openings cut into the Sea Wall building will signal the presence of the new connections between the beach and Park Square. The route to the boardwalk from Harbour Square will be made clear by the two lines of trees following the line between the southern frontage of the Cliff building and the stairway.
- (d) Streets will be defined by a well-structured siting of built form (criterion 10). Each of the buildings will clearly define the street or streets it faces, whether these are main routes such as that of the RTS and Palm Drive, or secondary, such as the one leading to the Asda service entrance (Mariners Quay) and the one running parallel to the West Quay wall (to the McDonalds). The buildings will also provide strong edges to each of the squares, setting a pattern for the further enclosure of space as the regeneration of the marina moves ahead.

(iii) Streets, parking and pedestrianization (criteria 11 to 15)

- (a) Mr Allies and Mr Roake agree that the car parking will be well integrated into the development and situated so that it supports the street scene (criterion 12); and that the new development will be well integrated within existing streets, paths and surrounding development (criterion 14).
- (b) The proposed retention of the ramps appears to have been the main reason why Mr Roake giving the scheme nothing at all under criterion 11 in his analysis ("Does the building layout take priority over the streets and car parking, so that the highways do not dominate?"), the other factor being the retention of the multi-storey car park. These matters have never

been identified as problematic by CABI. Mr Roake's score of "0" fails to take into account the fact the building layout in the scheme demonstrably does take priority over the streets and car parking. The development will simplify the inelegant and over-complex road layout that exists at the moment, and it will remove the extensive areas of surface-level car parking. It will replace all that with an arrangement compatible with the site's location and role within the city, and with the appellants' commitment, faithful to national and local planning policy, to make efficient and effective use of this very large area of previously developed land. It will place the car parking to serve the supermarket inside the base of the Cliff building. The geometry of the layout also makes perfect sense. A clear relationship will be established between the orientation of the buildings and the alignment of the streets. Each of the proposed buildings has been designed with a clear sense of the front it will present towards public spaces. The curving mass of the proposed Cliff building was deliberately adopted to make the access ramps appear naturally related to the fabric of this part of the city, not an imposition dictating where other things would have to go. The design manifestly succeeds in this aim.

(c) Mr Roake suggested that the streets in the development will not be friendly to pedestrians, cyclists and motorists (criterion 13). Here too he was wrong. There has never been any suggestion either by CABI or by the City Council that the streets proposed will be hostile to pedestrians, or to anyone else who uses them, whether on a bicycle or in motor vehicle. Mr Roake's concern is nowhere to be found either in the City Council's decision notice or in its "clarified and amplified" reasons for refusal. It is astonishing to see this point taken against the proposals in this way at this stage. The appellants have done as much as any promoter of regenerative development at Brighton Marina ever could to improve the present unfriendly environment for those moving about on foot. The development will introduce new routes and connections in place of existing cul-de-sacs. It will provide lifts to facilitate changes of level wherever they are needed. The movement of vehicles across the site has been simplified. All but service vehicles will be removed from Park Square. The bus stops will be relocated to a new transport interchange on

Palm Drive, close to Marina Point and Merchants Quay at the heart of the marina. The part of the site that will become Harbour Square will this be radically remodelled from what today resembles the most dismal suburban roundabout to a space both safe and convenient for pedestrians and cyclists to share with the other traffic that is going to use it. This part of the scheme is discussed in more detail below under the heading “Layout”. It is enough simply to note here that Mr Frisby, giving the only expert evidence the inquiry has heard on highway safety, confirmed⁹⁸ that he believed Harbour Square met criterion 11.

(d) All the new public spaces and pedestrian routes will be overlooked and will feel safe (criterion 15). Wherever possible, the design has brought together several activities in one place, to maximize usage of the many publicly accessible areas in the development. For example, the route from Harbour Square to the beach will pass the main supermarket frontage along the length of the Cliff building, the public lifts and the sports co-ordinator’s office at the south-west corner of the building, and the recreational areas underneath the ramps.

(iv) Design and construction (criteria 16 to 20)

(a) Mr Allies and Mr Roake agree on the scores for criteria 17, 19 and 20.

(b) Mr Allies has given the scheme a score of “0.5” for criterion 16 (“Is public space well designed and does it have suitable management arrangements in place?”) for the following reasons:

(1) Each of the new public spaces has been carefully designed to accommodate its specific functions and to establish its own clear identity. In the first phase of regeneration, the buildings will establish the anatomy of the public spaces in the development, a framework to which subsequent development can contribute more.

(2) As has already been said, at the south-western corner of the Cliff building, overlooking the recreational spaces beneath the ramps, there will be an office for the sports co-ordinator’s office. Funding for this will be secured in the section 106 obligation.

⁹⁸ In re-examination

- (3) All the public spaces will be open and well lit; all have been designed to meet “Secure by Design” principles. CCTV will be used throughout the public spaces.
- (4) Further detailed design of the public spaces can be made the subject of a planning condition⁹⁹.

(c) Mr Roake’s score of “0” for criterion 18 (“Do internal spaces and layout allow for adaption, conversion or extension?”) fails to take into account that all of the residential accommodation in the proposals has been designed to Lifetime Homes standards¹⁰⁰, thus providing for future adaptation; internal partitions in the flats will generally not be load bearing, and this too allows flexibility in their use. Mr Allies was, if anything unkind to himself in suggesting a score of “0.5” for this criterion.

The design of the proposed open spaces

92. The development will provide a set of separate open spaces, which will relate well to each other and to the buildings that surround and enclose them¹⁰¹. These spaces will meet the ambition of SPG 20¹⁰² to establish a series of related urban enclosed public spaces that will create an atmosphere of interest, excitement and vitality at pedestrian level¹⁰³. As Mr Reid has said – and there has been no convincing counter-attack to his evidence on this, as his cross-examination for the City Council served well to show – they will be of “very high quality and their implementation will effect a significant and tangible visual improvement to a major part of the Brighton Marina, and will transform what is at present an uninspiring environment into one of particular and distinctive quality”¹⁰⁴. The provision of these spaces responds directly and effectively to the aims set out in PAN04¹⁰⁵.

⁹⁹ See Condition 43

¹⁰⁰ CD 12/3

¹⁰¹ See paragraph 7.3 of Mr Reid’s proof and sub-section 7 of Volume I and Appendix 6 of Volume III of the DAS.

¹⁰² In paragraph 5.3

¹⁰³ See paragraph 7.3 of Mr Reid’s proof.

¹⁰⁴ Paragraph 7.3 of Mr Reid’s rebuttal

¹⁰⁵ Part 3, p. 44

93. The design of the open space in the proposed development is a strand of the whole initiative to make full and effective use of previously developed land at the western end of the marina. As Mr Reid said¹⁰⁶, failure to do this would indeed be a compromise in the use of this resource: a wasted opportunity to create “a successful new district of the city”, as advocated by PAN04¹⁰⁷. The fact that the appeal proposal has taken the opportunity to exploit awkward parts of the site, utilizing spaces that would otherwise be difficult to make use of – for example, the ground under the ramps – is the very best approach to adopt. How ironic it is, therefore, that this has been met by the City Council’s retort that the appeal scheme represents some kind of compromise, in which a residual approach has been taken to the provision and design of open space, relegating this to the end of the exercise rather than embracing it from the start.
94. That is a ludicrous thing to suggest. In the first place, as Mr Allies explained¹⁰⁸, it is wrong as a matter of fact. The design of the whole scheme, buildings and spaces alike, went forward from the beginning – as it would with any urban designer as good as Mr Allies (and there are not many of those) – in a sequence of logical steps, properly balancing at every stage the relationship of buildings and space. It was iteration, in which neither building nor space assumed a priority it did not deserve.
95. Secondly, as an expert view on this issue offered by one who has immense experience of his own both as a planner and as a landscape architect, and who stands in this case independent of any involvement in the design process itself, Mr Reid’s evidence should carry considerable weight. He disagreed firmly with the allegation that something is amiss in this aspect of the design.
96. Mr Reid’s view, more dependable by far than anything that has been said on the other side, is that the proposed use of the ground under the ramps and beside the cliff and the design put forward for these areas is an inspired response to

¹⁰⁶ In his evidence-in-chief

¹⁰⁷ In section 15.0, on p. 17

¹⁰⁸ Both when he was cross-examined and in re-examination

what might otherwise have been a waste of space. He did not see this as a compromise, or anything approaching that. Far from it: what has been done here is the conscious rejection of compromise. And there is the irony in the City Council's stance on open space. Its own officers too were positive about the location of this recreation space. The Development Manager – Sport and Leisure is reported to have concluded that the “proposals for the urban sports area under the flyover are welcomed”¹⁰⁹. Nor did she express concerns about the location of any other recreation space, considering rather that the appellants’ “response has been very positive in making sure that sport and recreation opportunities on site would meet the needs of all residents from children right through to older people”¹¹⁰.

97. The quality of the outdoor amenity and recreation space is discussed below.

The design of the public realm

98. The Secretary of State can and should conclude that, as Mr Reid put it¹¹¹, the design of the public realm as a whole is “exemplary and innovative ..., of the highest quality, which is appropriate, both to its local context, and to the wider ambition to effect the physical, environmental and social regeneration to the marina as a whole”.

99. The aim of the appellants here has been fundamentally to improve the urban context and public realm of the marina. Establishing a coherent, comprehensive and comprehensible public realm, made up of contiguous spaces, has been the intent – an aim underpinned by strong design objectives¹¹², and one that has been admirably attained. Close reference has been paid to the principles enshrined in “By Design”¹¹³. The following four points should be noted. To some

¹⁰⁹ See p.72 of the December 2008 committee report (CD3/1.1).

¹¹⁰ Ibid. p. 71

¹¹¹ In paragraph 6.3 of his proof

¹¹² See sub-section 4.2 in Volume I of the DAS, p. 46; and paragraph 6.1.3 of Mr Allies’ proof.

¹¹³ CD2/5: see paragraph 6.3.1 of Mr Allies’ proof and paragraph 7.1 of Mr Coleman’s.

degree they pick up submissions made above about the Building for Life criteria, but it is as well to bring them together here.

- (i) Spaces have been designed in such a way that, while each will have its own individual character and identity, together they will form a coherent public realm (Principle 1: “Character”).
- (ii) The proposed new buildings have been configured in such a way that they provide clear definition to the streets, squares or footpaths that they enclose (Principle 2: “Continuity and Enclosure”).
- (iii) The new buildings will relate well to the ones that are already there and will stay and will draw out the potential of these existing buildings to contribute to the creation of the overall sense of place (Principle 3: “Quality of the Public Realm”).
- (iv) Connections between the marina and its hinterland will be greatly improved and made as attractive as possible to make it easy to move from one to the other. Once people arrive in the marina they will be able to get the hang of its layout quickly and understand how to continue their journey within or across the site (Principle 4: “Ease of Movement” and Principle 5: “Legibility”).

100. The details of the public realm, including discussion of Harbour Square and the Cliff building Arrival Space, are dealt with below under the heading “Layout”.

101. Mr Roake criticized the proposed public realm, suggesting that it exhibits “the same weaknesses” as does the marina today¹¹⁴. He sought to support this proposition not only with his own BfL analysis, (which has been addressed already), but also with comments made by CABE’s design review panel, in particular their comment “the proposals for the public realm are not yet as convincing as the buildings”¹¹⁵. When he decides the appeal, the Secretary of State will of course have to form this own interpretation of CABE’s letters. However, neither Mr Allies nor Mr Reid read CABE’s concerns about the public

¹¹⁴ See paragraph 5.4 of Mr Roake’s proof.

¹¹⁵ See paragraph 2.4 of Mr Roake’s proof, and CABE’s letter of 3 October 2008 (Mr Coleman’s Appendices, p. 62).

realm as though they said that the appeal proposal is unacceptable or that it ought not to be permitted. Their understanding is plainly right, as one can see when one reads CABA's letter fairly as a whole. Mr Reid saw CABA's reaction as very positive, concluding as it does that, subject to a limited number of points, CABA supports the proposals, including the public realm elements¹¹⁶. Nor does it appear from the December 2008 committee report¹¹⁷ that either the City Council's urban design or its conservation officers considered that CABA was seeking the rejection of the proposals, or had introduced matters of concern about them that could not be resolved, through appropriate conditions, at a later stage of the planning process¹¹⁸.

Conclusion

102. For all those reasons it ought to be concluded that the appeal proposals are of the highest quality in their design and are in that respect fully in accordance with the relevant passages in PPS1, namely paragraphs 33-39, with South East Plan policies CC1, CC6, CC8 and BE1, with local plan policies QD1, QD2, QD3, QD4 and HO4, and with the design principles and guidance for high density development issued by the City Council in SPG20, SPG15 and PAN04.

Height

103. As has already been recalled several times in these submissions, a central thrust of Government policy for planning generally and for the creation of sustainable communities in particular is that full and effective use must be made of previously developed land¹¹⁹. Paragraph 27 (viii) of PPS1¹²⁰ spells out the national policy objective to

“[p]romote the more efficient use of land through higher density, mixed use development and the use of suitably located previously developed

¹¹⁶ See paragraph 2.13 of Mr Reid's rebuttal proof.

¹¹⁷ CD3/1.1

¹¹⁸ See paragraph 2.13 of Mr Reid's rebuttal.

¹¹⁹ See paragraph 27(viii) of PPS1, paragraphs 40 and 45 of PPS3, paragraph 1.5 of PPS6 and policy EC5.1 of draft PPS4.

¹²⁰ Quoted by Mr Gavin in paragraph 4.14 of his proof of evidence

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.”

104. For the City Council Mr Goodwin, accepted, as he had to, the need to make effective and efficient use of the appeal site¹²¹.

105. If full and effective use is to be made of this urban site, if the marina to be regenerated by supplanting with sustainable development the profligate use that is made of much of it today, it is going to be necessary to introduce taller buildings¹²². So much is common ground, at least between the appellants and the City Council, consistent as it is with the vision in SPG 20, given more specific direction in SPG15 and PAN04. Not only must the marina become a more vigorous district centre, it must have landmark architecture worthy of the status of the marina – as a destination in its own right, as a new civic quarter and as the eastern gateway of a large and famous seaside city.

106. Introducing taller buildings at the marina has the following specific policy support:

- (i) The marina is identified as benefitting from proximity to good public transport¹²³ thus making it a desirable location for tall buildings¹²⁴.
- (ii) SPG 20 states that urban design objectives at the marina will only “be achieved by the introduction of well designed, high quality buildings, the conception of which should deliberately include tall structures”¹²⁵. It also notes the need to “create distinctive landmarks” at the marina¹²⁶ and that “underused space at the eastern and western ends should be utilised with new buildings to provide views outwards to the Marina and sea and to

¹²¹ See paragraph 5.11 of Mr Goodwin’s proof.

¹²² See paragraph 7.4.1 of Mr Allies’ proof.

¹²³ See the emerging Core Strategy “Proposed Amendments” paper, paragraph 4.4, p.13; paragraphs 3.4.9 to 3.4.12 and 4.7 of Mr Frisby’s proof; and paragraph 2.2.5 on p.3 of the statement of common ground on transport.

¹²⁴ See policy QD3 of the local plan; South East Plan policy CC6; SPG 20; SPG 15; PAN04 and emerging Core Strategy Spatial Objective SO1, to which Mr Gavin refers at paragraph 4.18.

¹²⁵ CD 8/9.2, Volume 2, p. 59

¹²⁶ P. 59

define the site from afar as an important destination and landmark place”¹²⁷.

- (iii) SPG 15 (“Tall Buildings”), based on the “Guidance on Tall Buildings” jointly published by English Heritage and CABA¹²⁸ and Gillespies’ and GVA Grimley’s comprehensive appraisal commissioned by the City Council, the “Brighton & Hove Tall Buildings Study” of October 2003¹²⁹, identifies the marina as one of five “nodes suitable for taller development”¹³⁰. It states a number of reasons why this would be appropriate, including the opportunity to “bookend” this edge of the city¹³¹. Mr Goodwin’s assertion¹³² that SPG 15 “does not state that the appeal site can accommodate a tall building” is not a true reflection of the strong and well-reasoned policy support for tall buildings at Brighton Marina. No policy of the development plan or supplementary planning guidance which stipulates any limit on the height of buildings in Brighton Marina. Had the authors of the policies in SPG15 and PAN04 wanted to do so they could have done. It is significant that they did not.
- (iv) PAN 04 defines tall buildings as those above six storeys. It draws attention¹³³ to the fact that SPG 15 recognizes Brighton Marina as one of the few locations in the city where tall buildings are acceptable in principle. It also indicates¹³⁴ that the local planning authority “considers the western, more commercial areas of the Marina may be more suitable for taller buildings than the eastern end.” Again, there is no prescribed upper limit on the height of buildings in the marina. Rather, there is the general indication that new development “in close proximity” to the Black Rocks cliffs must “generally conform to or be lower than the existing cliff height”. This makes it clear that buildings adjacent to the cliffs do not have to be kept below the height of the cliff, or precisely to match it along their length. In particular, it does not say they must not be any taller than

¹²⁷ Volume 2, p. 42

¹²⁸ CD5/1

¹²⁹ CD 9/1

¹³⁰ Sub-section 8.3, p. 15

¹³¹ Ibid.; see paragraph 8.11 of Mr Coleman’s proof.

¹³² In paragraph 4.11 of his proof

¹³³ On p. 28

¹³⁴ Ibid.

it. The appeal scheme complies with this guidance. The part of the development that will be “in close proximity” to the cliff is the eponymous Cliff building, which will “generally conform” to the height of the cliff, reducing to six storeys at the western end as the cliff itself begins to drop away¹³⁵.

107. The City Council’s decision to grant planning permission for the Brunswick development, which includes not only a 40 storey tower, but a further ten buildings ranging between six and 15 storeys, excluding the two-storey base, provides further support – not less as seemed at one stage to be hinted by counsel for the City Council – for the principle of introducing tall buildings within the marina¹³⁶. The appeal scheme will continue the momentum begun by the Brunswick permission. It accords with the City Council’s stated aims of securing the planned expansion, renewal and transformation of the marina¹³⁷.

108. Far from specifying or supporting low rise development, prosaically dubbed “ground-hugging” by Ms McKay of the Regency Society (as has already been noted), the city Council’s site-specific policy matrix for the marina unequivocally endorses the principle of tall buildings being erected there and goes further in its objective for development which, in the words of SPG 20, “marks the city from afar”, and SPG 15, “bookends the city”. The proposed development will satisfy those objectives. It will do so either in combination with the Brunswick development of that does get built, or on its own if it has to.

109. The New Shorter Oxford English Dictionary defines a “book-end” as “either of a pair of often ornamental props for keeping a row of books upright”. The books in this row comprise a lengthy array of buildings, many of them commercial, many residential standing up on the top of the cliffs bending gently along this span of the south coast of England. Without straining the metaphor of a book-end beyond its useful bounds, one could say – could one not – that to have a book-end that did not come any higher than the bottom of one’s books

¹³⁵ See section drawing XB005_AM_S1_0_A_07_200.

¹³⁶ See paragraph 7.4.4 of Mr Allies’ proof.

¹³⁷ See Volume 2 of SPG 20 (CD8/9/2), p.29, and paragraph 5.40 of Mr Gavin’s proof.

would look a little strange, and probably would not be terribly effective in keeping the books standing up?

110. The design of all the buildings in the development has taken account of the relevant considerations relating to height. The following five points should be noted.

- (i) The proposed height of Marina Point has been carefully assessed taking into account the two principal viewpoints: first, the place where this building will just appear above the roof tops over the east quadrant of Lewes Crescent; and second, the place where it will be seen in the backdrop of the south-easternmost building of Lewes Crescent¹³⁸.
- (ii) The proposed differing roof levels of the Quayside building have been arranged to maintain a good amount of sunlight and daylight for the flats in the adjacent Brunswick development and to add variety to the roofscape of the proposed development when viewed from the east¹³⁹.
- (iii) The height of the lower part of the Sea Wall Building has been designed to be low enough so as not to overshadow the Black Rock Beach SNCI, but high enough to mask the western elevations of the multi-storey car park and the leisure sheds, something specifically called for in SPG 20¹⁴⁰.
- (iv) The Inner Harbour building, which will stand in the predominantly residential, eastern end of the marina, will be a three to four-storey structure, in deference to the view, reasonably expressed in the course of consultation, that the tallest buildings should be confined to the more commercial, western end of the marina¹⁴¹.
- (v) The Cliff building will not go above nine storeys because of its proximity to the cliff and, as has already been noted, will relate well to the height of the cliff by reducing to six storeys at its western end where the cliff itself is not as high as it is further along to the east. This reduction in height will

¹³⁸ See paragraph 7.7.2 of Mr Allies' proof and paragraph 9.2 of Mr Coleman's.

¹³⁹ See paragraphs 5.5.4 and 7.8.1 and 7.8.2 of Mr Allies' proof.

¹⁴⁰ Volume 2 p. 40; see paragraph 7.9.1 of Mr Allies' proof. See also Dr Littlefair's conclusions as to the very good sunlighting of Black Rock Beach (CD12/26 paragraphs 12-13).

¹⁴¹ See paragraph 7.10.1 of Mr Allies' proof.

also serve to retain views through the marina and beyond to the sea from Arundel Terrace¹⁴².

111. The height limitation contained in the Brighton Marina Act 1968¹⁴³, which has been prayed in aid by several rule 6 and other third party objectors (principally the Kemp Town Society, the MGAG and the BMRA) operates completely independently from the planning regime. The Act allows, subject to approval by the Corporation (now the City Council) for permission to be sought and given for development above the height of the cliff¹⁴⁴. Following advice from counsel, the decision to grant planning permission for the Brunswick proposals proceeded without regard to the Brighton Marina Act, which was rightly taken to be an immaterial consideration in that context. Subsequently, after discussion at a meeting of the City Council on 13 July 2006, which, as Mr Martin of the BMRA acknowledged¹⁴⁵ went on for several hours, the City Council's approval was given to waiving the height restriction in the case of that development¹⁴⁶. The members voted 37:14 in favour of not enforcing the restriction. No claim for judicial review of that decision was made. The officers' report to committee in the present case gave advice consistent with the approach adopted by the City Council in the case of the Brunswick development: that planning permission should not be withheld on the basis of the Act¹⁴⁷. This is reflected in the Statement of Common Ground submitted in this appeal by the appellants and the City Council¹⁴⁸.

112. Judged, as they have to be in this instance, in the context of the planned redevelopment of the marina, the pressing need for regeneration in this part of the city and the constant need to make full and effective use of land, the buildings proposed here are, in principle, of an appropriate height. The policy support for the location of tall buildings in the western part of Brighton Marina,

¹⁴² See paragraph 7.11.1 of Mr Allies' proof.

¹⁴³ CD 14/12

¹⁴⁴ See sections 55, 59 and 70 of the 1968 Act; paragraph 4.8 of Mr Gavin's rebuttal proof; and sub-section 15.2 of PAN04.

¹⁴⁵ In cross-examination

¹⁴⁶ CD 11/9

¹⁴⁷ CD3/1.1, p. 3

¹⁴⁸ See section 6(t) of the Statement of Common Ground, paragraphs 6.125 and 6.126.

and the impetus set by the planning permission granted by the City Council for the Brunswick development, provide as strong a basis for this conclusion as one could expect to see. The visual effects of the development and its impacts on the local and wider townscape and landscape are tackled elsewhere in these submissions¹⁴⁹.

Siting

113. As Mr Allies has emphasized and as has already been submitted, the buildings in the appeal scheme have not been proposed in locations, with footprints and of a scale that the appellant demanded and forced their design team to accept. Any such suggestion is misconceived. Yet it was suggested by counsel for the City Council in cross-examination of Mr Allies. As one would expect, and as would be so in any large and complex project for a site of this kind, the appellants and their architects and consultants have had to proceed with the land available to them, and this inevitably will influence decisions about the appropriate location for new and replacement buildings and the network of public spaces around them¹⁵⁰. Such pragmatism is not to be equated with compromise. That suggestion is misplaced, and the Secretary of State ought not to fall for it. No compromise has marred the design of this scheme. As has already been submitted, the design of buildings and the public realm has been conceived and progressed as a single entity. Indeed it would have been impossible to design good buildings without designing good spaces. Neither task can be done on its own. Both go to the making of a development that generates the value the developer is striving to gain. In the present case, as Mr Allies has shown¹⁵¹, the buildings in this scheme were designed with a keen sense of how they would work with the public realm, and how they would engender a true sense of place. Illustrations of the way in which this was done are given below under the heading "Layout". But at this stage the Secretary of State is invited to see this: that the development will introduce a dramatic improvement to the public realm as well as making effective use of the available land by putting

¹⁴⁹ Under the heading "The effects of the development on the surrounding area"

¹⁵⁰ Mr Allies made this point very clear in his re-examination.

¹⁵¹ And as he emphasized in his evidence-in-chief and in re-examination

buildings in the parts of the site where it makes conspicuously good sense to have them.

114. The siting of the taller buildings in the scheme (Marina Point and the Quayside building) has been given careful thought in the light of the CBE and English Heritage joint guidance tall buildings, which has already been mentioned and with the benefit too of Mr Coleman's advice¹⁵². The locations of these buildings (on the McDonalds site and the petrol filling station site respectively) are appropriate for at least the following five reasons.

- (i) Both are important locations in the marina, the first forming the eastern termination of Park Square, the second forming the eastern side of Harbour Square, which will be the main entrance space for those arriving at the marina.
- (ii) Tall buildings on these sites will make a positive contribution to the identity of the Inner Harbour, signalling the civic significance of the marina.
- (iii) Both sites are at an appropriate distance from the cliff for buildings of their stature and massing to be appropriate¹⁵³.
- (iv) Marina Point will form a focus as the centrepiece of the development, signalling the presence of the marina in distant views and defining the position of the east-west axis. Its height and design have evolved as a response to the architect's awareness of the places from which it will be seen and of how it will be seen, and of its relationship with its seaward counterpart, the Brunswick tower¹⁵⁴.
- (v) The Quayside building will be in a prime position commanding views of the city, the downs, the boat moorings and the sea. Its height has been determined by the wish to relate to the lower blocks in the Brunswick development, and to be an object whose form complements Marina Point¹⁵⁵.

¹⁵² See paragraph 7.5.1 of Mr Allies' proof.

¹⁵³ See paragraph 7.6.1 of Mr Allies' proof.

¹⁵⁴ See paragraph 7.5 of Mr Coleman's proof and paragraphs 7.7.1 to 7.7.4 of Mr Allies'.

¹⁵⁵ See paragraph 7.6 of Mr Coleman's proof.

Layout

115. As an abiding consideration throughout the design process there has been a concern not only with individual buildings but with the way in which those buildings will contribute to the creation of a successful piece of city, with a strong sense of place and sustainable infrastructure¹⁵⁶.

116. The detailed proposals for the public realm area are described in section 7 in Volume I of the DAS. Details of the improvements proposed to public spaces in the marina are set out in paragraphs 7.4.2 to 7.4.16 of the DAS and have been considered by Mr Reid in his evidence¹⁵⁷.

117. The public realm proposals in this project will deliver at least six things that are well worth having:

- (i) substantial areas of new on and off-site recreation space, including a major contribution to the amount and quality of open space accessible to the public through the creation of the Cliff Park;
- (ii) greatly improved legibility and permeability in the publicly accessible areas in the western part of the marina;
- (iii) a new link from the cliff top to the Cliff building and through it into the marina;
- (iv) rationalized arrangements for transport;
- (v) increased biodiversity; and
- (vi) investment in public art¹⁵⁸.

118. A number of important routes and connections within the marina will be improved by the project. These include:

- (i) the connection from the pedestrian bridge in the Brunswick development, on to the sea wall and into Park Square;

¹⁵⁶ See paragraph 6.1.1 of Mr Allies' proof, and section 6 in Volume I of the DAS.

¹⁵⁷ In paragraph 3.5 of his proof.

¹⁵⁸ See section 7.4 in Volume I of the DAS.

- (ii) the connection from the beach under the existing underpass and into the north-west corner of the marina;
- (iii) the under-cliff walk, which today takes one behind the Asda service yard, which is a somewhat unprepossessing part of the marina;
- (iv) the route from the cliff into the site, which today consists of steps down the face of the cliff and a gloomy excursion across the Asda car park¹⁵⁹.

119. The proposed buildings themselves have also been arranged to assist in the transformation of the quality, clarity and accessibility of routes across and around the site. In brief:

- i. The Sea Wall building, which will form the western enclosure to Park Square, will have in it two large staircases, together with a lift, thus connecting Park Square to the sea wall, the pedestrian bridge in the Brunswick development and the beach.
- ii. The southern façade of the Cliff building has been designed to form an edge to the route connecting the beach and the Black Rock site through the marina.
- iii. The under-cliff walk will be defined by the enclosure of the service yard with a concrete deck, which will be landscaped to form the new park. Access to the park will be provided both from the under-cliff walk and from a new stair and public lift at the end of the Asda service road.
- iv. The podium created by the supermarket and car park at the lower floors of Cliff building will be used to establish an elevated connection between the cliff and the marina, with a new route extending via the bridge leading from the cliff into the square at the western end of the Cliff building and then down a cascading flight of steps to deliver people to the heart of the marina in Harbour Square¹⁶⁰.

120. The legibility of the marina will be improved not only in the ways to which reference had already been made – the placement of buildings to provide clear

¹⁵⁹ See paragraph 6.4 of Mr Allies' proof.

¹⁶⁰ See sub-section 6.5 of Mr Allies' proof.

definition to the streets, squares or footpaths that they enclose¹⁶¹ and so that they relate well to their neighbours¹⁶² – but also in three other ways:

- i. A clear distinction will be made between the fronts and backs of buildings¹⁶³ and the frontages of buildings uses will have uses likely to attract a lot of people, such as shops and cafes, and entrances¹⁶⁴.
- ii. The proposed improvements to pedestrian movement and public transport will make it possible to relocate the bus stops in the site to a more central position on Palm Drive. This was the “one preferred option” identified in PAN 04¹⁶⁵.

121. PAN04¹⁶⁶ provides a “SWOT” analysis of the marina’s public realm. It continues (In Table 3 on p. 24) with a list of objectives for the public realm within the master plan area, which “should be used by developers to inform their plans for the public realm”. As Mr Reid has explained¹⁶⁷, the appeal scheme fulfils the relevant parts of these objectives. Those that it does not and cannot fulfil, in particular reinforcing the “Seafront character of the public realm on the sea facing part of the Marina” cannot reasonably be regarded as reasons to refuse planning permission in the present case.

122. PAN04 expressly recognizes, under the objective “Adaptability”¹⁶⁸, that the public realm “for each new phase of development” in the master plan area should “operate independently of others phases”. Thus the City Council has itself acknowledged that the realization of the PAN04 objectives will not be the result of one set of proposals alone.

123. That is a very important point. And the City Council’s case at this inquiry has never got to grips with it.

¹⁶¹ See paragraphs 6.3.2 and 6.5.1 of Mr Allies’ proof.

¹⁶² See paragraph 6.3.3 of Mr Allies’ proof.

¹⁶³ See paragraph 6.6.1 of Mr Allies’ proof.

¹⁶⁴ See paragraphs 6.6.2 and 6.6.3 of Mr Allies’ proof.

¹⁶⁵ See paragraph 10.4 on p.15 of PAN04 and paragraphs 6.7.1 to 6.7.5 of Mr Allies’ proof.

¹⁶⁶ In Table 2 on p. 23

¹⁶⁷ In his evidence-in-chief

¹⁶⁸ On p.24

124. As Mr Reid has quite rightly said¹⁶⁹, the proposed development will do nothing to preclude improvements to the public realm being achieved phase by phase, as PAN04 envisages they will be. It is likely only to accelerate that phenomenon. Turning the development away, however, will do absolutely nothing for the public realm of the marina. And it is hardly likely to stir anyone else to come along and try to do something to make it better.

125. On the evidence before him, therefore, the Secretary of State ought to conclude that the appellants' proposals for the public realm have complied with the objectives in PAN04. It is telling that Mr Roake's written evidence for the inquiry is silent on PAN04, save for the fleeting references to that document in paragraphs 2.22 and 2.32 of his proof.

126. CABE's laudatory view of the appellants' scheme from the first was that it "does an admirable job of improving public routes and spaces"¹⁷⁰. Mr Roake agreed¹⁷¹ that the architect had done an "admirable job", though, to be fair, it is clear just how far that praise was intended to run. Mr Roake was unstinting in his enthusiasm for Allies and Morrison's buildings, but at best ambivalent in his opinions of the scheme as a whole. The Secretary of State, however, can trust the judgment of CABE, who, as one would expect of body whose responsibilities include advising the Secretary of State on these matters, took care to discuss the design of the public realm with Allies and Morrison and were able to influence the scheme positively as it advanced. As has already been submitted, CABE would not have done that – it would have been disingenuous of them to do so – had they not been supportive of the proposals.

Active frontages, overlooking and enclosure

127. Active frontages at ground level, the presence in this part of the marina of large numbers of people both by day and at night and the surveillance afforded

¹⁶⁹ In his evidence-in-chief

¹⁷⁰ See the third paragraph on p.1 of CABE's letter of 27 November 2006, p. 55 of Mr Coleman's appendices.

¹⁷¹ In cross-examination

by windows to flats on the upper floors of the residential buildings will be conducive to the safety of the public areas in the development.

128. SPG20 recommends¹⁷² that:

“Spaces should be narrowed and enclosed with new buildings to help create an intimate atmosphere of interest and excitement, vitality and viability, at street level.”

129. One has only to look, as an example, at the RTS route fly-through to see that the buildings themselves will create good enclosure of the public realm. Thus is apparent too in the images provided in the DAS¹⁷³.

130. Despite some suggestion to the contrary by Mr Roake, Mr Allen, the City Council’s landscape witness, in evaluating view M35 in the TVIA – a view of Harbour Square – stated that the tall buildings surrounding the square gave it a “high level of visual enclosure”¹⁷⁴ and assessed the impact here as “Moderate beneficial”.

131. As has already been submitted, the new buildings have been designed to maximize overlooking of the public spaces in the development. Examples of this approach are to be seen in the south façade of the Cliff building, which has been designed so that flats overlook the new route from the beach to Harbour Square, the fully glazed ground floor frontage of the new Asda supermarket, which will face directly on to the public realm, the windows and balconies of the Cliff building, which will overlook the entire length of the Cliff Park to the north and the area under the ramps to the west¹⁷⁵. Overlooking enhances security¹⁷⁶.

132. During the inquiry Mr Allies has sought to agree with Mr Roake what constitutes an “active frontage” in the appeal scheme. This has nearly, but not

¹⁷² On p.41 in Volume 2

¹⁷³ See e.g. Volume 1 at pp. 136, 138, 142, 144.

¹⁷⁴ See Mr Allen’s evaluation of M35 in his Appendix 9 (p.26).

¹⁷⁵ See paragraph 6.5 of Mr Allies’ proof and the diagrams showing the overlooking of the area under the ramps (CD12/23).

¹⁷⁶ See Section 9 of Volume I of the DAS and note that Sussex Police have raised no concerns about the safety of users of the public realm.

quite, been possible¹⁷⁷. Mr Allies considers there are four more elements of active frontage than have been acknowledged by Mr Roake:

1. the stairs leading to the Cliff Park and the lift;
2. the long window of the Asda store behind which the line of tills will stand;
3. the permeable screening around the replacement petrol filling station; and
4. the north face of the Quayside building between the McDonalds and the retail unit on the north west corner, where there is a pedestrian entrance into the McDonalds car park and the McDonalds outdoor covered seating area.¹⁷⁸

133. Though useful as a guide, diagrams that concentrate solely on the extent of visible activity associated with the frontages of buildings cannot take account of the scale and variety of activity in the recreational areas themselves, including those proposed under the ramps¹⁷⁹. This point is also particularly relevant to Park Square, which Mr Roake has criticized for a lack of significant active frontage¹⁸⁰. Park Square is not a part of the marina where new buildings are proposed in the present scheme, which of course is not to say that the land adjacent to it will not come to be redeveloped in the future. However, there are three fundamental points to consider in determining whether suitable vitality will be provided in this part of the development:

- i. The physical character of the square will be improved by new paving proposals and the water features and tree planting that will be introduced.
- ii. The proposals provide for the removal of through traffic, including buses, along the northern side of the square.
- iii. Through the management of the space the nature of its use will be changed, with new activities coming into being, for example in the children's play space at the western end of the square¹⁸¹.

¹⁷⁷ See Mr Roake's "active frontages" diagram (CD 13/3).

¹⁷⁸ It should be noted that this space has been designed to accommodate an additional retail unit in the future should the drive-thru be replaced.

¹⁷⁹ See paragraph 5.2 of Mr Reid's rebuttal proof.

¹⁸⁰ See paragraph 2.23 of Mr Roake's proof.

¹⁸¹ See paragraphs 2.8 and 2.9 of Mr Reid's rebuttal proof.

The Cliff building arrival space

134. The new pedestrian route into the marina across the Cliff building has been “welcomed” by CABA¹⁸². In their letter of 29 February 2009 CABA provided constructive advice for the enhancement of the design of the arrival space at the western section of the Cliff building, and Mr Roake was correct when he agreed¹⁸³ that CABA do not criticize the arrival space in principle, nor do they say it will not work. Mr Roake agreed that the scheme skilfully handles the configuration of flats around this space.

135. Mr Roake asserted that someone who has arrived in the arrival space will not be able to see from within the space visual clues as to where one might want to go. This contention is ill-founded. Often the most interesting routes are ones where one can see a particular location or landmark, which then is lost sight of for some time, only to reappear¹⁸⁴. As Mr Allies confirmed¹⁸⁵, when one walks across the arrival space, the views will open up and the cascading stairs will come into view. Once again Mr Roake’s ostensible misgivings are not shared by CABA. And as Mr Roake accepted¹⁸⁶, CABA could not be said to be insufficiently appraised of the facts or of the design intent. Mr Roake’s point does not begin to amount to a sound reason for withholding consent for appellants’ proposals.

136. Mr Roake also complained that the paths crossing the arrival space would not be legible, or legible enough. Mr Reid considered the pictures of this space in the DAS¹⁸⁷ does not do justice to this space, or show how it will actually look; he agreed¹⁸⁸ that better materials and colours will be needed to pick out the pedestrian desire lines. CABA’s suggestion that “careful landscape signals” will be needed was not, said Mr Reid¹⁸⁹, to be seen as a criticism of the arrival space in principle, but rather an indication that a “modest amount” of further design was

¹⁸² See the fourth paragraph on p.2 of CABA’s letter of 29 February 2009.

¹⁸³ In cross-examination

¹⁸⁴ See paragraph 2.4 of Mr Reid’s rebuttal proof.

¹⁸⁵ When cross-examined by counsel for the City Council

¹⁸⁶ In cross-examination

¹⁸⁷ On p.126 of Appendix 6, in Volume III (CD2/7.3)

¹⁸⁸ In his evidence-in-chief

¹⁸⁹ In his evidence-in-chief

needed. This is scarcely a matter of serious objection. It can easily be resolved in the final stage of the design work, beyond the grant of planning permission – and can be governed by condition¹⁹⁰.

Harbour Square

137. Concerns were also raised by Mr Roake about the layout of Harbour Square. It is necessary again to see how this matter was left at the end of its being discussed with CABE. When shown this part of the appellants' intended scheme late in 2006 CABE welcomed the principle of "humanising the space by creating ambiguity between pedestrians and vehicles"¹⁹¹ and later gave their blessing to the "decision to replace the roundabout south of the ASDA superstore with a public square"¹⁹². Although CABE entertained some concerns about the way in which Harbour Square would work in practice in a context where "it will be hard to create a legible space in an area loosely defined by buildings and dominated by road infrastructure"¹⁹³, they advocated "exploring a narrative"¹⁹⁴, and at no stage suggested that the design and layout of Harbour Square proposed could be a reason to refuse planning permission. For the City Council Mr Roake himself acknowledged¹⁹⁵ that it was impressive that the appellant had attempted the challenge of transforming Harbour Square, and accepted that, had CABE considered that the planning application prevented scope to develop Harbour Square further in the future, CABE would have said it should be rejected, which they did not do.

138. The Secretary of State will appreciate that for Harbour Square there is necessarily a two-stage approach, as Mr Allies¹⁹⁶ explained. A grant of planning permission should confirm acceptance of the principles of the Harbour Square design in the submitted application documents and drawings; then the optimum detailed arrangement and treatment of this space can be arrived at through

¹⁹⁰ See paragraph 2.3 of Mr Reid's rebuttal proof.

¹⁹¹ See the first paragraph on p.2 of CABE's letter of 27 November 2006.

¹⁹² See the second paragraph on p.1 of CABE's letter of 29 February 2008 letter.

¹⁹³ Ibid. in the third paragraph on p.1

¹⁹⁴ Ibid. in the first paragraph on p. 2

¹⁹⁵ In cross-examination

¹⁹⁶ In his re-examination

planning conditions with the benefit of further work. This is simply something that has to be dealt with over time, as CABE have acknowledged.¹⁹⁷ As was accepted by Mr Roake¹⁹⁸, if CABE had considered this two-stage process was inappropriate, they had ample opportunity to say so and advise Allies and Morrison to put forward an alternative solution. But that they did not do.

139. Mr Frisby explained¹⁹⁹ to the inquiry why he was confident that the proposals for Harbour Square would work safely at all times and for all road users. His was the only expert evidence presented live to the inquiry on those matters. It ought to be accepted by the Secretary of State in preference to the anecdote and assertion that are the stuff of the opposition to Harbour Square. It is highly significant that Mr Frisby's evidence about Harbour Square was not disputed by the highway authority or by the consultants, Mouchel, employed by the Brighton Marina Estates Management Company. The City Council's Head of Transport Planning and Policy has raised no objection to the design of Harbour Square²⁰⁰. The highway authority's position is also summarized in the statement of common ground on transport, which states²⁰¹:

"It has been agreed that ... the principle of shared space is appropriate ... in highway terms."

In the passages of their report of 30 November 2009²⁰² in which they deal with Harbour Square, Mouchel stated²⁰³:

"... the s 106 Agreement allows for robust monitoring and assessment of personal injury data. On the basis of this undertaking Mouchel does not believe that these concerns should prevent implementation of the scheme".

140. Mr Allies explained²⁰⁴ that the Harbour Square concept had its genesis in his desire "to change the character of the space" away from a suburban roundabout, which one might see anywhere, to a space with a unique quality that will distinguish the marina out as a destination. That was surely a worthy

¹⁹⁷ See their letter to Sue Dubberley of 25 October 2008, p. 2 paragraph 1, at Appendix 3 to Mr Allies' rebuttal proof.

¹⁹⁸ In cross-examination

¹⁹⁹ In his evidence-in-chief

²⁰⁰ See pp 116 and 117 of the December 2008 committee report (CD 3/1.1).

²⁰¹ In paragraph 3.5.1

²⁰² CD12/33

²⁰³ At 3.6

²⁰⁴ In his cross-examination for the City Council

objective. And the City Council does not seem ever to have denied this. It was also found to be practicable.

141. The square will obviously operate differently at different times of the day and at different times of the week. When the level of vehicular traffic is low, pedestrians will be able to move freely across the square, which is not something that can happen at the existing roundabout. At times when more vehicles are there, pedestrians will be likely to use the crossings provided for them. As Mr Frisby noted²⁰⁵, if the traffic is moving very slowly pedestrians will be able to cross between the vehicles, as they do every day in countless towns and cities up and down the country.

142. In the course of the design process two independent Road Safety Audits have been carried out, the results of which were positive²⁰⁶. As has been agreed, this has been done to the satisfaction of the City Council as highway authority²⁰⁷. Speed reducing measures have also been agreed²⁰⁸.

143. The safety and convenience of all road users, including people who are disabled, partially sighted or blind, has been properly considered in this exercise. The design of Harbour Square has been developed in consultation with the Disability Officer of the City Council and with specialist consultants who are expert in designing for people with disabilities, David Bonner Associates²⁰⁹. Mr Frisby is confident that the space will safely and efficiently accommodate “all road users”²¹⁰. There was no direct or any persuasive challenge to that evidence.

144. It has been agreed²¹¹ with the City Council as highway authority that the appellants will be responsible for monitoring the impact of this junction, providing safety reports quarterly together with a thorough review of any accidents after 15

²⁰⁵ In his evidence-in-chief

²⁰⁶ See paragraph 12.3 of and Appendix U to Mr Frisby’s proof.

²⁰⁷ See paragraph 3.53 of the Transport Statement of Common Ground.

²⁰⁸ See TSO CG at paragraph 3.1.3.

²⁰⁹ See paragraph 6.2.3 of Mr Frisby’s rebuttal proof.

²¹⁰ As he confirmed in his evidence-in-chief

²¹¹ See paragraph 3.5.5 of the Transport Statement of Common Ground.

months²¹². A Stage 3 Safety Audit will be undertaken when the square is actually in place. This regime is secured in the section 106 obligation. Thus the appellants are committed to a process by which it can be ensured that neither capacity nor safety is compromised.

145. Of course, it must be acknowledged that the Harbour Square “shared space” is a concept for which there are currently no exact precedents in the United Kingdom, although there are similar examples of the use of shared space at road junctions in Denmark, Sweden and the Netherlands²¹³. Out of what is likely to prove an abundance of caution and as a result of discussions with the City Council and Mouchel, the appellants have had designed an alternative solution, of conventional junction signals, which can be taken up should the shared space concept be less than a total success. This clearly was the right thing to do. Mr Frisby stressed²¹⁴ his judgment that the fall-back solution will not have to be resorted to. However, this sensible approach does allow the Secretary of State to grant planning permission with the comfort of knowing that there is an alternative, uncontroversial, safe and workable solution available. This being so, the acceptability of Harbour Square is, in truth, not even an issue in this appeal. It would not be right for the Secretary to refuse permission because the “shared space” concept might not work. To do that would be perverse.

The effect of the proposed development on the other parts of the Marina: local townscape

Townscape

146. At present the western end of Brighton Marina has few positive townscape qualities worth emphasizing or enhancing. The appeal proposals do not attempt a cosmetic exercise of that kind. Instead, a quite new and distinctive character is intended. And that is what will be achieved through the high quality design of this development, both buildings and space. As has already been

²¹² See paragraph 6.3.6 of Mr Frisby’s rebuttal proof.

²¹³ See p.116 of the December 2008 committee report (CD3/1.1).

²¹⁴ In his evidence-in-chief

submitted, the development will change the public realm in the marina hugely for the better. It will craft a new piece of city. It will more than begin to change the marina into the sort of place it ought to be. It will bring here a new and distinct urban environment. It will complement the stronger and more striking townscape in this part of the city. It will remain distinct from that. But it will create, as it should, its own identifiable sense of place²¹⁵.

147. Throughout the preparation of the design, however, account has been taken of the character and appearance of the surroundings in determining the height and mass of buildings, their effect on existing views – which of course in many ways they will change – and on the skyline, and the physical and visual connections between them. This is all in accordance with policy QD2 of the local plan²¹⁶.

148. Significant gains will accrue for the urban environment in this part of Brighton and Hove, by the creation of a new vibrant district centre with an improved leisure and retail offer and the improvements in pedestrian movement and the local transport infrastructure²¹⁷. This can only have a vastly positive impact on the prevailing townscape. This one can see if one bears in mind the failings of the existing townscape, much of which, frankly, is hideous. A quality of life and a vitality will be injected into the marina, which will make living there much more attractive and sustainable for everybody who does²¹⁸.

149. By the excellence of their design these new buildings and spaces will transfigure the western end of the marina²¹⁹. It needs nothing less than a metamorphosis of this kind. As a single example to demonstrate the point – though there are of course many – consider the existing views from the cliff top in the vicinity of the big block of flats, Marine Gate. Here the background of sea is seen across the foreground of a supermarket with its rooftop plant, its own car

²¹⁵ See paragraph 8.10.2.4 of Mr Coleman's proof of evidence.

²¹⁶ See paragraph 8.8.6 of Mr Coleman's proof.

²¹⁷ See sub-section 6.7 of Mr Allies' proof.

²¹⁸ See paragraph 8.8.9 of Mr Coleman's proof.

²¹⁹ See paragraph 8.10.2.4 of Mr Coleman's proof.

park and the multi-storey car park beyond²²⁰. One would have to expunge that foreground to get anywhere near the concept Save Brighton invite the Secretary of State to accept, which is that the views of residents of Marine Gate are of a “currently uninterrupted expanse of sky”²²¹. The reality simply is this. Wherever the townscape of the western marina is in the apron of such a view, it spoils it.

Sunlight and shadow

150. The new buildings will not cause unacceptable shadowing of their surroundings. Dr Littlefair of the BRE has tested the potential availability of sunlight to Palm Drive, where there are cafes with outdoor seating, and Black Rock beach. His conclusion is that both spaces would have very good levels of sunlight, with long periods of unbroken sun in good weather. There would be some shadowing by the proposed buildings, but this would only be for a short time (some two hours or less). In the case of Black Rock beach, shadowing would occur in the early morning, when the beach is unlikely to be heavily used²²².

The effects of the development on the surrounding area

151. The design of the appeal scheme has from the outset been informed by, and has responded to, a scrupulous study of its visual impact on the surrounding area, in particular on the Kemp Town Conservation Area and the South Downs AONB and the proposed National Park.

152. The TVIA was carried out by the pre-eminent consultancy in this field, Richard Coleman Citydesigner, using images produced by Miller Hare, who are also the acknowledged leaders in their own sphere of work. And it was properly done. The TVIA was first compiled in September 2007²²³. It was subsequently

²²⁰ See paragraph 7.12.6 of Mr Allies’ proof and the existing views M32 and T41 in the TVIA.

²²¹ See paragraph 4.6.7 of Save Brighton’s proof of evidence (SB/2).

²²² See paragraphs 12 and 13 of Dr Littlefair’s supplementary report (CD12/26).

²²³ See CD12/9.1 and CD12/9.2

revised to take into account the changes to the scheme made in June 2008²²⁴. This latter version duly formed section 7 of the Environmental Statement.

153. It would not normally be necessary to draw the Secretary of State's attention to Mr Coleman's curriculum vitae²²⁵. But in this case it is. This is because of the unfortunate, though unavailing, attempts that have been made at this inquiry to impugn Mr Coleman's good faith. The Secretary of State ought to have no truck with that kind of comment. Obvious as that may be, it has to be said because this is a public inquiry. The truth is that Mr Coleman is a professional person of immense experience and unimpeachable fairness and sincerity.

154. The TVIA assesses 43 viewpoints, all of which are characterised as beneficial or neutral, with the exception of two which are "adverse", but not harmful in the sense of being, in traditional planning parlance, "demonstrable harm to interests of acknowledged importance" such as would justify a refusal of planning permission.

The TVIA methodology

155. The assessment methodology adopted by Mr Coleman has clearly set out²²⁶. It has been validated in this particular case through the exercise Mr Coleman was asked to carry out to demonstrate the integrity of the photography. It was the subject of a specific ruling made during the inquiry²²⁷ as it had to be once the matter had been raised. The crux of that ruling was that the TVIA, as part of the appellants' environmental statement, was a sufficiently robust exercise to be in accordance with the EIA Directive and regulations. In other words, the environmental statement, including the TVIA, affords the Secretary of State a legally secure basis for a grant of planning permission. No challenge has been made to the ruling.

²²⁴ CD 2/10.3

²²⁵ See Mr Coleman's Appendix B.

²²⁶ CD2/10.3, section 2 and Annex 3

²²⁷ On 1 December 2009

156. It is the type of methodology supported by the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment²²⁸ and represents best practice under industry standards²²⁹. It has been agreed with the City Council in the Statement of Common Ground²³⁰ that the methodology used for creating Accurate Visual Representations (AVRs) upon which the TVIA is based was accepted by officers. And, lest there be any doubt about this, the reference to the City Council's officers is not to be taken as distinguishing their position from the members'. It will be recalled that counsel for the City Council, when given the formal opportunity to do so, in submissions before the ruling on the validity of the TVIA was made, did not seek to go question the appropriateness and reliability of the work Mr Coleman has done. They were right not to do so. The City Council's Design and Conservation officer, agreed the viewpoints in the TVIA and accepted their suitability for analysing the effects of the proposed development from representative public viewing points²³¹.

157. The particular methodology employed for these proposals evolved through Mr Coleman's experience since he carried out a TVIA as part of the environmental statement for the development at 30 St Mary Axe now known by Londoners (and others) by its affectionate sobriquet, "the Gherkin"²³². TVIAs produced by Mr Coleman have been described as "exemplary" by Westminster City Council in cases involving a scheme at Victoria Station and Arundel Great Court, which assessed views from Conservation Areas, the Royal Parks, Buckingham Palace, Waterloo Bridge and Somerset House. Such views are scarcely of lesser importance than the present case²³³. He has used this methodology (bar only some small refinement) on previous schemes where a TVIA has formed part of the environmental statement, as it was for the Brunswick development, which included an extremely tall building and other prominent, though much smaller, blocks, on the site next door to this one. It is a methodology entirely appropriate to townscape assessment. It is fit for its

²²⁸ 2nd edition (CD 13/1)

²²⁹ As Mr Coleman confirmed in cross-examination by Mr Simpson

²³⁰ At paragraph 6.51

²³¹ Ibid.

²³² This was mentioned by Mr Coleman in his evidence-in-chief.

²³³ As confirmed by Mr Coleman in re-examination

purpose in the present case. And it does not offend any relevant applicable guidance. Nothing is inimical here to the guidance of the Landscape Institute, which really ought not to be read as if it had the stamp of Procrustes upon it; it does not.

158. Mr Coleman has taken a positive view of the quality of the architecture, as, it happens, have the City Council's witnesses too, and this has informed his judgement. It is right that it should. After all these buildings are designed to be visible, not hidden away. This is what the City Council itself, in SPG20 and SPG15, has envisaged, and encouraged. This, then, is not a case where a more traditional landscape assessment method as appeared to be advocated by Mr Allen would be appropriate, such as when assessing the impact of a proposed power station on the open countryside, where any visibility is, by definition, "adverse".

159. Mr Coleman's work quite deliberately does not include an assessment of the particular sensitivity of "visual receptors" (which here essentially means people in their attitudes to a particular place) or the sensitivity of the landscape resource. This is for three reasons:

- i. In every case the buildings will be noticeable or prominent because the views chosen are the relevant ones in that particular way, so all the receptors have such "sensitivity" to them. Mr Coleman has not chosen "insensitive" receptors to improve the overall impression given by his assessment.
- ii. The sensitivity of the "landscape" resource is not rated, because the physical effects of the development will occur within the marina and so there will be, as a simple matter of fact, no direct effect on the landscape character of the AONB itself. Where views of the proposed development from AONB or views of the AONB in which the development itself will be visible might affect the character of the AONB, these have been assessed.
- iii. Creating a document in which more information was transmitted than is in this TVIA would have been unnecessary. Such a document would have been

confusing and cumbersome. The aim behind the TVIA has been to produce a document that is as transparent and readable as possible²³⁴.

160. Mr Allen acknowledged²³⁵ that the coverage afforded by Mr Coleman's 43 views were "very comprehensive and give a very good impression of the surrounding of the site". He confirmed that the TIVA has taken into account every view that the City Council had requested, thus corresponding exactly to the advice in PAN04²³⁶ that

"Developers will need to demonstrate an understanding of the impact of their proposals on key views within the Visual Impact and Townscape Assessment".

161. Mr Allen put before the inquiry²³⁷, though this had never been shared with the appellants until proofs of evidence were submitted shortly before the inquiry, his own commentary on the visual and landscape effects of the proposed development. He described this as a "preliminary overview" and volunteered²³⁸ that it was nowhere near what he would produce for an Environmental Assessment. He had simply taken Mr Coleman's assessment and applied his own comments to it. However, unlike Mr Coleman's TVIA, Mr Allen's commentary seems to have been predicated principally on the crude concept of the blocking of certain features in particular views: an inevitable consequence of much new development, including development that is planned. It pays scant, if any regard to the impact of the design virtues of the buildings themselves. It attempts no balance taking that into account²³⁹. Mr Allen described the results of Mr Coleman's work as "valid", but only from an architect's point of view. He made it clear too that policy considerations had not borne upon his commentary at all. From Mr Allen's own explanation of it, therefore, the Secretary of State can draw the conclusion that this was a limited exercise, the outcome of which is necessarily artificial.

²³⁴ As Mr Coleman emphasized when cross-examined by counsel for the City Council

²³⁵ In cross-examination

²³⁶ In sub-section 8.2

²³⁷ In Appendix 9 to his proof

²³⁸ In cross-examination

²³⁹ As was actually underscored in Mr Allen's evidence-in-chief

162. Thus, no direct comparison can be made between the Mr Coleman’s assessment and Mr Allen’s commentary. Putting it simply: Mr Coleman has done a townscape assessment in the round and Mr Allen’s commentary defaults to the presumption that any impact or change is necessarily harmful. While it had charge of the appellants’ application for planning permission the City Council found Mr Coleman’s approach acceptable, and Mr Allen²⁴⁰ did not suggest it had been wrong to do so.

163. As to the visual representations used to inform the judgments in the TVIA, Mr Allen accepted²⁴¹ that “these photographs are superb in terms of clarity and authenticity”. The appellants have always acknowledged that photographs cannot represent what the human eye sees and should rather be used as a tool for the viewer as he stands at the actual viewpoint to help him interpret the effect²⁴².

164. The photographs have been taken using a 65 to 70 degree lens. This view, which is wider than the 40 degrees recommended by the Landscape Institute for landscape purposes, has been selected by Miller Hare to capture the most useful image, in a situation where a wider angle lens is needed to get a true sense of the context²⁴³. In any event, the Landscape Institute guidance is flexible in its own terms²⁴⁴. The cropping test carried out by Miller Hare on 23 November 2009, at the Inspector’s request²⁴⁵ demonstrates that no material difference arises in the image if one uses a 65 to 70 degree rather than a 40 degree lens.

165. Mr Simpson asserted that the appellants have manipulated some of the images so as to promote their scheme in the best possible light, and a misleading one. In giving his evidence-in-chief, Mr Simpson described the TVIA and those responsible for its production variously in the following terms: “deception”; “before and after trickery”; “temptation to doctor pictures”; “if the

²⁴⁰ When he was asked about this in cross-examination

²⁴¹ In evidence-in-chief

²⁴² See paragraph 2.2.3 of the TVIA, and paragraph 2.1a of Mr Coleman’s rebuttal proof.

²⁴³ As was explained by Mr Coleman in his evidence-in-chief; also see Miller Hare’s e-mail of 28 October 2008 to Mr Simpson (CD15/1)

²⁴⁴ As Mr Coleman observed in his evidence-in-chief

²⁴⁵ CD12/30

developers were honest they wouldn't have done this"; "they didn't believe their own story"; "devious"; "the manipulation department [at Miller Hare]"; "the appellants' shrinkage department"; and "this level of dishonesty is hugely worrying". Each of those imputations is false.

166. It has always been acknowledged in the TVIA that view M34 has been manipulated so as to include the top of Marina Point in the image. This was done in the knowledge that this particular view was not height-sensitive, it could not be usefully measured against other objects in the view²⁴⁶. Mr Coleman's use of the word "manipulation", both here and in other parts of the TVIA, as a neutral concept was apt, and as far from dishonesty as one could imagine.

167. As Mr Simpson quite correctly pointed out, though nobody else seems to have spotted it, views M32, M33, M34 and M35 had different photographs for the existing and changed views in the TVIA. As Mr Coleman explained, however²⁴⁷, there was nothing sinister in this mistake, and it has no material significance in the assessment itself. As he confirmed²⁴⁸, the words used in the descriptions of the effects do not have to be revised at all; the words stay "exactly the same" regardless of whether the original or corrected images are used.

168. Mr Coleman has nevertheless provided²⁴⁹ the correct images for comparison; they show that what he said was right.

169. As Mr Coleman explained²⁵⁰, in view M35 the image including the proposed development represents what will be seen at a point further to the west and closer to the fence than the existing view shown in the TVIA. This was not done, as was suggested by Mr Simpson, to portray the only view of the sea that will be available through the development. There will be several lines of view in which the development will allow walkers on the cliff-top path, as they go past

²⁴⁶ See paragraph 3.1.2b of Mr Coleman's rebuttal proof.

²⁴⁷ In paragraph 3.1.2b of his rebuttal proof

²⁴⁸ In re-examination

²⁴⁹ In his rebuttal proof

²⁵⁰ In his evidence-in-chief

the development, to look between the new buildings and see the sea horizon. The images provided in the DAS²⁵¹ show this to be so.

The consideration of the development's likely effects on views in the design process

170. The buildings in the proposed development have been designed to take into account full consideration of the TVIA²⁵². Mr Allen criticized the appellants for not having made an initial view assessment before the outset of the design process. Such an assessment has, however, never been required or requested by the City Council and this should not be seen as any kind of failing on the part of the appellants. Mr Coleman has been involved as part of the design team since 2006. He was also the townscape consultant for the promoters of the Brunswick development. He provides independent advice²⁵³. His independence has enabled him to stimulate Allies and Morrison to reach satisfactory solutions to the issues they have had to grapple with in producing a design that is worthy of the site and its context. It has been an outstandingly successful dynamic.

171. A specific example is the design of Marina Point. This has gone through several iterations to ensure that the height and form – in particular the profile of its roof – will not cause any adverse effects to the perambulating views from Kemp Town. Mr Coleman has rightly lauded Allies and Morrison as the kind of architectural practice that is flexible in its thinking, always willing to receive constructive suggestions about its work. A good architect, said Mr Coleman, such as will find a solution that might not have been suggested²⁵⁴. And Mr Allies is a good architect. Actually, that is a considerable understatement. But anyway, in the present case, as one can see from the short summary of the evolution in subsection 5.1²⁵⁵ he has kept an open mind throughout the whole process of the design thus far, without sacrificing the inherent soundness of the concept for which they had invited the reactions of CABE and English Heritage in late 2006, following on from the early studies prepared between March and June of that

²⁵¹ On pp.106 to 109 of Volume I

²⁵² See paragraph 7.7.2 of Mr Allies' proof, and paragraph 9.2 of Mr Coleman's.

²⁵³ Describing himself, in his evidence-in-chief, as "quite demanding"

²⁵⁴ As Mr Coleman put it, in response to a question asked of him by the Inspector's

²⁵⁵ See pages 51 to 69 in Volume I of the DAS.

year. It is worth quoting some of the text that appears on page 61 of Volume I of the DAS, which shows the painstaking approach Mr Allies has taken while maintaining confidence and consistency in the concept itself. It relates to the phase of design evolution that took place after the fourth public exhibition, which was held in June 2007 and the final round of pre-application consultations with the City Council, English Heritage, the Kemp Town Society and the BMRA. Under the heading “Improvements in the form and proportion of the Marina Point tower” it states:

“A number of alternatives (see model photographs below) were shown to English Heritage in August 2007. The selected option ‘E’ at the right, gives a more elegant profile to the building with an increased sense of verticality and overall proportion. The curved balconies have been redistributed throughout the height of the tower instead of locating them exclusively on the top of the building (see images of the tower on preceding pages). The corner balconies are associated with duplex units. The resulting form preserves the earlier complex profile – particularly important at the higher part of the building – as well as the sense of centeredness at the heart of the Marina. The change has resulted in a reduction of ten units within the tower (Item 1, facing page).”

Policy protection for views

172. Policy QD4 of the local plan, under the heading “Design – strategic impact”, provides

“In order to preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings, all new development should display a high quality of design. Development that has a detrimental impact on any of these factors and impairs a view, even briefly, due to its appearance, by wholly obscuring it or being out of context with it, will not be permitted.
... ”

173. The policy goes on to consider the following things (among others) as being of strategic importance:

“a. views of the sea from a distance and from within the built up area;
b. views along the seafront and coastline;
c. views across, to and from the Downs;
d. ...;
e. views into and from within conservation areas;
f. the setting of listed buildings ...;
g. vistas along avenues, boulevards and steeply rising streets; and
h. initial views of Brighton & Hove from access points by all modes of transport.”

174. The effects of the proposed development on these “features and buildings” (as policy QD4 generically describes them) are discussed in detail below.

175. Paragraph 3.23 of QD4 states:

“SPG15 Tall Buildings gives guidance on the siting of tall buildings to ensure they have minimal visual impact on sensitive historic environments and that they retain and enhance key views. Strategic views and approaches are identified in the SPG. The SPG also identifies areas which are considered suitable for tall buildings”.

None of the views generally described in policy QD4 is marked on the local plan proposals map. Mr Allen, the City Council’s landscape witness, was not aware of any specific policy protection for any particular view, certainly not for any view that might be relevant in the present case. In fact, there is no such specific protection. Policy QD4 has therefore to be applied with good sense, on the facts, on a case-by-case basis, having regard to any policy documents supplementary to the local plan – for example, SPG20, SPG15, and PAN04 – which deal specifically with the site or view or other factor of relevance in the case in hand. Such specific guidance serves to qualify and refine the policy in a specific context. It is not trumped or overridden by the policy. The two must be read together.

176. Policy QD4 does not require that there be no change to any such view or vista (or to the setting of any important building); it is aimed at preventing harmful change. One can see that this is the thrust of the policy from both its language and its composition. The first sentence of the policy contemplates change to the interests it seeks to protect by recognizing the concept of their being enhanced by new development that displays a high quality of design. The second sentence of the policy is concerned not with preventing any development which has an impact on a particular view, but with ensuring that development which has a “detrimental impact ... and impairs a view, even briefly, due to its appearance, ...”²⁵⁶ is not permitted. One should not misconstrue the second sentence of the

²⁵⁶ Emphasis added

policy as saying that development which changes a view by interrupting the visibility of something one can see today or by introducing a new and noticeable element into the scene is automatically harmful. Indeed, to interpret and apply the policy in that way would be to make a nonsense of it. It would, for example, frustrate the City Council's declared objective, in paragraph 8.3.1 of SPG15, of using tall buildings at the marina to "bookend" the edge of the city, which is itself a reflection of the aim, expressed in SPG 20²⁵⁷, to mark this place in views from afar. In the same vein, paragraph 3.22 of the local plan, in its final sentence, states not that development that would have an impact on important views is to be opposed, but that

"Proposals which have an impact on important views should take into account other policies in the Plan relating to the downland, seafront and conservation area".

Thus it is – as one would expect – harmful impact rather than change itself which the policy resists. The concept of change for the better, including substantial changes that are beneficial, is countenanced. Mr Coleman's evidence and the assessment set out in the TVIA reflect the same thinking. Mr Coleman confirmed this to be his understanding of policy QD4 in the course of his cross-examination by counsel for the City Council.

177. In the present case, in the City Council's reasons for refusal, no "strategic view" or "important vista" is identified as the subject of an allegation of harm. Nor is any allegation of harm tied to any specific "feature" within the general scope of policy QD4. This is significant, because it seems to show a lack of any real coherent, collective thinking, on the part of the members of the committee that decided to refuse planning permission, as to the particular impacts, if any, that were held by them as a committee, and contrary to their officers' perfectly clear advice, not to be acceptable. Like so much else in the City Council's case this was, and remains, tentative and vague. Nor did it become any less nebulous after the Planning Committee reconsidered the City Council's case in September 2009.

²⁵⁷ On p. 42 in Volume 2

178. The Tall Buildings Study²⁵⁸, which informed SPG 15, provides a diagram of “strategic views” in its Figure 13.11²⁵⁹. There are four strategic views potentially relevant to development at the marina. None of these will be materially affected by what is proposed in this appellants’ application, still less impaired, still less again wholly obscured or marred by development “out of context” with it (the language of policy QD4). The following four points should be noted:

- a. View No 10 (Palace Pier) is a view in two directions – east and west. The cone of the eastward view shown in the diagram is towards the marina but does not quite reach it (As was observed by Mr Coleman in his evidence-in-chief)
- b. View No 9 (Brighton Marina) is a view from, or close to, the end of the eastern breakwater looking back towards Kemp Town. It will not take in much, if any of the proposed development. If and when the Brunswick development is constructed, it will obscure this view. As Mr Coleman explained²⁶⁰, the corresponding view from the western breakwater would also be unaffected by the appeal development.
- c. View No 15 (from Rottingdean) equates to the panorama seen from a position somewhere between views C11 and C12 in the TVIA. Mr Coleman has assessed the impact of the proposed development as being “moderate” in these views, and beneficial because of the high quality design and because the development will be, and will be seen as, a new neighbourhood, defining the edge of the city where it meets the countryside. That this will be so is in accordance with the recommendation in SPG20 that new buildings in the marina should “define the site from afar as an important destination and landmark place”²⁶¹. David Allen considers view C11 ‘slight adverse’ (which he confirmed should not be taken to be harmful)²⁶² and C12 ‘neutral’. It is clearly a good thing that the relationship between town and country should be so defined by a termination of the city in the place where, as a

²⁵⁸ CD 9/1

²⁵⁹ On p. 41

²⁶⁰ In his evidence-in-chief

²⁶¹ See p.42 in Volume 2 of SPG 20

²⁶² In cross-examination

result of the designation of the National Park, that relationship will be as near a permanent one as our planning system will allow.

- d. View No 6 (from Woodingdean) equates to TVIA view D18. There is already a considerable strip of urban townscape separating the Downs from the sea in this view, and the taller elements of the proposed development will add high quality architecture to that. Mr Coleman rightly considers that the impact of the development here will be “moderate beneficial”.

179. Similar conclusions go for the “Key local views” shown diagrammatically and illustrated by photographs in Figure 16 of PAN04. None of those views will be harmed by the proposed development. The only one in which the development will make a significant change is the view entitled “waterfront”. This equates to view M33 in the TVIA. The desolate environment confronting one in the existing view over the Asda car park and of the supermarket will be replaced with well composed urban development. The lower cliff walk will also become a more defined space, landscaped, its ambience much improved²⁶³.

The conclusions to be drawn from the TVIA

180. The six basic submissions here, which are underlined by the totality of the evidence the inquiry has heard on the visual effects of the proposed development, are these:

- (i) Change and harm are not the same thing.
- (ii) Many views will inevitably change if the western end of Brighton Marina is developed in the way that the City Council has planned for its physical, economic, social and aesthetic regeneration.
- (iii) The proposed development is consistent with the City Council’s planning for regeneration in the marina.
- (iv) As has already been submitted, the architecture of the development is excellent.
- (v) The development will change many views.

²⁶³ See p.182 of the TVIA.

- (vi) The overwhelming balance of the change will be extremely positive.
- (vii) It would not be a sensible or a defensible basis for refusing planning permission in this case that certain views of some of the features of the city or of the coast are interrupted by development that is right in this location and is required for it.

Views along the seafront and coastline

181. The City Council's first reason for refusal, even in its clarified and amplified form, does not refer to views along the seafront and coastline as being likely to be harmed by the development, although it does refer to views of the cliff.
182. Policy SU7 of the local plan, which is not referred to in the City Council's reasons for refusal, provides that planning permission will only be granted for development within the coastal zone where it respects or enhances the appearance and character of the seafront environment and does not adversely affect sea views.
183. In some views to the east from places to the west of the marina the development will interrupt the visibility of a wedge of chalk cliffs and the Downs above them. The cliffs will still be there and so will the Downs. And it could hardly be suggested that an awareness of their presence extending a long way beyond the city will be lost. It will not be. However, the reduction in their being actually seen is honestly counted as an adverse factor in the balance in the TVIA assessments²⁶⁴.
184. Change in these views is, however, an intended consequence of the planned regeneration of the marina. Development close to the Black Rock cliffs, if it is at or about the same height as the cliffs, will be bound to obstruct views of

²⁶⁴ See, for example, the commentary on view T30, p. 170.

the cliffs further to the west. Perspective makes this inevitable. Any substantial development on this site will have this effect²⁶⁵.

185. There is no specific policy protection at any level for these views. Describing view C6, Richard Coleman said²⁶⁶ that the development “invites the viewer to explore a new neighbourhood of the city” and “marks an important place”, which one “can read from afar”. If the interruption of the visibility of the cliffs is a loss, it is more than compensated for by the regeneration importance of the development and by the high quality design one will see in the development introduced into these views.

186. This can be well appreciated if one spends a few moments looking at the model. Seeing in three dimensions what is going to be the effect on these views does help one to make a good judgment about it. The views in the TVIA are necessarily partial in what they are able to show. They cannot display everything the human eye will perceive. They represent a static experience, whereas the way in which a person actually takes in the buildings and landscape around him is not like that; it is a kinetic experience, more subtle and constantly changing. From all of the places where these views will be had, one will still be able to see a great expanse of the English Channel and the arc of coastline too. For example, view T30 is not a set-piece view where a viewer would be likely to stand for a long time in one place. Crossing to the other side of the street he would see more of the cliffs²⁶⁷.

187. Although no mention is made of it in the reasons for refusal, nor was it a conspicuous theme in Mr Allen’s evidence, counsel for the City Council sought to cross-examine Mr Coleman about the loss of some views of the Pier²⁶⁸.

188. Though the visibility of the pier will be reduced in views from the east²⁶⁹, the new element in these views will be a “new quarter of the city”, well designed

²⁶⁵ See CD12/29.1 and CD12/29.2.

²⁶⁶ In his evidence-in-chief

²⁶⁷ As Mr Coleman noted in his evidence-in-chief

²⁶⁸ By reference to the existing sequence of views at p. 37-42 of his Appendices

²⁶⁹ As Mr Coleman noted in his evidence-in-chief when dealing with views C9 and C10

and, as Mr Coleman fairly put it, “something to be proud of”. There are, and will remain, many other views of the bay and the pier. In the balance of visual assessment the interruption of views of the pier as one comes towards Brighton from the east, then the delight one can take in the views of it that will unfold as one gets closer to the edge of the city²⁷⁰ can be accepted and should.

The Kemp Town Conservation Area

189. The ensemble of listed buildings in the Kemp Town estate comprises one of the country’s most important Regency townscapes²⁷¹. This has been acknowledged and taken into account since the outset of the project, both by Allies and Morrison and by Mr Coleman as townscape consultant²⁷² in his cross-examination for the Kemp Town Society Mr Coleman stressed that the proximity of the appeal site to Kemp Town estate and the effects the development would have on the special interest of the conservation area had been important considerations in his assessment and in his advice from the outset. Mr Coleman also emphasized that the appellants were themselves well aware of the sensitivity of the historic environment with which the regenerated marina will be juxtaposed. As Mr Coleman also explained, adjustments were made to the scheme to ensure that no harm will be caused to either the character or the appearance of the conservation area, or to its setting, or to its setting, or to views to or from it.

190. Mr Coleman’s judgment, with the weight of his experience behind it, is that Kemp Town will not in any way be damaged by the development.

191. The fabric of Kemp Town will not be affected by the development. The appeal site does not overlap with the conservation area. And it has no common boundary with it; the nearest part of the site to the conservation area is at least 100 metres from Kemp Town and at a lower level²⁷³. The proposed development

²⁷⁰ See the moving sequence of views from the east at Mr Coleman’s pp. 37-42.

²⁷¹ See sub-section 10.1 of Mr Coleman’s proof.

²⁷² Ibid.

²⁷³ See paragraph 5.1 of Mr Allies’ rebuttal proof of evidence.

will not encroach on the immediate setting of any the listed buildings or of the conservation area itself²⁷⁴.

192. There is no allegation in the City Council's reasons for refusal that the development would harm any listed building or its setting; Mr Froneman's evidence for the City Council did not articulate any such objection; and none of the third parties has convincingly argued this either. The first reason for refusal (as clarified and amplified) mentions policy HE3 of the local plan. This states

"Development will not be permitted where it would have an adverse impact on the setting of a listed building, through factors such as its siting, height, bulk, scale, materials, layout, design or use".

It is note necessary here to repeat the submissions already made on those factors in the design of the proposed development. None of them has been drawn into any clear-cut case for a rejection of the proposals on the grounds of a failure at least to preserve the special interest of any particular building or buildings, beyond the more general assertions made about the impacts of the development on views of and from the Kemp Town Conservation Area.

193. Policy HE6 of the local plan provides that

"Proposals within or affecting the setting of a [Conservation Area] should preserve or enhance the character or appearance of the area".

If the Secretary of State concludes, as he ought to, that the architecture of the proposed development is, as the City Council's design, landscape and conservation witnesses all seem to accept – in the words of one of them (Mr Roake): "elegant and convincing" – he is going to struggle to conclude that the development will harm the setting of the conservation area, or its character and appearance. It will not. No harm will be done to the heritage assets involved in this case. The Secretary of State will be reinforced in that conclusion by the fact that he is not being advised by English Heritage to come to the opposite conclusion. Such reservations as they have about the scheme do not ascend to an objection to the granting of planning permission. They have never sought that result. They have never said that the development will harm the setting of the conservation area or its character or its appearance. They do not say that the

²⁷⁴ See sub-section 10.2 of Mr Coleman's proof, and paragraph 8.8.1 of the TVIA.

alterations there will be to views into the conservation area or out from it – in particular from Lewes Crescent or from Arundel Terrace – are unacceptable²⁷⁵.

194. The first reason for refusal, in its clarified and amplified form, also includes in the list of policies it sets out policy HE11 of the local plan. This is aimed at preventing harm to “the historic structure, character, principal components or setting of an area included in the Register of Parks and Gardens of Special Historic Interest in England”. No mention is made of the registered garden in Kemp Town (the Kemp Town Enclosures) in the reasons for refusal and no evidence has been provided by the City Council to explain or substantiate an allegation that it would be harmed by this development. Such an argument would, in any event, be wrong. Paragraph 8.43²⁷⁶ in the text accompanying policy HE11 refers to the role of English Heritage as compilers of the “Register of Parks and Gardens of Special Historic Interest in England”. Again, therefore, it is significant that English Heritage do not oppose the appeal proposals. They do not say there would be any deleterious effects on the Kemp Town Enclosures. There will not be.

Views of Kemp Town

195. No significant views of the Kemp Town group will be obscured by the development²⁷⁷. This is not a matter of judgment; it is a matter of fact. This position can be contrasted with the likely obliteration of the view of Kemp Town from the western breakwater of the marina were development of the scale of the once proposed Brighton International Arena to go ahead on the Black Rock site²⁷⁸: a point that the City Council does not dispute.

196. There are two viewpoints in which the proposed development will be seen as a background to Lewes Crescent. These are:

²⁷⁵ See the English Heritage correspondence on pp. 63 to 72 of the appendices to Mr Coleman’s proof; and pp 53 and 54 of the December 2008 committee report (CD3/1.1).

²⁷⁶ The first of the two paragraphs with that number

²⁷⁷ See sub-section 10.3 of Mr Coleman’s proof, and paragraph 8.8.1 of the TVIA.

²⁷⁸ See view M43 of the TVIA

- a) the street outside 7 and 8 Lewes Crescent (View T27), where Marina Point will be seen behind the south-eastern extremity of the crescent; and
- b) the street outside Cubitt's former home (View T28), where the roof of Marina Point will just be seen among the varied roof line of the crescent.

197. Incursions have already been made into the backdrop of Kemp Town. These are haphazard, in the sense of not having been coherently designed as a backdrop to the historic estate; and some are poorly designed, the most egregious example being the de Courcels block²⁷⁹ and the Kemp Town hospital tower²⁸⁰. Kemp Town is no longer a free-floating jewel of Regency design, untarnished by later development. By virtue of its high quality design the proposed development will provide a worthy, though far from dominant counterpoint in these two views. Its visual juxtaposition with the Kemp Town estate will be a comfortable one.

198. The effect of the development in view T27 is perfectly acceptable. As Mr Coleman has said²⁸¹:

- (i) this will be a momentary part of the kinetic experience in a place where one is not likely to stand and stare;
- (ii) the eye will discern a clear distinction between the crescent in the foreground and the new development well to rear; and
- (iii) when one notices Marina Point one will be seeing a well designed building, which is not trying to exert its own personality too much in the scene.

199. English Heritage and the City Council's conservation officer both consider the effect on this view acceptable²⁸².

200. The effect on view T28 will be acceptable, for similar reasons. As Mr Coleman explained²⁸³:

²⁷⁹ See Figures 37 to 39 on p. 49 in Appendix D to Mr Coleman's proof.

²⁸⁰ Ibid., Figures 40 and 41 on p. 50

²⁸¹ In sub-section 10.6 of his proof

²⁸² See the third paragraph on p.2 of English Heritage's letter of 9 June 2008, p. 71 of Mr Coleman's appendices.

- (i) while it is one of those views from a place where one is more likely to stop and stare and is available at the place from which the maximum amount of the east quadrant is visible, the individual buildings in the quadrant themselves provide a varying profile, differing in height, roof form and in their array of chimney stacks;
- (ii) perceiving in this view the discrete form of Marina Point in the background, as part of the skyline silhouette will not be a shocking or unpleasant experience – far from it – for the development has been consciously designed to be of a delicate form when seen above the roof tops, and in this aim its architect has clearly succeeded²⁸⁴.

201. English Heritage and the City Council’s conservation officer both consider the effect of the development on this view acceptable²⁸⁵.

202. In assessing the appeal scheme in this spectrum of views the Secretary of State should, of course, not ignore the fact that the City Council has permitted the Brunswick development, which includes a 40-storey tower, and that English Heritage did not oppose that scheme. It is again a matter of fact, not of judgment, that the degree of visibility of the appeal development as a backdrop to Kemp Town will be considerably less than that of the approved Brunswick tower²⁸⁶.

203. It ought to be concluded that the architecture of the proposed development will serve to enhance the visual integrity of Kemp Town. As Mr Coleman has said²⁸⁷, the development will leave intact Kemp Town’s unique sense of place. It is the very strength of that sense of place that enables the Regency estate now to accept – as the latest of many a change by which its surroundings on all sides have evolved since it was built – a respectful new neighbour, in place of one that has got to move on. Kemp Town is not an island. It is embedded in the city of which, long ago, it became an integral part. This

²⁸³ See sub-section 10.7 of his proof.

²⁸⁴ See paragraph 8.8.1 of the TVIA.

²⁸⁵ See the third paragraph on p.2 of English Heritage’s letter of 9 June 2008.

²⁸⁶ See paragraph 8.8.1 of the TVIA.

²⁸⁷ In sub-section 9.12 of his proof

development will not destroy or disrespect the history of Kemp Town. It will do the opposite of that. It will signal the healthy growth of a city, in place of urban decay. It will not turn away from the best of the past. But it will show that the city of Brighton is prepared for its future as well²⁸⁸.

Perambulating views from Kemp Town

204. The appeal scheme will be visible in a continuous sequence of views passing from west to east across the south face of the Chichester and Arundel Terraces²⁸⁹.

205. Considerable care has been applied in the design to ensure that Marina Point will not be over-dominant and that the architecture of Marina Point achieves a good visual conjunction with development in the foreground²⁹⁰.

206. That the development will come nowhere near overpowering the buildings one will see in front of it as one looks towards it from the west, either individually or in their grouping, is clear from the TVIA, in views T42 and T30. In these places the view has deliberately been taken close to the listed buildings to make this assessment both accurate, and as onerous as it reasonably can be²⁹¹.

207. The development has been designed so that from Kemp Town one will be able to get a clear view through it to the harbour and to the horizon of sea beyond²⁹². This has been welcomed by English Heritage and the City Council's conservation officer²⁹³. The maritime setting of Kemp Town will remain clear, and uncompromised. So too will Kemp Town's splendid command of the sea – in the

²⁸⁸ See, for comparison, the Inspectors' conclusions on the "Shard of Glass" development (CD11/3), the Doon Street tower (CD11/4), and the redevelopment of Lots Roads Power Station (CD11/5).

²⁸⁹ See pp. 34 and 35 of the TVIA, Mr Coleman's Appendix D, Figures 45 to 51 on pp. 53 and 54, views T42 and T30.

²⁹⁰ See sub-section 10.8 of Mr Coleman's proof.

²⁹¹ Ibid.

²⁹² See sub-section 9.3 of Mr Coleman's proof, and views C39 and C40 in the TVIA.

²⁹³ See the second paragraph on p.3 of English Heritage's letter of 9 June 2008 (in Mr Coleman's Appendix D.).

visual sense, of course, not the metaphysical²⁹⁴. Mr Froneman seems to have accepted as much²⁹⁵.

208. Views T42 and T30 in the TVIA demonstrate that the sea and horizon will remain visible from Kemp Town. In the image for view T42 one can see the masts of boats in the outer harbour of the marina²⁹⁶. Mr Coleman confirmed²⁹⁷ that, although these gaps were already present in the initial design of the scheme, alterations were made to the proposed massing of the development to emphasize them.

209. The development will not seem over-assertive in views from Lewes Crescent and Arundel Terrace²⁹⁸. A gradient of receding height is clear in view C6 in the TVIA. These views can be compared with views from Kemp Town looking west towards Sussex Heights²⁹⁹, which is at a higher level than Marina Point will be, and which forms an attractive relationship between buildings historic and modern.

210. The architecture of Marina Point will be well worthy of its place in the perambulating view across the south face of Chichester and Arundel Terraces³⁰⁰. The fact that new and historic fabric will be side by side will serve to intensify the experience of the Regency elements of Kemp Town³⁰¹.

211. English Heritage have not objected to the proposed development coming into this perambulating view³⁰². English Heritage were keen to make the point to the City Council that the thoughts Mr Steaggles had previously expressed about the design of Marina Point should be taken into account in deliberating on the

²⁹⁴ See Figure 8.10 on p. 31 of the TVIA.

²⁹⁵ See paragraph 3.7 of his summary proof.

²⁹⁶ Though this was not acknowledged by the MGAG in their comments on the Sea Wall building in paragraph 7.4.4 of their statement.

²⁹⁷ In his evidence-in-chief

²⁹⁸ Contrary to the assertions in paragraph 7.6.4 of the Marine Gate Action Group's statement

²⁹⁹ See p.36 of the TVIA p. 36.

³⁰⁰ See sub-section 10.9 of Mr Coleman's proof.

³⁰¹ See paragraph 10.8 of Mr Coleman's proof.

³⁰² See English Heritage's letter of 9 June 2008, on p. 71 of Mr Coleman's Appendix D.

balance between his comments and the acknowledged advantages of regeneration which the scheme. There has been as much consensus as it might be realistic to expect in an inquiry such as this on the soundness of the architecture of Marina Point. For the City Council Mr Froneman³⁰³ agreed that the appeal scheme will be a “landmark”.

212. View T30 in the TVIA is taken from the edge of the enclave rather than from its centre. The model shows well that in local views from this part of the city the development as a whole – seen, as it will be, not in two dimensions but three – will represent itself as a series of stepped planes, and not a blank-fronted bulk. One can test the worth of descriptions of the development as a “vast concrete cuckoo” and resembling “a tumour”³⁰⁴ in that way. Such epithets reach beyond hyperbole; they qualify well as travesty. The Sea Wall building will provide a firm façade to the marina, a “modern comparator”³⁰⁵ to the rhythm of the architecture of Kemp Town. The development will not dominate the historic terrace³⁰⁶. Its being set on distinctly lower land than the ground levels of even the nearest parts of the Kemp Town houses will make clear that it is “another place”³⁰⁷. Mr Coleman was right: “the power of the Kemp Town architecture and its size [are] clearly the dominant element” in this view.

The setting of the Kemp Town Conservation Area

213. Mr Froneman was wrong when he said that the proposed development will cut off the “only remaining part of the conservation area’s once undeveloped setting”³⁰⁸. The original connection between the Kemp Town estate, which stood at first in splendid isolation from the Regency town of Brighton, and the open countryside to its north, its west and its east has long been lost, in all three directions. To the east it has been first disrupted and then gradually destroyed by

³⁰³ In paragraphs 5.21 and 5.27 of his proof

³⁰⁴ Both of which surfaced in the closing submissions of Mr Simpson

³⁰⁵ As Mr Coleman it in his evidence-in-chief

³⁰⁶ See p.170 of the TVIA.

³⁰⁷ As Mr Coleman put it in his evidence-in-chief

³⁰⁸ See paragraph 3.1 of his proof, and paragraph 1) c) of his summary proof.

increments of development to the east of the estate³⁰⁹. While some views from Marine Parade contain some vestigial threads of connection between the conservation area and the open countryside this is not so in any in views from any Lewis Crescent or Sussex Square³¹⁰.

214. Similarly, the appeal scheme does not destroy one's perception of "being at the edge of the city"³¹¹. Kemp Town is no longer on the rim of the city. This is a matter of fact. One can, of course, experience Kemp Town within a rank of seafront buildings. But it does not stand at the end of the line, with an unbroken swathe of countryside and coast to its east. In distant, oblique views from the west in which one cannot see much of the development in the coastal strip to the east of Kemp Town one can see the marina as a separate entity. The "existing" image for view C4 in the TVIA shows this. In this view one can also see the gap that will separate the Kemp Town estate from the marina. There is a gap today. And a gap will remain once the development is in place. As Mr Coleman remarked³¹², what is dominant in this view is the "long line of seafront buildings". The hospital tower to the west is the highest incident in the view, and the view culminates in the break at the eastern extremity of the Kemp Town terraces. The linear Sea Wall building, placed at right angles to the line of the seafront, and the "bookending" of the city by the taller buildings in the development will³¹³ be, as it is meant to be, "a prominent object that marks the end of a built up area".

Conclusion: the effects of the development on the special interest of the conservation area

215. The City Council has signally failed to demonstrate that the special interest of the Kemp Town Conservation Area will be impaired by the proposed development. None of the individual attributes of the character and the appearance of the conservation area identified, in a fairly wide terms, in Chapter

³⁰⁹ See, for example, view C40 in the TVIA

³¹⁰ See, for example, view C39, on pp. 196 and 197 of the TVIA

³¹¹ See paragraph 3.10 of Mr Froneman's summary proof.

³¹² In his cross-examination for the Kemp Town Society

³¹³ As Mr Coleman stated in his evidence-in-chief

3 of the Kemp Town Conservation Area Study and Enhancement Plan³¹⁴ and identified more specifically in summary form in Appendix 4 to that document will be harmed.

216. On page 11 of the conservation area study, it is stated:
- “The character of the Kemp Town Conservation Area derives greatly from the uniform nature of the estate and its striking layout in a prominent position overlooking the sea. Its graceful and imposing appearance depends, too, on the individual symmetry and clarity of form of the buildings themselves. ...
- The estate was designed as an ‘exclusive’ residential development and, although the original houses have been converted into flats, the area retains the almost wholly residential use which is so important to its character. Also important, both historically and visually, is the link to the sea which the slopes and esplanades provide. These two remain largely in their original form but are presently relatively little used and suffer from graffiti. It should be recognised, however, that this situation may well change with the future development of leisure park proposals for Black Rock together with the growth of attractions at the Marina.”
217. None of those attributes will be lost or destroyed or compromised (as the case may be) by the proposed development.
218. The “uniform nature” and “striking layout” of the Kemp Town estate will not be affected. Nor will its “graceful and imposing appearance”. The “individual symmetry and clarity of form of the buildings” will be left wholly intact. No historic link with the sea will be lost. Abundant visual links with the sea will remain. So will the amenity of the slopes and esplanades; they will stay just as “largely in their original form” as now.
219. Similarly, the qualities of the “[s]ense of enclosure”, the function of the “central gardens as a setting for the buildings”, the “contrast between the grandness of the front facades and the small-scale modesty of the rear street areas and mews buildings”³¹⁵ will not be compromised. Neither will the intrinsic features of merit in the buildings of the conservation area and their compositional qualities listed under the heading “Appearance” in Appendix 4.

³¹⁴ Of January 1992 (CD17/1)

³¹⁵ Qualities that are listed in the summary under “Character” in Appendix 4 to the study

220. The evidence and submissions provided to the inquiry on behalf of the Kemp Town Society, eloquently presented as they have been, do not make a cogent case to the contrary. The Secretary of State ought therefore to conclude that the effects of the development on the heritage assets of Kemp Town will be acceptable and that the appeal scheme is in accordance with policies HE3, HE6 and HE11 of the local plan³¹⁶.

The effect of the development on the South Downs AONB

221. The South Downs are recognized at the national level for the importance and beauty of their landscape. They are an AONB. They will shortly be a National Park. The marina is not in the AONB but is close to it. The Secretary of State obviously must have regard to the likely effect of the proposed development on the setting of the AONB, and on views of and from it.

222. Policy C3 of the South East Plan states, as one would expect of such a policy in a regional plan:

“High priority will be given to conservation and enhancement of natural beauty in the region’s [AONBs] and planning decisions should have regard to their setting. Proposals for development should be considered in that context...”

No development control test is created by this policy.

223. Policy NC8 of the local plan provides that

‘Development within the setting of the AONB will not be permitted if it would be unduly prominent in, or detract from views into, or out of the AONB ... or would otherwise threaten public enjoyment of the AONB’.

This is not a policy that advocates or requires no visual change. As is the case with policy QD4, it is directed against harmful – “unduly dominant” – change. It is not a criterion of the acceptability of development outside the AONB that it should be invisible or difficult to see from within the AONB. Mr Allen agreed³¹⁷ with this interpretation of policy NC8.

³¹⁶ See Mr Coleman’s proof at 10.10.1

³¹⁷ In cross examination

224. The proposed development will not cause any harmful change to the setting of the AONB, or to views of or from it. Neither English Heritage nor Natural England has objected to the scheme on this – or any other – ground³¹⁸. They were right not to do so. They have not sought to argue that the development will compromise the policy priority of conserving and enhancing the natural beauty of AONBs. They were right to eschew any such objection.
225. The designation of the South Downs National Park was approved by the Secretary of State in March 2009, subject to a number of boundary modifications. The Secretary of State’s decision finally confirming the boundaries is imminent³¹⁹. Full legal status will follow within a year. No suggestion appears to have been made in the course of the designation process that the marina should be included within the National Park. That is not surprising. Nor is the fact that the proposed National Park is not referred to at all either in the statutory decision notice or in the “clarified and amplified” reasons for refusal. Policy C2 of the South East Plan is referred to in the first reason for refusal in its revised form. But that policy simply provides that the future designation is, for the time being, a planning consideration. It contains no development control test.
226. Policy QD4 of the local plan provides that development that would have a detrimental impact on or would impair a view across, to or from the Downs, by wholly obscuring it or being out of context with it, will not be permitted. As has already been submitted, this policy does not require there to be no change to any such view; it is aimed at preventing harmful change.
227. The proposed development will not have a detrimental impact on, or impair any view across, to or from the Downs³²⁰.
228. The development will be visible in certain views from and of the South Downs³²¹. This, however, will generally be in the context of the city, or a large portion of it, seen from the Downs. There is nothing wrong in this. It is what one

³¹⁸ See the December 2008 committee report at p. 54 (CD3/1.1).

³¹⁹ As Mr Allen explained in evidence-in-chief

³²⁰ As confirmed by Mr Coleman in re-examination

³²¹ See views C10, C11, D15, D16, D19, D21 in the TVIA.

would expect. Indeed, the landform makes it inevitable that in many views from the higher slopes of the Downs one looks down on to and into the city, spread out in the distance below³²². Mr Coleman described the conjunction of the city and the Downs as “a delight to see”³²³. The marking of the end of the City that will be achieved by the proposed development will be a “further delight”, particularly as its design is of such high quality. The deep balconies and the sculptural form of Marina Point will be noticeable from the Downs. This building will not stand out as much as will the Brunswick tower will, or, perhaps, take the eye as often, but when it is seen it will be seen as a something that is elegant and fine³²⁴. The development will not materially affect any view towards or from the Downs in which the city or parts of it are not already visible³²⁵.

229. Mr Allen for the City Council, agreed that in view C9 one is aware today of the presence of a major urban settlement. He agreed, as he had to, that the eastern fringes of Brighton are visible from the Downs, but would not say whether, in his view, their presence in those views constituted an intrusion³²⁶.

230. The permitted Brunswick development plainly will have some visual impact on the area between the Downs and the sea. It too will contribute to the panorama of the city and the marking of the conjunction between the city and the Downs³²⁷. In permitting the Brunswick development, the City Council clearly did not consider that it was “unduly prominent” (in the words of local plan policy NC8). Mr Allen expressed no doubt when asked in cross-examination whether the City Council regarded the decision to approve the Brunswick scheme as having been a mistake. He did not believe it did. Nor has any other witness for the City Council in his evidence, or its counsel in their closing submissions, suggested that that permission (or the subsequent dispensation granted for it under the Brighton Marina Act 1968) was wrongly granted. That approval is testament to the acceptance by the City Council of a very tall building in this

³²² As Mr Coleman said in his evidence-in-chief

³²³ In his evidence-in-chief

³²⁴ As Mr Coleman said in response to a cross-examination for the City Council: see, for example, view C9

³²⁵ See TVIA at paragraph 12.4.

³²⁶ In cross examination

³²⁷ See e.g. Cumulative Views D18 and D19.

location, which, in some views at least, will be a landmark – and a very striking one at that – seen from the Downs³²⁸.

231. Counsel for the City Council, in cross-examination of Mr Coleman, suggested that something “more recessive” might be built at the marina, now that the Brunswick development has been approved. Mr Coleman confirmed that the present scheme has been deliberately designed not to compete with the Brunswick development. And it will not. If, however, by “recessive” it was meant that the development should be low-rise and at low density, the idea runs counter to the City Council’s policies encouraging high density, tall and visible buildings at Brighton Marina. It may fairly be said that the concept of recessive development at the marina is not conspicuous in relevant policy.

232. When the South Downs Joint Committee commented at the planning application stage they indicated that in their view the development would not detract from the AONB. They therefore raised no objection. However, by the time that the Planning Committee met in December 2008 the joint committee had resiled from that position. Evidently, however, they were not against a 28 storey building being erected on the appeal site. Rather, their concern was limited to the individual design of Marina Point, which, for reasons that are obscure, they felt was not good enough³²⁹. It will be recalled here that the architecture of Marina Point has not been criticized by CABE, by English Heritage or by the City Council’s officers, or by the City Council’s witnesses at this inquiry. Its merits are described above. If the Secretary of State accepts that CABE were right, and English Heritage were right and the City Council’s officers and their witnesses were right in their collective judgment that the architecture of Marina Point is acceptable, he can and should conclude that the South Downs Joint Committee’s concern falls away.

³²⁸ As was confirmed by Mr Coleman in cross-examination by counsel for the City Council

³²⁹ See Mr Coleman’s proof of evidence at paragraph 12.3.1.

Main issue (ii): matters relating to residential amenity

The size of the proposed housing

233. There are no minimum unit sizes for proposed housing specified in the development plan. The concept of size referred to in policies HO3 and HO4 of the local plan relates to the number of bedrooms, and not to floor space³³⁰. Neither the building regulations nor the planning system specify minimum floor space for privately developed homes in this country³³¹.

234. Policy HO3 of the local plan (entitled “Dwelling type and size”) states that

“The [City Council] will seek to ensure that proposals for new residential development ... incorporate a mix of dwelling ... sizes that reflects and responds to [Brighton and Hove’s] needs”.

Paragraph 4.34 of the local plan elucidates the policy in this way:

“The [Brighton and Hove] ‘Housing Needs survey 2000’ demonstrated, in overall numerical terms, that the greatest category of need will be for smaller sized affordable accommodation (one and two bedrooms). However, analysis of housing needs demonstrates a significant ‘mismatch’ in the demand and supply of affordable larger family accommodation (three and four plus bedrooms) that has emerged in recent years. Therefore, it is particularly important, that wherever possible, three and ‘four plus’ bedroom dwellings form an element of the [affordable housing] mix’.

235. All of the affordable housing dwellings (including the proposed shared ownership dwellings) have been built to exceed the Homes and Communities Agency (“HCA”) Design and Quality Standards of April 2007³³² and the National Affordable Homes Agency Housing Quality Indicators, version 4, which were updated in April 2008³³³. This is accepted by the City Council³³⁴. This is the guidance that should be given material weight on this issue because it encompasses the current principles accepted and promoted by the HCA to ensure the provision of high quality affordable housing that is well designed,

³³⁰ See Mr Bean’s proof of evidence at paragraph 5.6.

³³¹ Mr Bean’s rebuttal proof at paragraph 2.17

³³² CD5/7; and see Mr Bean’s proof at paragraphs 5.13 to 5.15

³³³ CD5/8; and see table 1 of Mr Bean’s proof on p. 14

³³⁴ As is stated in Mr Goodwin’s proof, in paragraph 5.33, and in the Statement of Common Ground, in paragraph 6.34

flexible and adaptable for future occupants³³⁵. The Secretary of State will be aware that the Design and Quality Standards have replaced the former Housing Corporation Scheme Development Standards referred to in the City Council's affordable housing brief, and those standards are no longer of any relevance in this case.

236. The appeal scheme has been rigorously tested against the HCA Design and Quality Standards³³⁶. The measure of performance that is stipulated for the internal environment core performance standard is the meeting in full of the minimum scores for three aspects of the published Housing Quality Indicators ("HQIs"). The specified HQIs and the stipulated minimum scores are these: for Unit Size, 41%; for Unit Layout, 32%; and for Unit Services, 22%. These indicators are measured through the Housing Quality Indicator ("HQI") toolkit to ensure the provision of good quality affordable housing. An independent HQI assessment of the proposed scheme was carried out by Churchill Hui in October 2007³³⁷. This tested Unit Size and Layout. It was not considered necessary to test Unit Services as this is not a hard score to meet. Mr Bean explained in his cross-examination by the counsel for the City Council that the scheme would easily achieve approximately 60% for unit services, which may be compared with a minimum requirement of 22%. This was not disputed by the City Council. For both affordable tenures, the Unit Size was exceeded by 2%, and the Unit Layout by 19%³³⁸. The most important test is Unit Layout because, whilst any size of dwelling can be constructed, if one cannot fit inside it the minimum HQI furniture requirements and activity zones, the dwelling will not be satisfactory³³⁹.

237. To assist the Secretary of State Churchill Hui have recently carried out a further assessment based upon the substituted affordable housing layouts included within the application for planning permission³⁴⁰. This assessment takes into account all 520 affordable dwellings, including the shared ownership

³³⁵ As has been explained by Mr Bean in his rebuttal proof at paragraph 2.18

³³⁶ CD5/7

³³⁷ CD12/2

³³⁸ See Mr Bean's proof of evidence, paragraph 5.14.

³³⁹ As Mr Bean explained in evidence-in-chief

³⁴⁰ CD12/28

element. In it the score for Unit Size is 48%, which is to be compared with a requirement of 47%. The Unit Layout achieves a score of 65%, which is to be compared with a requirement of 32%. As has been stated by Churchill Hui, therefore, it may be concluded that the affordable housing accommodation proposed is well above peer group average and will provide good quality housing³⁴¹.

238. Thus it is absolutely clear that the appellants have met the national recommendations for all new affordable homes which are to receive Social Housing Grant.

239. All of the new dwellings (both private and affordable) will meet Lifetime Homes standards³⁴². What makes a dwelling a Lifetime Home is the incorporation of 16 design features that together create a flexible blueprint for accessible and adaptable housing. The Lifetime Homes concept serves to increase choice, independence and a sense of well-being for communities and individuals alike³⁴³. Five per cent of the dwellings in the proposed development (including 10% of the affordable units) will meet the Wheelchair Accessible standards, in accordance with policy HO13³⁴⁴. This has been confirmed by City Council's Disability Access Officer in his letter dated 26 June 2008³⁴⁵. The meeting of the Lifetime Homes Standards is as good evidence as the Secretary of State could reasonably wish that these new homes will be flexible and adaptable enough to deal with changes in the circumstances of their occupants³⁴⁶. All of the dwellings in the development will be fit for purpose³⁴⁷.

240. All of the proposed dwellings will achieve Level 4 in the code for sustainable homes. This is a notable achievement and one that is matched by

³⁴¹ Mr Bean amplified this conclusion in his evidence-in-chief

³⁴² CD12/4

³⁴³ As was explained by Mr Bean in evidence-in-chief

³⁴⁴ CD8/11; and see Mr Bean's rebuttal proof at paragraph 3.1(b).

³⁴⁵ In Mr Bean's Appendix 1

³⁴⁶ See Mr Bean's proof of evidence at paragraph 5.7

³⁴⁷ As Mr Bean explained in evidence-in-chief

very few other developments at the present time³⁴⁸. The HCA's target for sustainable homes, for 2010, is Level 3³⁴⁹.

241. The City Council's Housing Strategy Team has produced an internal guide to minimum unit size requirements (The generic 'Affordable Housing Brief'). The version in force at the time of the submission of the application is entitled "Section 106 – Affordable Housing Requirements – Brighton Marina – Inner Harbour", and was issued in May 2006³⁵⁰. This was provided to the appellants in May 2006. Mr Goodwin confirmed in cross-examination that neither of these briefs has been ratified by any committee of the City Council as local planning authority and that neither has any backing of a resolution made by the City Council or any of its committees behind it. Neither, therefore can carry any significant weight as a material consideration for the purposes of development control.

242. According to Mr Goodwin³⁵¹, in March 2009 an updated generic version of the brief was prepared. This document has not been consulted upon nor is it supported by statutory policy in the development plan. Until the issue of Mr Goodwin's proof, the appellants had never seen this document, nor had reference been made to it by the City Council in any discussions with them. Its provenance is opaque³⁵².

243. The May 2006 brief contains "recommended" standards for social housing³⁵³. These, however, do not have the force of mandatory requirements. Rather, they are aspirations, not supported by development plan policy.

³⁴⁸ As confirmed by the Rt Hon John Gummer when he gave oral evidence to the inquiry on 3 December 2009

³⁴⁹ See Mr Bean's proof of evidence at paragraph 5.13, and his rebuttal at paragraph 2.13.

³⁵⁰ See Appendix A to the Housing Statement (CD2/12).

³⁵¹ See his proof at paragraph 5.22.

³⁵² In Mr Bean's words at paragraph 2.4 of his rebuttal proof

³⁵³ See paragraph 4.19 of the planning committee minutes (CD3/1.2) and Mr Bean's proof at paragraph 5.7.

244. The City Council's brief requested 40% of the development to be one-bedroom flats of at least 51 square metres, 50% to be two-bedroom flats of at least 66 square metres, and 10% to be three-bedroom flats of at least 76 square metres. During negotiations with the City Council's officers, the appellants were asked to increase the two-bedroom units from 66 square metres to 67 square metres. The appellants were then informed by the housing officers that they no longer wanted one-bedroom wheelchair units as these would not be suitable for a visiting carer to stay in, and were requested to replace these with larger two and three-bedroom units. This the appellants did³⁵⁴. The appellants were also asked to increase the number of three-bedroom family units above the requested 10%³⁵⁵. This history shows the responsive and responsible approach that has been taken by the appellants and the flexible use the housing officers were prepared to make of the recommendations in the City Council's brief.

245. Some of the affordable housing dwellings do not meet the City Council's recommended standards in the Affordable Housing Brief³⁵⁶. This is because:

- (i) Meeting the standards for one-bedroom units (by an increase of five square metres) would result in an extra building cost of about £2.3 million, which would not be recoverable from the purchasing housing association and would thus affect the viability of the development. As is acknowledged in the December 2008 report to committee, this was accepted by the City Council's housing officers³⁵⁷.
- (ii) An unnecessary increase in floor space would have been at the cost of dwelling numbers, resulting in a reduction in the 40% provision the City Council wanted to maintain³⁵⁸.
- (iii) In addition to the extra build cost, the appellants would need to sacrifice some 980 square metres of private residential floor space, which equates to about

³⁵⁴ See Mr Bean's Table 1 on p. 14 of his proof and his evidence-in-chief.

³⁵⁵ As is recorded in Mr Bean's proof at paragraph 5.25

³⁵⁶ See Mr Bean's proof at paragraph 5.7 and the agreed table for the individual flats (CD13/17).

³⁵⁷ See Mr Bean's proof of evidence at paragraph 5.8.

³⁵⁸ Ibid.

£4.5million in revenue, none of which has been factored into the District Valuer's viability assessment³⁵⁹.

246. Mr Goodwin suggested that the City Council has a sound basis for seeking affordable housing that meets and exceeds the recommendations in the May 2006 brief³⁶⁰. He seems to have based this view on the following factors:

- (i) The floor areas referred to in the brief are "mainly based upon the size requirements of what is now English Partnerships Quality Standards (November 2007)"³⁶¹;
- (ii) There is evidence that space standards are under scrutiny, in particular:
 - (a) the Mayor of London's draft planning guidance on larger flat sizes in London³⁶²;
 - (b) CABE's publication of the results of research into space standards in new homes that recommends that there should be recognition that adequate space in the home has an effect on health, diversity and community cohesion³⁶³.

247. The English Partnerships' Quality Standards, cited by Mr Goodwin, should be given no material weight in this case, for the following reasons:

- (i) They are intended as guidance to provide developers with a fair, consistent and predictable basis for submitting bids on English Partnerships sites. The guidance only applies to English Partnerships' own projects or where English Partnerships is the contracting authority³⁶⁴. In any event, as is demonstrated by the two English Partnerships schemes referred to by Mr Bean, namely the Millbay development in Plymouth and The Parks development in Bracknell³⁶⁵, English Partnerships do not always follow their own recommended standards.

³⁵⁹ See Mr Bean's proof, paragraph 5.9.

³⁶⁰ In paragraph 5.31 of his proof

³⁶¹ See paragraph 5.26 of Mr Goodwin's proof.

³⁶² See paragraph 5.29 of Mr Goodwin's proof.

³⁶³ See paragraph 5.30 of Mr Goodwin's proof.

³⁶⁴ See paragraph 3 on p. 1 of the English Partnerships document at Appendix E to Mr Goodwin's proof, and also Mr Bean's rebuttal proof at paragraph 2.5.

³⁶⁵ CD12/28

(ii) English Partnerships became part of the HCA on 1 December 2008. The HCA have stated that activities inherited from English Partnerships are “subject to the existing Quality Standards and the National Housing Programme will continue to operate according to the Design and Quality Standards inherited from the Housing Corporation”³⁶⁶. As English Partnerships are neither the site owner nor the contracting authority, the applicable standards here are the Design and Quality Standards of April 2007 and the HQI standards, version 4³⁶⁷, which the appeal scheme meets.

248. The Mayor of London’s draft planning guidance, cited by Mr Goodwin, is of no material weight in the present case for the following reasons:

- (i) These are merely suggested standards for consultation.
- (ii) They carry no force outside London³⁶⁸.

249. CABE’s “Space in new homes” research paper, which was also cited by Mr Goodwin, relates to private new homes built between 2003 and 2006. As to affordable homes, this document makes clear that the relevant space requirements are those set by the HCA, and it then goes on to consider the importance of adaptable and sustainable homes. As all the proposed affordable housing in the present case exceeds the Homes and Communities Design and Quality Standards, will be constructed to Lifetime Homes standards, and will achieve Level 4 of the code for sustainable homes, the scheme plainly does not fall foul of the advice in CABE’s paper. It meets it.

250. As was noted in the December 2008 committee report³⁶⁹, the failure to meet in full the City Council’s guidance has to be weighed in the balance with the benefits that this scheme holds in prospect both for the marina and for the city as a whole, in providing regeneration and a large amount of much needed housing and affordable housing. And in any event the City Council’s officers – both its

³⁶⁶ See the extract from the HCA’s website, at Appendix B to Mr Bean’s rebuttal

³⁶⁷ See Mr Bean’s rebuttal at paragraph 2.6

³⁶⁸ See Mr Bean’s rebuttal proof, at paragraph 2.7.

³⁶⁹ CD3/1.1 on p. 99 at paragraph 4

planning officers and its housing officers – found the affordable housing element of the scheme acceptable³⁷⁰. They were not wrong.

251. The Secretary of State will note that the proposed unit sizes exceed those recently approved in the city at the Grand Ocean Hotel, Saltdean³⁷¹, and at City Point, in Blocks E and F, New England Quarter, Brighton³⁷². Mr Bean also drew attention to comparable developments elsewhere: at Victoria Road, Ashford³⁷³, and Wallis Yard, Hart Street, Maidstone³⁷⁴.

252. So, in summary, the Secretary of State can and should conclude that the proposed dwellings are of an acceptable size when viewed against national guidance, and will provide satisfactory living conditions for their future occupants, in accordance with policies QD1, QD3, QD27 and HO4 of the local plan and PPS1 and PPS3.

The living conditions of the occupants of the proposed new housing

The size and quality of the outdoor spaces proposed

253. Policy QD3 of the local plan states that the City Council will seek to secure the retention of existing and the provision of new open space. This aim is articulated in more detail in policy HO6, which deals with quantitative provision (2.4 ha per 1000 population or part thereof, or the equivalent of 24 square metres per resident) and also indicates that proposals will be expected to accord with NPFA standards and guidance, and to take into account Sport England's guidance.

254. Policy HO6 seeks the commensurate provision of public open space in association with development. It applies across the whole city. In the present case this policy needs to be considered and applied in the light of the extremely

³⁷⁰ See also Mr Bean's proof of evidence at paragraph 5.10.

³⁷¹ See Mr Bean's Appendix 3.

³⁷² See Mr Bean's Appendix 4.

³⁷³ See Mr Bean's Appendix 5.

³⁷⁴ See Mr Bean's Appendix 6.

unusual circumstances of Brighton Marina³⁷⁵. The marina is unlike any part of the city. It must be recognised that whatever form of development were to be proposed at the marina, it could never meet the open space requirements of policy HO6 on the site itself, and would thus have to rely, to a degree, on the alternative contribution to off-site provision provided for in the policy, which is what this development will do³⁷⁶. If one took the City Council's estimated level of occupancy of the proposed development (2805 residents), the open space required by policy HO6 would be in excess of 6.7 hectares³⁷⁷. As it is, the total area the appellants have available to build on within the six development sites is only 4.3 hectares, of which 3.9 hectares are already allocated within the scheme for new and replacement class A1 and A3 uses (1.63 hectares), car and cycle parking (2.08 hectares), and combined heat and power plant (0.22 hectares)³⁷⁸. Mr Goodwin, on behalf of the City Council, has accepted these facts³⁷⁹.

255. Draft SPG9 recognizes that the standard for on-site provision in policy HO6 may not be applicable in what it describes as "very special circumstances", 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"³⁸⁰. The situation at the marina is also anticipated in the City Council's "Open space, sport and recreation study" of March 2009³⁸¹.

256. Residents of Brighton Marina enjoy the benefit of substantial areas of recreational space of extraordinary variety and quality within easy reach of their homes, a point highlighted by the City Council in SPG15 as one of the reasons for promoting tall buildings here³⁸². These areas include the breakwaters and the boardwalk, Park Square, the under-cliff walk, the beaches, the promenade,

³⁷⁵ As explained by Mr Reid in his proof at paragraph 2.12

³⁷⁶ See Mr Reid's proof at paragraph 2.12 and Mr Allies' at paragraph 8.3.7.

³⁷⁷ See also the Statement of Common Ground, paragraph 6.87.

³⁷⁸ As is explained by Mr Allies in paragraph 8.3.7 of his proof

³⁷⁹ In paragraph 5.96 of his proof

³⁸⁰ SPG9, p. 9

³⁸¹ CD9/14, section 14.31, p. 183; see Mr Allies' proof at paragraph 8.3.8.

³⁸² At paragraph 8.3.1

Madeira Drive, the cliff top and East Brighton Park³⁸³. Mr Allen agreed³⁸⁴ that it is necessary to look at the gamut of recreational spaces that will be available to those who live in the marina, not just the on-site provision in the scheme.

257. Sport England do not object to the proposed on-site recreation provision.

They wrote to the City Council on 1 December 2008, saying this:

“Sport England is now satisfied that the applicant has provided adequate justification for the choice of on site sport and recreation facilities”³⁸⁵.

Sport England made it plain that they had had regard to the DAS and noted the extensive consultation that had been undertaken with, amongst others, local community groups and schools, which had informed the selection of the types of sports facilities proposed and had led to the scheme being progressively refined.

258. Sport England’s holding objection – for that is what it was – had been based on their concerns about the detailed justification for the types of facilities chosen and specific details of the off-site contribution³⁸⁶. They did not express any concern about the design of the facilities proposed. Mr Allen agreed in cross-examination that the information given to Sport England in October 2008 was neither inaccurate nor incomplete.

259. The City Council’s “Development Manager – Sport and Leisure” does not object to the quality or the size of the outdoor space proposed³⁸⁷. Mr Reid told the inquiry that he had been informed that a series of discussions had taken place with that officer concerning the provision of outdoor recreation space, and that this had led to “quite a significant re-thinking of the style, content and scale of the space”³⁸⁸. This is borne out in the officers’ report³⁸⁹:

“Following the initial comment made by officers at the pre application stage regarding the allocation for outdoor recreation it is now evidence that the requirements of policy HO6 cannot all be met on site given the

³⁸³ See Mr Allies’ proof at paragraph 8.6.2

³⁸⁴ In cross-examination

³⁸⁵ CD12/13

³⁸⁶ See 22 October 2008 letter (CD12/13).

³⁸⁷ See the December 2008 committee report, CD3/1.1, pp. 70-72.

³⁸⁸ In evidence-in-chief

³⁸⁹ On p. 71

size and location of this development. However, after sharing these initial comments with the developer and their agents they have made great efforts to improve both the on site and off site sports and recreation offer. Indeed their response has been very positive in making sure that sport and recreation opportunities on site would meet the needs of all residents from children right through to older people.”

260. The Secretary of State can and should conclude that the proposed development will provide at least as much by way of both public and private outdoor spaces as could reasonably be required, and that all of these spaces will be fit for their intended purpose, accessible, and safe and attractive to use. There is no policy requirement³⁹⁰ to provide more on-site open space than is justified by the development. Mr Goodwin accepted³⁹¹ that each application should be looked at individually, and that the judgment is necessarily, every time, a case-specific one.

261. Once the proposed development has been fully implemented residents of the marina – all of them – will be able to enjoy the several publicly accessible spaces for recreation³⁹²:

- (i) A large area of public open space (3,500 square metres in extent) will be laid out along the northern side of the Cliff building. By the upgrading of the under-cliff walk and other routes, the development will create a series of attractive linked open spaces, where at present there are none³⁹³. The Cliff Park will incorporate an adventure playground (a NEAP of 1,100 square metres) and an amphitheatre in which lectures and performances can take place³⁹⁴;
- (ii) At the eastern end of the Cliff Park, a Geo-Learn space is proposed (designed as a LEAP of 430 square metres) where there one will be able to enjoy views of the cliff face³⁹⁵;

³⁹⁰ Either in draft SPG9 or elsewhere

³⁹¹ In cross-examination

³⁹² See DAS Volume III at sub-section 7.4.

³⁹³ See Mr Reid’s proof, paragraph 3.5.

³⁹⁴ DAS Volume III, sub-section 7.4, and Mr Allies’ proof at paragraphs 8.6.6 and 8.6.7

³⁹⁵ See Mr Reid’s proof, paragraph 3.5; and Mr Allies’, paragraphs 8.6.8 and 8.6.9.

- (iii) Under the access ramps are proposed (in a space of 2,595 square metres) a five-a-side football court, an urban sports area, a “Parkour” area, where young people (and older people too, should energy and inclination coincide) will be able to running and jump, to skateboard and to ride bmx bikes, and climbing structures and walls, which will make an asset out of an area that has no other obvious use³⁹⁶. Security here will be enhanced by the presence, next to this area of open space, of the new Asda supermarket, which will be open 24 hours a day on weekdays and for much of the week-end as well³⁹⁷.
- (iv) Village Square (comprising 639 square metres) will be transformed from an unloved and tired space, dominated by hard-standing, into three useful areas, one laid out as a lawn for sitting-out and for activities such as pilates; another as a petanque court, framed and shaded by trees; and the third given over to giant outdoor chess and draughts³⁹⁸;
- (v) Park Square (an area of 400 square metres) will be transformed from a bleak and uninspiring space, cluttered with street furniture and temporary structures and facilities, into a simplified space, which will allow for a wide range of recreational activities, including beach football, musical events, fairs, markets and ice skating³⁹⁹. The square will also incorporate an equipped play area (a LEAP of 400 square metres) with a café⁴⁰⁰.

262. Residents of the proposed new residential buildings will also benefit from the outdoor amenity space, private and communal, that will be provided for their use:

- (i) The Cliff and Quayside buildings will surround external courtyards that establish generous communal spaces (In the Cliff building a total of 5469 square metres; in the Quayside building, 535 square

³⁹⁶ See Mr Reid’s proof at paragraph 3.5 and Mr Allies’ at paragraph 8.6.13.

³⁹⁷ See Mr Allies’ proof at paragraph 8.6.13.

³⁹⁸ See Mr Reid’s proof at paragraph 3.5, and Mr Allies’ at paragraph 8.6.17.

³⁹⁹ See Mr Reid’s proof at paragraph 3.5, and Mr Allies’ at paragraph 8.6.18.

⁴⁰⁰ See Mr Allies’ proof, at paragraph 8.6.19.

metres). Communal courtyards are especially appropriate in developments of this density, where secure open spaces can be provided, which include areas where young children can play (LAPs) without direct supervision but can be overlooked⁴⁰¹. Seven children's play areas (LAPs), will be provided within the residential courtyards in the Cliff site and Quayside buildings, and on the roof of the Sea Wall building. These have been designed in accordance with the needs of young, pre-school children living in the surrounding blocks⁴⁰².

- (ii) Smaller, individual areas of flat roof will be paved or planted and made accessible to residents wherever this is possible (Cliff building: 1926m², Sea Wall: 358m², Marina Point: 220m², Quayside: 1693m², Inner Harbour: 143m²)⁴⁰³.
- (iii) Throughout the development the aim has been to provide all flats with private balconies or terraces, typically measuring between 2.8m² and 5m². In some places – where for example, a loss of privacy or overshadowing might occur – balconies have been omitted. In all, however, only 4% of the units (50 in total) will not have private balconies or terraces (Cliff building: 4658m², Sea Wall: 1704m², Marina Point: 2320m², Quayside: 1290m², Inner Harbour: 247m²)⁴⁰⁴.

263. The total of the areas that will be provided for private outdoor amenity space across the site is 20,565m² (the sum of the total space for private terraces and balconies (10,220m²) and communal courtyards, gardens and roof terraces (10,345m²) (CD12/27)). Every flat in the development will have access to some form of private outdoor amenity space provided in one of the three ways outlined above⁴⁰⁵.

⁴⁰¹ See Mr Allies' proof at paragraph 8.5.3.

⁴⁰² DAS Vol III, pp. 132-133, and Mr Allies' proof at paragraph 8.6.20

⁴⁰³ See Mr Allies' proof at paragraph 8.5.5.

⁴⁰⁴ As agreed in the Statement of Common Ground at paragraph 6.80

⁴⁰⁵ See Mr Allies' proof at paragraph 8.5.7, and the Statement of Common Ground at paragraph 6.80.

264. The plan on pages 98 and 99 of Bob Allies' proof of evidence shows the locations and dimensions of the open spaces proposed.

265. The Secretary of State ought to conclude that this is a scheme that has responded extremely well to the need to make full and effective use of the limited space at the marina. The size of the open spaces is not compromised; it is generous. It will serve the needs of the residents of this development, and it is entirely appropriate for an urban environment such as this.

Accessibility

266. No suggestion was made by the City Council in its written evidence that the proposed play facilities in the development are not within a reasonable distance of the dwellings, save for a general point made by Mr Allen⁴⁰⁶ and a specific point made about the Park Square LEAP⁴⁰⁷. However, the length of time it would take to walk to the various facilities was the subject of cross-examination of Messes Allies and Reid by the City Council's counsel.

267. Draft SPG9 sets out accessibility standards that reflect both the NPFA and the more recently published Fitstandards for accessibility (5 minutes walk (400m) to a LEAP and 15 minutes walk (1000m) to a NEAP). The FiT guidance, which informs draft SPG9, is not absolute, nor has it been woven into policy of the development plan⁴⁰⁸. One sees the word "recommendation" recurring in the Forward. It is clear that a flexible approach, informed by the guidance, should be taken, on a case-by-case basis. It should be noted that the City Council, in its "Open space, sport and recreation study", March 2009⁴⁰⁹ identifies a longer distance of a 15 minute walk time or 720m as acceptable. All the LEAPs and NEAP will fall well within that accessibility standard.

268. All of the dwellings in the development will be close enough to the play areas their residents' children will be likely to choose. This does not mean that in

⁴⁰⁶ At paragraph 2.24 of his proof

⁴⁰⁷ At paragraph 2.26 of Mr Allen's proof

⁴⁰⁸ As was confirmed by Mr Allen in cross-examination

⁴⁰⁹ CD9/14 at p. 75

every case the distance from the front door of a flat to the nearest NEAP or LEAP will be within the range suggested in the FiT guidance. But none of these journeys will be awkward or unsafe, or too long. Allies and Morrison have provided the Inquiry with accessibility diagrams that show that all 1,301 units are within 400m of a LEAP⁴¹⁰. For some residents of the Cliff building it may be quicker to go to the Park Square LEAP. However, as Mr Reid confirmed in cross-examination by counsel for the City Council, the Cliff Park will also be nearby, and will be reached by a route available only to those on foot through communal gardens and the cascading street, which will not involve any crossing of roads⁴¹¹.

269. Mr Reid's judgment, offered to the Secretary of State⁴¹².with the benefit of his considerable experience behind it, is that the development will perform very well in the accessibility of its play spaces, the time taken to get there and the kind of journeys those using these spaces will have

Usefulness

270. Mr Allen complained that the area underneath the ramps will not be high enough for playing basketball and five-a-side football⁴¹³. However, he did not seem to disagree with the principle of using this area for recreation.

271. Using the ground under the ramps in this way was a concept that emerged directly out of discussions with the City Council's officers⁴¹⁴. The space is intended as an "incidental area" for informal play, and obviously not for any kind of competitive matches⁴¹⁵. True it is, as Mr Allen pointed out, that these facilities do not meet the guidelines in the Architects' Journal Metric Handbook, which is not planning guidance. However, that is beside the point. As Mr Reid confirmed, the space under the ramps will work well for its intended purpose. There really cannot be any sensible dispute about this.

⁴¹⁰ On 16 December 2009

⁴¹¹ As Mr Reid explained in his evidence-in-chief

⁴¹² In his evidence-in- chief

⁴¹³ In paragraph 2.25 of his proof

⁴¹⁴ As Mr Reid explained in evidence-in-chief

⁴¹⁵ As Mr Reid's observed in his evidence-in-chief

272. Mr Reid said he had been told by Mr Broome of Outerspace, who was involved in the design of the play areas and recreational facilities, that the climbing wall proposal, which was criticized by Mr Allen for rather curious reasons relating to the unevenness of the ground and the function of the vents, was in fact conceived and taken forward in discussions not only with the City Council's officers but also with representatives of local climbing groups, who welcomed the idea, noting that there is nothing comparable – an outdoor climbing wall, that is – anywhere else in the city⁴¹⁶. Sport England raised no criticism of this facility. They could have done so if they had wanted to; clearly they did not.

273. The second theme of Mr Allen's concern on the utility of the recreation areas proposed concerns the separation of play facilities from dwellings in the Cliff Park NEAP. Again, there is no real substance in the point. The NPFA guidance on which Mr Allen sought to base his concerns⁴¹⁷ has now been superseded by the FiT publication "Planning and Design for Outdoor Sport and Play" (2008)⁴¹⁸. This suggests (as did the NPFA guidance) that a 10 metre buffer zone around the play "activity zone" should be provided, as well as a 20 metre distance between the activity zone and the habitable room façade of a dwelling. However – and this is important – the FiT guidance also notes:

"For high density developments – particularly on brownfield sites – the buffer zone may have to be reduced in order to provide play facilities for children."

In cross-examination, Mr Allen agreed – and he had no reasonable option but to do so – that this will be a high density development on previously developed land and thus this is a site where the buffer zone can be reduced as a matter of principle. The City Council has not provided any empirical analysis – such as a noise study in which it is shown that the living conditions of residents in any of the relevant flats would be appreciably better if the play area were further away – nor even any anecdotal evidence, founding an objection that the "buffer zone" here is not wide enough. Nor have the appellants ever been asked to address

⁴¹⁶ See Mr Reid's rebuttal proof at paragraph 3.12

⁴¹⁷ In his Appendix 10

⁴¹⁸ CD12/7 paragraph 6.2.5

this question. It is not something that has been raised by Sport England, by the City Council's officers including its environmental health officer, or by anybody else. The distance between the activity zone and dwellings cannot fairly be seen as a failure of the design of the LEAP. If anything it is strength. The closeness of flats to this play area will only be conducive to the safety of the children who use it.

Attractiveness

274. Nobody has said that the equipment provided within the NEAP, the LEAPs and under the ramps would be deficient, in the light of draft SPG9. It will not be.

275. The City Council suggested – somewhat diffidently it must be said, perhaps because this point, like so much else in the inquiry version of the City Council's case, finds no explicit connection with the Planning Committee's resolutions in December 2008 and September 2009 – that some of the recreation areas in the development may turn out to be unattractive because at times they may be too windy to use, or because of overshadowing or lack of sunlight. These concerns are ill-founded. They are fully answered in the several reports of Dr Littlefair and Mr Breeze that have been submitted in evidence. Those reports build on the assessment set out in the environmental statement⁴¹⁹ with which the City Council never took issue. They have not been countered by any expert analysis or opinion contradicting their conclusions. This, then, is yet another example of forensic expediency parting company with reasonable judgment.

276. All of the open spaces within the site, including the courtyards on the Cliff site, the open space by the cliff, the Geo-Learn park next to the Cliff site, Village Square and Harbour Square have been assessed. All meet the recommendations on sunlight and daylight provided by the Building Research Establishment ("the BRE")⁴²⁰. It will not be forgotten that Dr Littlefair is the author

⁴¹⁹ In Appendix 16

⁴²⁰ See section 7 of Dr Littlefair's report in Appendix 10 to Mr Gavin's proof.

of the BRE recommendations⁴²¹. In cross-examination, Mr Allen confirmed that the BRE guidance has been complied with in the present case; that that guidance is suitable for assessing the amenity of open space; and that there is no policy requirement for a developer to go further than meeting the BRE guidance. In the present case there is no here is no policy germane to the proposals concerning the amount and quality of daylight and sunlight.

277. At times of the year the recreational spaces will be more in shade than they are at other times. Even then, however, there will be sunlight in these areas. The idea that the Cliff Park will be a “canyon” or a “gorge”⁴²² is of course fanciful. It says more about the quality of the criticisms levelled against the scheme than it does about the proposals themselves. The Cliff building will be amply set away from the cliff. The distances by which the two will be separated are given in the note the appellants have provided⁴²³. The Cliff Park will, however, provide enough shelter for those who will use it. If a child wants to play in unbroken sunshine – and if the sun is out – there will be innumerable opportunities in and around the marina to do so: the beaches and East Brighton Park to mention but two⁴²⁴.

278. The wind tunnel testing carried out by Mr Breeze⁴²⁵, demonstrates that the wind conditions in and around all of the public areas and communal open spaces within the development will be suitable for their intended activities⁴²⁶.

Planting

279. The concerns expressed by Mr Allen about the proposed planting do not form any explicit part of the reasons for refusal, nor did they appear in the City Council’s statement of case. In any event, in cross-examination, Mr Allen accepted that these matters could be dealt with by an appropriate condition.

⁴²¹ As is explained in paragraph 1.2 of the report

⁴²² Words used by Mr Allen at paragraph 2.28 of his proof and Mr Roake at paragraph 2.33 of his proof respectively

⁴²³ See section drawings showing distances from the cliff (CD12/32).

⁴²⁴ As Mr Reid remarked in his evidence-in-chief

⁴²⁵ Contained in Appendix 11 to Mr Gavin’s rebuttal proof

⁴²⁶ See paragraphs 6.3 to 6.13 and 7.2 of Mr Breeze’s report

280. There is no doubt that the marina presents unusual challenges for successful landscaping, mainly because the weather it receives can make it harder to get vegetation established than it would be further inland. The appellants are well aware of this. However, although it is more difficult to plant in the marina, it is far from impossible⁴²⁷. The City Council officers, whose views were sought while the landscaping proposals were being prepared, concur (See Mr Reid's rebuttal proof, at paragraph 5.4). Mr Reid, who has experience of planting in coastal areas, has given an example of successful planting in another similarly challenging location in Malmo (In his rebuttal proof, at paragraph 5.4).

281. Agreed condition 38 provides for the submission of a landscape management plan. This can deal with detailed matters, including:

- (i) whether trees should be sourced from nurseries in coastal locations;
- (ii) whether the quality of soil and tree pits are appropriate (to avoid the current situation in the Asda car park where trees have failed, in Mr Reid's view probably because the tree pits were too small); and
- (iii) which species can and will grow in the proposed development, though it should be noted that the City Council's ecologist was broadly supportive of the species suggested by Mr Broome of Outerspace (As Mr Reid explained in his evidence-in-chief).

282. The head gardener of the gardens at Sussex Square, Mr Mouldsdale (IP/15), has outlined some of the difficulties he has experienced in planting there. It should however be noted that:

- (i) the gardens at Sussex Square many plants seem to be doing very well;
- (ii) Mr Reid noted a lot of hedging in the square, which had apparently had to be cut down to keep it at an appropriate height;
- (iii) The marina has a different microclimate to Sussex Square's and will also have a somewhat more compact grain of development (As Mr Reid remarked in his evidence-in-chief).

⁴²⁷ As was stated by Mr Reid in his evidence-in-chief

283. The wind conditions in the marina will not preclude successful planting. In the Cliff Park, the wind conditions at all of the test locations are judged to be suitable for any pedestrian usage⁴²⁸. The potential for “wind trimming” to occur is not a reason to reject the proposals. And, anyway, as Mr Reid observed, there are many species that will happily grow in shade and are less affected by salt action⁴²⁹.

Conclusion

284. The way in which outdoor amenity and recreational space has been designed in these proposals reflects the nature of this new quarter of the city, maximizing the use of every available piece of land within the site for one or another of the types of open space listed in the Annex to PPG17, exploiting the accessibility of adjacent, off-site, external spaces and facilities, as well as providing pleasant communal gardens. Residents of the development will have ample well-designed and well-disposed private, communal and public space that is both useful and attractive, which will be complemented by the exceptional range of publicly accessible open spaces nearby – East Brighton Park the beaches, the cliff-top walk, the promenade, the National Park itself⁴³⁰. Not many urban sites awaiting regeneration could boast all of that. It is an amazing endowment of recreational open space. And it forms the wider context in which the Secretary of State must look at this issue.

The aspect of the proposed dwellings and their proximity to natural and physical features

285. The Cliff building will have a predominant north-south grain, designed in this geometry to preserve views through the site from the cliff to the sea⁴³¹. This orientation will make it possible for the great majority of flats in this part of the

⁴²⁸ See Mr Breeze’s report in Mr Gavin’s rebuttal proof, Appendix 2 at paragraphs 66 and 67.

⁴²⁹ In his evidence-in-chief

⁴³⁰ See Mr Allies’ proof, at paragraph 8.9.2.

⁴³¹ As explained by Mr Allies in his proof at paragraph 8.8.4

- development to enjoy an east, a west, or a south orientation, or, indeed, a dual one⁴³².
286. To ensure that some flats will overlook the recreational areas and thus enhance their security, some parts of the building will be aligned east-west⁴³³. One implication of this is that a small number of flats either will face north towards the cliff park, or south or west towards the ramps⁴³⁴.
287. The number of dwellings that will have a predominantly northward orientation is 67, of which 17 will be social rented dwellings, which represents 2.2% of the total number of dwellings in the Cliff site⁴³⁵.
288. These residents will enjoy views of the cliff. The cliff is a nationally important natural artefact; it is pale in colour and therefore bright; and, because it faces south, it is generally well lit and always interesting to look at. Residents will not, however, be looking only at the cliff, These flats will also allow views east - west along the cliff's length, a view which will be enhanced by the provision of balconies in them all⁴³⁶.
289. The distances between residential properties and the Cliff face range between 16 and 40 metres⁴³⁷.
290. All the flats in the Cliff site will have daylight levels meeting the BRE's recommendations (BS8206 Part 2)⁴³⁸. All of these flats will also benefit from some morning or evening sun during the summer months⁴³⁹.

⁴³² See Mr Allies' proof, at paragraph 8.8.3.

⁴³³ Ibid. at paragraph 8.8.7

⁴³⁴ Ibid. at paragraph 8.8.8

⁴³⁵ Ibid. at paragraph 8.8.10; and see also Mr Allies' Appendix 4

⁴³⁶ See Mr Allies' proof, at paragraph 8.8.12.

⁴³⁷ See the section drawings showing distances from the cliff (CD12/32).

⁴³⁸ See paragraph 5.3 of Dr Littlefair's technical report in Appendix 10 to Mr Gavin's proof of evidence; and the statement of common ground on daylight (CD12/35).

⁴³⁹ See Mr Allies' proof, at paragraph 8.8.12, and Dr Littlefair's technical report, Appendix 2, the Sun Shadow Study for 21 June at 8 a.m. (on p. 5).

291. None of those flats that will face south and west towards the car ramps will be nearer the ramp than 8.4 metres and most of the flats will be about 10 metres away from it⁴⁴⁰. This is a significantly greater distance between dwellings and streets than is often to be seen in towns and cities, in places where the intensity of road traffic is substantially higher than it will be here. It is a sustainable arrangement. Living conditions for those who dwell there will be acceptable. A system including both secondary glazing and whole-house mechanical ventilation with heat recovery will be used in these flats⁴⁴¹. From many of them flats there will also be slanting views of the seafront to the west of the site⁴⁴².

292. The Secretary of State can and should conclude that all of the residential accommodation proposed will be entirely appropriate for its occupants, who will be housed in an enlarged and more vigorous community in this part of the city⁴⁴³.

Sunlight and daylight to the new dwellings

293. There is no national planning policy guidance on daylight and sunlight. The City Council's own policies refer to it only in general qualitative terms. However, the appellants rigorously designed and tested the development in the light of, and with the help of the author of, the BRE's guidance in "Site layout planning for daylight and sunlight: a guide to good practice" and the British Standard Code of Practice for daylight, BS8206 Part 2⁴⁴⁴.

294. Daylight provision to the new dwellings will be good. A selection of rooms in worst case positions on the Cliff site has been analysed. They will all have daylight levels meeting the BRE recommendations (BS8206 Part 2). The other sites will be less obstructed. Daylight provision there will also be good⁴⁴⁵. It has

⁴⁴⁰ See Mr Allies' proof at paragraph 8.8.14.

⁴⁴¹ See Mr Allies' proof, at paragraph 8.8.15.

⁴⁴² See Mr Allies' proof, at paragraph 8.8.14.

⁴⁴³ Which, in effect, is what Mr Allies says at paragraph 8.9.3 of his proof of evidence

⁴⁴⁴ See Dr Littlefair's technical report at Appendix 10 of Mr Gavin's proof of evidence and supplementary technical report at Appendix 1.

⁴⁴⁵ See paragraphs 5.3 to 5.4 of the main technical report.

been agreed with Mr Roake that other rooms in the development can be expected to receive more daylight than the “worst case rooms”⁴⁴⁶.

295. The layout of the flats has been cast to ensure that as many dwellings as possible will have a living room facing within 90 degrees of due south, or at least close to this direction, to ensure they enjoy the most sunlight they can⁴⁴⁷. 90% of living rooms in the development will face east, south or west and will therefore receive enough sunlight⁴⁴⁸. The 10% that will face solely north or north west should be put in the context of a 25% proportion for a random arrangement of orientations, and of the 31% of the flats in the Octagon building that are either north, north east or north-west facing (13% being solely north-facing)⁴⁴⁹.

296. On a low-lying, previously developed site whose topographic template is already well set, that the proportion of north-facing flats in this scheme is so low is not only good; it is creditable. The proportion is less than the “one in five” facing north “good practice example” provided in the recent publication “Daylighting in urban areas: a guide for designers” produced by the BRE for the Energy Saving Trust⁴⁵⁰.

297. As is stated in the British Standard Code of Practice for daylighting, BS8206 Part 2 (paragraph 5.3):

“The degree of satisfaction [of the resident] is related to the expectation of sunlight. If a room is necessarily north facing or if the building is in a densely built urban area, the absence of sunlight is more acceptable than where its exclusion seems arbitrary”⁴⁵¹.

298. In sum, the Secretary of State can and should conclude that the residential accommodation in the appeal scheme will provide satisfactory living conditions for all its occupants, in accordance with policies QD1, QD3, QD27 and HO4 of the local plan and PPS1 and PPS3.

⁴⁴⁶ See the statement of common ground on daylight (CD12/35), at paragraph 3.

⁴⁴⁷ See paragraph 6.2 of the main technical report.

⁴⁴⁸ See paragraph 6.5 of the main technical report.

⁴⁴⁹ As is stated by Dr Littlefair, at paragraph 6.5 of the main technical report

⁴⁵⁰ See Figure 18 in paragraph 6.8 of Dr Littlefair’s main technical report.

⁴⁵¹ Quoted by Dr Littlefair at paragraph 6.8 of his main technical report.

The impact of the development on living conditions of neighbouring occupiers

299. The impact of the development on the living conditions of neighbouring occupiers is not a matter pursued by the City Council. Most of the existing residential buildings on or near the marina will stand well apart from the new ones⁴⁵². The nearest residential building is the Octagon, which is only partly in residential use, the other uses being commercial of one kind or another⁴⁵³.

300. Dr Littlefair has evaluated the potential loss of daylight to existing dwellings in Neptune Court and the Octagon as being negligible or insignificant. Almost all of the windows that will experience a loss of light will be well within the BRE guidelines. A handful of windows (six in all, in the Octagon) will have a calculated loss of light marginally outside the guidelines. However, because the new buildings will all be light in colour, the effect of reflection will enable these six windows to receive more daylight in total than with a standard obstruction that met the BRE guidelines. The loss of daylight to these windows will be small and not significant, once reflected light is taken into account, and will not be unacceptable⁴⁵⁴. Loss of daylight to dwellings in all other buildings, including Neptune Court, will be within the guidelines⁴⁵⁵.

301. Loss of sunlight to existing dwellings in the Octagon building will be negligible or minor, and in no respect unacceptable⁴⁵⁶. All windows facing within 90 degrees of due south will receive more than enough sun with the new development in place (typically over double the recommendations), both all year round and in the winter months⁴⁵⁷.

⁴⁵² See paragraph 4.1 of Dr Littlefair's technical report.

⁴⁵³ Ibid..

⁴⁵⁴ As was concluded by Dr Littlefair at paragraph 4.4 of his technical report.

⁴⁵⁵ See paragraphs 4.9 and 4.11 of Dr Littlefair's technical report.

⁴⁵⁶ As is concluded by Dr Littlefair at paragraph 4.7 of his technical report

⁴⁵⁷ See paragraph 4.6 of Dr Littlefair's technical report.

302. Because the side of Neptune Court opposite the proposed Inner Harbour building faces north, loss of sunlight here is not an issue⁴⁵⁸.

303. The existing dwellings Dr Littlefair analysed will not experience significant cumulative impacts from the Brunswick development and therefore cumulative impacts to existing dwellings can be discounted⁴⁵⁹.

304. The proposals are therefore in accordance with the guidance in SPG15⁴⁶⁰ and policy QD27.

Main issue (iii): housing matters

Meeting housing need

305. The city of Brighton and Hove has housing needs both chronic and acute. This is starkly demonstrated in section 10 of the Strategic Housing Market Assessment (“the SMHA”) of April 2008⁴⁶¹, which sets out analysis of the future provision of housing in the city. It refers to the CLG Household Projections, and identifies a projected increase in the number of households in Brighton of about 28,000 between 2006 and 2026⁴⁶², of which 22,000 will be single person households. These numbers are frighteningly high.

306. The response to the housing problem to which the City Council has had to commit itself as local planning authority is clearly reflected in the “saved” housing policies of the local plan and policy H1 of the South East Plan, which requires that Brighton accommodate some 11,400 dwellings between 2006 and 2026 (some 570 units per annum). This⁴⁶³ is not a maximum target.

⁴⁵⁸ See paragraph 4.10 of Dr Littlefair’s technical report.

⁴⁵⁹ Ibid. at paragraph 4.12

⁴⁶⁰ Paragraph 7.4.12

⁴⁶¹ CD9/5

⁴⁶² Table 10.3 of the SHMA

⁴⁶³ As has been emphasized by Mr Spry, at paragraph 4.7 of his proof

307. In this context, the statutory development plan provides a clear policy basis for substantially increasing the level of housing and affordable housing provision in Brighton. As a result of the publication of the South-East Plan (which was in draft at the time of the City Council's decision in December 2008 to refuse planning permission), the development plan's housing-related provisions relevant to the appeal proposal now carry an even stronger policy imperative for housing provision⁴⁶⁴.

308. CLG data on housing completions suggests that rates of housing completions in Brighton (between 1999/00 and 2008/09) have on average been lower (at 365 p.a.) than that needed to deliver enough housing to meet the rates set by the local plan and the requirements of the South-East Plan⁴⁶⁵. The current economic downturn will put further pressure on the ability of the City Council to meet its housing requirements, and to address any backlog that will result from under-performance⁴⁶⁶.

309. Against that background, the appeal proposals can be seen to be of immense potential benefit in their promise – an indisputably deliverable one – of a significant contribution to the meeting of Brighton's housing needs, representing:

- (i) 1,301 new dwellings – equivalent to 2.25 years of Brighton's housing requirement, which will be delivered in a stream over a seven year development period; and
- (ii) realistic and achievable proposals that are capable of being delivered⁴⁶⁷.

310. The proposed development is thus fundamentally in accordance with the development plan in terms of the significant contribution it can make – and, if permitted, assuredly will make – towards meeting the housing requirement of Brighton.

⁴⁶⁴ See Mr Spry's proof at paragraph 4.9.

⁴⁶⁵ See Mr Spry's proof at paragraph 4.13.

⁴⁶⁶ As is stated by Mr Spry at paragraph 4.15 of his proof

⁴⁶⁷ See Mr Spry's proof at paragraph 4.16.

311. The Strategic Housing Land Availability Assessment (“the SHLAA”) of June 2009⁴⁶⁸ includes the appeal site as part of the identified future supply of housing, albeit at a lower yield of dwellings than that proposed by the appellants. In the slow and somewhat painful process by which the City Council’s draft Core Strategy is emerging, though it is still to go through the test of independent scrutiny, this has stood at 650 units for most of this inquiry, but has very recently⁴⁶⁹ gone back up again as far as 1,000 new dwellings for the inner harbour. Whether or not the “direction of travel” continues to be up, it is clear beyond any reasonable dispute that a very substantial amount of new housing is going to have to come forward at Brighton Marina if the City Council is going to meet the South-East Plan’s housing requirement for its area.

312. The interim SHLAA published in May 2008 identified a dwelling yield for the appeal site of 1000 units. It is not made clear in the June 2009 document, published after the City Council’s refusal of planning permission, how the assessment of site capacity was carried out – if it was – or how – again, if it was – this was seen as justifying the specific site estimates arrived at. In particular, there is no evidence before the Secretary of State as to why the estimate for the appeal site changed between the two versions of the SHLAA⁴⁷⁰. The Secretary of State should, however, be made aware of the fact that the lower yield has been contested by the appellants through the SHLAA process.

313. Viewed in the light of the SHLAA, the appeal proposals, with their higher dwelling yield, ought to be seen as putting momentum behind the City Council’s efforts to maintain its long-term housing land supply. This is something the SHLAA fails to do without including a windfall allowance, chiefly from the conversion of existing residential properties, changes of use to residential, and small new-build schemes⁴⁷¹.

314. Continued over-reliance on windfalls is likely to result in further reductions in the stock of larger dwellings and the knock-on increase in smaller units within

⁴⁶⁸ CD9/6

⁴⁶⁹ As a result of the decision the City Council took on 10 December 2009

⁴⁷⁰ See Mr Spry’s proof at paragraph 4.18.

⁴⁷¹ See paragraph 3.6.6 of the SHLAA, and paragraph 4.22 of Mr Spry’s proof.

the Brighton and Hove. This would not be consistent with the wider policy imperative facing the City Council, one that is underlined by national policy in PPS3 – of creating not merely a continuous, sufficient and reliable supply, but also a wide mix of dwellings within the Brighton housing market area (See paragraph 4.23 of Mr Spry’s proof). The proposed developed will provide not only a large amount of much need housing, but also a range of dwelling types.

315. Thus the appeal scheme will serve to reduce the need for a windfall allowance to make up the likely shortfall. This is entirely in line with the Government’s policy guidance in PPS3⁴⁷².

316. The Secretary of State can and should conclude, therefore, that in providing 1,301 new homes, in a phased flow of delivery, the appellants’ development will be a hugely worthwhile injection of new stock, of various tenures, into the pool of new housing available for those who need it in Brighton. Mr Goodwin confirmed⁴⁷³ that no other scheme in the last five years has provided as much housing as this one will; and that this is a more significant contribution to the meeting of housing needs in Brighton than any other scheme he could mention.

Housing mix

Policy HO3

317. Policy HO3 of the local plan, which is entitled “Dwelling type and size”, expresses the City Council’s intention to ensure that proposals for residential development incorporate a mix of dwelling types and sizes that reflects and responds to Brighton and Hove’s housing needs. It does not specify a particular mix of size or tenure of homes.

⁴⁷² See Mr Spry’s proof, at paragraph 4.26.

⁴⁷³ In cross-examination

Size and mix

318. In seeking to understand the true import of policy HO3, one should pay attention to the up-to-date empirical evidence in the SHMA (of 2008)⁴⁷⁴. Less weight should be given to the Housing Needs Survey (of 2005)⁴⁷⁵.
319. The SHMA 2008 does not support a prescriptive approach by the local planning authority to determining the mix of market housing delivered in new developments:
- (i) It is urged, as a matter of general principle in the SHMA, that local authorities should not seek to control the size and type of dwellings provided by the private sector⁴⁷⁶;
 - (ii) Planning for a mix of housing is not a precise science. Setting targets for particular types and size of market dwellings is likely to present difficulties in practice⁴⁷⁷;
 - (iii) Market demand and viability have a large role to play in determining the type, size and mix of housing development⁴⁷⁸. It will be for the market to bring forward a mix of dwellings that suits current demand and responds appropriately to the context of the site⁴⁷⁹.
320. The appeal scheme will deliver a broad range of new homes, including many one and two-bedroom apartments. This is a size and type of dwelling that the evidence base indicates has the greatest need, given Brighton's housing market, and demand from a growing number of smaller households⁴⁸⁰.
321. The evidence suggests that although there is a need for a range of property types and sizes, the overwhelming need in absolute terms is for one and

⁴⁷⁴ CD9/5

⁴⁷⁵ CD9/2; and see Mr Spry's proof at paragraphs 5.7 and 5.23.

⁴⁷⁶ See paragraph 10.5 of the SHMA and paragraph 5.31 of Mr Spry's proof.

⁴⁷⁷ Paragraph 10.5 of the SHMA

⁴⁷⁸ Ibid. paragraph 10.36

⁴⁷⁹ Ibid. paragraph 10.5; and see Mr Spry's proof at paragraph 5.37

⁴⁸⁰ As concluded by Mr Spry at paragraph 5.49 of his proof of evidence

two-bedroom properties to meet the needs of a population which, in Brighton, is younger and living in smaller households than the regional average⁴⁸¹.

322. This need is particularly acute in the case of properties required by applicants in housing need. The SHMA states⁴⁸² that “the size requirement of those *in need* differs from the requirements of applicants as a whole” (emphasis added). Figure 10.18 shows that 82% of applicants of highest priority need require one or two-bedroom properties (with 59% requiring a one-bedroom property).

323. This is confirmed in the text following and explaining policy HO3, which states⁴⁸³:

“The Brighton & Hove ‘Housing Needs Survey 2000’ demonstrated, in overall numerical terms, that the greatest category of need will be for smaller sized affordable accommodation (one and two bedrooms).”

Affordability in Brighton is major challenge. In the 2008 market, the majority of households (69%) were unable even to afford to buy an entry level (E.g. a one bedroom flat or maisonette) property in the then current market⁴⁸⁴.

324. The SHMA also illuminates the fact highlights that increasing the provision of smaller dwellings can help meet the need for larger dwellings by providing incentives and attractive alternatives for those who want to move to a smaller dwelling, thus tackling the problem of “under-occupancy”, which is higher in Brighton than elsewhere⁴⁸⁵.

325. The housing mix proposed here is comparable with other schemes in Brighton (e.g. Brunswick, King Alfred Waterfront, Grand Ocean)⁴⁸⁶ and is supported by the viability appraisal of the District Valuer⁴⁸⁷.

⁴⁸¹ See paragraph 10.14 of the SHMA, and paragraphs 5.25 to 5.28 to Mr Spry’s proof.

⁴⁸² At paragraph 10.51

⁴⁸³ At paragraph 4.34

⁴⁸⁴ See the SHMA at paragraph 7.24, and Mr Spry’s proof at paragraph 5.29.

⁴⁸⁵ See the SHMA, at paragraph 6.26; and paragraph 5.30 of Mr Spry’s proof.

⁴⁸⁶ See paragraph 5.41 of Mr Spry’s proof.

⁴⁸⁷ See paragraph 5.27 of Mr Spry’s proof; and see also the December 2008 committee report (CD3/1.1) at pp. 98 and 99.

326. The proposed development contains 86 three-bedroom flats, which will make a valuable contribution to meeting the need for larger properties⁴⁸⁸. This accords with the text accompanying policy HO3, which states⁴⁸⁹ that “it is particularly important, that wherever possible, three and ‘four plus’ bedroom dwellings form *an element* of the affordable housing mix” (emphasis added). This ought to be regarded as appropriate in view of the evidence in the market that many families seeking three-bedroom properties will demand homes in more suburban locations, rather than apartments in denser urban development such as has been planned for by the City Council at Brighton Marina. The appellants have been clear that, based on the assumptions validated by the District Valuer, and taking into account their own comprehension of the way the market actually operates, increasing the number of larger flats would not be a viable solution and would inevitably result in the need to reduce the affordable housing provision⁴⁹⁰.

Affordable housing: amount

327. Throughout the development process, the appellants have been committed to providing 40% affordable housing, which is in line with policy SCT6 of the South East Plan and policy HO2 of the local plan.

328. This is a significant achievement, and one that has not been achieved at other permitted developments, for example at King Alfred, City Point and Grand Ocean Hotel⁴⁹¹. The development will provide 520 affordable dwellings to Brighton and Hove, which is a hugely worthwhile injunction of new affordable stock into the pool of affordable housing for the many who need it in the City. This reflects paragraph 4.28 under policy HO2, which states:

“In the light of an overriding level of housing need, it is an imperative that the [LP] adopts an approach based upon maximising the amount of new housing that is genuinely affordable”.

⁴⁸⁸ As stated by Mr Spry at paragraph 5.57 of his proof

⁴⁸⁹ At paragraph 4.34

⁴⁹⁰ As is noted by Mr Spry at paragraph 5.57(1) of his proof

⁴⁹¹ See Mr Bean’s tables 3 and 4, on p. 21 of his proof.

The text continues, at paragraph 4.30:

“Fundamental to the policy approach is an overall shortage of land free from other policy constraints and which is available to meet local housing needs. The council does not have a significant land ‘bank’ from which to enable housing association development and the majority of development opportunities are on privately owned sites.”

Affordable housing: mix

329. The mix of affordable housing proposed has been determined in close consultation with the City Council’s planning and housing officers. This much is plain in the Housing Statement⁴⁹². Mr Bean has outlined the discussions that took place with the City Council⁴⁹³. This factor weighed significantly in the thinking of the inspector and the Secretary of State in their consideration of the appeal for the mixed-use development of the King’s Cross Triangle site⁴⁹⁴.

330. The proposed mix of affordable housing matches the specific Affordable Housing Site Brief, issued by the City Council’s Housing Strategy Department in May 2006, and thus reflects the combination of dwellings of various sizes requested by the City Council as a housing authority. The mix of unit sizes that is to be provided is based on the levels of need indicated by the City Council’s own research⁴⁹⁵.

331. Although the City Council now jibs at the preponderance of one and two-bedroom affordable flats in the scheme, the proportion of the total that will be provided in the form of larger units than that is also broadly in line with the identified need in the 2008 SHMA (10.6% as against 13%), whereas the provision of one-bedroom units in the scheme is actually below the

⁴⁹² CD2/12

⁴⁹³ At paragraphs 5.24 to 5.26 of his proof; and see below under the heading “Affordable Housing”

⁴⁹⁴ See Mr Spry’s proof at paragraph 5.28 and his Appendices 1 and 2, in particular Appendix 2 at paragraphs 6.12 and 12.59.

⁴⁹⁵ See minutes of Committee Meeting of 12 December 2008 (CD3/1.2) at paragraph 4.19.

corresponding share of the global need in the SHMA that is represented by this category (40% against 63% - Bands A, B and C (Figure 10.18))⁴⁹⁶.

332. The provision of three-bedroom affordable properties in the appeal scheme (10.6%) also compares favourably against 4% for King Alfred, 2% for Brunswick, and 8% for City Point, New England Quarter⁴⁹⁷.

333. The Secretary of State can and should therefore conclude that the housing mix proposed is entirely acceptable, indeed a strong benefit of the appeal scheme.

Affordable housing: tenure

334. There is no requirement in statutory policy at the local level that, for all or any schemes of housing or mixed use development, compels a particular split between social rented and shared ownership dwellings, nor even a specified range. Policy HO3 of the local plan merely provides that

“The [City Council] will seek to ensure that proposals for new residential development ... incorporate a mix of dwelling types ... that reflects and responds to [Brighton and Hove’s] housing needs.”

Mr Goodwin confirmed in cross-examination that the City Council believes that policy HO3 is flexible in its terms and in its application. Clearly it is.

335. This position is to be contrasted with to the proposed Core Strategy⁴⁹⁸, which does provide a tenure mix requirement of 55:45 (social rented: intermediate) (Policy CP12). However, the draft Core Strategy has not been relied upon by the City Council in its reasons for refusal. And it is perhaps more significant still that when, at the stage of its deciding to “clarify and amplify” the reasons for refusal in September 2009, the City Council had the opportunity to insert into its formal opposition to the appellants’ proposals some reference to the emerging Core Strategy, they chose not to do it⁴⁹⁹.

⁴⁹⁶ See Mr Bean’s proof at paragraph 5.28.

⁴⁹⁷ See Mr Bean’s proof, at paragraphs 5.25 to 5.26.

⁴⁹⁸ CD8/2.1

⁴⁹⁹ As Mr Goodwin had to confirm in cross-examination

336. Policy HO3 allows for a departure from housing needs where a specific mix would be inappropriate. It states:

“Exceptions will only apply when ... a mix of dwellings would be inappropriate due to the location of the site or limitations of the site itself.”

This is further emphasized in the SHMA⁵⁰⁰, which states:

“The split between social rented and intermediate tenures can also provide flexibility in negotiations with developers to address viability issues ... It is important, therefore, that policies on affordable housing have the flexibility to cope with changing development economics and that they do not just reflect what is achievable in a robust market”⁵⁰¹.

337. The scheme will deliver 182 social rented units, which ought to be seen as a very welcome addition to Brighton and Hove’s housing stock⁵⁰². This is in accordance with paragraph 4.33 of policy HO3 which states:

“Providing dwellings of different types ... will help to counter social exclusion by meeting the needs of people with a variety of different lifestyles and incomes. A variety of dwelling types and tenures will provide greater choice for people seeking to live and work in [Brighton and Hove] and will contribute to meeting the council’s regeneration objectives. These objectives accord with ... PPS3 ... which actively encourages [LPAs] to provide wider housing opportunity and choice and a better mix in the size, type and location of housing, seeking to create mixed communities.”

338. The City Council’s case that a split of 55:45 (social rented:shared ownership) can, despite the absence of a settled local policy for development is based on their Housing Needs Survey, March 2009⁵⁰³. The Housing Needs Survey 2005 (CD9/2) advises a mix of affordable housing at the marina on the basis of 60:40 (social rented:intermediate). However, as the City Council has acknowledged, a revision to the generic version of this brief in March 2009 now accepts proposals with a split of 55:45 in favour of social rented units across the city, which is consistent with the emerging policy within the Core Strategy⁵⁰⁴.

⁵⁰⁰ CD9/5

⁵⁰¹ At paragraph 11.40

⁵⁰² See table 1 of Mr Bean’s proof.

⁵⁰³ See Mr Goodwin’s proof at paragraph 5.59.

⁵⁰⁴ See Mr Goodwin’s proof at paragraph 5.59.

339. The appellants' proposed split of 35% social rent and 65% shared ownership has been reached as a result of:

- (i) detailed discussions with potential Registered Social Landlords⁵⁰⁵;
- (ii) detailed discussions with City Council officers, both planning and housing;
- (iii) the independent financial assessment of the District Valuer, which was undertaken to ensure that the project remains viable and deliverable⁵⁰⁶; and
- (iv) the need to provide 40% affordable housing.

340. From the beginning of this whole exercise – discussion, application, consultation, amendment and amendment again – the appellants have committed themselves to a full, open and collaborative engagement with everybody who has an interest in the delivery of affordable housing⁵⁰⁷. As has already been noted above, this kind of responsible approach impressed both inspector and Secretary of State in the King's Cross Triangle case⁵⁰⁸. It ought to do so in this case too.

341. The Housing Statement records that an initial meeting with the City Council took place in early May 2006 between Explore Living's affordable housing consultant, Mr Briscoe (then of King Sturge LLP and since November 2007 of CB Richard Ellis) and the City Council's senior housing officer and housing development manager, to discuss the City Council's aspirations for the affordable housing elements on the site. The City Council's officers presented the site specific Affordable Housing Brief to the appellant. This document had been issued after the adoption of the City Council's city-wide Housing Needs Survey (of 2005)⁵⁰⁹. Because it was specific to the marina, this brief formed the basis of discussions and design as the months went by.

⁵⁰⁵ As described by Mr Bean at paragraphs 5.18 to 5.19 of his proof

⁵⁰⁶ See paragraph 5.20 of Mr Bean's proof.

⁵⁰⁷ See Housing Statement, p. 1, paragraph 1 (CD 2/12).

⁵⁰⁸ See Mr Spry's proof at paragraph 5.28 and his Appendices 1 and 2, in particular Appendix 2 at paragraphs 6.12 and 12.59.

⁵⁰⁹ CD9/2

342. The Housing Statement records⁵¹⁰:

“It was accepted at the meeting that the actual quantum and tenure mix on the site would have to be financially viable, be appropriate and complimentary when taken in context with the wider regeneration proposals for the scheme and be comparable to other approved schemes in the City.”

343. A further meeting between the appellants and the City Council’s housing development team and project manager took place to review the progress of the design and delivery of the proposed affordable housing in December 2006. At that meeting, the City Council’s officers advised that greater weight should be given to the Housing Needs Survey published in 2005 rather than the site specific Affordable Housing Brief issued to the appellants in the following year. Having carefully considered the detail of the City-wide Housing Needs Survey, which by its very nature represents a mix of need and aspiration, the appellants decided that the site specific brief of May 2006 should continue to be the central consideration in promoting the affordable housing proposals for the site. This was because:

- (i) it was prepared after the HNS had been published (2005) and should therefore have been informed by its findings;
- (ii) it is specific to the site; and
- (iii) the scheme and discussions with the housing officers at the City Council had developed based on this site specific Brief for a period of over six months.

344. During this period, the appellants embarked on the tendering process, which is described in paragraphs 5.18 and 5.19 of Mr Bean’s proof of evidence. In summary, at the request of the City Council’s housing department the appellants tendered the scheme to the City Council’s preferred RSL partners in July 2006. Two of these RSL partners were shortlisted and invited to an interview. One of the RSLs withdrew its offer due to financial capacity. The second pulled out when it was placed under supervision. Both financial offers from these RSLs yielded a 60:40 split in favour of shared ownership. The appellants then (in February 2007) approached the third placed RSL and a non-

⁵¹⁰ At paragraph 5

partner RSL. After all these many months of negotiation, the City Council's partner RSL (Affinity Sutton) was able to match the 50:50 split offered by the non-partner⁵¹¹. This information was sent to the District Valuer on 15 February 2008 for inclusion in his valuation appraisal.

345. Subsequently, in March 2008, the City Council requested Code for Sustainable Homes Level 4 and BREEAM "Excellent" on the commercial elements of the scheme⁵¹².

346. On 9 January 2008 the City Council instructed the District Valuer to provide a financial assessment and to advise on, among other things, the proposed tenure split⁵¹³. He was provided with Affinity Sutton's 50:50 offer⁵¹⁴ and knew of the City Council's request for Code Level 4 and a BREEAM "Excellent" rating to be achieved⁵¹⁵. At a meeting held on 25 July 2008 attended by the District Valuer and the City Council officers, at which Mr Bean was present for the appellants, the City Council officers made known their request for an increase in the required performance against the Code for Sustainable Homes from level 3 to 4 and for a BREEAM "Excellent" rating for the commercial elements of the scheme, and they also asked for an increase of about £1.3 million in the financial commitments that were to be included in the section 106 obligation.

347. It became clear that if the appellants were to meet those demands, the tenure mix had to change to ensure the scheme remained viable and deliverable. Following further consideration of these matters by the District Valuer, he supported a proposal of 35:65 in favour of shared ownership⁵¹⁶, which would be a sustainable and important contribution to affordable housing in Brighton⁵¹⁷. This split is similar to that permitted in the Brunswick (38% social rented:62% shared

⁵¹¹ See Affinity Sutton's offer letter of 1 February 2008 in Mr Bean's Appendix 10.

⁵¹² See the correspondence presented by the City Council to the inquiry on 2 December 2009 (CD13/27).

⁵¹³ See draft District Valuer's report, 27 October 2008, Appendix 1 to Mr Dennis's Note on Scheme Deliverability, contained in Appendix 3 to Mr Gavin's rebuttal proof.

⁵¹⁴ See District Valuer's report at section 15(b).

⁵¹⁵ See the District Valuer's report, sub-section 15(f).

⁵¹⁶ See paragraph 5.20 of Mr Bean's proof, District Valuer's report at section 15.

⁵¹⁷ See Mr Bean's proof at paragraph 5.23.

ownership) and King Alfred (27% social rented:73% shared ownership) developments⁵¹⁸.The split was also accepted by the City Council’s officers in their report to committee in December 2008⁵¹⁹.

348. The District Valuer, in reaching his own conclusions on all this, took into account several considerations, which informed a robust and independent judgement of the viability of the whole evidence. It is clear that the District Valuer had to be satisfied on several aspects of the scheme. He was not considering the viability of the quantum and tenure of affordable housing on its own, as if this could realistically be done in some hermetically separate set of valuation calculations; he was weighing also the important consideration of the level of sustainability that could be formally secured both in terms of Code Level 4 and a BREEAM “Excellent” rating. He was looking, therefore, at the economics of the scheme as a whole. This was a site and scheme-specific exercise, a distinct, up to date and necessarily more demanding exercise than the “independent research on development viability” lying behind policy HO2, to which reference is made in paragraphs 4.29 and 4.31 of the local plan.

349. It is important to understand the chronology here. The appellants had not formally decided that they could afford to meet the City Council’s request for Code Level 4 and a BREEAM “Excellent” rating to be achieved before the meeting with the District Valuer on 25 July 2008, although this request had by then been made by the City Council and its intentions had been relayed to the District Valuer. The formal substitution made in June 2008 committed only to the achievement of:

- (i) Code for Sustainable Homes Level 3 overall, with Level 4 on the primary categories (for (i) energy and CO₂; (ii) water; (iii) materials; (iv) surface water run-off; and (v) waste); and
- (ii) a BREEAM “Very Good” rating on the commercial elements of the scheme with a commitment to achieving ‘Excellent’⁵²⁰.

⁵¹⁸ See Mr Bean’s proof, at paragraph 5.22.

⁵¹⁹ CD3/1.1 at pp. 98 and 99

⁵²⁰ See the DAS Volume I, p. 229, paragraphs 10.2.6 and 10.2.7; and Chapter 21 of the Environmental Statement, pp. 46 and 47, paragraph 21.178.

In September 2008 a further, smaller, substitution was made. The commitments relating to the Code for Sustainable Homes and BREEAM remained as they were in the June 2008 substitution⁵²¹. It was only after the September 2008 substitution, in October 2008, that further discussions with the City Council's officers took place, resulting in the appellants making a commitment to achieving Code for Sustainable Homes Level 4 throughout the scheme and a BREEAM "Excellent" rating on the commercial elements⁵²².

350. It was therefore incorrect for the City Council to suggest, as was suggested in the cross-examination of Mr Bean, that the offer of a 50:50 tenure split in February 2008 was made in the knowledge of, and on the basis of, the viability implications of a BREEAM "Excellent" rating and Code Level 4 for Sustainable Homes, as these were not realities until October 2008.

351. It was in these circumstances that the District Valuer concluded⁵²³:

"The table above shows that there is a good deal of common ground on both costs and revenues attaching to the submitted scheme. There is a marginal adjustment in the finance costs considered justified. However, surplus from this element has been offset by build cost inflation in Quarters 1 & 2 of 2008 and the additional costs associated with Code for Sustainable Homes Level 4 and BREEAM Excellent standards. The applicants have stated that they are in a unique position to mitigate the rises in construction costs through their parent company, Laing O'Rourke and hence their return figures are better than our market assessment. However, following extensive negotiations on the mix of affordable housing, the tested mix (35%/75%) is required to deliver the scheme with a profit level approaching market norms. This is considered to be fair to the developer in putting significant capital at risk." (emphasis added).

352. The issue of affordable housing tenure was dealt with by the City Council's officers on pp. 98 and 99 of the December 2008 committee report⁵²⁴. This was the opportunity for the City Council to go back to the District Valuer if they had any remaining concerns. This was not done. Nor does it appear ever to have been done after planning permission was refused, or when the City Council was preparing its case for this inquiry. Nor, again, does it appear that the City

⁵²¹ See the Planning Statement, September 2008, p. 68, paragraphs 5.82(xi) and (xii).

⁵²² See the e-mail correspondence dated 30 October 2008 (CD12/46).

⁵²³ In section 16 of his draft report, version 4, dated 27 October 2008

⁵²⁴ CD3/1.1

Council went anywhere else to see whether another independent valuation expert might come to a materially different conclusion from the District Valuer's.

353. At the pre-inquiry meeting, it was requested that the up-to-date viability position should be explained to the inquiry. There was no intimation then that the City Council was intending to instruct, or to provide the inquiry with evidence from, any valuation expert. In the event it did not.

354. As a result of assertions made about the viability of the scheme by the City Council's planning witness, Mr Goodwin, in his proof of evidence – this, it will be recalled, was before City Council's design witness, Mr Roake, found himself involved in valuation issues too – the appellants considered it necessary to provide a response clearly setting out the position of the developer. This was done by way of Mr Dennis' Note on Scheme Deliverability, contained in Appendix 3 of Mr Gavin's rebuttal proof. Further material, which was claimed by the City Council to have some worth as information germane to the viability of the proposals, was provided to the inquiry by Mr Roake. This was vitiated by mathematical errors, which had to be corrected first by Mr Goodwin and subsequently by Mr Dennis⁵²⁵. No doubt Mr Goodwin and Mr Roake were both doing their best to help the inquiry. But in that they did not succeed, except, inadvertently, in demonstrating that the independent valuation exercise undertaken by the District Valuer was and remains sound; and that the level of profit in the scheme is sufficient to encourage the developer to continue to bear the considerable risk he must shoulder in getting this scheme built and delivered over the long period it is going to take to do that, and, what is more, to keep going through one of the most severe economic recessions this country has had to contend with in 100 years and more. If the City Council was setting out to show that the appellants could manage now to change the affordable housing tenure mix in their scheme, or that they ought to have done more than they successfully did, throughout 2008, to demonstrate beyond any sane dispute that they could or might be able to do that, or, again, that despite the development plan saying nothing one could read as creating an onus upon a developer in situation like this repeatedly to prove such a negative, it has abysmally failed. Mr

⁵²⁵ See CD13/2a and CD13/2b.

Goodwin's and Mr Roake's assertions on this matter cannot reasonably be given any material weight by the Secretary of State. And the submissions now made in closing on the back of that evidence carry no force at all.

355. There are striking parallels here with the decision of the Secretary of State in the King's Cross Triangle appeal⁵²⁶. In considering the amount of affordable housing, the inspector rejected the suggestion that developers should be required to provide the local planning authority with economic analyses of their schemes. He was satisfied that the independent analysis that had been undertaken and which was before him in the form of a valuation report was sufficient. He said this⁵²⁷:

"I was informed that a financial appraisal using the Three Dragons toolkit or similar could be undertaken expeditiously ... However, it seems to me that such analysis is not best suited to deal with developments where costs and benefits are spread across more than one site and where development (as here) is likely to take place some years hence ... Valuation is not a precise science and it is inevitable that all such exercises will be hedged about with caveats and provisos. I doubt, in this a particular case, that any more verifiable economic assessment could be achieved for a development of the scale and complexity involved without compromising either commercial sensitivity or the independence of the analysis. The appraisal was, I judge, sufficient to guide the Council's negotiations when considering the proposals for the Main Site, and to provide reassurance on its approach to the Triangle Site."

356. The Secretary of State agreed with those conclusions⁵²⁸.

357. In the present case the Secretary of State can properly, and should approach the matter of viability in a way that is consistent with the approach he and his inspector took in the King's Cross case. In particular, he can and should accept the following propositions:

- (i) The nature of a valuation exercise in a case such as this, where a complex development project going to be implemented, in phases, over a long period is not necessarily a precise science. An inquiry like this one is not assisted by iterative, residual valuations that assume the character of a developer being

⁵²⁶ Contained in Appendix 2 to Mr Spry's proof

⁵²⁷ At paragraph 12.17 of his report

⁵²⁸ See Mr Spry's Appendix 3.

required to prove he cannot do what somebody else might like him to, but policy does not require. This is not the kind of exercise that policy invites, still less demands. If evidence of that nature is before the Secretary of State it is liable to present a confusing and unhelpful picture, and in the circumstances of the present case, this would not add clarity to a situation in which the scheme has already been independently evaluated on a basis the City Council did not question when it might have done so had it felt inclined to do so.

- (ii) It should also be remembered that the central context with which the Secretary of State is concerned here is one in which a negotiation is expected to occur between the developer and the City Council. In the present case that negotiation took place in the only way it could – between City Council’s officers and the appellants. In the appeal, the Secretary of State has assumed the role of the planning decision-maker in place of the City Council. No negotiation process is possible with him. The Secretary of State must therefore consider whether the negotiation that took place at the stage when the application was before the City Council was a robust and complete exercise. Here, plainly, it was. If, for its part, the City Council wanted to dissociate itself from the position reached at the end of the negotiation, in light of independent expert advice (in this case the District Valuer’s) it was incumbent on it to produce clear and complete evidence, which could then be set alongside the District Valuer’s independent and complete assessment for and fairly tested at the inquiry. This it has chosen not to do, presumably on advice.
- (iii) There is no onus on the developer in national, regional or local policy to demonstrate that any particular quantum or mix of housing is the only affordable housing offer he can afford to provide. The explanation for policy HO2 is clear⁵²⁹ that:

“Negotiations will take place on each site and developers will be asked to justify any proposals which do not meet the policy requirements.”

This, in the context of the paragraph and policy HO2, means “the target proportion of 40% affordable housing”. In the present case this target is being

⁵²⁹ At paragraph 4.31

met in full. So no “justification” is called for. There simply is no requirement in the development plan for the developer to “justify” any other element of his affordable housing provision. The RSS does not detract from this point. Mr Goodwin confirmed in cross-examination that, other than in the case of the 40% “target proportion” of affordable housing, which is itself not a requirement, policy HO2 contains several considerations that plainly are neither targets nor requirements or tests. The consideration of “the particular costs associated with the development of the site” was addressed by the District Valuer.

(iv) The fact that the viability of the proposed affordable housing provision being secured and delivered through this development has been actively considered by the City Council with the benefit of the District Valuer’s advice does not serve to create a viability test for the development. It merely demonstrates one ingredient of the negotiations that have taken place⁵³⁰.

358. In these circumstances, for the City Council to complain that no witness has been produced by the appellant, is to shirk its own responsibilities in this part of the case. In the circumstances it was quite unnecessary for the appellant to call such a witness. And had such a witness been called, he or she could not have been cross-examined on the basis of any expert valuation evidence that could then have been tested in the same way. The efforts that have been made at this inquiry to improve the City Council’s patently insufficient case on the viability of the appellants’ scheme has served only to demonstrate this lack of expertise on its side. Of course, the inquiry has provided the opportunity for any questions of fact to be elucidated by or for the appellants. If those questions have not been asked, this is no fault of the appellant. Ultimately, however, if the Secretary of State requires to be even more fully informed, he has the opportunity to make that known to the parties before reaching a decision. Fairness dictates that this is what he should do if he requires to be more fully informed before reaching his decision.

⁵³⁰ See paragraph 4.31 of the local plan.

Affordable housing: distribution

359. Both tenures of affordable housing will be distributed evenly throughout the Cliff site, which will also include a sustainable market housing element⁵³¹. The proposed affordable housing is “tenure blind”. No individual block will have only private dwellings in it⁵³².
360. The Cliff site is the preferred location for affordable housing, for two reasons:
- (i) Residents will have the benefit of secure, communal open spaces which will include areas where young children can safely play outside (the LAPs).
 - (ii) It will be completed in the first phase of the project, thus delivering much-needed affordable housing at the earliest possible stage⁵³³.
361. The distribution and integration of the affordable housing throughout the Cliff site is also necessary to protect the overall viability of the project. This was concluded by the District Valuer, who tested distribution on the Council’s instruction⁵³⁴.
362. It is important to note that the distribution of the affordable housing in the Cliff site compares favourably with other approved schemes in Brighton, for example, the King Alfred, Brunswick, Grand Ocean Hotel and City Point, New England Quarter developments⁵³⁵.
363. Mr Goodwin has suggested that the City Council has control of the distribution of the affordable housing in the Brunswick development⁵³⁶. This is not the case. The location of the affordable housing elements of the Brunswick

⁵³¹ See paragraph 5.30 of Mr Bean’s proof and paragraph 4.19 of the Planning Committee Minutes (CD3/1.2).

⁵³² See paragraph 5.32 of Mr Bean’s proof.

⁵³³ See paragraph 8.5.3 of Mr Allies’ proof.

⁵³⁴ See the committee report, p. 99, paragraph 3 (CD3/1.1).

⁵³⁵ See Mr Bean’s proof at paragraph 5.34.

⁵³⁶ In his proof at paragraph 5.84

scheme has already been fixed within the section 106 agreement within two individual blocks⁵³⁷.

364. The affordable housing will be sufficiently dispersed within the site to ensure the achievement of a mixed and sustainable community. The hyperbolic suggestions of an affordable housing “ghetto” (the word used by Mr Goodwin at paragraph 5.81 of his proof) are wholly unfounded and fail to find support in recent experience at other sites in Brighton. The affordable housing element of the development does not distinguish between the affordable tenures or the market sale unit, with all units having access to shared communal areas, stairwells, on-site facilities and amenities⁵³⁸.

365. The City Council’s Housing Development Manager accepted all the affordable homes being located on the Cliff site⁵³⁹. The Housing Strategy team also recorded as having said⁵⁴⁰ that “it accepts the applicants’ viability arguments in this instance for concentrating the affordable housing within the Cliff site”.

366. Affinity Sutton (the proposed RSL) have accepted the location of affordable housing in the Cliff site⁵⁴¹. The grouping of the affordable housing units will minimize management issues and reduce maintenance and whole life costs for the RSL⁵⁴².

Affordable housing: conclusion

367. The Secretary of State ought therefore to conclude that the City Council has proper grounds relating to the viability of the appeal proposals for alleging that the scheme is inadequate on the basis of an inadequate provision, or mix, or tenure split, of affordable housing. The opposite is so. The outcome of this

⁵³⁷ As is demonstrated by Mr Bean in paragraph 5.34 of his proof, his Appendix 9, and paragraph 3.11 of his rebuttal proof

⁵³⁸ See Mr Bean’s proof, at paragraph 5.36.

⁵³⁹ See the Planning Committee minutes, 12 December 2008, at paragraph 4.19 (CD3/1.2).

⁵⁴⁰ On p. 99 of the committee report (CD3/1.1)

⁵⁴¹ See Mr Bean’s Appendix 10.

⁵⁴² See paragraph 5.36 of Mr Bean’s proof.

aspect of the appeal ought to be the conclusion that both the level and the split of affordable housing are realistic components of the scheme as a whole. The Secretary of State will of course need to weigh the evidence presented to him on this matter. The essential elements of the evidence for this purpose, as has been noted above, are the District Valuer's report seen in the context of the context of the chronology set out above⁵⁴³ the December 2008 committee report⁵⁴⁴, and Mr Dennis's Note on Scheme Deliverability⁵⁴⁵.

368. Pragmatism is needed here. This is recognized by policies HO2 and HO3. The target of 40% affordable housing is met. The Council's wish for a split of 55:45 social rented:intermediate housing is not in fact a requirement at all, and cannot reasonably be treated as if it were. The appellants' proposed split of 35:65 is in no way inconsistent with development plan policy. It ought to be accepted.

369. The section 106 obligation contains in Schedule 2 a cascade mechanism. There is no reason to imagine that the affordable housing will not be delivered in full, with the active and enthusiastic involvement of an affordable housing provider, and in the relative proportions of tenure that have been described and explained in the appellants' evidence. If, however, for some wholly unforeseen reason this did not occur, the successive default positions in the cascade will assure the delivery of the maximum reasonable amount of affordable housing in those circumstances.

370. Two matters have come out in the evidence the inquiry has heard and ought also to be mentioned:

- (i) The shared ownership aspect of the affordable housing provision will enable the purchase of a minimum of 25% and a maximum of 75% equity. A further 10% can subsequently be purchased every year. Thus, those who occupy these flats will have the opportunity to purchase their homes outright. In these circumstances, "any subsidy obtained by the developer upon sale is required

⁵⁴³ Appendix 1 to Mr Gavin's rebuttal proof, Appendix 3

⁵⁴⁴ CD3/1.1 on pp. 98-99

⁵⁴⁵ Appendix 3 to Mr Gavin's rebuttal

to be reinvested by him to meet future identified affordable housing needs” (CD4/2.1: DCLG – Delivering Affordable Housing). In this context, the developer is the RSL, not the appellants. Thus⁵⁴⁶ the appellants are not in a position to control how the RSL allocates the money.

- (ii) When considering the ability of the shared ownership buyer to purchase equity in the current market, it should be borne in mind that it will be several years before the units become available, and in Mr Bean’s experience of other developments in Brighton, such as the Grand Ocean Hotel, sales of shared ownership units have been “really good”, the only issue being the length of time it has taken purchasers to obtain a mortgage. The form and location of the proposed development (including the mix of uses), the range of housing types proposed, and the 40% affordable housing provision, will all contribute towards achieving a mixed sustainable community in accordance with PPS3.

Main Issue (iv): infrastructure matters

Outdoor amenity and recreation space

371. As has already been noted, the appeal scheme will provides a total area of 6,164 square metres of recreational open space⁵⁴⁷, which will meet the needs generated by a wide cross-section of age groups.

372. The recreational open space provision includes⁵⁴⁸:

- (i) Six LAPs that meet the FiT guidance “Planning and Design for Outdoor Sport and Play”⁵⁴⁹;
- (ii) Two LEAPs that are compliant with the standards⁵⁵⁰;
- (iii) One NEAP, also standard-compliant⁵⁵¹

⁵⁴⁶ As Mr Bean confirmed in response to one of the Inspector’s questions

⁵⁴⁷ According to a calculation based only on those facilities which come within the ambit of policy HO6 and draft SPG9 (CD12/27)

⁵⁴⁸ See DAS Vol III, Appendix 6, section 7.0.

⁵⁴⁹ CD12/7: See Mr Allies’ proof at paragraph 8.6.20 and Mr Gavin’s at paragraph 7.5(i)

⁵⁵⁰ See Mr Allies’ proof at paragraphs 8.6.6 and 8.6.8, and Mr Gavin’s at paragraph 7.5(ii).

(iv) Adult and youth sports facilities comprising of an urban sports area, a climbing area and activity spaces within Marina Village⁵⁵².

373. 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 agreed condition 19.

The principle of an off-site contribution

374. Policy HO6 of the local plan provides that new residential development will not be permitted unless the requirement for outdoor recreation space, generated by the development, is suitably provided in accordance with:

- a. the standard of 2.4 hectares per 1,000 population (or part thereof), or
- b. any subsequent standard adopted by the council following a local assessment of needs and audits of open space and sports and recreational facilities.

Where it is not practical 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.

375. The text for policy HO6 states that:

- (i) The application of policy HO6 is so linked with draft SPG9 that its content will inevitably need to be taken into account in conjunction with policy HO6⁵⁵³;
- (ii) The City Council will only expect an applicant to make provision for the outdoor recreation space required to meet the needs of the proposed development. Applicants will not, therefore, be expected to provide recreation facilities beyond those that can actually be justified by the development⁵⁵⁴;

⁵⁵¹ See Mr Allies' proof at paragraph 8.6.6 and Mr Gavin's at paragraph 7.5(iii)

⁵⁵² See Mr Allies' proof at paragraphs 8.6.13 to 8.6.17 and Mr Gavin's at paragraph 7.5(iv)).

⁵⁵³ Paragraph 4.46

⁵⁵⁴ Paragraph 4.47

- (iii) Where an applicant can satisfy the planning authority that this requirement can be suitably provided by way of an existing outdoor recreation space, the planning authority will not require the developer to make further provision.

376. It is neither practical nor appropriate on a site such as the marina to provide the full level of open space recommended by HO6 and draft SPG9 on-site. That would require 6.7 hectares or 56% of the total site area to be given over to recreational open space, which would be impractical and inappropriate if a sustainable development at an appropriate density to make best use of this important urban site is to be delivered. Such a provision of on-site open space would inevitably compromise the scheme's regenerative aims⁵⁵⁵. This is accepted in principle by the City Council⁵⁵⁶.

377. Such a situation is explicitly recognized in:

- (i) policy HO6⁵⁵⁷;
- (ii) PPG17 "Planning for Open Space, Sport and Recreation"⁵⁵⁸, which advocates section 106 contributions as a means to remedy local deficiencies in the quantity or quality of open space, sports and recreation provision⁵⁵⁹;
- (iii) draft SPG9⁵⁶⁰, which states that alternative provision can be considered 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
- (iv) the City Council's Open Spaces and Recreation Study⁵⁶¹, which states that in many circumstances "it will not be possible to

⁵⁵⁵ See Mr Allies' proof at paragraph 8.3 and Mr Gavin's at paragraph 7.8.

⁵⁵⁶ See Mr Goodwin's proof at paragraph 5.97. He confirmed this in cross-examination.

⁵⁵⁷ As has been noted above

⁵⁵⁸ CD4/13

⁵⁵⁹ At paragraph 33

⁵⁶⁰ CD8/7

⁵⁶¹ CD9/14

provide any or all of the types of open space that are required on-site”⁵⁶².

Calculating the level of off-site contribution

378. The appellants will be committed in the section 106 obligation to a financial contribution of £1,045,000.00 towards the provision of off-site sport and recreation facilities. Both the City Council’s officers and Sport England were satisfied with the level of provision proposed⁵⁶³. The commitment in the section 106 obligation satisfies all of the relevant tests in Annex B to Circular 05/05.

379. A parallel can be drawn with the contribution being made by the Brunswick development, because it too is a major regenerative development at the marina and so has similar characteristics in relation to open space⁵⁶⁴. It was inappropriate, in that case too, for all of the provision to be provided on-site. It should be noted that a much smaller provision of outdoor amenity space was permitted in the Brunswick scheme, coupled with a smaller financial contribution⁵⁶⁵. It is thus clear that just three years ago, and on a site adjacent to the appeal site, the City Council concluded as a matter of judgment that there were very exceptional circumstances to justify a relaxation from the recreational open space requirements of draft SPG9 and policy HO6.

380. As Mr Reid stated⁵⁶⁶, policy HO6 explains that the Council will effect a judgment and has an element of discretion as to what it requires and the scale of the requirement in relation to the application of HO6 and draft SPG9. The Brunswick development is testament to that. Mr Goodwin accepted⁵⁶⁷ that the application of policy HO6 and draft SPG9 involves the application of judgement. It does.

⁵⁶² At paragraph 14.31, on p. 183

⁵⁶³ See Mr Gavin’s proof at paragraph 7.31 and paragraphs 7.33 to 7.35.

⁵⁶⁴ As Mr Reid stated in his evidence-in-chief

⁵⁶⁵ See paragraph 7.36 of Mr Gavin’s proof.

⁵⁶⁶ In his evidence-in-chief

⁵⁶⁷ In cross-examination

381. The City Council suggests that a contribution of £1,871,596.35 is required based on a calculation that follows the methodology of draft SPG9⁵⁶⁸. At the inquiry, the City Council produced two separate calculations⁵⁶⁹, one that includes in addition the Cliff building LAPs (which lowers the required contribution to £1,837,422.96) and another that includes the Cliff building LAPs and the Quayside and Sea Wall LAPs (which reduces the contribution to £1,832,570.96).
382. The methodology in draft SPG9 that informs what Mr Goodwin describes as his “ready reckoner” is as follows. One calculates the development population⁵⁷⁰, which is then applied to the spatial requirements (2.5 square metres per person for children’s equipped play space, 4.5 square metres for casual / informal play space and 17 square metres per person for adult / youth outdoor sports facilities). This provides the overall space requirements for recreational space. One then subtracts the on-site provision from the total requirement to obtain an overall off-site requirement to which a charge per square metre (indexed to the current day figures) is applied⁵⁷¹.
383. It should be noted that if one applies a population figure in accordance with the average household size of 1.5 in Brighton and Hove, this produces a development population range of 1,950 to 2,080⁵⁷². A 1.5 occupancy figure is supported by PAN04, which refers⁵⁷³ to an average occupancy at the marina of 1.6 persons per unit for the master plan⁵⁷⁴. Applying a 1.5 household size to Mr Goodwin’s Appendix G(1) produces a figure of about £1.3million (rather than £1.87 million)⁵⁷⁵.

⁵⁶⁸ See Mr Goodwin’s Appendix G(1)). It should be noted that the City Council does not now seek an additional maintenance contribution, as set out in Appendix G(1).

⁵⁶⁹ In Mr Goodwin’s Appendices G(2) and G(3)

⁵⁷⁰ On p. 9

⁵⁷¹ As Mr Reid explained in evidence-in-chief

⁵⁷² As opposed to Mr Goodwin’s 2,805

⁵⁷³ On p. 38, in section 16

⁵⁷⁴ See Mr Gavin’s rebuttal proof, at paragraphs 2.34 and 2.43.

⁵⁷⁵ As was explained by Mr Reid in evidence-in-chief

Moving away from the draft SPG9 Methodology

384. In Mr Reid's view, draft SPG9 carries "limited weight". Although it is acknowledged that draft SPG9 is the mechanism by which policy HO6 is applied (and that draft SPG9 is expressly referred to within the text of policy HO6) it should be borne in mind that:

- (i) it has not progressed beyond draft stage although it has been around since 2002; and
- (ii) thinking on open space has moved on since 2002 – the publication of PPG17 in 2002 heralded a broader approach to the matter of open space provision, which has been set out in more detail in the Council's Open Space, Sport and Recreation Study (2009)⁵⁷⁶.

385. This is an important point. The PPG makes it clear that it is moving away from the "slightly blunt"⁵⁷⁷ standard of 2.4 hectares per 1000 to a more locally focused approach responsive to local circumstances. It includes a typology that "illustrates the broad range of open spaces that may be of public value"⁵⁷⁸. This includes⁵⁷⁹ "civic spaces, including civic and market squares, and other hard surfaced areas designed for pedestrians". Thus, the PPG lends support to Mr Allies' inclusion of general areas of public realm within his calculation of open space.

386. The City Council's recent Open Space, Sport and Recreation Study (2009)⁵⁸⁰ (known at the Inquiry as "the PPG17 study") adopts the broader approach advocated by PPG17.

387. This document states that it "does not constitute Council policy" and that no standard subsequent to draft SPG9 has been adopted by the City Council. However, the PPG17 study is clearly "looming in the wings"⁵⁸¹ and underpins

⁵⁷⁶ CD9/14

⁵⁷⁷ In Mr Reid's words

⁵⁷⁸ Annex

⁵⁷⁹ At item 10

⁵⁸⁰ CD9/14

⁵⁸¹ As Mr Reid stated to the Council's advocate in cross-examination

much of the emerging Core Strategy⁵⁸². It was produced as a background document to the LDF. So much is apparent from the fact that the Children's and Young Persons Open Space Provision⁵⁸³ is identical to the 0.055 hectares per 1000 recommended by the PPG17 study, which is to be compared with the "quite dramatically different"⁵⁸⁴ 0.7 hectares per 1000 for Children's Spaces in draft SPG9. Whilst it is clear that the provisions for outdoor sports facilities in policy CP7⁵⁸⁵ are not identical to the PPG17 study's. However, no explanation is given as to why the City Council is not following its consultants' advice.

388. Sport England recognized the weight that could be given to the PPG17 study, stating in their letter of 22 October 2008⁵⁸⁶ that the study:

"has been carried out in accordance with the requirements of PPG17 and sets out the likely current and future provision required for indoor and outdoor sports facilities. The applicant could therefore refer to the information and findings presented in this assessment."

389. Sections 6 to 13 of the PPG17 study set out a range of open space typologies and, for each typology, local standards are identified (broken down into quantity, accessibility and quality), as is advocated by PPG17 itself. Section 14 then sets out the methodology for calculation. Importantly, once a figure is reached, the decision-maker has to make a judgment informed by the availability and accessibility of existing facilities as to what the off-site contribution should be. The worked out example at paragraph 14.58 shows the outcome of the methodology producing an open space requirement of 0.9 hectare on a 1.5 hectare site. However, that is then considered, as a matter of judgment, too great and is reduced to 0.3 hectare. The on-site contribution is 13% of the total site. There is then a calculation of the financial contribution taking into account the on-site provision.

⁵⁸² CD8/2.1

⁵⁸³ Policy CP6, p. 97

⁵⁸⁴ Mr Reid's words in evidence-in-chief

⁵⁸⁵ On p. 101

⁵⁸⁶ CD12/13

390. The key recommendations arising from this section should be noted⁵⁸⁷, which include the following:

“More generally, it is important to note that the provision standards are only the starting point in negotiations and high quality environments will not result simply from applying them in mechanical way” (DC5).

This is not dissimilar to the approach in draft SPG9: each produces a financial figure, which forms the basis of negotiation and discussion.

391. Mr Reid has applied the PPG17 study recommendations to the appeal site. Applying the outdoor sports facility standard (0.47 hectare per 1000)⁵⁸⁸ and children and young people’s facilities (0.055 hectare per 1000)⁵⁸⁹ to a development population of 2,805 (in accordance with Mr Goodwin’s Appendix G(1)) produces a recommendation of 1,543 square metres. Excluding the area under the ramps, the total on-site provision is 2,569 square metres (i.e. the two NEAPs and the LEAP). If the LAPs were included in the calculation⁵⁹⁰, the on-site provision is 3,569 square metres. It should be noted that these are the typologies that “correlate” to policy HO6 and draft SPG9⁵⁹¹.

392. Therefore, against the standards now emerging through the PPG17 Study, the appeal scheme meets, and indeed exceeds, the requirements for children’s and young people’s facilities on the site. It of course follows that if one applied a lower development population, the degree of overprovision would be even greater.

Discussion and negotiation

393. To understand the appellants’ offer of £1,045,000.00 it is necessary to take appreciate the chronology of the negotiation process undertaken with the City Council.

⁵⁸⁷ See paragraph 14.62.

⁵⁸⁸ See paragraph 10.20.

⁵⁸⁹ See paragraph 6.21.

⁵⁹⁰ See Mr Goodwin’s Appendix G(3).

⁵⁹¹ As Mr Reid explained in cross-examination.

394. It is not a requirement of policy HO6 for a developer to pay the total figure that is produced by the draft SPG9 “ready reckoner”. On the contrary, draft SPG9 makes it clear that once the figure is derived, the developer will enter into a course of negotiation with the City Council⁵⁹².

395. The following evidence was given to the Inquiry by Mr Reid based on his understanding of the sequence of events that took place between Mr Broome from Outerspace and Mr Gavin of NLP on behalf of the appellants and Ms Babb, Sport and Recreation Manager of the City Council.

(i) During the course of discussions at the end of 2007 and in early 2008 a number of suggestions for works that could be carried out off-site were made by the City Council and an outline was provided as to what the works / projects might comprise of⁵⁹³.

(ii) Through Mr Broome and others, the appellants produced in outline form some sketch proposals that would inform a view on costing⁵⁹⁴. These proposals were then costed by cost consultants for Laing O’Rourke and given an overall sum, which was very much a “budget one”⁵⁹⁵ at that stage⁵⁹⁶.

(iii) Against that background, the appellants made an offer of £845,000 to go towards off-site recreational facilities in around June 2008 (including £100,000 for an on-site sports co-ordinator).

(iv) As a result of further negotiations with the City Council and Sport England, which culminated in Sport England withdrawing their objection, the appellants increased their proposed contribution to £1,045,000.00 (including £200,000 for the on-site sports co-ordinator).

396. This demonstrates the spirit of the consultation and discussion that took place⁵⁹⁷, which led to the position set out by the officers in their report to committee⁵⁹⁸. The Development Manager – Sport and Leisure stated⁵⁹⁹:

⁵⁹² CD8/7, at p. 10

⁵⁹³ Mr Goodwin’s Appendix H provides further details of these. It should be noted that all these sites come within the City Council’s sports strategy and are therefore related to the marina.

⁵⁹⁴ See the DAS Volume III, Appendix 6, section 9.

⁵⁹⁵ Mr Reid’s words

⁵⁹⁶ For example, no figures for Manor Road Gym and City College were given.

⁵⁹⁷ As is advocated by PAN04, paragraph 12.3

“Following the initial comments made by officers at the pre application stage regarding the allocation for outdoor recreation it is now evident that the requirements of policy HO6 cannot all be met on site given the size and location of this development. However, after sharing these initial comments with the developer and their agents they have made great efforts to improve both the on site and off site sports and recreation offer.”

397. Sport England stated⁶⁰⁰:

“The applicant has also provided further information relating to the off site sport contributions. 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 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.”

Existing recreational facilities

398. Material to the judgment of whether the sum reached as a result of that negotiation process is appropriate is the fact that residents at the marina are very well served by a range of existing on and off-site recreational facilities⁶⁰¹. 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 Brighton⁶⁰². When the South Downs National Park is finally approved, the National Park will be directly adjacent to the eastern boundary of the marina⁶⁰³, which will further increase opportunities to enjoy access to the countryside and to open space⁶⁰⁴.

399. Access to off-site recreation will be enhanced as a result of the improved linkages provided as part of the appeal scheme (See Mr Gavin’s proof at paragraph 7.19).

⁵⁹⁸ CD3/1.1

⁵⁹⁹ On p. 71

⁶⁰⁰ On p. 58

⁶⁰¹ As is set out in Mr Gavin’s proof at paragraphs 7.9 to 7.17

⁶⁰² See Mr Gavin’s Appendices 14 and 15

⁶⁰³ Ibid..

⁶⁰⁴ See Mr Gavin’s proof at paragraph 7.9. It should be noted that the Peter Pan Playground is actually 15 minutes’ walk from the centre of the appeal site, not the 20 to 25 minutes mentioned in David Gavin’s main proof: see his rebuttal proof at paragraph 2.33. Mr Reid has walked this himself and could confirm the time in oral evidence.

Meeting the tests of Circular 05/2005

400. As Mr Reid has said⁶⁰⁵, one would expect, given the level of detail of the types of facilities to which sums would be payable set out on page 10 of draft SPG9, that they would be capable of being linked to specific sites.

401. This would accord with the Government's guidance in Circular 05/05 which sets out as the tests for a planning obligation⁶⁰⁶ that it must be:

- (i) relevant to planning;
 - (ii) necessary to make the proposed development acceptable in planning terms;
 - (iii) directly related to the proposed development;
 - (iv) fairly and reasonably related in scale and kind to the proposed development;
- and
- (v) reasonable in all other respects.

402. The Annex continues by saying that the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold⁶⁰⁷ and that, similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development⁶⁰⁸.

403. In principle, it is accepted that an off-site contribution is relevant to planning and is necessary to make this development acceptable.

404. The appellants propose that the £1,045,000.00 contribution in the section 106 obligation will fund improvements to:

- (i) Madeira Drive;
- (ii) Rottingdean terraced gardens;
- (iii) Rottingdean beach (sports area);

⁶⁰⁵ In evidence-in-chief

⁶⁰⁶ In Annex B(5)

⁶⁰⁷ Paragraph B6

⁶⁰⁸ Paragraph B7

- (iv) East Brighton Park;
- (v) Manor Road Gym;
- (vi) facilities at City College⁶⁰⁹.

405. All of these facilities are sufficiently directly related to the development, including those at Rottingdean, which although further away from the marina, do relate to the improvement of the coastal facilities to which the marina is part⁶¹⁰. This is reflected in the officers' report to committee, which states that off-site contributions should in the first instance fall within the agreed catchment area of the development itself, taking in the areas of Rottingdean, Madeira Drive, East Brighton and Manor Road⁶¹¹. Access to facilities at City College by the whole community will be the subject of a negotiation with the College at a later stage.

406. The improvements to Madeira Drive will be concentrated on the improvement of the poor lighting. This is essential to making access to sports and recreational facilities safer and enabling Madeira Drive to become a more attractive and safer place in the city's sea front.

407. The proposed contribution is fairly and reasonably related in scale and kind to the proposed development. It is not a requirement of Circular 05/05 that contributions should fund improvements in their entirety. To do so would ignore the fact that funding for these projects will no doubt come from a number of sources, including other developments and public funding (see e.g. Manor Road Gym which aims to make a lottery bid). Mr Goodwin's suggestions in his Appendix H that as "there is scope for further improvements [to Madeira Drive] ... [and that] this contribution could be increased"⁶¹², and that it would be "better to fund the whole [Manor Road Gym] project via the S106 rather than leaving it relying on a successful and uncertain lottery bid" do not begin to warrant a more onerous commitment to funding than the appellants are prepared to give in the

⁶⁰⁹ See Mr Gavin's proof at paragraph 7.22. These facilities are expressly referred to within the definition of "Offsite Recreational Facilities Contribution" in the section 106 obligation.

⁶¹⁰ As Mr Reid explained in cross-examination by the City Council's advocate

⁶¹¹ CD3/1.1, p. 72

⁶¹² At paragraph 11

section 106 obligation. They miss by far the test of necessity and reasonableness. And, as the City Council ought to know, the circular cannot properly be used as a basis for seeking more money from the developer of a major proposal than is fairly and reasonably related in scale and kind to the development itself. In fact this language of Mr Goodwin's encapsulates the unreasonableness of the City Council's position. .

408. The Secretary of State ought to conclude that the contribution proposed by the appellants fulfils the Circular 05/05 tests.

409. By contrast, the City Council's "ready reckoner" output of £1,871,596.35 might, in an abstract sense, qualify as relevant to planning as a matter of principle, but the scale of the money sought is not necessary – or even remotely so – to make the development acceptable. There appears to be no relationship to any needs created by the proposed development in this. The reality is that the City Council has, even now, not grappled with this elementary point at all. And, because there is no identification of proposed facilities, one could never reasonably conclude that this is fairly and reasonably related in scale and kind to the development. Put simply: it is not reasonable. The City Council has been asked and has been unable to state during the inquiry what facilities the contribution would go towards. The Secretary of State ought therefore to conclude that the City Council's figure is not justified, or justifiable, and fails to engage with, let alone meet, the stringent tests in paragraphs B5 to B7 of Circular 05/2005.

410. The precise allocation of the off-site funds to which the appellants are committing themselves in the section 106 obligation is clear, but not inflexible. The officers acknowledged that the particular facilities to be improved by the use of that money would be in the discretion of the City Council to determine⁶¹³. The obligation provides the scope for this and strikes the right balance between specificity of where the money is going and some flexibility in practical allocation.

⁶¹³ See the report to committee (CD3/1.1), p.72.

The on-site sport's co-ordinator

411. The appellants will also:
- (i) fund an endowment for a sports co-ordinator, (£200,000 included within the £1,045,000 contribution), based on the site who will ensure that best use of the on and off-site recreational facilities including those in East Brighton is made⁶¹⁴;
 - (ii) provide a permanent base for the sports co-ordinator within the Cliff building in a position overlooking the recreation areas adjacent to the Asda store⁶¹⁵; and
 - (iii) provide an area for the storage of trolleys used for the transportation of marine / beach related equipment, which will support water based recreation at the marina⁶¹⁶.

412. The appellants' original offer of £100,000 for the sports co-ordinator was increased as a result of negotiation with the City Council and Sport England. Mr Reid accepted that there had been an element of "brinkmanship" on the part of Sport England. This is not to criticize Sport England at all. Such is the process of negotiation. What is important is that Sport England decided, in the light of all the information they had, to withdraw their holding objection.

413. It is clear that the marina and the parts of the city, coast and countryside to which it lies close, together with the appeal scheme's provision of new open space and play areas, and the funded improvements and enhanced access to off-site facilities, will provide ample outdoor amenity and recreation space to serve the increased population. This is as sustainable a situation as one could wish for a major development of this kind. Those who live and work in this neighbourhood will never suffer from a dearth of outdoor recreation opportunities.

⁶¹⁴ See the Statement of Common Ground, section 8, p. 58. The duties are likely to include, for example, organizing events, supervising the under-the-flyover space, enabling the starting up of sports clubs, being an information point.

⁶¹⁵ See the DAS, sub-section 7.4.9, Appendix 6, Volume III, pp. 120 and 121.

⁶¹⁶ See Mr Gavin's proof, at paragraph 7.18.

Transport

414. As a result of dialogue with the City Council as highways authority and the Highways Agency all issues relating to the transport impact of the proposals were agreed prior to the City Council's consideration of the planning application and no objections were made by either body⁶¹⁷. No transport reason for refusal featured in the City Council's statutory decision notice.
415. At the planning committee meeting of 2 September 2009, when the City Council decided to "clarify and amplify" the statutory decision notice, officers did not suggest that any transport-related objections should be added to the case and the committee did not "amplify" the reasons in this respect.
416. A comprehensive Transport Statement of Common Ground relating to all transport and highways issues associated with the appeal proposal has been agreed with the City Council.
417. These submissions respond only to third party objections, the three primary issues being:
- (i) the location of the transport interchange;
 - (ii) car parking levels; and
 - (iii) emergency access and egress.
418. It is also necessary to consider here the impact of the proposals on congestion in the marina and surrounding area.

The position reached with the Brighton Marina Estates Management Company and Brighton Marina Residents Management Company

419. The Brighton Marina Estates Management Company (BMEMC) and Brighton Marina Residents Management Company (BMRMC) instructed Mouchel to review the September 2007 Transport Assessment. Mouchel's initial report

⁶¹⁷ See the December 2008 committee report, CD3/1.1, p. 3, paragraph 6.

resulted in a letter of objection which was submitted on 12 December 2007 by Ashursts on behalf of BMEMC and BMRMC⁶¹⁸.

420. Further work with Mouchel resulted in adjustments to the proposals (including an amended Transport Assessment) on 30 June 2008. This prompted the submission of the August 2008 Mouchel report, which has been referred to by the BMRA at this inquiry⁶¹⁹. The appellants responded with a further amended Transport Assessment on 15 September 2008⁶²⁰. Following further testing and clarification of the proposals in collaboration with Mouchel, Mouchel indicated that they were generally content with the proposals on 6 November 2008⁶²¹, and BMEMC and BMRMC removed their objection to the scheme⁶²².

421. Mouchel have subsequently, on 30 November 2009, produced a final report for BMEMC⁶²³ which concludes:

“Mouchel have independently examined the analysis and assumptions underlying CB work [Colin Buchanan] and concluded that there are no outstanding issues which are felt to cause significant concern ... In our August 2008 review of the Transport Assessment we identified what were felt to be the transport risks inherent in this development. Since this time we have been invited to comment on the drafting of the Unilateral Undertaking which seeks to mitigate against these risks. On this basis it is concluded that the third party objections which have been raised, whilst in many instances based on understandable concerns, are unlikely to be warranted.”

Transportation benefits

422. The proposals will build on the existing public transport facilities already serving the marina by incorporating proposals that will update and modernize the existing transport infrastructure and promote sustainable transport. The full range of measures aimed at promoting smarter travel choices to the proposed development include:

⁶¹⁸ See Mr Frisby's rebuttal, at Appendix A.

⁶¹⁹ CD14/1

⁶²⁰ See Mr Frisby's rebuttal proof at paragraph 2.2.4.

⁶²¹ See Mr Frisby's rebuttal at Appendix C.

⁶²² See Mr Frisby's rebuttal proof, Appendix D; and see the December 2008 committee report, p. 32, (CD3/1.1).

⁶²³ CD12/33

- (i) a new transport interchange to accommodate 6 buses and 2 taxis (including real time information and shelters);
- (ii) off-site junction improvements to facilitate bus movement into the marina;
- (iii) introduction of a new route into the marina for a Rapid Transport System (RTS);
- (iv) improvements to the existing vehicular access ramp incorporating speed reducing features;
- (v) new access for emergency services vehicles;
- (vi) Reconfiguration of the existing roundabout to a shared space 'Squareabout'
- (vii) the introduction of a site wide car parking management plan
- (viii) the introduction of Variable Messaging Signs on the A259, to show current parking levels in the marina;
- (ix) a new pedestrian and cycle access via a bridge link from the cliff top into the heart of the marina;
- (x) the introduction of a new Toucan crossing on the A259 to encourage cycling and pedestrian movement into the marina;
- (xi) the improvement of cycle facilities by enhancing cycle routes, providing a centre for cycle rental and a 'doctor-bike' maintenance facility (available to all users of the marina);
- (xii) enhancement of pedestrian and cyclist signage within the marina;
- (xiii) the preparation of a travel plan that includes a car club, discount vouchers for bus and train travel and the purchase of bicycles; and
- (xiv) a commitment to monitoring displaced parking in surrounding residential areas⁶²⁴.

The transport interchange

423. PAN04, having noted that the marina is well served by bus services, describes its current transport facilities and bus interchange as "very poor"⁶²⁵. It continues:

"At present, buses enter the Marina via the ramp and turn right around the roundabout into the access road which encircles the leisure sheds. The journey terminates at a poorly designed bus drop-off and waiting area just

⁶²⁴ See Mr Frisby's proof at paragraph 13.2.1.

⁶²⁵ At p. 11

outside the McDonalds Drive-Through restaurant, which is not easy to find or access”.

424. The appeal proposals’ re-location of the bus interchange to Palm Drive “aligns itself”⁶²⁶ with PAN04’s “preferred option” for the transport interchange to be situation on Palm Drive close to Merchants Quay, at the heart of the marina. This location is at the intersection of the three catchment areas for the superstore, the approved Brunswick scheme and the existing residential quarter. It is thus a suitably central location for an interchange. This will be a “significant improvement and enhancement” that will “put public transport at the heart of the marina, at a visible and prominent location”⁶²⁷. It will be supported by new, clean facilities, real-time information and a better public transport strategy for the marina.

425. Extensive consultation was undertaken with businesses along Palm Drive and there was not a single objection to the location of the interchange. On the contrary, the consultation process suggested that local business welcomed the additional footfall⁶²⁸.

426. Mr Frisby, the appellant’s transport consultant, spent “a lot of time”⁶²⁹ with Mr French, Managing Director of Brighton and Hove Bus and Coach Company, to find out what would best suit his business and increase the use of public transport. The correspondence was profuse⁶³⁰ with support for the proposed location⁶³¹.

⁶²⁶ As Mr Frisby said in evidence-in-chief

⁶²⁷ See Mr Frisby’s evidence-in-chief

⁶²⁸ See Mr Frisby’s Appendix R and Appendix 5 to the Planning Committee Report (CD3/1.1), which indicates that a number of businesses (facing onto Palm Drive) supported the application, and Mr Frisby’s proof at paragraph 11.1.5.

⁶²⁹ As he put it in evidence-in-chief

⁶³⁰ See Mr Frisby’s Appendix S.

⁶³¹ Note that Mr French spoke of putting the interchange “back at the heart of the Marina”: letter of 9 February 2007.

Car parking

427. The Government adopts a “restraint-based” approach to car parking provision, which will bring about a behavioural change (modal shift) away from single occupancy car usage⁶³². The corresponding local policy approach is found in policy TR2 (“Public transport accessibility and parking”) of the local plan, which states that, where a development is highly accessible by public transport⁶³³, “developers can maximise built development at the expense of parking spaces and reduce commuter parking, by promoting alternative ways of travelling to the site”⁶³⁴.

428. The appeal scheme responds to and accords with these policies in the following ways:

- (1) 1,471 new parking spaces will be delivered across the marina (compared to a possible maximum of 3,540 in SPG4) and the capacity of the multi-storey car park will be reduced by 193 spaces⁶³⁵.
- (2) A site-wide Car Park Management Plan will be introduced⁶³⁶ which will introduce parking control and enforcement through a pricing structure, management methods which will encourage the use of more sustainable modes of transport⁶³⁷ and Variable Message Signs on all approaches to the marina on the A259.
- (3) The significant investment in sustainable transport in the travel plan will underpin the car parking strategy at the marina.

429. Without clouding its focus on restraint-based car parking, the CPMP will ensure that 100 spaces are available at all times for berth holders. Residents of the marina will not be charged for car parking⁶³⁸ and the car club will also have

⁶³² PPG13, p. 19, paragraph 49 (CD4/10); and see Mr Frisby’s proof at paragraph 10.1.3.

⁶³³ As is the case for the marina: see TSO CG p. 3, paragraph 2.2.5

⁶³⁴ CD8/1, p. 29; and see also policy T4 of the South East Plan (CD7/1, p. 69)

⁶³⁵ The level of parking is agreed in the TSO CG at paragraph 3.1.4.

⁶³⁶ In accordance with PAN04, p. 14, paragraph 10.2.3 (CD8/12)

⁶³⁷ See the TSO CG at paragraph 3.1.5.

⁶³⁸ As was explained by Mr Frisby in answer to one of the Inspector’s questions

allocated spaces within the multi-storey⁶³⁹. In all, the CPMP will aim to “rationalize parking” by enforcing limited parking for defined periods without excluding the needs of residents and business in the marina⁶⁴⁰.

Emergency access

430. Emergency services access to the marina is currently limited⁶⁴¹. This was a point raised in the Brighton Marina Masterplan – Transport workshop of 22 June 2007⁶⁴² and led to the recommendation in PAN04 that “any further development at the site would require the identification of additional access routes”⁶⁴³.

431. The appeal scheme has done this. Mr Frisby spent about eight weeks discussing all potential emergency accesses. This resulted in the proposal to deliver and design a new emergency access under the ramps from the west. It is envisaged that this will become the primary point of emergency access in the future⁶⁴⁴. The emergency services have been consulted. They support the provision of a second emergency access into the marina⁶⁴⁵. This will allow choice and ease of access should the existing access ramp become blocked. None of the emergency services has contended that the emergency access into and out of the marina will be inappropriate or constrained with the proposed development in place. That is not surprising. The access arrangements for emergency vehicles will be markedly improved.

432. The BMRA have expressed their concern that there is insufficient emergency access to the eastern end of the marina. There is an existing access at the eastern end of the marina out onto the Undercliff walk leading to a tarmac ramp up the cliff to the A259⁶⁴⁶. This route could accommodate fire tender

⁶³⁹ Again in answer to one of the Inspector’s questions

⁶⁴⁰ As was explained by Mr Frisby in his evidence-in-chief

⁶⁴¹ See Mr Frisby’s proof at paragraph 9.3.1.

⁶⁴² See Mr Frisby’s Appendix K.

⁶⁴³ On p. 17

⁶⁴⁴ See Mr Frisby’s proof at paragraph 9.3.2.

⁶⁴⁵ See Mr Frisby’s Appendix O.

⁶⁴⁶ As is shown in Mr Frisby’s rebuttal at paragraph 3.1.2

vehicles⁶⁴⁷. However, at present, the boatyard which leads into the eastern end of the marina is currently blocked by boats. Were this to change, there is an emergency road out of the marina and potentially into the marina for vehicles at the eastern end, in addition to those at the western end⁶⁴⁸.

Congestion

433. There is no objection to the proposed development from the highway authority.
434. This position has been reached in the light of a comprehensive analysis of the likely effects of the additional traffic generated by the proposed development. It has not been suggested that the analysis presented in the appellants' Transport Assessment was either inaccurate or incomplete.
435. The planned allocation of residential redevelopment at Brighton Marina in the Local Development Framework – Core Strategy⁶⁴⁹ and supported by SPG 20⁶⁵⁰ will generate a local increase in traffic volumes. This is an inevitable corollary of the regeneration of the marina with high density residential development and creation of a new district centre.
436. One of the principal objectives set out in local plan policy LTP2 is to reduce congestion. It is suggested that this should be approached by reducing "... the demand for travel (especially by private car) ..." and providing "...improved provision for sustainable transport modes..."⁶⁵¹.
437. Discussions with the highway authority have made clear to the appellants that investment in sustainable transport measures should take priority over

⁶⁴⁷ Ibid. at paragraph 3.1.3

⁶⁴⁸ As Mr Frisby explained in his evidence-in-chief

⁶⁴⁹ Which has recently revised in its indication of the capacity of the sites upwards to 2,000 for the whole site, 1,000 for the marina

⁶⁵⁰ CD8/9.2 Volume 2, p. 55, section 2, fifth bullet point

⁶⁵¹ On p. 49, section 6.2

general junction capacity improvements⁶⁵². This was confirmed at the pre-application stage in a letter of 2 August 2006 and confirmed again at a meeting on 15 January 2008⁶⁵³. It is agreed in principle between the appellants and the highway authority⁶⁵⁴.

438. Mr Frisby was invited⁶⁵⁵ to amplify his evidence on the effects of additional traffic generated by the development on one arm of the Marina Way / Marina Village junction which is part of the group of junctions known as the Black Rock Interchange. Mr Frisby's response is contained in two notes, the first of which he introduced at the Inquiry on 14 December 2009 against the background of the by then agreed position on the scope and content of the Travel Plan⁶⁵⁶. It is to be noted that negotiations with the Highway Authority on the Travel Plan had led by then to the agreed joint initiative to achieve a 20% modal shift, but Mr Frisby's note had been prepared on the assumption of the originally indicated 12.5% modal shift. The second note was provided to the inquiry on 15 December 2009.

439. The picture that emerged from Mr Frisby's first note, in essence, was this:

- (i) The agreed Travel Plan will ensure a modal shift in single occupancy vehicles using Brighton Marina (up to 20%) through the delivery of new sustainable travel infrastructure and the appointment of an STM (Sustainable Travel Manager).
- (ii) The figures contained within the Transport Assessment did not consider the impact of modal shift.
- (iii) When considering the impact of (a 12.5%) modal shift, the resultant maximum queue would be 31 vehicles during the peak 15 minute period (an average of 15 vehicles over the hour).
- (iv) The travel plan will aim for a 20% reduction which will reduce this maximum queue further and will be in effect for a minimum period of five years.

⁶⁵² See Mr Frisby's proof of evidence at paragraph 8.5.1.

⁶⁵³ See Mr Frisby's Appendix H

⁶⁵⁴ See the TSO CG, p. 7, paragraph 3.4.7.

⁶⁵⁵ By the Inspector in his questions

⁶⁵⁶ CD12/48

- (v) The figures contained within the Transport Assessment did not consider elective trips and pass-by trips (double counting) which could represent a further 30% reduction in development generated traffic.
- (vi) Considering a further 30% reduction in retail trips would reduce the anticipated maximum queue to 21 vehicles.

440. Mr Frisby's second note deals with the full 20% modal shift. In this note, the following conclusions are presented:

- (i) A Travel Plan will ensure a modal shift in single occupancy vehicles using Brighton Marina of 20% through the delivery of new sustainable travel infrastructure and the appointment of an STM.
- (ii) The Travel Plan will be in effect for a minimum period of five years or a 20% reduction whichever comes later.
- (iii) The figures contained within the Transport Assessment did not consider the impact of modal shift.
- (iv) When considering the impact of a 20% modal shift, the resultant maximum queue would be 11 vehicles during the peak 15 minutes period (an average of 6 vehicles over the hour).
- (v) The figures contained within the Transport Assessment and Mr Frisby's proof of evidence did not consider elective trips and pass-by trips (double counting) which could represent a further 30% reduction in development generated traffic; and
- (vi) Considering a further 30% reduction in retail trips would reduce the anticipated maximum queue to between 7 and 10 vehicles during the peak 15 minutes segment (12:30 – 12:45).

441. It is important that in approaching this evidence the Secretary of State should keep in mind that the queues estimated through the use of the PICADY analysis, on the unrefined basis on which they were originally presented, show than worse than worst case position. Allowance must be made not only for the modal shift but also for the fact that many of the journeys that might potentially contribute to pressure on the junction are discretionary trips being undertaken in the middle of the day on a Saturday, some for various leisure purposes, others for shopping, others for different purposes which could be undertaken at different

times of the day or on other days of the week. There will also be an element of “pass-by trips”, which ought to be allowed for in view of the increase in the retail floor space that the development will introduce. When these factors are introduced into the analysis one can see that the junction will perform adequately throughout the peak hour, including the short period when the pressure is most acute, which will probably be between 12:30 and 12:45 p.m. As Mr Frisby observed⁶⁵⁷, to regard this short lived increment in queuing at a single junction as a ground for refusing planning permission for 1,301 new dwellings at the marina, given the clarity of the policy context in which the appeal application has come forward, would be absurd.

The Travel Plan

442. The detail of the Travel Plan for the proposed development has been discussed and agreed between the appellants and the City Council as highway authority. Neither as highway authority nor as local planning authority does the City Council say to the Secretary of State that the travel plan arrangements are inappropriate, unrealistic or in any way unworkable. The essential elements of the Travel Plan, in its agreed form, are summarized in the note Mr Frisby presented to the inquiry on 14 December 2009.⁶⁵⁸ They are as follows:

- (1) Targets and a programme of monitoring are an essential part of the regime.
- (2) The strategy, targets, indicators and measures will be monitored throughout, to ensure that they remain relevant and will deliver the agreed target modal shift.
- (3) These elements of the Travel Plan strategy will be discussed and agreed with the City Council prior to its being implemented and during the whole period for which the regime of the Travel Plan will operate.
- (4) Various practical steps will be taken, including marketing and travel awareness initiatives, measures to encourage and facilitate cycling and walking, to enhance the attractiveness of public transport, initiatives for the

⁶⁵⁷ In the evidence he gave on 14 December 2009

⁶⁵⁸ CD12/48

cutting of emissions and the reduction of the use of the car, and parking management.

443. The Secretary of State should note that the Travel Plan is not merely an agreed document. It is consistent with current advice and good practice⁶⁵⁹. There is no evidence before the inquiry that could reasonably lead the Secretary of State to reject the Travel Plan. Nor is there any basis for concluding that its targets will not be successfully achieved within the substantial amount of time allowed for its implementation, the substantial amount of money for specific agreed transport measures, and the involvement of the STM. Running the travel plan period from first occupation of the development will afford an ample amount of time within which to establish, adjust and refine the performance of the Travel Plan. The City Council as highway authority would not have agreed to it had it believed that the 20% modal shift was an unrealistic governing target or that the measures of money the appellants will devote to achieving that change in travel behaviour were in any way deficient. As Mr Frisby noted⁶⁶⁰, the City Council has no policy for sanctions or penalties to be imposed if the aspirations or targets in travel plans are not fully met. There is, therefore, no local policy stipulation that this travel plan could be said to have been omitted to include. To stigmatize the Travel Plan as incomplete on that basis would be unreasonable and unfair.

Education

The issue

444. The City Council's fifth reason for refusal number (which remained unchanged after the 2 September 2009 committee meeting) alleges that:

"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."

⁶⁵⁹ The most recently published guidance being "Good Practice Guidelines: Delivering Travel Plans through the Planning Process" (April 2009); see paragraphs 1.3.8 to 1.3.12 of the Travel Plan.

⁶⁶⁰ In answer to the Inspector's questions on 14 December 2009

Thus the issue between the appellants is not whether existing educational facilities are in fact going to be sufficient to meet the needs of residents this development. Rather, it is whether the appellants have or have not shown that they will be. This is not mere playing with words. In view of the way in which the City Council has put this aspect of its case in opposition to the appeal, it would be fair to think that believes it has no obligation to investigate with rigour whether there is any real evidence that the education authority would struggle to cope with the additional children who would be likely to find their names on the rolls of local schools if the development went ahead. That is not a realistic attitude for it to take.

445. Policy HO21 is concerned with the provision of community facilities. It states:

“Proposals for ... residential uses will be expected to demonstrate that a suitable range of community facilities will be provided to meet the realistic, assessed needs of residents, consistent with the scale and nature of the development proposed.”

It continues⁶⁶¹:

“The need for community facilities will be reflected in the scale of development and also the type of development. Community facilities will be expected to accurately reflect the needs of residents and take into account factors such as age profile and special needs.”

The policy does not define a requirement for education contributions. Nor does it even refer directly to education, although it can be accepted that educational facilities are within its ambit. It is, however, important when applying the policy to remember that it does not suggest – nor logically could it that the existing facilities should be ignored in an assessment of relevant needs and how they are to be met⁶⁶².

446. PAN04⁶⁶³ states:

“The demand for education from pre-school right through to secondary school will need to be met by developers proposing residential schemes.

⁶⁶¹ In paragraph 4.90

⁶⁶² As was emphasized by Mr Spry in cross-examination

⁶⁶³ On p.38, under the heading “Education provision”

... Financial contributions will be expected to meet the demand for primary and secondary school places at nearby schools, particularly targeted at those schools that are closest to the Marina and/or are currently over-subscribed. Options for meeting an expansion in the population of the Marina are currently being explored with the council's Children, Families and Schools Department, including the potential provision of a small scale primary school within the Marina. These options will be tested and a preferred way forward identified beyond the formal approval of the PAN and will inform its development into a Supplementary Planning Document."

447. Policy HO21 accepts that where it is not practical to integrate community facilities on the site where the development itself is being put, there will be circumstances in which an appropriate contribution towards provision on an alternative site will be acceptable. It is hard to think of circumstances more powerful than they are in the present case. Here is one of the City Council's strategic opportunities for new housing development. It is vital not merely to the regeneration of the marina, but also to the successful creation here of a truly sustainable community that the most effective use of the available land is made for the delivery of new housing and affordable housing. In any event there is no need for a new school to be built here. There is ample capacity in existing schools in the vicinity of the marina. Those are presumably the reasons – and powerful reasons they are – why the appellants have never been requested by the City Council to devote any of the appeal site to a primary school in the marina. In any event, it was confirmed by the City Council's advocate that this is not part of its case⁶⁶⁴. And that is not this is not urged either by the City Council as local education authority. The Cabinet report of 5 October 2009, Agenda Item 25⁶⁶⁵ outlines a number of options for a new school site in Brighton, but the marina is not one of them.

448. The appellants' environmental statement⁶⁶⁶ 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.

⁶⁶⁴ See also Mr Gavin's proof at paragraph 8.16.

⁶⁶⁵ See paragraph 3.5 in Appendix 7 to Mr Gavin's rebuttal proof.

⁶⁶⁶ In section 10, "Socio-Economic and Community Impacts" paragraphs 10.82 to 10.97 (CD2/10.1)

Child yield

449. The development will obviously generate a requirement for school places. A child yield of between 142 and 243 children requiring primary and secondary places has been identified by the appellants and the City Council⁶⁶⁷. The evidence on this has not changed since the written evidence was submitted⁶⁶⁸.

450. The appellants' approach starts with the characteristics of the existing marina (where in 2001 the Census showed 52 school aged children in 664 occupied dwellings) to reflect the likely proportion of second homes in the development, the likely number of children whose parents will opt to send them to private schools, the specific characteristics of the marina location and higher rise form of development. It then makes a series of adjustments, the most significant of which is that an additional pupil yield is assumed compared with the existing marina because of the presence and amount of affordable housing within the scheme. This is a specific and realistic reflection of the proposed tenure of the scheme. As was explained by Mr Spry in evidence-in-chief, this is a reliable approach because it takes the existing characteristics of the marina and understands that takes account of certain characteristics of a residential population in an unusual location of this kind. All of this gives a reasonable starting point.

451. It is also important to acknowledge in this exercise that some, perhaps most, of the children in the new development will already be being educated in the school system in Brighton⁶⁶⁹.

452. The City Council's approach, in contrast, was based on applying a set of city-wide assumptions⁶⁷⁰. These are adjusted to reflect the different sizes of

⁶⁶⁷ Appendix 6 to Mr Gavin's rebuttal proof is an extract from the environmental statement, as revised, and provides an explanation of the approaches adopted.

⁶⁶⁸ As was confirmed by Mr Spry in evidence-in-chief

⁶⁶⁹ As Mr Spry stressed in cross-examination

⁶⁷⁰ See paragraph 10.1 of Appendix 6 of Mr Gavin's proof.

property, but do not reflect that the housing within the marina will be a development of flats.

453. The appellants and the Council have never managed to agree a child yield for the development, but the conclusion in the environmental statement was that the yield estimates provided the ends of a range, with the actual number likely to be at the lower end.

454. It is to be noted that, in reporting to committee in December 2008, the Planning Officer referred to the City Council's estimate as a maximum figure, and went on to identify a range of considerations that might reduce this figure⁶⁷¹.

455. If he finds it necessary to reach a firm conclusion on the issue of pupil yield the Secretary of State ought to accept the appellants' figure in preference to the City Council's, for the simple and compelling reason that the appellants' child yield figure is clearly a more refined and realistic estimate.

456. That conclusion is not undermined by the reference on page 38 of PAN04 to the "introduction of affordable housing and more families" into the marina greatly altering "the demographic structure of the area", so that the marina will, "for the first time, start to become a more genuinely mixed community". Those ideas are expressed only two paragraphs after the passage of the document that refers to the assumption of an average dwelling occupancy of 1.6 persons per unit being applied to "a minimum of 2,000 new dwellings (including the approved Brunswick scheme)", which, is said, "would equate to an additional population of 3,200 within the Masterplan area". As Mr Spry explained⁶⁷² the appellants' assessment was based on a similar average occupancy, namely 1.5 persons per unit, consistent with Census data.

⁶⁷¹ CD3/1.1 at p. 151, first paragraph

⁶⁷² In his evidence-in-chief

Capacity in local schools

457. The appellants worked with the City Council's officers to assess local schools provision and ascertained that there was a significant surplus in places at existing primary schools in the local area, and that within the city there were available places at secondary schools, acknowledging that children living at the marina would have to travel somewhat longer distances to secondary schools than would children to primary schools⁶⁷³. The Statement of Common Ground⁶⁷⁴ outlines the agreed position as it was at that time on surplus capacity in local schools, which was that there was an oversupply of 258 primary places within the nearest three primary schools (St Mark's (Church of England), St John the Baptist (Roman Catholic) and Whitehawk Primary School), of which 228 places were at Whitehawk. Secondary school provision is more distant, with Longhill being the nearest relevant school that would cater for the population of the marina. This is near or at capacity, but the analysis at Appendix 19 of Mr Gavin's proof confirms 371 unfilled spaces at Brighton's secondary schools⁶⁷⁵, and the Cabinet Report of 6 July 2009⁶⁷⁶ confirms that an additional form of entry (a further 150 spaces) is being put in place for September 2010.

458. Mr Spry summarized the up-to-date position on secondary school expansion in his evidence-in-chief. In response to Mr Goodwin's figures produced for the inquiry on secondary school capacity⁶⁷⁷, Mr Spry has provided the inquiry with a note⁶⁷⁸ that sets out the present schools capacity including current expansion and improvement plans⁶⁷⁹. Annex 1 provides e-mail correspondence between the appellants and the City Council's education department which outlines:

⁶⁷³ See Mr Gavin's proof at paragraph 8.5 and 8.12

⁶⁷⁴ At paragraph 6.110

⁶⁷⁵ See also paragraph 8.13 of Mr Gavin's proof

⁶⁷⁶ See the extract contained in CD12/39

⁶⁷⁷ CD13/23

⁶⁷⁸ CD12/52

⁶⁷⁹ At paragraph 2.1

- (i) the planned expansion of Longhill Secondary School⁶⁸⁰;
- (ii) Portslade Community College (If agreed, this would have a form of entry of 150 spaces)⁶⁸¹ and
- (iii) the Building Schools for Future programme (“BSF”) (The City Council is currently in the process of making its bid for submission onto the BSF programme).

459. The present position on the number of pupils on the roll has been provided to the appellants by the City Council, and are agreed⁶⁸². On page 3 of Mr Spry’s briefing note is a schedule which sets out the outputs from the schools census carried out in May 2009 (supplied to NLP on 23 September 2009). That provided the basis for the estimates of pupil number in Mr Gavin’s proof of evidence. The planned admission numbers were supplied by the City Council and are agreed, as is the total school capacity. Those pupil numbers were used for the purposes for the summary of secondary school places in Appendix 18 to Mr Gavin’s proof. The figures show that the nearest three primary schools all have surplus capacity at present; St John the Baptist has a balance of three, St Marks a balance of 44, and Whitehawk a balance of 316. Therefore, at present, the May 2009 figures paint a picture of those three local schools having, in aggregate, very significant levels of unfilled spaces⁶⁸³.

460. The table also sets out the expected numbers on the roll in the week commencing on 31 August 2009. These are based on the two page note issued by Mr Goodwin on 9 December 2009⁶⁸⁴. These were the basis for the figures in the Statement of Common Ground⁶⁸⁵, which, as has already been stated, was that there is an oversupply of 258 primary places within the nearest three primary schools. Again, the picture is one of significant levels of unfilled spaces in the three primary schools nearest the marina⁶⁸⁶.

⁶⁸⁰ Its location is shown on Plan 7, in Appendix 18 to Mr Gavin’s proof

⁶⁸¹ Its location is shown on Plan 7

⁶⁸² They are set out in Mr Spry’s briefing note (CD13/23).

⁶⁸³ As Mr Spry stated in his evidence-in-chief

⁶⁸⁴ CD13/12

⁶⁸⁵ At paragraph 6.110

⁶⁸⁶ As Mr Spry stated in his evidence-in-chief

461. The final column shows the autumn 2009 school census supplied by the Council to NLP on 11 December 2009. The picture is similar, although the figure for capacity both in the nearest schools, and generally, is higher than the figure anticipated in August 2009 and only slightly lower than the position in May 2009.

462. The position on secondary schools is set out in the table on page 4 of Mr Spry's note⁶⁸⁷. Longhill is the most important secondary school for the marina in terms of its proximity. The relevant picture that emerges is one of a level of unfilled spaces. In October 2009, the most recent position equated to a capacity of 300. Longhill has is under capacity by six places, but, as has been mentioned, this is one of the schools where expansion is planned.

The lack of any sound basis for the City Council's request

463. Despite the existing capacity, as part of the pre-application discussions, the City Council indicated it wanted to receive a financial contribution towards education. In making this request:

- (i) No SPD has been adopted to set out a formula for charges, contrary to the requirement of Circular 05/05⁶⁸⁸. The appellants were, however, informed that one was proposed.
- (ii) Information about financial contributions was provided to the appellants⁶⁸⁹. But although this purports to display a standard approach this has no formal status, having no committee endorsement and having not been the subject of consultation. No evidence was available within it to support the yields or assumptions proposed, such as the relationship between child yield, school capacity, and other funding streams for school investment⁶⁹⁰. Mr Goodwin sets out in his paragraph 5.122 of his

⁶⁸⁷ CD12/52

⁶⁸⁸ As was accepted by the Mr Goodwin, in cross-examination

⁶⁸⁹ See CD12/37

⁶⁹⁰ As Mr Spry explained in evidence-in-chief

proof that the spreadsheet⁶⁹¹ is based upon work previously undertaken for a future SPD on planning obligations. These calculations formed no part of the process of negotiation that took place between the appellants and the City Council⁶⁹².

- (iii) No Schools Organisation Plan (SOP) has existed as a basis for assessing capacity and demand. And no reference has been made to the City Council's Asset Management Plan to support the requested contribution. Neither east Brighton nor, specifically, the marina have been identified as an area of stress for educational provision. All three factors are identified as relevant in the Council's Draft Education SPD document⁶⁹³.
- (iv) The Baker Associates report of June 2006⁶⁹⁴, prepared as a background document to the LDF and referred to in the Draft Core Strategy (and therefore very much a current part of the evidence base), provides a longer term estimate of the need for school places. Its analysis⁶⁹⁵ indicates a predicted surplus in both primary and secondary school places for the relevant period, with capacity in primary not reached until 2022 and in secondary education until 2019 to 2003.

The basis for the appellants' proposed contribution

464. In the absence of an adopted SPD and a defined shortfall in spaces, the appellants offered a sum of £394,000 in light of the child yield calculation, the City Council's guidance and the Baker Associates report, based pro-rata on the contribution made by the Brunswick scheme. This was increased to £594,000 through a normal process of negotiation involving all the personnel of the City Council equipped to make sensible and realistic judgments about these matters.

⁶⁹¹ His Appendix I

⁶⁹² As was confirmed by Mr Spry both in his evidence-in-chief and in cross-examination

⁶⁹³ CD13/9

⁶⁹⁴ CD9/10

⁶⁹⁵ On pp. 40-41

465. This sum was agreed to by the appellants as it was considered it would assist the City Council to increase school capacity when needed at local primary schools and thus to enhance parental preference, not something capable of formulaic resolution or arithmetical calculation⁶⁹⁶.
466. The negotiation on the financial contribution was not based on any local prediction of need by the City Council, or an identified future shortfall or a defined destination for the spending of any contribution. Given this, the Officer's Report to Committee⁶⁹⁷ described the appellants' proposed contribution as:
"Reasonable, having regard to other comparable developments, such as the Brunswick Scheme ... 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 s.106 contribution was £1.6 million."
467. Circular 05/05⁶⁹⁸ 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 contribution to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development⁶⁹⁹. A contribution of £594,000 is fairly and reasonably related in scale and kind to the development.
468. The local education authority, which has a statutory duty to provide places for school children, did not object to the proposed development on account of the impact of the proposal on its ability to meet its obligations under the Education Act 1998.
469. The appellants' contribution is specifically related to the provision of up to two new classrooms, as set out in the section 106 obligation⁷⁰⁰. As Mr Spry stated in evidence-in-chief, if the cost multiplier in the draft SPD were applied, the

⁶⁹⁶ As stated by Mr Spry in evidence-in-chief

⁶⁹⁷ CD3/1.1 at p. 152

⁶⁹⁸ CD6/3

⁶⁹⁹ At paragraph B9

⁷⁰⁰ In the definition of "Education Contribution"

appellants' development would yield approximately 44 spaces⁷⁰¹. That cost multiplier is one that relates to the potential whole cost of the school and so includes an allowance for central facilities, communal areas etc. Therefore, in Mr Spry's view, the appellants' supply could provide two classrooms or indeed provide more than two classrooms.

470. In relation to the City Council's requested contribution⁷⁰², Mr Spry confirmed that he has not seen any indication of how that would be spent in the planning obligation. He did not know, if the appellants did offer that sum of money, what would happen to it.

A crisis in education?

471. It was suggested by the City Council's witness, Mr Goodwin⁷⁰³ that there is an impending crisis in education provision in Brighton and by 2014 there will be an insufficiency of places, which justifies the higher contribution sought by the City Council.

472. This does not take into account the following matters:

- (i) The education authority's statutory responsibility under the Education Act 1998 is to provide places for school children, which means that the local education authority is actively planning for school places on an ongoing basis to cater for the changing demand for school places. This process takes account of a range of factors, including development.
- (ii) The City Council is actively and successfully securing resources from the Government to do so. This includes the Primary Capital Programme, Building Schools for the Future, Basic Need funding, and Co-Location fund, as well as utilising other resources⁷⁰⁴. BSF is a process of bidding by local authorities. Although some of the money will already have been allocated, there is no fixed pot of money allocated to the programme, as

⁷⁰¹ As Mr Spry confirmed in cross-examination

⁷⁰² See CD13/23, Figure 3

⁷⁰³ In his evidence-in-chief

⁷⁰⁴ Paragraph 5.1 of Agenda Item 25 of the CYP Cabinet Member Meeting of 5 October 2009 (CD12/39) summarizes the position for funding expansion to primary.

the funding mechanism is a public/private partnership⁷⁰⁵. The City Council has suggested that it can expect to lever in £720 million over seven years.

- (iii) That the pressure on school places (and priority for investment) is to the west (Hove) and in centre of the city. This pattern is likely to continue. The Primary Strategy for Change 2008⁷⁰⁶ has already identified a pressure on spaces in the west, but a considerable surplus in the east. The report of 5 October 2009⁷⁰⁷ confirms that the need is most acute in south central Hove and on the Brighton / Hove border.
- (iv) The significant activity taking place in terms of committed projects in east Brighton and future planning which has regard to planned development proposals at the marina⁷⁰⁸.
- (v) The timing of the development which is not likely to produce a child yield starting in 2016.

473. These factors, taken together, show that, as one would expect, the City Council has a strategy in place for future education provision, and that this strategy takes into account, where relevant, the proposals at the marina and their impact on demand for schools places. Thus, the scheme's child yield is already being factored into the education planning process for the short, medium and long term⁷⁰⁹. There is nothing evidence through these considerations which suggests that East Brighton will experience a shortfall in spaces in the foreseeable future, and nothing has been produced by the local education authority which identifies how a larger financial contribution from the appellants would be spent.

474. As Mr Spry explained in his evidence-in-chief, the City Council has been actively planning to meet the needs of pupils in the city and the committee reports in CD12/36 and CD12/37 portray an authority that continues to assess

⁷⁰⁵ As Mr Spry was given the opportunity to explain in cross-examination

⁷⁰⁶ At paragraph 2.4

⁷⁰⁷ Appendix 7 of Mr Gavin's proof at paragraph 7.2

⁷⁰⁸ As Mr Spry explained in evidence in chief and see CD12/52 which sets out the current expansion plans

⁷⁰⁹ As concluded by Mr Spry in his evidence in chief

the requirements for school places in the different parts of the city. It can clearly be seen that for both primary and secondary there are unfilled spaces overall across the city but shortages in some parts and surpluses in others. In that context, the City Council has taken steps to deliver that school investment. Absolutely no evidence exists to suggest that those steps will be less than wholly effective.

475. In particular, as Mr Spry explained in cross-examination, the census shows a net of 2,088 unfilled spaces within the Brighton schools system as a whole at present and the current expansion plans would add about 950 places. Those additional spaces are being focussed in the west and Hove part of the city and there is no indication that the growth in pupil numbers in the city is affecting the east in anything like the same kind of way.

476. Paragraph 100.4⁷¹⁰ of the minutes of the 20 April 2009 Cabinet meeting sets out the options for additional schools provision including the east of the city:

“The Schools Futures Project Director indicates that discussion would be taking place with the Head Teachers and Governing bodies ... and that other issues, such as the Brighton Marina development, would also be considered in this process.”

477. The only reasonable conclusion for the Secretary of State⁷¹¹ there will be sufficient capacity will children who will live in the development. There is no crisis – certainly not one that is remotely relevant in the present case – in the provision of education in east Brighton or in any relevant part of the City⁷¹².

478. It is worth finally noting paragraph 25.2 of the minutes of the 5 October 2009 Cabinet meeting⁷¹³, which records:

“The Schools Futures Project Director highlighted the main points of the report. He indicated that the report puts forward options that were realistic and within the budget to provide solutions to the shortage of spaces. He

⁷¹⁰ On p. 4

⁷¹¹ As Mr Spry stated in evidence-in-chief

⁷¹² Paragraphs 2.75 to 2.79 of Mr Gavin’s rebuttal proof provide a good summary, which is still relevant

⁷¹³ P. 7 of Appendix 7 to Mr Gavin’s rebuttal proof

stated that the report provided short, medium and long term provision; it recognised the need for temporary accommodation by expending existing facilities, whilst looking at realistic permanent solutions. The Director also indicated that officers were reluctant about providing an over number of spaces, as had been the case in the past, where schools were still currently unfilled.”

The draft SPD as the basis for a contribution

479. The City Council’s draft education contributions SPD⁷¹⁴ seeks to apply a standard charge approach. However, it refers⁷¹⁵ to the need for development to be guided by a Schools Organisation Plan and the City Council’s Asset Management Plan, unless otherwise stated. As far as Mr Spry was aware, neither has been used to identify or justify the need for additional school places by the City Council, and nor has any other evidence that demonstrates that existing capacity and planned provision will not be sufficient to meet school places⁷¹⁶.

480. The draft SPD refers to development threshold in “identified areas of stress”⁷¹⁷. Again, as far as Mr Spry was aware, and as has already been noted, the Council has not identified the catchment area embracing the marina as an area of stress, however that might be defined⁷¹⁸.

481. In the section on “detailed approach for specific education facilities”⁷¹⁹, the draft SPD refers to the fact that flats and apartments generate approximately 80% of the number of children that houses do. That 80% proportion filters through to the cost multipliers later in the documents. The City Council’s calculation of pupil yield in the environmental statement⁷²⁰ applied the yields in the table that were applicable to houses, not flats⁷²¹. Therefore, the yield

⁷¹⁴ CD13/9 in paragraph 3

⁷¹⁵ In paragraph 3

⁷¹⁶ In his evidence-in-chief

⁷¹⁷ Under ‘Recommended Development Thresholds’ on p. 1

⁷¹⁸ In his evidence-in-chief

⁷¹⁹ P. 3, paragraph 3

⁷²⁰ Table 10.31

⁷²¹ See Mr Spry’s evidence-in-chief

identified as the top of the range should probably be reduced by 20% to reflect that factor.

482. The draft SPD's cost calculation is based on a number of assumptions that have yet to be tested, and does not show how a number of material factors have been considered. These include:

- (i) the proportion of the child yield that is genuinely additional, and not relocated from elsewhere in Brighton or the local area, and therefore already placed within a school or assumed with existing pupil forecasts; and
- (ii) the contribution that other capital funding streams including from Government will make to meeting the cost of additional pupil places to help support the local authority in exercising its statutory duties.

483. Circular 05/05 sets out a policy framework for the issue of planning obligations and paragraph B8 states that obligations must be also so directly related. It is significant that no objection from the local education authority to the application or the contribution proposed has been raised and that the appellant is proposing wording in the planning obligation that links the contribution to schools within the education catchment of the marina.

484. Paragraph B25 states:

"Local authorities should seek to include as much information as possible in their published documents in the Local Development Framework."

Policy HO21 does not define a requirement for education contributions (or even refer directly to education).

485. Paragraph B35⁷²² states that:

"Standard charges and formulae applied to each development should not be applied in blanket form regardless of actual impacts, but there needs to be a consistent approach to their application".

In the absence of clear evidence of shortfall in education spaces, the appellants' proposed approach to this issue has a distinct thread of consistency running

⁷²² P. 15

through it, notably with Brunswick, which is accepted in the committee report (see above).

486. At paragraph B34, the circular states:

“Where they [local authorities] propose to rely on standard charges and formulae, LPAs should publish their levels in advance in a public document.”

The draft SPD has not been formally published, subject to consultation or formally adopted.

Conclusion

487. The City Council’s case on education is, as it was at the time when it was conceived, totally without any fair or specific analysis behind it.

488. A useful summary of the conclusions, and the only reasonable conclusions, to be drawn on the evidence the inquiry has heard and seen scrutinized by cross-examination, was given by Mr Spry in re-examination.

489. The premise implicit in the fifth reason for refusal, is and always was, false.

490. There is no relevant deficiency in the provision of primary or secondary education in the part of Brighton where the appeal site lies.

491. The proposed development will not create or exacerbate any shortfall in schools provision, either primary or secondary.

492. The contribution conscientiously negotiated with the City Council’s officers is consistent with the Government’s policy for planning obligations. Here the professional officers, whose careful and expert judgment the members of the Planning Committee – in this, as in every other aspect of the contentious case between the appellants and the City Council – would have done well to heed, deserve almost the final word:

“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

...

...[F]ollowing negotiations this figure [the sum of £394,000] has now been increased by £200,000 giving a total of £594,000 towards education. This 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.

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 contributing 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.” (my emphasis)

493. That is almost the final word only for this reason. The officers acknowledge the planning and location-specific relevance of the contribution negotiated with the appellants, the qualitative justification for it, and its proportionality. In only one respect were they, if anything, over-cautious. This was in the reference to the “ideal” in the context of travel distances. This is not, as the officers would certainly have recognized, a relevant policy test. The language of the policy HO21 is the language of suitability, realism, and ready accessibility. This, however, seemed not to deter some odd questions implying otherwise in cross-examination. Those questions were misconceived. They ignored not only the words of the policy, but also the facts: the surplus capacity and the ready accessibility of all the relevant schools, both primary and secondary – as is shown by the undisputed information about the distances and durations of journeys to school in Mr Gavin’s Plan 7⁷²³.

⁷²³ in his appendix 18

Policing

494. Sussex Police, who were originally to appear as a rule 6 party at the inquiry, withdrew their objection to the scheme on the basis of agreed wording of Clause 10.15 of Schedule 1 of the unilateral undertaking (Which provides for accommodation for the police on the site and see Sussex Police's confirmation of their acceptance of the terms offered (CD12/53)). This is therefore no longer an issue to consider.

Conditions and the section 106 obligation

Conditions

495. The conditions have been thoroughly considered and discussed. They are all now in substance agreed.

The section 106 obligation

496. The only issues outstanding on the unilateral undertaking concern the parties to it, the provision for emergency access and the cascade mechanism.

497. As has already been submitted when the matter was first raised in the inquiry, there is no deficiency in the efficacy and enforceability in the covenants in the obligation by reason of the absence of subsidiary interests, in particular Asda and McDonalds from the parties who will actively enter into the covenants contained within the document. There is no conflict here with the PINS advice, nor with the approach of the Inspector and Secretary of State in the Bracknell case. The crucial point to keep in mind is that there is no practical likelihood of either of the leaseholders who are not parties to the obligation being able, or inclined, to act against their own interests in frustrating the delivery of the commitments that are the active responsibility of the appellants. The corollary is not that those leaseholders should join in simply because they have nothing to do in the terms of the covenants contained in the obligation, or because it would not do any harm if they did. This is not a case, like the Bracknell case, in which a

freehold interest is absent. Even in that case, the Secretary of State found the risk to be “small” and the weight it carried only “slight” (At paragraph 30). The reality is that the City Council’s argument is artificial and has no legal or practical force in it. If, however, the Secretary of State takes a different view, he can come back to the main parties and make that view known, giving them a fair opportunity to react before he reaches his decision.

498. The apparently controversial aspect of the commitment to the delivery of the emergency access works relates to a provision that has been in the obligation for a long time (and since before the planning application was submitted). It is entirely reasonable for the appellants to expect, in the first, that the highway authority will co-operate in delivering a benefit that many who live in the marina are plainly keen to have; and, secondly, that if the appellants’ money is paid on the agreed basis to secure that benefit it will be spent on that benefit or returned to them if it is not required. This is not only fair, it is entirely normal position for a landowner or developer to adopt in a planning obligation.

499. The cascade mechanism in Schedule 2 of the planning obligation, it should be remembered, is the default position in the highly unlikely event that good quality, standard compliant, affordable housing will not be delivered by an affordable housing provider. If that event did arise, it is reasonable and realistic for there to be a specified minimum level of affordable housing below that which forms the basic, initial commitment. The progressive contingencies that culminate in the 21% commitment are designed to enable every reasonable effort to be made to maximize the delivery of affordable housing on this site.

Conclusion

500. The scale of the problems in Brighton Marina should not be underestimated.

501. The promise of Louis de Soissons’ original master plan for the marina has not been realized. Instead, the western end of the marina has been plagued by fragile viability, false hopes and piecemeal development, with little or no thought

given to the challenge of generating a sense of place and a coherent townscape. The consequence has been that the western end of the marina presents in several ways a dismal and unattractive environment, fails to be the vibrant and attractive place it could and should be, falls far short of the performance one expects of a modern district centre, and makes much less than effective and efficient use of the land it includes. All of this will have been seen on the site visit. And it is not a matter of dispute. It was frankly recognized by the City Council in SPG 20⁷²⁴ which acknowledges that the marina has assumed the character of “a disjointed, drab development failing to fulfil its role or potential” and that a “co-ordinated design and investment strategy [is] desperately needed”⁷²⁵. The central message of SPG 20 and of draft PAN 04⁷²⁶ is that the marina must be regenerated if it is to have a prosperous future and if it is to contribute what it should to the city’s strength and growth.

502. In the words of the City Council’s planning witness, Mr Goodwin, in cross-examination, “Clearly, if the scheme were allowed, it would regenerate the marina”. No party at the inquiry has made any serious attempt to challenge this proposition.

503. Between them the appellants have the will, the means and the experience to achieve the regeneration that is urgently needed here. As Mr Mernagh, Executive Director of the Brighton and Hove Economic Partnership has observed, Laing O’Rourke, Explore Living’s parent company, is one of perhaps only a few developers that could realistically be relied upon to build in the current economic climate⁷²⁷, and it is able to carry a substantial risk over a long period, as a company with cash at its command, and employing its own workforce. The District Valuer has confirmed that the scheme is viable⁷²⁸. Mr Dennis of Explore Living has subsequently confirmed that the scheme is still viable and

⁷²⁴ CD 8/9.1 and 8/9.2

⁷²⁵ CD 8/9.2, p. 10

⁷²⁶ Issued in March 2008 as a supplement to SPG 20: see p. 3

⁷²⁷ See proof of evidence of the Brighton and Hove Economic Partnership at paragraph 42.

⁷²⁸ See the planning officers’ report for the December 2008 meeting of the City Council’s Planning Committee (CD3/1.1) at p. 43

deliverable⁷²⁹. This should be reassurance enough that, if planning permission is granted, the appeal scheme will be delivered.

504. The Secretary of State cannot and should not assume that, if he refuses permission for the proposed development, the appellants or anyone else will be prepared to start all over again and prepare a different scheme in the hope that it might fare better in front of the City Council, or, on appeal, the Secretary of State. The appellants have worked closely during that time with the City Council, acting through its officers, with statutory consultees, with local groups and with lay people, listening to the comments made and altering and refining the proposals where there was good reason to do so, with the result that officers were able to give strong support for the application by the time it reached the City Council's committee in December 2008. There must, however, be not just an outcome but an end to this kind of exercise. This appeal is that end. Had there been any alternative scheme waiting to come forward the inquiry would have been told about it. If the present scheme should be rejected the Secretary of State can safely assume that the marina will be left as it is, not only a missed opportunity but a symbol of urban degeneration and continuing decay, a notorious example of how the planning system over which the Secretary of State presides has failed to deliver sustainable development and a sustainable community. What a sorry legacy to this process that would be.

505. Granting permission will enable delivery of planning benefits of very great importance, not only for the marina itself, but for the city of Brighton and Hove as a whole. These have been set out in the appellant's written and oral evidence at the inquiry, and were summarized in paragraph 18 of the appellant's opening statement, which should be read in conjunction with these closing submissions⁷³⁰. None of them has been – or could be – seriously denied.

506. This appeal is part of the democratic planning process in this country. It is the opportunity given to somebody who accepts the challenge and the risk of

⁷²⁹ See Appendix 3 to Mr Gavin's rebuttal proof of evidence.

⁷³⁰ See also paragraphs 5.1 to 5.10 of the appellants' statement of case and section 4 of Mr Gavin's proof of evidence.

promoting development, and doing so at a time of grave economic difficulty in this country, to have a decision made on a scheme that relates to a site of far greater than local significance made fairly and independently and remote from the local political scene.

507. This is a project of immense potential benefit for the City of Brighton and Hove and for Brighton Marina. The process behind it is sound. The proposals themselves are sound. There is no cogent planning objection to it. The appeal ought therefore to be allowed and planning permission granted, subject to such conditions as the Secretary of State may find it necessary and reasonable to impose.

KEITH LINDBLOM Q.C.

ANNABEL GRAHAM PAUL

Francis Taylor Building

16 December 2009