



Report to the Secretary of State for Communities and Local Government

by Martin Pike BA MA MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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TOWN AND COUNTRY PLANNING ACT 1990

BRIGHTON & HOVE CITY COUNCIL

APPEAL BY

**EXPLORE LIVING (NO 1) LTD,
X-LEISURE (BRIGHTON I) AND X-LEISURE (BRIGHTON II) LTD**

Inquiry held on 3 November – 16 December 2009

Land at Brighton Marina, Brighton

File Ref: APP/Q1445/A/09/2102048

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GLOSSARY and ABBREVIATIONS

AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
BfL	Building for Life assessment
BHCC	Brighton & Hove City Council
BHEP	Brighton & Hove Economic Partnership
BHLP	Brighton & Hove Local Plan 2005
BMCL	The Brighton Marina Company Limited
BMRA	Brighton Marina Residents Association
BRE	Building Research Establishment
BS	British Standard
CABE	Commission for Architecture and the Built Environment
CEMP	Construction Environmental Management Plan
CLG	Department for Communities and Local Government
CPMP	Car Park Management Plan
CS	Brighton & Hove City Council Core Strategy
CSH	Code for Sustainable Homes
DAS	Design and Access Statement
dph	Dwellings per hectare
DV	District Valuer
EH	English Heritage
EP	English Partnerships
ES	Environmental Statement
FiT	Fields in Trust (operating name of National Playing Fields Association)
FRA	Flood Risk Assessment
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GVA	Gross Value Added
HCA	Homes and Communities Agency
HNS	Housing Needs Survey
HQI	Housing Quality Indicators

KTCA	Kemp Town Conservation Area
KTS	Kemp Town Society
LAP	Local Area of Play
LDF	Local Development Framework
LEAP	Local Equipped Area of Play
LPA	Local Planning Authority
MGAG	Marine Gate Action Group
NEAP	Neighbourhood Equipped Area of Play
NPFA	National Playing Fields Association
PAN	Brighton & Hove City Council Planning Advice Note
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RES	Regional Economic Strategy
RSL	Registered Social Landlord
RTS	Rapid Transport System
SB	Save Brighton
SDNP	South Downs National Park
SE	Sport England
SEEDA	South East England Development Agency
SEP	The South East Plan: Regional Spatial Strategy for the South East of England
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SNCI	Site of Nature Conservation Interest
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
TVIA	Townscape and Visual Impact Assessment
VSC	Vertical Sky Component

File Ref: APP/Q1445/A/09/2102048**Land at Brighton Marina, Brighton, East Sussex BN2 5UT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Explore Living (No 1) Ltd, X-Leisure (Brighton I) and X-Leisure (Brighton II) Ltd against the decision of Brighton & Hove City Council.
- The application Ref: BH2007/03454, dated 14 September 2007, was refused by notice dated 19 December 2008.
- The development proposed is:
 - i) Demolition of the existing Asda retail store and redevelopment to create an enlarged retail store (Class A1) of 11,412 sq m along with 2,056.5 sq m of other retail uses in Class A1-A5 and 395 sq m of office accommodation (Class B1), a 342 sq m community hall (Class D1), with associated plant, refuse and parking facilities. This part of the redevelopment to also include 779 residential units with associated parking, public/private amenity space and a new bridge link for pedestrians/cyclists;
 - ii) Demolition of part of the eastern end of the existing multi-storey car park to create a replacement Asda petrol filling station and pedestrian footbridge;
 - iii) Demolition of the existing estates management office to create a 3 – 4 storey building comprising 35 residential units with associated private amenity space;
 - iv) Demolition of the western end of the existing multi-storey car park to create a 6 – 11 storey building (Sea Wall) comprising 117 residential units with associated parking, private amenity space and seasonal kiosk 72.5 sq m;
 - v) Demolition of the existing petrol filling station to create a 28 storey building comprising 148 residential units and 182.5 sq m of Class A1-A5 retail space with associated plant, refuse and parking facilities and a 26 sq m office unit (Class B1);
 - vi) Demolition of the existing McDonald's and redevelopment to create a new 5 – 16 storey development including a Drive-Thru restaurant facility (Class A3) comprising 555 sq m. This development also includes 131 sq m of other Class A1 - A5 retail space and 222 residential units with associated parking and public/private amenity space
 - vii) Change of use of two existing retail units (Class A1) within the Octagon development to create a Healthy Living Centre (Class D1) comprising 516 sq m;
 - viii) Construction of a Combined Heat and Power unit;
 - ix) Alterations to existing vehicular circulation, pedestrian and cycle access arrangements, areas for cycle parking and the creation of new and enhanced routes for access and servicing;
 - x) A new bridge link for pedestrians and cyclists between the upper cliff and the north-western part of the Cliff Site (Asda site), along with associated engineering works;
 - xi) New areas of hard and soft landscape, green roofs and formal and informal areas of amenity space including youth facilities.

Summary of Recommendation:

The appeal be ALLOWED and planning permission be granted if flaws in the S106 obligation can be resolved; if they cannot, the appeal be DISMISSED.

PROCEDURAL MATTERS

Planning application and appeal

- 1.1 Since it was submitted in 2007, the description of the development has undergone a number of minor changes in response to matters raised by the City Council and third parties. There has been a small increase in the number of dwellings and small adjustments have been made to the floor areas for retail, business and community use. The description given above reflects these changes and is the scheme on which the City Council based its decision. The original application plans have also been subject to a range of amendments, for the same reasons. The drawings on which the planning authority based its decision are primarily the June 2008 revisions; these are consistent with the above description of the development.
- 1.2 Since June 2008 further minor adjustments have been proposed, mostly to the size of openings and the internal layout of flats in the Cliff Site building, in an attempt to demonstrate that satisfactory living conditions would be provided for future occupiers. The appellants' case at the inquiry takes these revisions into account (including the revisions made during the inquiry), and the City Council does not oppose the appeal being determined on this basis.
- 1.3 I consider that the revisions made since June 2008 are indeed minor and do not materially alter the proposal. I also consider that the revisions would not have any material effect on nearby residents or other persons who might be affected by the development. Furthermore, the latest plans were available to all who participated in the inquiry, and the issues raised by the revisions were fully debated and taken into account by the parties. In these circumstances I am satisfied that there would be no prejudice to the interests of any party if the decision were based on the latest revisions. I have written my conclusions and recommendation accordingly. The drawings register was updated during the inquiry to reflect the latest plans and, for the avoidance of doubt, a specific condition listing the revisions is included in the Schedule of Conditions.
- 1.4 The appeal was recovered for the decision of the Secretary of State by a direction dated 18 June 2009. The reason given for the direction is that *"the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities"*.

The inquiry

- 1.5 I held a pre-inquiry meeting to discuss procedural and administrative matters relating to the inquiry on 18 September 2009. At that meeting the Council announced that it had clarified and amplified the reasons for refusal and said that it would not be contesting the flood risk issue, subject to appropriate mitigation being secured in the S106 planning obligation. This remained its position at the inquiry.
- 1.6 The inquiry sat for 22 days between 3 November and 16 December 2009. I carried out an accompanied visit to the site and the surrounding area on 17 December, and made unaccompanied visits during the inquiry and on 2 March 2010.

- 1.7 Sussex Police was granted Rule 6 status and submitted a proof of evidence to the inquiry. At the same time, however, it was attempting to resolve its objection to the proposal by negotiation with the appellants. That negotiation was concluded successfully: shortly before the end of the inquiry Sussex Police withdrew its objection and did not tender a witness to give evidence. The proof remains as an inquiry document and is included in the Core Documents list.
- 1.8 A draft unilateral planning obligation, prepared under S106 of the 1990 Act, was submitted by the appellants at the opening of the inquiry. Negotiations on both the substance and the detailed wording of the obligation took place between the appellants and the Council throughout the proceedings. Further amendments were made by the appellants in response to my comments and questions to certain witnesses. Because negotiations with the Council continued right up to the final sitting day of the inquiry, a completed obligation was not available at that time. I therefore kept the inquiry open to allow time for this matter to be resolved.
- 1.9 There followed a series of written exchanges between the main parties, in accordance with a timetable I established, in which further changes were made to the S106. The completed version is dated 10 February 2010. I gave the parties the opportunity to submit their comments on the final version of the S106, in writing, and I then closed the inquiry by letter dated 1 March 2010.
- 1.10 On 29 December 2009 the Government published Planning Policy Statement (PPS) 4: *Planning for Sustainable Economic Growth*. Because the inquiry had not closed by this time, I took the opportunity afforded by the exchanges over the S106 obligation to seek the main parties' views on the matters contained within PPS4. I have taken these comments into account in preparing this report.

Environmental Impact Assessment

- 1.11 The application was accompanied by an Environmental Statement (ES)¹ prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. The City Council is satisfied that the ES meets the statutory requirements, and confirmed that the appropriate procedures had been followed.
- 1.12 During the inquiry some third parties, primarily Save Brighton (SB) but also Marine Gate Action Group (MGAG), questioned the accuracy of the visual assessments presented in the Townscape and Visual Impact Analysis (TVIA) chapter of the ES. Because of concerns about whether the information is adequate to meet the requirements of the 1999 Regulations, I was asked by the appellants to make a ruling on this matter. To assist me in that decision I asked the appellants to carry out a brief practical exercise to demonstrate the validity of their hypothesis that the use of a cropping process to give a standard photographic field of view provides an identical (rather than a

¹ CD2/10

distorted) image.² I report below the main arguments of the third parties, the appellants' response, and my decision on the matter.

Third party submissions³

- 1.13 The TVIA does not provide a genuinely objective account of the visual impact of the development. It fails to show clearly the important views that would be lost, fails to give an accurate impression of the visual dominance of the development or its proximity to sensitive locations, and fails to follow the letter or the spirit of the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment⁴ (GLVIA).
- 1.14 Appendix 9 of the Guidelines states: "*35mm film format with a 50mm lens is recommended for most developments. If a practitioner wishes to use an alternative focal length, then a 50mm photograph of the same view should be provided for comparison*". This recommendation is important because the specified format and lens is widely regarded as producing a horizontal field of view (40 degrees) which gives the most accurate impression of visual impact and distance. The wide angle used by the applicants (typically 68 degrees) is about the same as that produced by a 28mm lens on a 35mm camera. This makes everything appear much further away than it would in reality, giving a false impression of the size and scale of the development. And the photographs showing existing views are printed at such a small size that, coupled with the shrinking effect of the wide angle view, it is often impossible to discern what would be lost. For example, in existing views C4, C6 and T30, the cliffs are barely visible.
- 1.15 Furthermore, various views have been manipulated, apparently to emphasise what the appellants describe as the negative features of existing views while rendering the development as more attractive and less obtrusive than it would be in reality. Thus proposed view M34 has been manipulated "to ensure that the top of the tower is included"; because the existing view has not been similarly manipulated, it is impossible to compare like with like. This is exacerbated by the fact that the existing view is in deep midwinter shadow, while the proposed view is bathed in summer sunshine. Views M33 and M35 have also been manipulated, showing the existing views in the worst of winter light with the proposed views in the best summer light, and with the horizon being shifted without explanation. Worse still is view M32, which purported to be a montage from the cliff in front of Marine Gate, whereas in fact it had been taken from a point 50m to the west and closer to the cliff edge.

Appellants' response

- 1.16 The TVIA was carried out by the pre-eminent consultancy in this field, Richard Coleman Citydesigner, using images produced by Miller Hare, who are the acknowledged leaders in their sphere of work. The assessment methodology adopted by Mr Coleman is clearly set out⁵. It is of the type supported by the Landscape Institute's GLVIA and represents best practice

² See CD15/1 for the origins of this matter.

³ Taken mainly from the case for Save Brighton

⁴ CD13/1 and 15/3

⁵ CD2/10.3, section 2 and Annex 3

under industry standards. The particular methodology employed for these proposals evolved through Mr Coleman's experience of preparing TVIAs for major developments in London, one of which has been described as "exemplary" by Westminster City Council.

- 1.17 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 to capture the most useful image in a townscape situation where a wider angle lens is needed to get a true sense of the context⁶. In any event, the Landscape Institute guidance is flexible in its own terms. The cropping test carried out by Miller Hare at the Inspector's request⁷ demonstrates that no material difference arises in the image if one uses a 65 to 70 degree rather than a 40 degree lens. Thus the methodology is entirely appropriate to townscape assessment and is fit for its purpose in the present case.
- 1.18 The accusations that the appellants have manipulated some of the images so as to promote their scheme in the best possible (and a misleading) light are untrue. It is 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 because this particular view is not height-sensitive and cannot be usefully measured against other objects in the view. The differences between the photographs used for the existing and the changed views at locations M32, M33, M34 and M35 have no material significance in the assessment itself. The change in location between the existing and proposed views for M32 was not done to portray the only view of the sea that will be available through the development. There would be several lines of view in which walkers on the cliff-top path would be able to look between the new buildings and see the sea horizon, as the images in the DAS⁸ demonstrate.

Inspector's ruling

- 1.19 The document produced by the appellants in response to my request (CD12/30) demonstrates that the cropping process does not result in distortion. Consequently I consider that it is possible to gain a true impression of the impact of the proposed development from the images in the TVIA. But I also note that a true impression can only be gained by a person going to the location from which the image was captured and carefully comparing what is observed in the 'existing' view with the computer-generated image of the proposed development. Thus it is right that the 'existing' images printed in the TVIA are too small to give a full appreciation of what would be obscured by the proposed development; nevertheless the true extent of concealment would be apparent at the location.
- 1.20 Turning to the manipulation of specific images, I do not regard the effect of reductions in shaded areas as a significant problem, for the differences are small and on-site observations would allow the real impact to be judged. Although the 'squashing' of the height of Marina Point tower in image M34 could give a false impression, this manipulation is acknowledged in the TVIA

⁶ See CD15/1, Miller Hare's e-mail of 28 October 2008 to Mr Simpson

⁷ CD12/30

⁸ On pp.106 to 109 of Volume I

and, being internal to the site, is of limited relevance to the impact of the development on the existing environment. The 50m difference in the location of the images in front of Marine Gate (view M32) is potentially misleading and should have been explained, but as a series of views from different locations in front of Marine Gate are available in graphic form in the DAS, a thorough study of the documents reveals the change in location.

- 1.21 Overall I conclude that the visual information in the TVIA, supplemented by that before the inquiry, is adequate to enable a true indication to be gained of the effects of the development on the landscape and townscape of the locality. There are no other matters on which the adequacy of the ES has been challenged. Consequently I am satisfied that the requirements of the Environmental Impact Assessment Regulations are met, and I gave my ruling to this effect at the inquiry. I deal separately with the argument that the TVIA departs from the GLVIA guidelines in my conclusions.
- 1.22 In arriving at my recommendation I have taken into account the environmental information contained in the ES and presented at the inquiry, and the comments about the likely environmental effects of the proposed development.

New national policy and other changes since close of inquiry

South Downs National Park

- 1.23 The formal designation of the South Downs as a National Park took place on 31 March 2010. On the same date the Sussex Downs Area of Outstanding Natural Beauty (AONB) was revoked. Although these changes occurred after the close of the inquiry, the date of National Park designation was known to the parties during the inquiry and their evidence was presented with this in mind.
- 1.24 In this report I have made reference to the status of the area as it existed at the time the reference was made. Thus I have not altered the description of the area as "AONB/future National Park" in reporting the cases of the parties, because that was the correct position at the time the inquiry closed. However, as this report is being submitted after designation, I have referred in my conclusions to the current status of the area as a National Park.

English National Parks and the Broads

- 1.25 On 18 March 2010 the Government published *English National Parks and the Broads: UK Government Vision and Circular 2010*. Its purpose is to provide updated policy guidance and it replaces (amongst others) DOE Circular 12/96. The parties have not commented on this document, and I have not taken it into account in reaching my conclusions and recommendation. Nevertheless, to assist the Secretary of State I have considered whether there are policy changes which might be material to the consideration of this case. I set out my comments in Annex B.

Planning Policy Statement 25 (Revision) and Coastal Change Supplement

- 1.26 On 9 March 2010 the Government published PPS25 Supplement: *Development and Coastal Change* and the associated *Practice Guide*. These documents set out planning policies for managing development in coastal areas affected by coastal change. Furthermore, on 29 March 2010 the

Government published a revised edition of PPS25: *Development and Flood Risk*. The parties have not commented on these documents, and I have not taken them into account in reaching my conclusions and recommendation. Nevertheless, to assist the Secretary of State I have considered whether there are policy changes which might be material to the consideration of this case. I set out my comments in Annex B.

Planning Policy Statement 5: Planning for the Historic Environment

- 1.27 On 23 March 2010 the Government published PPS5: *Planning for the Historic Environment* and the associated *Historic Environment Planning Practice Guide*. These documents set out planning policies on conservation of the historic environment. The parties have not commented on these documents, and I have not taken them into account in reaching my conclusions and recommendation. Nevertheless, to assist the Secretary of State I have considered whether there are policy changes which might be material to the consideration of this case. I set out my comments in Annex B.

Community Infrastructure Levy Regulations 2010

- 1.28 The Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010. The Regulations include certain limitations on the use of planning obligations. The parties have not commented on the Regulations, and I have not taken them into account in reaching my conclusions and recommendation. Nevertheless, to assist the Secretary of State I have considered whether the changes introduced by the Regulations might be material to the consideration of this case. I set out my comments in Annex B.

THE SITE AND SURROUNDINGS

*A full description of the site and the surroundings is given in the Environmental Statement, Volume 1 Chapter 4*⁹

- 2.1 Brighton Marina is situated about 2.25 km east of Brighton city centre at the base of the approximately 22-33m high Black Rock chalk cliffs. It extends some 500m into the sea and is bounded by two substantial, curving breakwaters. It comprises a working harbour and yacht moorings around a residential and commercial spine which separates an outer tidal basin from an inner, non-tidal (locked) basin. It provides some 1,500 boat berths and about 860 dwellings (70 of which are small holiday homes on the outer harbour). The retail and leisure uses include an Asda superstore, a bowling complex, an indoor sport and leisure complex and a range of shops and restaurants. Centrally positioned at the western end of the Marina is a five-storey car park that accommodates over 1,500 cars and incorporates a cinema. The 12ha appeal site covers most of the western part of the Marina and includes nearly all the retail and commercial uses.
- 2.2 Most of the existing housing on the Marina is provided in three and four storey blocks constructed of buff brick and render under hipped roofs. The

⁹ CD2/10.1

retail and commercial uses on the appeal site are contained in predominantly functional buildings that display a variety of styles. The Asda superstore is a large, mostly single storey structure covered by white rendered walls with areas of glazing under extensive sloping roofs. The canopy of the petrol filling station matches the roof of the Asda store, while the McDonalds drive-through is a free-standing, ubiquitous unit of that company. The casino, bowling and indoor leisure units fronting Park Square are plain structures under distinctive curved roofs of slightly differing heights. The Waterfront buildings, which contain many of the individual shops and the hotel, comprise a block of taller elements with a repetitive form along the Boardwalk; these back onto lower retail units fronting Palm Drive. Apart from the Waterfront complex, most of the retail and commercial buildings are approached across extensive hard surface areas.

- 2.3 Immediately to the west of the Marina, between the beach and the cliff, is Black Rock, a vacant Council-owned site intended for recreation and leisure use. Further west is the terminus station of the Volks Electric Railway, which runs parallel to Madeira Drive westwards towards the city centre. The beach at Black Rock is designated a Site of Nature Conservation Interest (SNCI), as are areas of water within the Marina. The cliffs to the north of the Marina form part of the Brighton-Newhaven Cliff Site of Special Scientific Interest (SSSI); the undercliff path at the base of the cliffs extends to Rottingdean, 3.5 km to the east.
- 2.4 The Marina is located on the eastern edge of the built-up area of Brighton. Above the cliffs runs the main A259 coastal road across the downs. To the north of this (immediately north of the appeal site) is Marine Gate, a 9-storey 1930s residential block containing some 140 apartments. To the north-east of Marine Gate, set back some distance from the A259 and cliffs, a finger of 20th century suburban housing projects into the surrounding countryside. North of Marine Gate is East Brighton Park, approximately 24ha of open parkland with playground facilities, two football pitches, two cricket pitches and two tennis courts. The rolling downland beyond the built-up area rises steeply above Sheepcote Valley and Roedean Bottom and is within the South Downs National Park.
- 2.5 Vehicular access to the Marina is at its western end, where the cliffs are slightly lower, via separate entry and exit ramps that curve down from a complex, grade separated junction with the A259. North of this junction is the site of a former depot and gas holders. Further west of this, beyond the Courcels apartment block and the French Apartments (Grade II listed), lies Kemp Town, an imposing Regency estate which contains over 100 Grade I listed buildings typically 4 storeys high (5 storeys including attics). Most of the Kemp Town terraces overlook the Kemp Town Enclosures, registered historic gardens which, though severed by the A259, continue down to the sea shore; the two sections are linked by a pedestrian tunnel under the road.

PLANNING HISTORY and THE PROPOSALS

History of Marina

- 3.1 Brighton Marina was developed on land re-claimed from the sea following two public inquiries and an Act of Parliament. The latter (The Brighton Marina Act

1968) was necessary as the development involved construction on the seabed, which required Crown approval. The original design for the Marina was set out in a 1973 Masterplan of the Louis de Soissons Partnership; it envisaged a high density development comprising a mix of uses, including residential (1,450 units in 4-8 storey blocks with parking beneath) and retail. Although the basic infrastructure of the Marina - the central spine and inner and outer harbours - was completed in 1978, the high costs of construction caused the Brighton Marina Company to go into receivership and the original concept was not realised.

- 3.2 During the 1980s the Marina was taken over by Brent Walker, who brought in a superstore operator and constructed the Village Square development of shops and restaurants. This was followed by flats and houses built on promontories overlooking the Inner Marina. The multi-storey car park and cinema complex at the western end of the Marina were completed in 1988. Then Brent Walker also went into administration and the Marina was sold to Brunswick Developments. In the 1990s they developed the bowling complex, health and fitness centre, casino and the residential development along the main spine (800 flats and houses) with Barratt. More recently the commercial section of the Marina was taken over by Parkridge Developments who constructed The Waterfront, a four storey complex incorporating retail units, restaurants and a hotel, which opened in October 2002.
- 3.3 In 2004 Brunswick Developments submitted a planning application for a mixed-use development at the Outer Harbour, West Quay and adjoining land. This proposed 988 flats in 11 buildings ranging from 5 – 40 storeys, together with some retail, office and leisure uses. Following the refusal of this scheme in 2005, a subsequent application with a reduced residential provision (853 flats in 11 buildings ranging from 6 – 40 storeys) was approved, subject to conditions, in June 2006. Although this scheme has not been built, the development was commenced and therefore the planning permission remains extant.

Appeal scheme

- 3.4 A full description of the appeal proposals can be found in the Design and Access Statement (DAS). Within the appeal site are six parcels of land where new buildings/structures are proposed¹⁰:
- (i) The largest is the 3.25ha Cliff Site, located in the north-west corner of the Marina to the immediate south of the cliff face, which incorporates the Asda store and associated surface car park.
 - (ii) Marina Point (1,432 sq m) is situated at the junction of Palm Drive and Marina Way and incorporates a petrol filling station operated by Asda.
 - (iii) Quayside is positioned in the north-east corner of Park Square and south of the multi-storey car park. Extending to 3,995 sq m, it is currently the site of a McDonald's drive-through restaurant.
 - (iv) The Sea Wall Site is a narrow strip of land (2,539 sq m) parallel to the western breakwater which includes the western section of the multi-

¹⁰ Plan A2

storey car park, the western side of Park Square and part of the western breakwater.

- (v) The 1,153 sq m Inner Harbour Site incorporates the Estate Office in a single storey building at the eastern end of Palm Drive overlooking the inner harbour.
- (vi) The Replacement Petrol Filling Station site (1,699 sq m) comprises the eastern end of the multi-storey car park and the adjoining exit road and grass verges.

- 3.5 The masterplan accompanying the appeal proposals indicates a potential future phase of building when the three existing leisure units become available for redevelopment¹¹. Whilst not part of the current proposal, the aim is to demonstrate that the development of the six sites (particularly the Quayside building) would not prejudice the aspirations for further redevelopment beyond these sites. The future masterplan (section 6.1 of the DAS) shows how the leisure sheds and most of the multi-storey car park could be replaced by a mixed use retail, leisure and residential scheme which includes, amongst other matters, raising the level of Park Square.

PLANNING POLICY

- 4.1 The development plan comprises the Regional Spatial Strategy for the South East of England (The South East Plan – SEP) and the saved policies of the Brighton & Hove Local Plan 2005 (BHLP). Regional Planning Guidance 9 and the East Sussex and Brighton & Hove Structure Plan, which were extant at the time the planning application was determined, were both superseded when the final version of the SEP was published in May 2009. The Planning Statement of Common Ground¹² provides a list of all the relevant development plan policies. Those most pertinent to the issues in this appeal are summarised below.

*The South East Plan*¹³

- 4.2 The spatial strategy for the South East seeks to focus growth and regeneration on identified sub regions which include the Sussex Coast (policy SP1). Brighton is specifically identified as a regional hub, a primary regional centre and a Diamond for growth. Policy SP2 aims to support and develop the role of regional hubs by, amongst other matters, encouraging higher density and/or mixed land uses that require a high level of accessibility so as to create “living centres”, and focusing housing development and economic activity in locations accessible by public transport. Urban areas are to be the prime focus for development (policy SP3) in order to foster accessibility to employment, housing, retail and other services and avoid unnecessary travel.
- 4.3 The core strategy for the Sussex Coast sub-region (policy SCT1) includes the pursuit of a better balance between the provision of housing and the capability of the local environment and economy to absorb this in a sustainable way whilst responding to the needs of local people (including key

¹¹ Plans B6 to B8

¹² SOCG

¹³ CD7/1

workers) for decent homes at an affordable cost. It seeks to optimise the use of previously-developed land, particularly in Brighton & Hove, whilst ensuring that sufficient green infrastructure is delivered alongside new development. The policy also aims to protect and enhance the sub-region's high environmental quality and nationally designated landscapes, in both town and country, and promote excellence in the design of new developments.

- 4.4 Policies H1 and SCT5 require the provision of 11,400 new dwellings (570 per annum) in the period 2006-2026 in Brighton & Hove (excluding Shoreham Harbour). A range of house types and sizes to meet the needs of the whole community is sought by policy H4. Policy H5 aims to raise the quality of new housing and, in the interests of making good use of land and encouraging sustainable patterns of development, promotes higher housing densities. In the Sussex Coast region, policy SCT6 proposes, as a guideline, that 40% of new dwellings should be affordable housing, with the proportion being the maximum that the viability of a particular development can support. The type, size and nature of affordable housing should recognise the needs of different sections of the community.
- 4.5 A number of cross-cutting policies promote sustainable development. These include mitigating and adapting to climate change (policy CC2), incorporating sustainable design and construction standards and techniques (policy CC4), creating sustainable communities with a distinct sense of place (policy CC6), securing sufficient infrastructure capacity to meet the needs of development (policy CC7), and providing networks of accessible multi-functional green space (policy CC8). Wide ranging policies dealing with specific matters are found in the chapters relating to Transport, Natural Resource Management, Countryside and Landscape Management, Tourism and Sports/Recreation, and Social and Community Infrastructure.

Brighton & Hove Local Plan 2005¹⁴

- 4.6 Although the BHLP was prepared in the context of the now superseded RPG9 and Structure Plan, it includes many of the overarching principles and objectives of the SEP. Thus the BHLP includes policies which promote sustainable development, seek to reduce the need to travel and to manage travel demand, encourage higher densities and making the best use of land, minimise environmental impact and conserve environmental assets, require energy efficient development, and improve design quality. Various policies of the BHLP translate these broad objectives to detailed policies relevant to the particular circumstances of the local area: this section focuses on those detailed policies most relevant to the issues in this appeal.
- 4.7 Dealing firstly with design, policy QD2 seeks developments which enhance the positive qualities of a neighbourhood, while policy QD3 encourages higher density development in locations with good public transport accessibility, subject to the provision of sufficient urban open space to avoid town cramming. As well as good accessibility, higher density residential development is also required by policy HO4 to exhibit high standards of design and architecture, to include a mix of dwelling types and sizes which reflect local needs, and to respect the capacity of the area to accommodate

¹⁴ CD8/1

additional dwellings. Policy QD27 endeavours to protect the amenity of existing and future occupiers from development that would cause material nuisance and loss of amenity or be detrimental to human health.

- 4.8 Policy QD4 identifies strategically important views which should be preserved: these include views along the seafront and coastline, views to and from the Downs, views into and from within conservation areas, and the setting of listed buildings. The policy states: *“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”*. Separate policies protect the historic environment: policy HE3 seeks to prevent development that would adversely impact on the setting of a listed building, while similar protection is afforded to conservation areas (policy HE6) and historic parks and gardens (policy HE11). Policy NC8 aims to prevent development that would be unduly prominent in, or detract from views into or out of, the Sussex Downs AONB.
- 4.9 A mix of dwelling types and sizes that reflects local housing needs is sought by policy HO3, while policy HO2 expresses the target of negotiating a 40% element of affordable housing in residential developments. Outdoor recreation space in accordance with the standard of 2.4ha per 1,000 population is sought for housing schemes by policy HO6; where it is not practicable for this to be provided on site, the policy allows for contributions to its provision on a suitable alternative site. Policy HO21 seeks the provision of community facilities to meet the realistic needs of residents, either as an integral part of the housing development or, in exceptional circumstances where land cannot be made available, as a contribution towards off-site provision.

*Core Strategy*¹⁵

- 4.10 The City Council has recently (10 December 2009) approved for submission to the Secretary of State the final version of the Core Strategy (CS), the first part of its Local Development Framework. This sets out the overall vision for the city to 2026 and, amongst other matters, identifies how the SEP housing target is to be delivered. The overarching spatial strategy is to aim to accommodate future development within the built-up area of the city by optimising development on brownfield land. To achieve this, significant development is directed to seven broad areas of the city where identified capacity exists.
- 4.11 One of these development areas (DA2) is Brighton Marina, Gas Works and Black Rock. The strategy is to facilitate a sustainable, comprehensive and high quality mixed use district of the city with enhanced transport infrastructure and a more balanced mix of retail, leisure, tourism and commercial uses. 2,000 dwellings are proposed overall; 1,000 of these are allocated to the inner harbour site, along with 5,000 sq m of retail development and community facilities. High quality design and materials are sought within the inner harbour area, reflecting the unique character of the Marina, as well as improvements to the legibility and quality of the townscape

¹⁵ CD8/2.1 and CD8/2.2

and public realm. Development within the Marina should not breach the cliff height.

- 4.12 The CS will be subject to independent examination later this year. Whilst it attracts some weight in the determination of this appeal, until such time as it is found to be 'sound', the weight is limited and dependent on the extent to which the policies reflect national policy and the SEP.

Supplementary planning guidance

- 4.13 SPG20¹⁶, comprising an Urban Design Analysis and a Development Brief for Brighton Marina, was adopted by the Council in January 2003. In terms of development form, this envisages the creation of the necessary critical mass to ensure the formation of a highly sustainable urban location, and the creation of a distinctive identity with landmarks and clusters of buildings. It identifies the Marina as a suitable location for tall structures, with the final height and massing to be determined by the design process. SPG15¹⁷, adopted in January 2004, gives city-wide guidance on tall buildings (defined as 18m or taller, approximately 6 storeys). It identifies the Marina as a node that is suitable for tall buildings because of the mitigating effect of the cliffs (up to a certain height), the amenity value for residents of a seafront location, the existence of a district shopping centre within the Marina, and the opportunity to 'bookend' the edge of the city. SPG15 also recognises the particular sensitivities of building at the Marina due to the proximity of Kemp Town and housing on the hillside, and the composition when viewed along the coast.
- 4.14 In March 2008 the Council produced the Brighton Marina masterplan (PAN04)¹⁸ as a supplement to SPG20. This aims to provide a comprehensive framework for schemes within and adjacent to the Marina and to establish principles to guide future development in an holistic rather than a piecemeal way. The masterplan divides the Marina into areas of high, medium and low priority for development, with the high priority areas concentrated at the western end of the Marina, including the superstore and leisure areas. Among the urban design considerations identified in PAN04 are enhanced urban legibility; visual permeability through the development to the sea, the harbour and the cliffs; and protection for the setting of Kemp Town Conservation Area and for views of the seafront, cliffs, coast and Downs. It states that development in close proximity to the cliffs "must generally conform to or be lower than the existing cliff height".
- 4.15 All three documents have been subject to consultation and then adopted by the Council, and thereby merit some weight in the determination of this appeal. However, consultation on the two earlier SPG was quite limited and consequently these should be accorded less weight than PAN04.

National planning policy

- 4.16 The national planning policy statements (PPS) or guidance (PPG) most relevant to the main issues in this appeal are PPS1: *Delivering Sustainable*

¹⁶ CD8/9.2

¹⁷ CD8/8

¹⁸ CD8/12

Development and its supplement Planning and Climate Change; PPS3: Housing; PPS4: Planning for Sustainable Economic Growth; PPS9: Biodiversity and Geological Conservation; PPG13: Transport; PPG15: Planning and the Historic Environment; PPG17: Planning for Open Space, Sport and Outdoor Recreation; PPG20: Coastal Planning and PPS25: Development and Flood Risk.

MATTERS AGREED BETWEEN THE APPELLANTS AND THE COUNCIL

- 5.1 Statements of Common Ground addressing Planning matters (CD1/3) and Highway matters (CD1/4) were prepared and agreed by the appellants and the City Council before the inquiry opened. During the inquiry certain issues in dispute were narrowed and clarified, resulting in the preparation of a further statement which set out areas of agreement (CD12/35). Many of the matters agreed between the two main parties are either disputed by other opponents of the scheme or are aspects of the main issues which are addressed in evidence, so there is no merit in describing them here. In this section I deal briefly with two matters not debated in detail at the inquiry, the retail impact of the scheme and the assessment of flood risk.

Retail impact

- 5.2 Brighton Marina is designated a District Centre in the BHLP, with the defined centre being tightly drawn around the Asda store and the Merchant's Quay area to the east. Because most of the enlarged Asda store would be sited on the existing car park, which is an edge-of-centre location in terms of PPS4 (and the then extant PPS6: *Planning for Town Centres*), a retail impact statement was submitted with the application¹⁹. This draws upon a city-wide retail study prepared for the Council in March 2006. The study concludes that there is capacity to support the amount of additional floorspace proposed, both in the convenience and comparison goods sectors, and that the proposal would not have any significant effect on the vitality and viability of any other shopping centre in the locality. It also concludes that there is a clear qualitative need for improvements in the retail offer at the Marina.

Flood risk

- 5.3 Brighton Marina is at risk from tidal and coastal flooding. It falls within Flood Zone 3a (an area with high probability of flooding) under the risk-based approach of PPS25. As required by PPS25, the appellants have submitted a flood risk assessment (FRA)²⁰ which draws substantially on the Strategic Flood Risk Assessment carried out by the City Council when preparing its Core Strategy. The FRA demonstrates that, because of the substantial constraints on land in Brighton & Hove, there are no alternative sites with a lower vulnerability of flooding available in the city for major housing development; consequently the sequential test is passed. As to the exception test, the appellants have demonstrated that the development provides wider sustainability benefits to the community that outweigh the flood risk (part (a) of the test), and that it is on previously-developed land (part (b)).

¹⁹ CD2/9

²⁰ CD2/8

- 5.4 The final part (c) of the exception test requires the FRA to demonstrate that the development would be safe and not increase the flood risk elsewhere. Sea defences at the Marina are the responsibility of The Brighton Marina Company Ltd (BMCL), who have recently raised most of the Inner Wall sea defences to 5.05m AOD, which would protect it from a 1 in 200 year tidal surge until the year 2060. Although BMCL has plans to complete the raising of defences to 5.05m, the S106 planning obligation (to which BMCL is a signatory) includes a commitment to carry out these works by 2018.
- 5.5 PPS25 requires that residential development is protected until at least the year 2115, taking into account the higher increases in sea levels now predicted as a result of climate change. This would require defences to be increased to 5.9m AOD. Whilst such works would have to be carried out in any event by BMCL to protect existing residents of the Marina, the S106 obligation provides a commitment to investigate the further works necessary to raise sea defences between 2050 and 2060. The S106 also commits BMCL to agree the scope and timing of these further works with the Environment Agency, and subsequently to implement them. On this basis, the FRA satisfies all the tests of PPS25; moreover, the Environment Agency does not object to the proposed development.

THE CASE FOR EXPLORE LIVING (NO 1) LTD, X-LEISURE (BRIGHTON I) AND X-LEISURE (BRIGHTON II) LTD

INTRODUCTION

- 6.1 This case is about regeneration. The proposed development would change Brighton Marina from a place that is degenerating into one that has a sustainable community and a sustainable future. The benefits of the proposal are not in serious dispute. They include:
- (i) The long-term beneficial use of some 12ha of previously-developed land within the urban envelope of a settlement that is severely constrained, both physically – by the sea and by landform – and by statutory policies for the protection of the natural and historic environment.
 - (ii) Substantial improvements to the local environment and townscape, enhancing the amenity of the Marina, transforming a part of the city which is dysfunctional and incoherent in its arrangement of buildings, uses and open space.
 - (iii) A large number (1,301) of new homes, 40% of which (520) would be affordable. This would be a substantial injection of new stock, of various tenures, into the pool of new housing available in the city.
 - (iv) A new and larger Asda store which would become the centre-piece of a reinvigorated district centre.
 - (v) The creation of new jobs: more than 3,600 temporary jobs in the construction period, and over 300 permanent jobs on the appeal site itself and some 400 more elsewhere. This would be a boon to the local economy and a signal of confidence in its future.
 - (vi) Various improvements to public transport, among them a new interchange on the appeal site with dedicated facilities for buses, new bus priority measures, and a financial contribution and the dedication of land for the city's Rapid Transport System.

- (vii) A second road connection to the Marina from Madeira Drive, facilitating access for emergency vehicles, giving pedestrians and cyclists a safe and convenient route, and enabling the integration of the regenerated Marina and the Black Rock site.
 - (viii) A new access way from the top of the cliff to the Marina for pedestrians and cyclists which would link the Marina to the coastal path and the Sustrans cycle route.
 - (ix) Publicly accessible spaces throughout the appeal site suitable for different kinds of recreation, all of them safe and attractive for their users.
 - (x) Enhanced biodiversity by the creation of new habitat in the new plantings and green roofs and green walls.
 - (xi) A boost to regeneration on adjacent land within and beyond the Marina, including the Black Rock site immediately to the west. Together with the Brunswick development (of 853 flats) on the Outer Harbour and West Quay, which was approved in June 2006, this development would generate the momentum that the rejuvenation of this part of the city requires if it is to be successfully completed.
- 6.2 The scheme follows several years' collaborative effort in the preparation (in parallel with the preparation of the BHLP) of a clear site-specific policy matrix in supplementary planning guidance²¹ and in the master plan for this sector of the city published in March 2008 in the form of PAN04²². In this sense the proposed development is no less a plan-led project than it would have been had the Marina been the subject of a specific allocation or proposal in the development plan, which eventually it will be when the City Council's local development framework is adopted.
- 6.3 The City Council criticises a scheme which was endorsed by its own officers – not only its planning officers, but also those responsible for housing, highways and transport, education, recreation and so forth²³. The City Council's members decided to refuse permission on grounds relating to visual impact, the quality of living accommodation, the tenure of the affordable housing proposed, the amount of outdoor amenity and recreation space in the scheme, the adequacy of educational facilities to meet the needs of residents, and the assertion of unacceptable flood risk²⁴.
- 6.4 Those reasons for refusal were "amplified and clarified" in September 2009²⁵. The changes are not merely the result of updating the references to policy in light of the adoption of the South East Plan and the abandonment of the reason for refusal relating to flood risk. On the contrary, new matters were added, notably the inclusion of the word "design" in the first reason for refusal and a complaint about the quality (as well as the quantity) of the outdoor recreation space.
- 6.5 The regeneration of the Marina will only be achieved if a venture with the commercial influence and experience on which the appellants are able to

²¹ SPG20 of January 2003 (CD8/9.1 and CD8/9.2) and SPG15 of January 2004 (CD8/8)

²² CD8/12

²³ CD3/1.1

²⁴ CD3/2

²⁵ CD3/3.1

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 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 urban renaissance here has been left in the hands of private sector concerns, who in the real world have to make real decisions about development and risk. None of the opponents of the scheme has said that the development is undeliverable or that it would not be delivered if permission is granted.

APPEARANCE AND VISUAL IMPACT

Design, height, siting and layout

Policy Context

- 6.6 The City Council submits that policies QD1, QD2, QD3, and QD4 of the local plan²⁶ are offended. Between them those four policies encapsulate the following principles:
- New buildings must demonstrate a high standard of design.
 - Replication of existing styles and the use of pastiche designs will be discouraged.
 - The overall standard of urban design ought to be raised and more innovative and distinctive design encouraged.
 - Modern designs using contemporary and sustainable materials will be welcomed, particularly in areas of characteristically drab and uninteresting design.
 - It is possible to integrate modern developments with their surroundings whilst respecting the character of areas that are attractive and worthy of preservation.
 - New development will be required to make efficient and effective use of a site. 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.
 - New development should 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.
 - 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.
- 6.7 The appellants contend that the scheme is a paradigm of high quality, innovative and distinctive design. The proposals emphasize and enhance the positive qualities of the local neighbourhood. For example, they respond to the topography of the appeal site and its surroundings, in particular the disparity in ground levels marked by the cliffs 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 would transform the appearance of a visually desolate scene. It would provide well considered new buildings and

²⁶ CD8/1

spaces in a coherent layout and disposition of uses. It would bring to the western part of the Marina an appropriate density of development. And it would do much more than simply make efficient and effective use of a site chronically unsustainable in its arrangement of uses. Thus the proposals are in accordance with the relevant parts of policies QD1, QD2, QD3 and QD4.

- 6.8 In the “clarified and amplified” first reason for refusal, the City Council also calls in aid policies CC1, CC6, CC8 and BE1 of the SEP²⁷. The cross cutting (CC) policies are aspirational and do not contain development control tests. However, their priorities are matched and supported by the appeal proposals. The development would represent a sustainable use of previously-developed land, conserve the physical and natural environment, play its part in reducing greenhouse gas emissions, and help to achieve safe, secure and socially inclusive communities (policy CC1). It would accommodate some of the high development pressure in the South East without compromise to its rich heritage of historic buildings, landscapes and habitats (policy CC6). Indeed, 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, west and east, and which contains extensive areas of protected heritage assets. As to policy CC8, there would be no harm to the achievement of networks of accessible, multi-functional green space.
- 6.9 SEP policy BE1 identifies how local authorities and their partners should use the opportunities associated with new development to manage an urban renaissance. Part (v) refers to 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. Part (vi) speaks of supporting and identifying “opportunities for appropriate higher density and mixed-use development schemes”. The City Council has done this in planning for the regeneration of Brighton Marina in SPG20, SPG15, and PAN04. The proposed development would convert this opportunity into reality. 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”. Again, this has been done in SPG20, SPG15 and PAN04.

Design Process and CABE

- 6.10 The design of the development was meticulously carried out over a two and a half year period. 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 discussions with Council officers²⁸. The fact that the appeal proposals were the subject of an intense process of consultation and design development not only demonstrates good practice. It means that the scheme was prepared with a full understanding both of the relevant policy context and of the comments expressed in the course of consultation.

²⁷ CD7/1

²⁸ CD2/7.3, Volume III of the DAS, Appendix 6, section 5.

- 6.11 CABE recognized the thoroughness of the design process following the first presentation to their design review panel in November 2006, and have always been positive in their treatment of the scheme. It is clear from CABE's letters that, from start to finish, they have been happy with the principle of the development and with the principle of its being approved, subject to conditions by which the final detailed stage of the design process would be guided and controlled. CABE acknowledged the skilfulness and thoughtfulness of the design at the outset, and have added their own thinking to the refinement of the design during the several stages of review that ensued. And whilst it is accepted that CABE has not given the scheme a complete endorsement, the lack of objection carries significant weight.

Appellants' master plan

- 6.12 The future vision of the Marina as a whole has played a central part in the design process. In consultation with Council officers, Allies and Morrison have prepared a master plan framework to address the whole of the western end of the Marina and to steer its further regeneration, including its evolution when the existing leisure sheds reach the end of their useful lives²⁹. This work has been done in the light of the principles and guidance contained in SPG20, SPG15 and PAN04.
- 6.13 Although not explicitly part of the City Council's case, in evidence the scheme was criticised for not embracing additional land in order to be comprehensive. But it has never been the objective of the City Council to insist on the entire regeneration of the western part of the Marina being undertaken all at once. Had this been the City Council's thinking, one might have expected to see it written down somewhere in PAN04, but it is not. Comprehensive regeneration will only be achieved in the Marina if it is understood that one has to start somewhere with enough mass of development to give the whole endeavour momentum. Much of the land at the western end of the Marina is not derelict or commercially inactive. The present proposals are a realistic response to a mature judgment about what can be done at this stage. That they are not more ambitious than the appellants can manage for the time being does not condemn them as compromised or as piecemeal development.
- 6.14 The appellants have subscribed to a design that is not only deliverable and functional in its own right, but would also encourage and facilitate the complete regeneration of the Marina over a much longer period. Thus the scheme would lay 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:
- Although the buildings would stand independently of each other, the choice of materials and the manner in which the buildings engage with the public realm would afford a level of consistency that would start the process of binding together the very disparate elements of the Marina.
 - Existing successful commercial operations would be given new accommodation, thus preserving customer loyalty and promoting the future economic vibrancy of the Marina.

²⁹ CD2/7.1 section 6.1

- The buildings and spaces proposed have been designed so as not to prejudice the future coming forward of other elements of the master plan and would be able to accommodate change.
- The design process has responded to the major development proposals for adjacent sites - the 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).

Density

- 6.15 There is no defined or indicated density range for residential development in Brighton and Hove generally, or specifically for the Marina. Policy HO4 of the Local Plan provides for higher densities than those typically found in the locality where the proposal (i) exhibits high standards of design and architecture; (ii) includes a mix of dwelling types and sizes which reflect local needs; (iii) is well served by public transport, walking and cycling routes, local services and community facilities; and (iv) respects the capacity of the local area to accommodate additional dwellings. Those four criteria are all satisfied by the appeal proposals.
- 6.16 PAN04 recognises that, to achieve maximum and best use of currently developed land, density levels are likely to increase within urban areas such as the Marina. Assessments of residential density are often problematic as different assumptions can be made about the area of land that should legitimately be included. A range of density calculations have therefore been provided, based on different assumptions. In the planning application³⁰, density was calculated 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 (dph). If, however, the whole of the area within the planning red line boundary is included, an average density of 106.6 dph emerges. If the site area is extended to include the whole of the western end of the Marina, this figure would fall to 100.9 dph. Finally, if an overall density were to be calculated for the Marina as a whole, the level would drop to 95.9 dph. None of those densities is said by the City Council to be too high.
- 6.17 The scale of development proposed has to be sufficiently large to justify the replacement of the existing poor quality buildings and landscape. Without this the degree of transformation currently required at the Marina would be unachievable. But this is not all. Any development on this site must also be able to generate sufficient financial return to allow for the replacement of the Asda supermarket, the McDonalds and the petrol filling station in accordance with SPG 20³¹ and, in the case of the Asda store, to enable it to remain operational throughout the construction of the development.

Architecture of proposal

- 6.18 Allies and Morrison, who rank among the most accomplished and highly regarded architects and urban designers of the day, have produced a design of exceptionally high quality for Brighton Marina, which is not an easy site to reform. The scheme would purge the western part of the Marina of the

³⁰ CD2/11 Planning Statement paragraphs 5.24 and 6.36

³¹ CD8/9.2 Volume 2 of SPG 20, page 43.

disjointed and the drab, and enable it to make its own distinctive contribution to the developed stretch of coast that completes the urban scene in this part of Brighton. The officers reporting to committee in December 2008 said the development would exhibit “landmark architecture”³². Even the City Council’s witness on design described the architecture of the scheme as elegant and convincing; other Council witnesses agreed.

- 6.19 Marine Gate Action Group has criticized the architecture of Marina Point. By contrast Mr Coleman (the appellants’ townscape witness) considers that Marina Point is a likely contender for becoming a listed building in the future. He opined that the design of Marina Point displays very high architectural qualities, the definition and layering in its façades emphasizing the three dimensions of its surfaces and comprising a counterpoint between rectilinear forms and curvature. CABE also reacted warmly to the architecture of the scheme as a whole and Marina Point in particular, stating that “it has the potential to be an elegant building”³³. Their concern about breaking the horizontal continuity of the balcony line was answered by Mr Coleman, who pointed out that the regularity of the balconies will lend elegance to the physique of the building.
- 6.20 All the other buildings in the scheme would be well scaled and well expressed additions to the urban scene. Each would sit in comfortable juxtaposition to its neighbours: spaced well, aligned well, varied in form and height. The result would be a composition of confident buildings, fit for their context, neither hidden nor overly dominant when viewed from close range or further away. Moreover, none of the criticisms of the townscape assessment in the TVIA go beyond the shallow level of asserting that the development is too big or that too much of it can be seen. No comprehensive assessment of the impacts of the architecture of the development, or of its effects on the townscape or wider landscape, has been provided by any party to the inquiry.

Height

- 6.21 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 land. If full and effective use is to be made of this urban site, it is going to be necessary to introduce taller buildings. There is specific policy support for this objective:
- (i) The Marina is identified as benefiting from proximity to good public transport, thus making it a desirable location for tall buildings³⁴.
 - (ii) SPG20 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”³⁵.
 - (iii) SPG15 (Tall Buildings) identifies the Marina as one of five nodes suitable for taller development³⁶. It gives a number of reasons why this would be appropriate, including the opportunity to “bookend” this edge of the city.

³² CD3/1.1 page 165

³³ CABE letter of 29 February 2008

³⁴ BHLP policy QD3; SEP policy CC6; SPG 20; SPG 15; PAN04 and emerging CS Spatial Objective SO1

³⁵ CD 8/9.2, Volume 2 page 59

³⁶ CD8/8 Sub-section 8.3, page 15

- (iv) PAN04 defines tall buildings as those above six storeys. It indicates that the western, more commercial areas of the Marina may be more suitable for taller buildings than the eastern end. 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”. The appeal scheme complies with this guidance. The part of the development that would be close to the cliff is the Cliff Site building, which would “generally conform” to the height of the cliff, reducing to six storeys at the western end as the cliff itself begins to drop away.
- 6.22 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, provides further support for the principle of introducing tall buildings within the Marina. The appeal scheme would continue the momentum begun by the Brunswick permission, fulfilling the objective to “mark the city from afar” (SPG20) and “bookend the city” (SPG15), either in combination with the Brunswick development if that gets built, or on its own if it has to.
- 6.23 The design of all the buildings has taken account of the relevant considerations relating to height. The following points should be noted:
- (i) The height of Marina Point has been carefully assessed taking into account two principal viewpoints. The first is the place where this building will just appear above the roof tops over the east quadrant of Lewes Crescent, the second is the place where it will be seen in the backdrop of the south-easternmost building of Lewes Crescent.
 - (ii) The 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 when viewed from the east. 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 Point.
 - (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 SPG20³⁷.
 - (iv) The Inner Harbour building would be a three to four-storey structure in deference to the view that the tallest buildings should be confined to the more commercial, western end of the Marina.
 - (v) The Cliff Site building would not go above nine storeys because of its proximity to the cliff, and it would reduce to six storeys at its western end where the cliff itself is not as high. This reduction in height would also serve to retain views through the Marina and beyond to the sea from Arundel Terrace.
- 6.24 The height limitation contained in the Brighton Marina Act 1968³⁸, which has been prayed in aid by several rule 6 and other third party objectors, operates completely independently from the planning regime. The Act allows, subject to approval by the Corporation (now the City Council), for permission to be

³⁷ CD8/9.2 page 40

³⁸ CD 14/12

given for development above the height of the cliff³⁹. 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 the City Council's approval was given to waiving the height restriction in the case of that development⁴⁰. Agreement that planning permission should not be withheld on the basis of the Act is reflected in the Statement of Common Ground submitted in this appeal by the appellants and the City Council⁴¹.

Siting and Layout

- 6.25 The availability of land to the developers has inevitably influenced decisions about the appropriate location for new and replacement buildings and the network of public spaces around them. But such pragmatism is not to be equated with compromise. The design of buildings and the public realm has been conceived and progressed as a single entity. The buildings 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. As a result, the development would introduce a dramatic improvement to the public realm as well as making effective use of the available land by putting buildings in the parts of the site where it makes good sense to have them.
- 6.26 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 CABE and English Heritage joint guidance on tall buildings⁴². Both would be sited at important locations in the Marina, where tall buildings would make a positive contribution to the identity of the Inner Harbour, signalling the civic significance of the Marina. Both sites are at an appropriate distance from the cliff for buildings of their stature and massing. Marina Point would be the centrepiece of the development, signalling the presence of the Marina in distant views and defining the position of the east-west axis. The Quayside building would be in a prime position commanding views of the city, the Downs, the boat moorings and the sea.
- 6.27 Throughout the design process there has been a concern to ensure that the buildings would contribute to the creation of a successful piece of city, with a strong sense of place and sustainable infrastructure⁴³. The public realm proposals would deliver greatly improved legibility and permeability in the publicly accessible areas in the western part of the Marina, substantial areas of new recreation space (including the creation of the Cliff Park), a new link from the cliff top to the Cliff Site building and through it into the Marina, rationalized arrangements for transport, increased biodiversity and investment in public art. A number of important routes and connections within the Marina would be improved, and the proposed buildings themselves have been arranged to assist in the transformation of the quality and accessibility of routes across and around the site.

³⁹ CD10/1 sections 55, 59 and 70

⁴⁰ CD 11/9

⁴¹ CD1/3 section 6(t), paragraphs 6.125 and 6.126.

⁴² CD5/1

⁴³ CD2/7.1 section 6 in Volume I of the DAS.

- 6.28 The aim has been fundamentally to improve the urban context of the Marina by establishing a coherent and comprehensive public realm, made up of contiguous spaces. Close reference has been paid to the principles enshrined in "By Design"⁴⁴:
- Spaces have been designed in such a way that, while each would have its own individual character and identity, together they would form a coherent public realm (Principle 1: "Character").
 - The proposed new buildings have been configured in such a way that they would provide clear definition to the streets, squares or footpaths that they enclose (Principle 2: "Continuity and Enclosure").
 - The new buildings would relate well to the ones that are already there and would 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").
 - Connections between the Marina and its hinterland would 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 would understand how to continue their journey within or across the site (Principle 4: "Ease of Movement" and Principle 5: "Legibility").
- 6.29 The proposed open spaces meet the ambition of SPG20 to establish a series of related urban enclosed public spaces that would create an atmosphere of interest, excitement and vitality at pedestrian level. The fact that the opportunity has been taken to exploit awkward parts of the site is the very best approach to adopt. The use of the ground under the ramps and beside the cliff, and the design put forward for these areas, is an inspired response to what might otherwise have been a waste of space. Rather than being, as the City Council suggests, some kind of compromise in which a residual approach was taken to the design of open space, the whole scheme went forward in a sequence of logical steps, properly balancing at every stage the relationship of buildings and space.
- 6.30 PAN04⁴⁵ analyses the Marina's public realm and lists objectives which should be used by developers to inform their plans. It expressly recognizes that the public realm for each new phase of development at the Marina should operate independently of other phases. Thus the City Council has itself acknowledged that the realization of PAN04 objectives will not be the result of one set of proposals alone. The appeal scheme fulfils the relevant parts of these objectives, and does nothing to preclude improvements to the public realm being achieved phase by phase, as PAN04 envisages they will be.
- 6.31 CABE stated from the first that the scheme "does an admirable job of improving public routes and spaces"⁴⁶. The Council places much reliance on CABE's comment that "the proposals for the public realm are not yet as convincing as the buildings"⁴⁷. However, these concerns should not be taken to mean that the appeal proposal is unacceptable. Reading CABE's letter as a whole it is clear that their reaction is very positive, concluding that, subject to

⁴⁴ CD2/5

⁴⁵ CD8/12 Table 2 on page 23

⁴⁶ CABE letter of 27 November 2006, page 55 of Mr Coleman's appendices.

⁴⁷ CABE letter of 3 October 2008, Mr Coleman's Appendices page 62

a limited number of points, CABA supports the proposals, including the public realm elements.

Design of individual parts of the proposal

- 6.32 This section focuses on the small number of individual components whose design has proved contentious during the inquiry: the retention of the access ramps, the Cliff Site building arrival space, Harbour Square, and the extent of active street frontages.

Access ramps

- 6.33 SPG20 says 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. The alternative arrangement shown in SPG20, which is diagrammatic and indicative only, is not a feasible highways option. This is because the roundabout would be so close to the cliff face that the resulting gradient of the ramp leading down from the A259 would be 1 in 6 or 1 in 5, rather than an appropriate gradient of 1 in 10 or 1 in 12. Instead, the appellants contend that any replacement ramps are more likely to be similar to those which are already there, for they are an efficient engineering solution to the 25m difference in levels between the A259 and the Marina. 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.
- 6.34 Consideration was given to the removal of the access ramps during the preparation of PAN04. Whilst this remains a long term aspiration of the City Council, there is recognition in PAN04 that it may not happen in the short to medium term. PAN04 requires developers of major schemes to demonstrate that they have given the removal of the ramps due consideration. It also recognizes the practical obstacles standing in the way of this desire being achieved, and urges developers to think creatively about ways of making improvements to the visual appearance of the ramps. Importantly, 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 access arrangements.
- 6.35 The analysis presented in the DAS⁴⁸ and the evidence to the inquiry demonstrates that the appellants have given due consideration to the removal of the access ramps in accordance with the advice in PAN04. Further, the scheme proposes a variety of creative solutions intended to reduce the visual appearance of the ramps⁴⁹. Thus compliance with this aspect of PAN04 is achieved, and the Council is wrong to suggest that the scheme is fundamentally flawed by not proposing the removal of the ramps.
- 6.36 The access ramps are structurally sound and in good condition. In terms of capacity, the Transport Assessment (TA) builds in the impact of the proposed development, and its cumulative impact with the Brunswick development. It

⁴⁸ CD2/7.1 Paragraphs 5.1.1 and 11.1.3

⁴⁹ See Public Art Statement (CD2/3.1) and Public Art Statement Addendum (CD2/3.2)

concludes⁵⁰ that there is a further 46% capacity available. The TA also puts forward suitable measures to control the speed of vehicles on the ramps⁵¹. In addition, measures such as a significant financial contribution for the RTS, a new pedestrian footbridge from the cliff top to the Cliff Site arrival space, and improvements to pedestrian and cycle routes within the Marina itself, would reduce the burden of vehicular movement on the ramps. Overall, keeping the ramps in place would not act as a constraint to access into the Marina.

Cliff Site building arrival space

- 6.37 The new pedestrian route into the Marina across the Cliff Site building has been welcomed by CABE⁵². They do, however, provide constructive advice for the enhancement of the design of the arrival space at the western section of the Cliff Site building. Their suggestion that “careful landscape signals” will be needed is not to be seen as a criticism of the arrival space in principle, but rather an indication that a modest amount of further design is required. This can easily be resolved in the final stage of the design work, beyond the grant of planning permission, and can be governed by condition. Thus the Council’s assertions that someone who arrives in the arrival space will not be able to see visual clues as to where to go, or that the paths crossing the arrival space will not be legible, are ill-founded.

Harbour Square

- 6.38 The Harbour Square concept had its genesis in the desire to change the character of the space away from a commonplace suburban roundabout to a space with a unique quality that would distinguish the Marina out as a destination. The square would operate differently at different times of the day and the week. When the level of vehicular traffic is low, pedestrians would 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 would be likely to use the crossings provided for them. If the traffic is moving very slowly, pedestrians would be able to cross between the vehicles as they do every day in countless towns and cities.
- 6.39 There is necessarily a two-stage approach. A grant of planning permission should confirm acceptance of the principles of the Harbour Square design in the submitted application documents and drawings. The optimum detailed arrangement and treatment of this space could then be arrived at through planning conditions with the benefit of further work. CABE supports the decision to replace the roundabout with a public square⁵³. Although CABE had 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”⁵⁴, at no stage did they suggest that the proposed design and layout of Harbour Square could be a reason to refuse planning permission.

⁵⁰ CD2/13 Table 9.3

⁵¹ CD2/13 Paragraphs 4.5.4 – 4.5.10.

⁵² See the fourth paragraph on p.2 of CABE’s letter of 29 February 2008.

⁵³ See the second paragraph on p.1 of CABE’s letter of 29 February 2008.

⁵⁴ Ibid. in the third paragraph on p.1

- 6.40 The appellants presented expert evidence to the inquiry which argued that Harbour Square would work safely at all times and for all road users. It is highly significant that this evidence was not disputed by the highway authority or by the consultants, Mouchel, employed by the Brighton Marina Estates Management Company. In addition, two independent Road Safety Audits have been carried out, the results of which were positive⁵⁵. The safety and convenience of all road users, including people who are disabled, partially sighted or blind, has been properly considered in this exercise.
- 6.41 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, though there are similar examples of the use of shared space at road junctions in Denmark, Sweden and the Netherlands. As a precaution, 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 success⁵⁶. This sensible approach allows the Secretary of State to grant planning permission with the comfort of knowing that there is an alternative, uncontroversial, safe and workable solution available. It would be perverse to refuse permission because the “shared space” concept might not work.

Active street frontages

- 6.42 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 Site 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 would face directly on to the public realm, and the windows and balconies of the Cliff Site building, which would overlook the entire length of the Cliff Park to the north and the area under the ramps to the west. Active frontages at ground level, the presence of large numbers of people both by day and at night, and the surveillance afforded by windows to flats on the upper floors of the residential buildings, would be conducive to the safety of the public areas.
- 6.43 During the inquiry the appellants sought to agree with the Council what constitutes an active frontage in the appeal scheme. This has nearly, but not quite, been possible⁵⁷. The appellants consider there are four more elements of active frontage than have been acknowledged by the Council:
- the stairs leading to the Cliff Park and the lift;
 - the long window of the Asda store behind which the line of tills will stand;
 - the permeable screening around the replacement petrol filling station; and
 - the north face of the Quayside building between the McDonalds and the retail unit on the north west corner.

Though useful as a guide, diagrams that concentrate solely on the extent of visible activity associated with the frontages of buildings cannot take account

⁵⁵ See Appendix U to Mr Frisby’s proof.

⁵⁶ CD2/13 Appendix 15 page 14

⁵⁷ CD 13/3 Mr Roake’s “active frontages” diagram

of the scale and variety of activity in the recreational areas themselves, including those proposed under the ramps.

Building for Life

- 6.44 There has been no formal CABE Building for Life (BfL) assessment in this case. Because no officer of the City Council has been appointed to the role of assessor, the local planning authority's decision was not taken on the basis of any such assessment. The City Council's design witness, Mr Roake, carried out a BfL analysis for this inquiry which (at the suggestion of CABE) was matched by Mr Allies' own analysis. These documents have equal status.
- 6.45 In making his BfL judgments, Mr Roake considered the appeal scheme in isolation, as if the Marina were a blank canvas. He 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.
- 6.46 Mr Allies has given the proposals a BfL score of 18 out of 20. Mr Allies and Mr Roake agree on the scores for ten of the twenty criteria, and disagree on the other scores. Of course, as with any assessment, there will be a margin of error, particularly so when a scheme is yet to be built. However, Allies and Morrison designs for other schemes have obtained high BfL scores: for example, the Arsenal Stadium redevelopment was given a score of 16 by Mr Church of CABE. In this case, it is submitted that Mr Allies' reasoning for giving the appeal scheme a score of 18 points is sound.

Conclusion on design

- 6.47 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. 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, nor by a sound appreciation of the role of conditions as a means of (1) securing the quality apparent in the drawings and descriptions included in the application material and (2) honing the design to address the residual concerns of CABE.
- 6.48 For the reasons given, the appeal proposals are of the highest quality in their design and are in that respect fully in accordance with paragraphs 33-39 in PPS1, with SEP policies CC1, CC6, CC8 and BE1, with BHLP policies QD1, QD2, QD3, QD4 and HO4, and with the design principles and guidance for high density development in SPG20, SPG15 and PAN04.

Effect of development on surrounding area

Townscape and Visual Impact Assessment (TVIA)

- 6.49 The design of the appeal scheme has from the outset been informed by, and has responded to, a rigorous study of its visual impact on the surrounding area, in particular on the Kemp Town Conservation Area and the South

Downs AONB/ future National Park. The Statement of Common Ground⁵⁸ records that the methodology used for creating Accurate Visual Representations used in the TVIA was accepted by City Council officers. It has been validated in this particular case through the exercise carried out to demonstrate the integrity of the photography. The methodology was the subject of a specific ruling made during the inquiry, the crux of which is 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. No challenge has been made to the ruling.

- 6.50 Mr Coleman has taken a positive view of the quality of the architecture, and this has informed his judgement. This is a proper approach, for the buildings are designed to be visible, as envisaged in SPG20 and SPG15, and not hidden away. Accordingly this is not a case where a more traditional landscape assessment method would be appropriate, such as when assessing the impact of a proposed power station on the open countryside, where any visibility is "adverse". Mr Coleman has deliberately not included an assessment of the particular sensitivity of "visual receptors" (that is, people) because the views chosen are those in which the buildings will be noticeable or prominent; thus all the receptors have such "sensitivity" to them. Nor has he rated the sensitivity of the "landscape" resource (that is, the AONB) because the physical effects of the development will occur within the Marina, so there will be no direct effect on the landscape character of the AONB itself.
- 6.51 The Council's commentary on Mr Coleman's assessment⁵⁹ seems to have been predicated principally on the crude concept of certain features being blocked in particular views. This is an inevitable consequence of much new development, including development that is planned, and pays scant regard to the impact of the design virtues of the buildings themselves. Nor did the Council's assessment take account of policy considerations. It was therefore a limited exercise, the outcome of which is necessarily artificial.

Policy protection for views

- 6.52 Local Plan policy QD4 seeks to preserve or enhance views of generic features and buildings which are identified as being of strategic importance. None of these views is marked on the BHLPP proposals map. Policy QD4 does not require that there be no change to any such view, vista or setting; it is aimed at preventing harmful change. The first sentence of the policy contemplates change to the interests it seeks to protect by recognizing the concept of views 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, ..." is not permitted. One should not misconstrue the second sentence of the policy as saying that development which changes a view by interrupting the visibility of something one can see today, or by introducing a new element into the scene, is automatically harmful. Indeed, to interpret the policy in that way would be to frustrate the City Council's declared objective of using tall buildings at the Marina to

⁵⁸ CD1/3 paragraph 6.51

⁵⁹ Appendix 9 to Mr Allen's Proof

“bookend” the edge of the city, which is itself a reflection of the aim to mark this place in views from afar⁶⁰. Thus it is harmful impact rather than change itself which the policy resists.

- 6.53 The Tall Buildings Study, which informed SPG 15, provides a diagram of “strategic views” in Figure 13.11⁶¹. There are four strategic views potentially relevant to development at the Marina – from Palace Pier, Brighton Marina, Rottingdean and Woodingdean. None of these would be materially affected by what is proposed, still less impaired, still less again wholly obscured or marred by development “out of context” with it (the language of policy QD4). Similar conclusions go for the “key local views” shown diagrammatically and illustrated by photographs in figure 16 of PAN04⁶². None of those views would be harmed by the proposed development.
- 6.54 Drawing together the threads relating to the visual effects of the proposed development, the following general propositions apply:
- Change and harm are not the same thing.
 - 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 regeneration.
 - The proposed development would change many views.
 - The development is consistent with the City Council’s planning for regeneration in the Marina.
 - The architecture of the proposed development is excellent.
 - The overwhelming balance of the change would be extremely positive.
 - It would not be a defensible basis for refusing planning permission 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.

Local townscape of Marina

- 6.55 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, changing the public realm in the Marina for the better and crafting a new piece of city. Nevertheless, throughout the preparation of the design, 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 and on the skyline, and the physical and visual connections between them. This is all in accordance with BHLP policy QD2.
- 6.56 By the excellence of their design these proposed buildings and spaces would transfigure the western end of the Marina. As a single example to demonstrate the point, consider the existing views from the cliff top in the vicinity of the Marine Gate block of flats. Here the background of sea is seen across the foreground of a supermarket with its rooftop plant, its own car

⁶⁰ SPG 20 page 42 in Volume 2

⁶¹ CD9/1 page 41

⁶² CD8/12 page 29

park and the multi-storey car park beyond⁶³. One would have to expunge that foreground to get anywhere near the concept propounded by Save Brighton, which is that the views of residents of Marine Gate are of a currently uninterrupted expanse of sky⁶⁴. The reality is quite different: wherever the townscape of the western Marina is in such a view, it spoils it.

- 6.57 The new buildings would not cause unacceptable shadowing of their surroundings. The potential availability of sunlight to Black Rock beach and Palm Drive, where there are cafes with outdoor seating, has been tested⁶⁵. This study concludes 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 used.

Views along the seafront and coastline

- 6.58 The City Council's first reason for refusal 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. In some views from west of the Marina the development would 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 an awareness of their presence extending a long way beyond the city will not be lost. However, the reduction in visibility of the cliffs is appropriately counted as an adverse factor in the TVIA assessments⁶⁶.
- 6.59 There is no specific policy protection at any level for these views. 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 the cliffs further to the west: perspective makes this inevitable. Any substantial development on this site will have this effect⁶⁷. 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 of the development introduced into these views.

Kemp Town Conservation Area

- 6.60 The ensemble of listed buildings in the Kemp Town estate comprises one of the country's most important Regency townscapes. 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 have been important considerations from the outset. Adjustments were made to the scheme to ensure that no harm would be caused to either the character or the appearance of the Conservation Area, or to its setting, or to views to or from it. However, the fabric of Kemp Town would not be affected by the proposed development. The nearest part of the site to the Conservation Area is at

⁶³ See the existing views M32 and T41 in the TVIA.

⁶⁴ SB/2 paragraph 4.6.7.

⁶⁵ CD12/26 paragraphs 12 and 13 of Dr Littlefair's supplementary report

⁶⁶ CD2/10.3 See, for example, the commentary on view T30, page 170.

⁶⁷ See CD12/29.1 and CD12/29.2.

least 100 metres from Kemp Town and at a lower level. Furthermore, the development would not encroach on the immediate setting of any the listed buildings or of the Conservation Area itself.

- 6.61 No significant views of the Kemp Town group would be obscured by the development⁶⁸. 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 site⁶⁹. Furthermore, the fact that the City Council has permitted the Brunswick development, which includes a 40-storey tower, cannot be ignored. The degree of visibility of the appeal development as a backdrop to Kemp Town would be considerably less than that of the approved Brunswick tower⁷⁰.
- 6.62 Incursions have already been made into the backdrop of Kemp Town: these are haphazard and some are poorly designed. Thus Kemp Town is no longer a free-floating jewel of Regency design, untarnished by later development. It is embedded in the city of which, long ago, it became an integral part. This development would not destroy or disrespect the history of Kemp Town, but would do the opposite. The architecture would serve to enhance the visual integrity of Kemp Town and leave intact its unique sense of place. The development would signal the healthy growth of a city in place of urban decay. It would not turn away from the best of the past, but it would show that the city of Brighton is prepared for its future as well⁷¹.
- 6.63 There are two viewpoints in which the appeal scheme would be seen as a background to Lewes Crescent. These are the street outside 7 and 8 Lewes Crescent (View T27), where Marina Point would be seen behind the south-eastern extremity of the crescent, and the street outside Cubitt's former home (View T28), where the roof of Marina Point would just be seen among the varied roof line of the crescent. By virtue of its high quality design, the development would provide a worthy, though far from dominant, counterpoint in these two views. English Heritage and the City Council's conservation officer both consider the effect on these views acceptable.
- 6.64 The proposed development would be visible in a continuous sequence of views passing from west to east across the south face of the Chichester and Arundel Terraces⁷². Considerable care has been taken to ensure that Marina Point would not be over-dominant and that its architecture achieves a good visual conjunction with development in the foreground. From Kemp Town one would be able to get a clear view through the development to the harbour and to the horizon of sea beyond⁷³. This has been welcomed by English Heritage and the City Council's conservation officer⁷⁴. The maritime setting of Kemp Town would remain clear and uncompromised, as would Kemp Town's splendid command of the sea.

⁶⁸ CD2/10.3 paragraph 8.8.1

⁶⁹ CD2/10.3 view M43

⁷⁰ CD2/10.3 paragraph 8.8.1

⁷¹ 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)

⁷² CD2/10.3 pages 34 and 35, and views T42 and T30

⁷³ CD2/10.3 views C39 and C40

⁷⁴ See the second paragraph on page 3 of English Heritage's letter of 9 June 2008

- 6.65 The proposed development would not seem over-assertive in views from Lewes Crescent and Arundel Terrace, for a gradient of receding height is clear in view C6 in the TVIA. The architecture of Marina Point would be worthy of its place in the perambulating view across the south face of these two Terraces. Although English Heritage had concerns about the adverse impact of Marina Point on this perambulating view, and suggested that the Council should balance this impact against the regeneration benefits of the scheme, they have not objected to the development coming into this view⁷⁵.
- 6.66 View T30 in the TVIA is taken from the edge of the enclave rather than from its centre. The model shows that in local views from this part of the city the development as a whole would appear as a series of stepped planes, not a blank-fronted bulk. The Sea Wall building would provide a firm façade to the Marina, a modern comparator to the rhythm of the architecture of Kemp Town. The development would not dominate the historic terrace, for the power of the Kemp Town architecture and its size would remain the dominant element in this view. Being set on distinctly lower land than the ground levels of the Kemp Town houses, the Marina would clearly be another place.
- 6.67 As to the setting of the Conservation Area, 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. Similarly, Kemp Town is no longer on the edge of the city because of incremental development to its east. In distant, oblique views from the west, in which much of the development in the coastal strip to the east of Kemp Town is not visible, the Marina is seen as a separate entity⁷⁶. The gap that separates the Kemp Town estate from the Marina would remain once the development is in place. These views, in which the long line of seafront buildings is dominant, culminate 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, would be (as intended) prominent objects that mark the end of the built up area.
- 6.68 None of the individual attributes of the character and the appearance of the Conservation Area, as identified in the Kemp Town Conservation Area Study and Enhancement Plan⁷⁷, would be harmed by the proposed development. The “uniform nature” and “striking layout” of the Kemp Town estate would not be affected, nor would its “graceful and imposing appearance”. The “individual symmetry and clarity of form of the buildings” would be left wholly intact. No historic link with the sea would be lost, and abundant visual links with the sea would remain. So would the amenity of the slopes and esplanades, which would stay “largely in their original form”. 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 façades and the small-scale modesty of the rear street areas and mews buildings”⁷⁸ would not be compromised. Neither would the intrinsic features of merit in the buildings of the Conservation Area.

⁷⁵ See English Heritage’s letter of 9 June 2008

⁷⁶ CD2/10.3 See the “existing” image for view C4

⁷⁷ CD17/1 Chapter 3 and Appendix 4

⁷⁸ CD17/1 Qualities that are listed in the summary under “Character” in Appendix 4

- 6.69 None of those attributes would be lost or destroyed or compromised (as the case may be) by the proposed development. Consequently there is no basis for a rejection of the proposals on the grounds of a failure at least to preserve the special interest of any listed building or buildings (BHL policy HE3), nor would it harm the setting of the Conservation Area, or its character and appearance (BHL policy HE6). No harm would be done to the heritage assets involved in this case. English Heritage do not 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.

South Downs

- 6.70 The South Downs are recognized at the national level for the importance and beauty of their landscape. Currently an AONB, they will shortly be a National Park. The Marina is not in the AONB/ future National Park but is close to it. Thus regard must be had to the likely effect of the proposed development on the setting of the AONB/ future National Park, and on views of and from it.
- 6.71 Local Plan policy NC8 seeks to prevent development 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. Policy QD4 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. Both policies are directed against harmful change. It is not a criterion of the acceptability of development outside the South Downs that it should be invisible or difficult to see from within the South Downs.
- 6.72 The development would be visible in certain views from and of the South Downs⁷⁹. This, however, would generally be in the context of the city, or a large portion of it, seen from the Downs. It is what one would expect. Indeed, the landform makes it inevitable that in many views from the higher slopes of the Downs, one looks down onto the city, spread out in the distance below. The development would not materially affect any view towards or from the Downs in which the city or parts of it are not already visible⁸⁰. Mr Coleman described the conjunction of the city and the Downs as “a delight to see”. The marking of the end of the city by the proposed development would be a further delight, particularly as its design is of such high quality.
- 6.73 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 Downs⁸¹. In permitting the Brunswick development, the City Council clearly did not consider that it was “unduly prominent” (in the words of BHL policy NC8). That approval is testament to the acceptance by the City Council of a very tall building in this location which, in some views at least, would be a landmark – and a very striking one at that – seen from the Downs. The Marina Point building would not stand out as much as the

⁷⁹ CD2/10.3 See views C10, C11, D15, D16, D19, D21

⁸⁰ CD2/10.3 Paragraph 12.4.

⁸¹ See e.g. Cumulative Views D18 and D19.

Brunswick tower, but when seen it would appear as something that is elegant and fine.

- 6.74 Neither English Heritage nor Natural England has objected to the scheme on the ground that it would cause a harmful change to the setting of the AONB/ future National Park, or to views of or from it. The South Downs Joint Committee initially indicated that the development would not detract from the AONB, and therefore raised no objection. However, the Joint Committee later resiled from that position. They were not against a 28 storey building being erected on the appeal site, but they were concerned about the individual design of Marina Point, which they felt was not good enough⁸². It is pertinent that the architecture of Marina Point has not been criticized by CABE, by English Heritage, by the Council's officers, or by the Council's witnesses at this inquiry. If it is accepted that all these parties were right in their collective judgment that the architecture of Marina Point is acceptable, it should be concluded that the South Downs Joint Committee's concern falls away.

RESIDENTIAL AMENITY

Size of proposed housing

- 6.75 There are no minimum unit sizes for proposed housing specified in the development plan. The concept of size referred to in Local Plan policies HO3 and HO4 relates to the number of bedrooms, and not to floor space. Neither the building regulations nor the planning system specify minimum floor space for privately developed homes in this country. All of the affordable housing dwellings (including the proposed shared ownership dwellings) would be built to exceed the Homes and Communities Agency (HCA) Design and Quality Standards of April 2007⁸³ and the National Affordable Homes Agency Housing Quality Indicators, version 4, which were updated in April 2008⁸⁴. This is accepted by the City Council.
- 6.76 The appeal scheme has been rigorously tested against the HCA Design and Quality Standards. The required measure of performance is meeting the minimum scores for three aspects of the published Housing Quality Indicators (HQIs): for Unit Size, 41%; for Unit Layout, 32%; and for Unit Services, 22%. An independent HQI assessment of the proposed scheme was carried out by Churchill Hui in October 2007⁸⁵. This tested Unit Size and Layout; for both affordable tenures, the Unit Size was exceeded by 2%, and the Unit Layout by 19%. It was not considered necessary to test Unit Services as this is not a hard score to meet – it is believed that the scheme would easily achieve approximately 60%. This was not disputed by the City Council. The most important test is Unit Layout because if one cannot fit inside it the minimum HQI furniture requirements and activity zones, the dwelling will not be satisfactory.
- 6.77 Churchill Hui have recently carried out a further assessment based upon the substituted affordable housing layouts included within the application for

⁸² See Mr Coleman's proof of evidence at paragraph 12.3.1.

⁸³ CD5/7; and see Mr Bean's proof at paragraphs 5.13 to 5.15

⁸⁴ CD5/8; and see table 1 of Mr Bean's proof on page 14

⁸⁵ CD12/2

planning permission⁸⁶. The score for Unit Size is 48%, compared with a requirement of 47%, and for Unit Layout 65%, compared with a requirement of 32%. Therefore the affordable housing accommodation would be well above peer group average and would provide good quality housing. It would meet the national recommendations for all new affordable homes which are to receive Social Housing Grant. It should be noted that the proposed unit sizes exceed those recently approved in the city at the Grand Ocean Hotel, Saltdean⁸⁷, and at City Point (Blocks E and F), New England Quarter, Brighton⁸⁸.

- 6.78 All of the new dwellings (both private and affordable) would meet Lifetime Homes standards⁸⁹. A Lifetime Home incorporates 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 alike. The meeting of the Lifetime Homes Standards is good evidence that these new homes would be flexible and adaptable enough to deal with changes in the circumstances of their occupants. In accordance with policy HO13⁹⁰, five per cent of the dwellings (including 10% of the affordable units) would also meet the Wheelchair Accessible standards. In addition, all of the proposed dwellings would achieve Level 4 in the code for sustainable homes. This is a notable achievement and one that is matched by very few other developments at the present time. The HCA's target for sustainable homes, for 2010, is Level 3.
- 6.79 The City Council's Housing Strategy Team has produced internal guides to minimum unit size requirements. The brief for Brighton Marina contains recommended standards for social housing, which are 40% of the development to be one-bedroom flats of at least 51 square metres, 50% to be two-bedroom flats of at least 67 square metres, and 10% to be three-bedroom flats of at least 76 square metres. This brief has not been ratified by any committee of the City Council as local planning authority, nor does it have the backing of a resolution made by the City Council or any of its committees behind it. It cannot, therefore, carry any significant weight as a material consideration for the purposes of development control.
- 6.80 220 of the affordable housing flats would not meet the Brighton Marina brief standards⁹¹. Meeting the standards for one-bedroom units (by an increase of 5 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. An increase in floor space would also have been at the cost of dwelling numbers, resulting in a reduction in the 40% of affordable housing provision the City Council wanted to maintain. Further, 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 £4.5million in revenue. None of this has been factored into the District Valuer's viability assessment.

⁸⁶ CD12/28

⁸⁷ See Mr Bean's Appendix 3.

⁸⁸ See Mr Bean's Appendix 4.

⁸⁹ CD12/4

⁹⁰ CD8/11; and see Mr Bean's rebuttal proof at paragraph 3.1(b).

⁹¹ See the agreed table for the individual flats (CD13/17).

- 6.81 The City Council contends that its internal size requirements are based upon the size requirements of English Partnerships (EP) Quality Standards. These are intended as guidance to provide developers with a consistent basis for submitting bids on EP sites. However, this guidance only applies to EP's own projects or where EP is the contracting authority. The Council also suggests that space standards are under scrutiny, citing examples of higher standards sought by the Mayor of London and CABI's research into space standards in new homes. The London planning guidance is in draft form, however, and only has relevance for London, and the CABI document makes clear that the relevant space requirements are those set by the HCA, which in the present case would be exceeded.
- 6.82 In summary, the proposed dwellings are of an acceptable size when viewed against national guidance, and would 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

Sunlight and daylight

- 6.83 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 Building Research Establishment's (BRE) 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 2⁹².
- 6.84 Daylight provision to the new dwellings would be good. A selection of rooms in worst case positions on the Cliff Site building has been analysed. They would all have daylight levels meeting the BRE recommendations (BS8206 Part 2). The other sites are less obstructed, so daylight provision there would also be good.
- 6.85 The layout of the flats has been cast to ensure that 90% of living rooms in the development would have a living room facing within 90 degrees of due south, or at least close to this direction, to maximise the amount of sunlight they receive. The 10% that would 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). On a previously developed site whose topographic template is already well set, it is creditable that the proportion of north-facing flats in this scheme is so low. The proportion is less than the 20% 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 Trust.

⁹² See Dr Littlefair's technical report at Appendix 10 of Mr Gavin's proof of evidence and supplementary technical report at Appendix 1.

Aspect and proximity to natural and physical features

- 6.86 The predominant north-south grain of the Cliff Site building makes it possible for the great majority of flats in this part of the development to enjoy an east, a west, or a south orientation. To ensure that some flats would overlook the recreational areas and thus enhance their security, some parts of the building would be aligned east-west. As a result, a small number of flats either would face north towards the Cliff Park, or south or west towards the ramps.
- 6.87 The number of dwellings that would have a predominantly northward orientation is 67, of which 17 would be social rented dwellings (2.2% of the total number of dwellings in the Cliff Site building). These residents would enjoy views of the chalk cliff. The distances between residential properties and the cliff face would range between 16 and 40 metres⁹³. 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 would not, however, be looking only at the cliff - these flats would also allow east-to-west views along the cliff's length, views which would be enhanced by the provision of balconies in them all.
- 6.88 Most of those flats that would face south and west towards the car ramps would be about 10 metres away from them, and the nearest flat would be 8.4 metres away. These are significantly greater distances between dwellings and streets than is often to be seen in towns and cities, in places where road traffic is substantially higher than it would be here. From many of these flats there would also be slanting views of the seafront to the west of the site. In addition, a system including both secondary glazing and whole-house mechanical ventilation with heat recovery would be used in these flats. It is a sustainable arrangement, and living conditions for those who dwell there would be acceptable.

On-site recreation and amenity space

Size and quality of the outdoor spaces

- 6.89 All residents of the Marina would be able to enjoy the several publicly accessible recreation spaces provided on-site as part of the development ⁹⁴:
- (i) Cliff Park, 3,500 square metres of public open space laid out along the northern side of the Cliff Site building. By upgrading the under-cliff walk and other routes, a series of attractive linked open spaces would be created. Cliff Park would incorporate an adventure playground (a NEAP) and an amphitheatre in which lectures and performances can take place. At the eastern end of Cliff Park would be a Geo-Learn space (designed as a LEAP).
 - (ii) 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 for freestyle jumping, skateboarding and riding bmx bikes, and climbing structures and walls. These would make an asset out of an area that has no other obvious use. Security would be enhanced by the

⁹³ See the section drawings showing distances from the cliff (CD12/32).

⁹⁴ CD2/7.3 DAS Volume III at sub-section 7.4.

presence of the Asda supermarket, which for most of the week would be open 24 hours a day.

- (iii) Village Square would be transformed 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 draughts.
- (iv) Park Square would be transformed into a simplified space to allow for a wide range of recreational activities, including beach football, musical events, fairs, markets and ice skating⁹⁵. It would also incorporate a LEAP with a café.

6.90 Residents of the proposed residential buildings would also benefit from private and communal outdoor amenity space:

- (i) The Cliff Site and Quayside buildings would surround external courtyards laid out as generous communal spaces. These secure open spaces would include areas where young children can play (LAPs) without direct supervision but can be overlooked.
- (ii) Smaller, individual areas of flat roof would be paved or planted and made accessible to residents wherever this is possible.
- (iii) The aim has been to provide all flats with private balconies or terraces, typically measuring between 2.8 sq m and 5 sq m. In 4% of the units (50 in total), where a loss of privacy or overshadowing might occur, balconies have been omitted.

Every flat in the development would have access to some form of private outdoor amenity space provided in one of these three ways. The total area that would be provided for private outdoor amenity space across the site is 20,565 sq m (the sum of the total space for private terraces and balconies, and communal courtyards, gardens and roof terraces)⁹⁶.

6.91 The City Council's "Development Manager – Sport and Leisure" does not object to the quality or the size of the outdoor space proposed on the site⁹⁷. Neither do Sport England⁹⁸. Overall, the scheme has responded well to the need to make full and effective use of the limited space at the Marina. The size of the open spaces would serve the needs of the residents of this development, and would be entirely appropriate for an urban environment such as this.

Accessibility

6.92 Draft SPG9 sets out accessibility standards that reflect the recently published FiT standards for accessibility (5 minutes walk (400m) to a LEAP and 15 minutes walk (1000m) to a NEAP)⁹⁹. The FiT guidance is not absolute, nor has it been woven into a policy of the development plan. It is clear that a flexible approach, informed by the guidance, should be taken on a case-by-case basis.

⁹⁵ See Mr Reid's proof at paragraph 3.5, and Mr Allies' at paragraph 8.6.18.

⁹⁶ CD12/27

⁹⁷ CD3/1.1 December 2008 committee report, pages 70-72.

⁹⁸ CD12/13

⁹⁹ CD12/7

- 6.93 All of the dwellings in the development would be close enough to the play areas their residents' children would be likely to choose. This does not mean that in every case the distance from the front door of a flat to the nearest LEAP or LAP would be within the range suggested in the FiT guidance. But none of these journeys would be awkward or unsafe, or too long. Accessibility diagrams were provided to the inquiry which show that all 1,301 units would be within 400m of a LEAP¹⁰⁰. It should be noted that the City Council, in its "Open space, sport and recreation study"¹⁰¹ identifies a longer distance of a 15 minute walk time or 720m as acceptable. All the LEAPs would fall well within that accessibility standard.

Usefulness and attractiveness of open spaces

- 6.94 The City Council argued that the area underneath the ramps is not high enough for playing basketball and five-a-side football. Using the ground under the ramps in this way was a concept that emerged directly out of discussions with the Council's officers. Whilst it is true that these facilities would not meet the guidelines in the Architects' Journal Metric Handbook, the space is intended as an "incidental area" for informal play, not for competitive matches. As to the complaints about the unevenness of the ground at the base of the climbing wall, and the function of the vents, this proposal was taken forward in discussions not only with the Council's officers but also with representatives of local climbing groups, who welcomed the idea. Sport England raised no criticism of this facility. Thus the spaces under the ramps would work well for their intended purposes.
- 6.95 The Council is concerned about the limited separation of play facilities from dwellings in the Cliff Park NEAP. The FiT guidance suggests 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 the FiT guidance also notes that the buffer zone may have to be reduced for high density developments, as would be the situation at the Marina. The Council has not provided any empirical analysis, such as a noise study, suggesting that the living conditions of residents in any of the flats would be appreciably better if the play area were further away, nor has any objection been raised by the Council's officers or Sport England.
- 6.96 The City Council suggested 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 they may be overshadowed or lack sunlight. These concerns are ill-founded. The wind tunnel testing¹⁰² demonstrates that the wind conditions in and around the public areas and communal open spaces within the development would be suitable for their intended activities. The idea that the Cliff Park would be a "canyon" or a "gorge" is fanciful. Although at times of the year the open spaces would be more in shade than they would be at other times, all of the recreational spaces within the site would meet the BRE recommendations on sunlight and daylight¹⁰³.

¹⁰⁰ CD12/56

¹⁰¹ CD9/14 at page 75

¹⁰² Report of Mr Breeze, Contained in Appendix 11 to Mr Gavin's rebuttal proof

¹⁰³ See section 7 of Dr Littlefair's report in Appendix 10 to Mr Gavin's proof.

Planting

- 6.97 There is no doubt that the Marina presents unusual challenges for successful landscaping, mainly because the weather it receives can make it hard to get vegetation established. However, it is quite possible to plant in coastal areas, as was demonstrated by an example of successful planting in another similarly challenging location in Malmo. And although the head gardener of the gardens at Sussex Square outlined some of the difficulties he has experienced in planting there¹⁰⁴, many plants seem to be doing very well in those gardens. Successful planting depends on matters of detail such as the quality of soil and tree pits, the choice of species and the sourcing of stock. The condition which requires the submission of a landscape management plan is an appropriate means of dealing with this matter, as the Council's landscape witness accepted.

Conclusion

- 6.98 It has been demonstrated that the residential accommodation in the appeal scheme would 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.

Impact on the living conditions of neighbouring occupiers

- 6.99 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 would stand well apart from the new ones. The nearest residential building is the Octagon, which is only partly in residential use, the other uses being commercial.
- 6.100 The potential loss of daylight to existing dwellings in the Octagon and Neptune Court has been assessed as being negligible or insignificant. Almost all of the windows that would experience a loss of light would be well within the BRE guidelines. A handful of windows (six in all, in the Octagon) would have a calculated loss of light marginally outside the guidelines. However, because the new buildings would all be light in colour, the effect of reflection would enable these six windows to receive more daylight in total than with a standard obstruction that met the BRE guidelines. Consequently the loss of daylight to these windows would be small and not significant, once reflected light is taken into account, and would not be unacceptable¹⁰⁵. Loss of daylight to dwellings in all other buildings, including Neptune Court, would be within the guidelines¹⁰⁶.
- 6.101 Loss of sunlight to existing dwellings in the Octagon building would be negligible or minor, and in no respect unacceptable¹⁰⁷. All windows facing within 90 degrees of due south would receive more than enough sun with the new development in place (typically over double the recommendations), both all year round and in the winter months. Because the side of Neptune Court

¹⁰⁴ IP/15

¹⁰⁵ As was concluded by Dr Littlefair at paragraph 4.4 of his technical report.

¹⁰⁶ See paragraphs 4.9 and 4.11 of Dr Littlefair's technical report.

¹⁰⁷ As is concluded by Dr Littlefair at paragraph 4.7 of his technical report

opposite the proposed Inner Harbour building faces north, loss of sunlight here is not an issue.

- 6.102 The proposals are therefore in accordance with the guidance in SPG15¹⁰⁸ and Local Plan policy QD27.

HOUSING MATTERS

Meeting housing need

- 6.103 There is a chronic need for new housing in Brighton and Hove. The Strategic Housing Market Assessment (SMHA) of April 2008¹⁰⁹ identifies a projected increase in the number of households of about 28,000 between 2006 and 2026¹¹⁰, of which 22,000 will be single person households. The response to this housing need 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).
- 6.104 Rates of housing completions in Brighton between 1999/00 and 2008/09 have on average been lower than that needed to deliver enough housing to meet the targets set by the Local Plan and the South-East Plan, though rates did increase during the latter part of the period. 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-performance. Against that background, the appeal proposals are of immense potential benefit in their promise of a significant contribution to the meeting of Brighton’s housing needs, representing 1,301 new dwellings (equivalent to 2.25 years of the housing requirement) delivered over a seven year period.
- 6.105 The Strategic Housing Land Availability Assessment (SHLAA) includes the appeal site as part of the identified future supply of housing. The interim SHLAA published in May 2008 identified a dwelling yield for the appeal site of 1,000 units. This was reduced to 650 units in the SHLAA of June 2009¹¹¹. As a result of the decision the City Council took on 10 December 2009¹¹², the number has gone back to 1,000 new dwellings for the inner harbour. Whilst it is not clear how the assessment of site capacity was carried out, it is evident 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 housing requirement for its area.
- 6.106 The appeal proposals, with their higher dwelling yield, should 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 schemes. Continued over-reliance on windfalls is likely to result in further reductions in the stock of larger dwellings and the knock-on increase in

¹⁰⁸ Paragraph 7.4.12

¹⁰⁹ CD9/5

¹¹⁰ Table 10.3 of the SHMA

¹¹¹ CD9/6

¹¹² CD12/59

smaller units within Brighton and Hove. This would not be consistent with the wider policy imperative facing the City Council (and one that is underlined by national policy in PPS3) of creating a wide mix of dwellings within the Brighton housing market area.

- 6.107 Thus the appeal scheme would 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 in PPS3. It would provide a hugely worthwhile injection of new stock, of various tenures, into the pool of new housing available for those who need it in Brighton. The scheme would make a more significant contribution to the meeting of housing needs in Brighton than any other scheme of recent years.

Housing size and mix

- 6.108 Local Plan policy HO3 seeks a mix of dwelling types and sizes that reflect and respond to Brighton and Hove's housing needs. It does not specify a particular mix of size or tenure of homes. The SHMA 2008¹¹³ does not support a prescriptive approach by the local planning authority to determining the mix of market housing delivered in new developments. It recognises that market demand and viability have a large role to play in determining the type, size and mix of housing development. The SHMA states that 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 site.
- 6.109 The evidence suggests that although there is a need for a range of property types and sizes, the overwhelming need in Brighton is for one and two-bedroom properties to meet the needs of a population which is younger and living in smaller households than the regional average¹¹⁴. This need is particularly acute in the case of properties required by persons in housing need - 82% of applicants of highest priority need require one or two-bedroom properties (with 59% requiring a one-bedroom property). The SHMA also highlights the fact that increasing the provision of smaller dwellings can help meet the need for larger dwellings by providing 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 elsewhere.
- 6.110 The appeal scheme would deliver a broad range of new homes, including many one and two-bedroom apartments. Thus it would contribute to meeting the greatest category of need. Nevertheless the proposed development contains 86 three-bedroom flats, which would make a valuable contribution to meeting the need for larger properties. This ought to be regarded as appropriate in view of the evidence that many families seeking three-bedroom properties demand homes in more suburban locations, rather than apartments in denser urban development such as at Brighton Marina. The proposed housing mix is comparable with other schemes in Brighton (e.g. Brunswick, King Alfred Waterfront, Grand Ocean) and is supported by the viability appraisal of the District Valuer (DV)¹¹⁵.

¹¹³ CD9/5

¹¹⁴ See paragraph 10.14 of the SHMA.

¹¹⁵ See the December 2008 committee report (CD3/1.1) at pages 98 and 99.

Affordable housing

- 6.111 Affordability in Brighton is a major challenge. In the 2008 market, the majority of households (69%) were unable even to afford to buy an entry level property (such as a one bedroom flat or maisonette). 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. The 520 affordable dwellings would represent a major injection of new affordable stock for the many who need it in the city. This would be a significant achievement, and one that has not been attained at other permitted developments, for example at King Alfred, City Point (New England Quarter) and Grand Ocean Hotel.
- 6.112 The size of the affordable housing units has been determined in close consultation with the City Council's planning and housing officers¹¹⁶. The mix matches the specific Affordable Housing Site Brief, issued by the Council's Housing Strategy Department in May 2006. The proportion of larger (three or more bedroom) affordable units would be broadly in line with the identified need in the 2008 SHMA (10.6% as against 13%), and compares favourably against 2% for Brunswick, 4% for King Alfred, and 8% for City Point. Conversely the proportion of one-bedroom units would actually be below the corresponding share of the global need in the SHMA that is represented by this category (40% against 63%). Overall, the proposed mix in the size of affordable dwellings is a strong benefit of the appeal scheme.

Tenure of affordable housing

- 6.113 Local Plan policy HO3 seeks a mix of dwelling types that reflects and responds to Brighton's housing needs. There is no requirement in statutory policy at the local level for a particular split between social rented and shared ownership dwellings, nor even a specified range. It is true that policy CP12 of the emerging Core Strategy¹¹⁷ does require a tenure mix of 55:45 (social rented: intermediate). However, the draft Core Strategy has not been relied upon by the City Council in its reasons for refusal, either initially or as amended in September 2009.
- 6.114 The appellants' proposed split of 35% social rented and 65% shared ownership would deliver 182 social rented units, which would be a welcome addition to Brighton and Hove's housing stock. This split is similar to that permitted in the Brunswick (38% social rented:62% shared ownership) and King Alfred (27% social rented:73% shared ownership) developments.
- 6.115 It is important to appreciate how the tenure split figure has changed over time as a result of discussions with City Council planning and housing officers, discussions with potential Registered Social Landlords (RSLs), the independent financial assessment of the DV (which was undertaken to ensure that the project remains viable and deliverable), and the need to maintain affordable housing at a level of 40%. Following initial meetings in May 2006, the appellants embarked on a tendering process with the City Council's preferred RSL partners in July 2006. Two financial offers were made, both yielding a 40:60 split in favour of shared ownership, though neither RSL was

¹¹⁶ See CD2/12

¹¹⁷ CD8/2.1

subsequently able to proceed. In late 2007 an improved 50:50 split offer was made by the Council's partner RSL, Affinity Sutton, the details of which were sent to the DV for inclusion in his valuation appraisal.

- 6.116 In March 2008 the City Council requested 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. They also asked for an increase of about £1.3 million in the financial commitments that were to be included in the S106 obligation. It became clear that if the appellants were to meet those demands (together with the build cost inflation in Quarters 1 & 2 of 2008), the tenure mix had to change to ensure the scheme remained viable and deliverable. The appellants gave a commitment to achieving Code Level 4 throughout the scheme and a BREEAM "Excellent" rating in October 2008¹¹⁸.
- 6.117 Following further consideration of these matters, the DV supported a proposal of 35:65 in favour of shared ownership¹¹⁹. He concluded that *"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%/65%) 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"*. The 35:65 split was accepted by the City Council's officers in their report to committee in December 2008¹²⁰. The officers had the opportunity to go back to the DV if they had any remaining concerns, but this was not done. Further, the City Council could have gone back to the DV in preparation for this inquiry, or sought another independent valuation, but it has not done so.
- 6.118 In response to matters raised by the City Council in evidence to the inquiry, a Note on current scheme deliverability was prepared by Mr Dennis, Explore Living's Project Director¹²¹. Its main conclusions were as follows:
- the viability assessment undertaken by the DV in October 2008 remains sound;
 - whilst both costs and revenues have declined since the DV's report, they have moved broadly in tandem and are predicted to return to approximately 2008 values by 2013, the earliest possible time for the commencement of building;
 - the DV considered the land cost to be modest and to represent a good value site;
 - the projected level of developer profit is at the lower end of the normally accepted 15-20% range;
 - the global financial crisis has led to institutions being more risk averse, thereby making funding for large and complex schemes more difficult;

¹¹⁸ CD12/46

¹¹⁹ Appendix 1 to Mr Gavin's rebuttal proof, Appendix 3 section 15.

¹²⁰ CD3/1.1 at pages 98 and 99

¹²¹ Gavin Rebuttal, Appendix 3

- the worsening market conditions add to developer risk, as the DV accepted.

The assertions made at the inquiry about the viability of the scheme by the City Council's witnesses were full of mathematical errors which had to be corrected first by Mr Goodwin and subsequently by Mr Dennis¹²². All that this exercise did was to demonstrate that the independent valuation exercise undertaken by the DV 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.

- 6.119 For the City Council to complain that no witness has been produced by the appellants is to shirk its own responsibilities in this part of the case. In the circumstances it was quite unnecessary for the appellants 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 the inquiry to improve the City Council's case on the viability of the appellants' scheme has served only to demonstrate this lack of expertise on its side.
- 6.120 There are striking parallels here with the decision of the Secretary of State in the King's Cross Triangle appeal¹²³. 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. The Secretary of State agreed with his Inspector's conclusions¹²⁴.
- 6.121 Based on the Kings Cross case, the following propositions apply to the present appeal:
- (i) The central context is one in which a negotiation is expected to occur between the developer and the City Council. That negotiation took place between Council officers and the appellants. In the appeal, the Secretary of State assumes the role of the 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 has taken place was a robust and complete exercise. 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 from the DV, it was incumbent on it to produce evidence which could then be set alongside the DV's assessment and fairly tested at the inquiry.
 - (ii) 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. Local Plan policy HO2 only requires developers to justify any proposals which do not meet the policy requirements. The target in policy HO2 is 40% affordable housing, which in the present case would be met in full. Thus no "justification" is called for.

¹²² See CD13/2a and CD13/2b.

¹²³ Contained in Appendix 2 to Mr Spry's proof

¹²⁴ See Mr Spry's Appendix 3.

- (iii) The nature of a valuation exercise in a case such as this, where a complex development project is to be implemented in phases over a long period, is not necessarily a precise science. A planning inquiry is not assisted by iterative, residual valuations that assume the character of a developer being required to prove he cannot do what somebody else might like him to, but policy does not require.

Distribution of affordable housing

- 6.122 Both tenures of affordable housing would be distributed evenly throughout the Cliff Site building, which would also include 259 market housing units. The proposed affordable housing would be “tenure blind”, with all units having access to shared communal areas, stairwells, on-site facilities and amenities, and no individual block would have only private dwellings in it. It would be sufficiently dispersed within the site to ensure the achievement of a mixed and sustainable community. The distribution in the Cliff Site building compares favourably with other approved schemes in Brighton, for example the King Alfred, Brunswick, Grand Ocean Hotel and City Point developments, where affordable housing is confined to a limited number of blocks.
- 6.123 The Cliff Site building is the preferred location for affordable housing, for two reasons. Firstly, residents would have the benefit of secure, communal open spaces which would include areas where young children can safely play outside (the LAPs). Secondly, it would be completed in the first phase of the project, thus delivering much-needed affordable housing at the earliest possible stage. The provision of the affordable housing within the Cliff Site building is also necessary to protect the overall viability of the project, as the DV concluded. Affinity Sutton (the proposed RSL) has accepted the location of affordable housing in the Cliff Site building. The grouping of the affordable housing units would minimize management issues and reduce maintenance and whole life costs for the RSL.

Affordable housing - conclusion

- 6.124 The target of 40% affordable housing sought by Local Plan policy HO2 is met. The appellants’ proposed split of 35:65 in favour of shared ownership provision is in no way inconsistent with development plan policy. The City Council has no 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. Instead, the evidence in the DV’s report¹²⁵, the December 2008 committee report¹²⁶, and Mr Dennis’s Note¹²⁷ demonstrate that both the level and the split of affordable housing are realistic components of the scheme as a whole.
- 6.125 The S106 obligation contains in Schedule 2 a cascade mechanism. There is no reason to imagine that the affordable housing would 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. If, however, for some wholly unforeseen reason this did not occur, the

¹²⁵ Appendix 1 to Mr Gavin’s rebuttal proof, Appendix 3

¹²⁶ CD3/1.1 on pages 98-99

¹²⁷ Appendix 3 to Mr Gavin’s rebuttal

successive default positions in the cascade would assure the delivery of the maximum reasonable amount of affordable housing in those circumstances.

- 6.126 The shared ownership aspect of the affordable housing provision would 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 would have the opportunity to purchase their homes outright. CLG *Delivering Affordable Housing*¹²⁸ requires that “any subsidy obtained by the developer upon sale is required to be reinvested by him to meet future identified affordable housing needs”. In this context, the developer is the RSL, not the appellants. The appellants are not in a position to control how the RSL allocates the money.

INFRASTRUCTURE MATTERS

Outdoor amenity and recreation space

- 6.127 Local Plan policy HO6 seeks the provision of 2.4 ha of outdoor recreation space per 1,000 population in association with residential development. The policy – and draft SPG9¹²⁹ – states that where it is not practicable for all the recreation space to be provided on site, contributions to alternative off-site provision may be acceptable. In circumstances where the total open space required by policy HO6 (6.7ha) substantially exceeds the area the appellants have available to build on within the six development sites (4.3 hectares), some reliance on off-site provision is inevitable. This is accepted in principle by the City Council. It should be noted that one of the reasons cited by the Council for promoting tall buildings at the Marina¹³⁰ is the variety and quality of recreational space within easy reach of the proposed homes. These areas include the breakwaters and the boardwalk, the under-cliff walk, the beaches, the promenade, Madeira Drive, the cliff top and East Brighton Park.
- 6.128 The appeal scheme would provide a total area of 6,164 square metres of on-site recreational open space, which would meet the needs generated by a wide cross-section of age groups. This would include six LAPs, two LEAPs and one NEAP, all of which are designed to meet the FiT guidance, and adult and youth sports facilities comprising of an urban sports area, a climbing area and activity spaces within Marina Village. Thus, all of the proposed residential accommodation would have convenient access to children’s play facilities.

Calculating the level of off-site contribution

Methodology

- 6.129 The City Council uses the methodology in draft SPG9 to assess the open space contribution. The spatial requirements (0.25 ha per 1,000 population for children’s equipped play space, 0.45 for casual/ informal play space and 1.7 for adult/ youth outdoor sports facilities) are multiplied by the development population to provide the overall space requirements for recreational space. The on-site provision is then deducted to obtain an overall off-site requirement, to which a charge per square metre is applied.

¹²⁸ CD4/2.1

¹²⁹ CD8/7

¹³⁰ CD8/8 SPG15 paragraph 8.3.1

- 6.130 The appellants contend that draft SPG9 carries limited weight. Although it is the mechanism by which policy HO6 is applied, it has not progressed beyond draft stage despite being published in 2002. Furthermore, 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 City Council's Open Space, Sport and Recreation Study (2009)¹³¹. PPG17 moves away from the slightly blunt standard of 2.4 ha per 1,000 population 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. This includes "civic spaces, including civic and market squares, and other hard surfaced areas designed for pedestrians"¹³². Thus, PPG17 lends support to the inclusion of general areas of public realm within the calculation of open space.
- 6.131 The City Council's 2009 Study adopts the broader approach advocated by PPG17. Although this document states that it does not constitute City Council policy and that no replacement for draft SPG9 has been adopted, it was produced as a background document to the LDF and underpins much of the emerging Core Strategy. Indeed, the emerging standard for equipped play spaces is 0.055 ha per 1,000 population, which is substantially different to the 0.25 ha per 1,000 for children's spaces in draft SPG9. Sport England acknowledges that the 2009 Study has been carried out in accordance with PPG17 advice and indicates that the appellants might choose to refer to its findings.
- 6.132 The 2009 Study recommendations have been applied to the appeal proposal. Applying the outdoor sports facility standard (0.47 ha per 1,000) and children and young people's facilities (0.055 ha per 1,000) to a development population of 2,804 (the Council's figure) produces a figure of 1,472 sq m. Excluding the area under the ramps, the total on-site provision would be 1,930 sq m (the NEAP and the two LEAPs). If the LAPs were included in the calculation, the on-site provision would be 2,930 sq m. Therefore, against the standards now emerging through the PPG17 compliant study, the appeal scheme exceeds the requirements for children's and young people's facilities on the site. If one applied a lower development population, the degree of overprovision would be even greater.

Calculation and negotiation

- 6.133 Based on the draft SPG9 methodology, the City Council initially suggested that a contribution of £1,871,596 was required¹³³. This made no allowance for on-site provision. At the inquiry, two further calculations were supplied, one that includes the Cliff Site building LAPs (which lowers the required contribution to £1,837,423) and another that includes the Cliff Site building, Quayside and Sea Wall LAPs (which reduces the contribution to £1,832,571).
- 6.134 The Council's calculation is based on a development population of 2,804 persons. 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 2,080. A 1.5 occupancy figure is supported by

¹³¹ CD9/14

¹³² Annex to PPG17

¹³³ See Mr Goodwin's Appendix G(1)

PAN04, which refers¹³⁴ to an average occupancy at the Marina of 1.6 persons per unit. Applying a 1.5 household size to the original assessment produces a figure of about £1.3 million (rather than £1.87 million).

- 6.135 In practice, the Council makes a judgment and uses an element of discretion as to the scale of the requirement in relation to the application of BHLP policy HO6 and draft SPG9. Once the figure is derived, it is usual for the developer to negotiate with the City Council: that is what happened in this case. The City Council made a number of suggestions for works that could be carried out off-site, and an outline was provided as to what the works/ projects might comprise. The appellants produced some sketch proposals which were then costed by consultants. Against that background, the appellants made an offer of £845,000 to go towards off-site recreational facilities (including £100,000 for an on-site sports co-ordinator). 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 (including £200,000 for the on-site sports co-ordinator). Both the City Council's officers and Sport England were satisfied with the level of provision proposed.
- 6.136 A parallel can be drawn with the contribution being made by the Brunswick development, where it was similarly inappropriate for all of the open space to be provided on-site. A much smaller provision of outdoor amenity space was permitted in the Brunswick scheme, coupled with a smaller financial contribution. Thus 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. The present case also involves the application of judgement.
- 6.137 Material to the judgment of whether the sum reached is appropriate is the fact that residents at the Marina are very well served by a range of existing on and off-site recreational facilities. The Marina is not located in an area of recreational open space deficiency: on the contrary, it is one of the better served areas of Brighton. Moreover, access to off-site recreation would be enhanced as a result of the improved linkages provided as part of the appeal scheme. The forthcoming South Downs National Park will be directly adjacent to the eastern boundary of the Marina, which will further increase opportunities to enjoy access to the countryside and to open space.

Meeting the tests of Circular 05/2005

- 6.138 Government guidance in Circular 05/2005 sets out the tests for a planning obligation. It must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. The appellants propose that the £1,045,000 contribution would fund improvements to Madeira Drive, East Brighton Park, Manor Road Gym, facilities at City College, Rottingdean terraced gardens, and Rottingdean beach (sports arena).

¹³⁴ CD8/12 page 38

- 6.139 In principle, an off-site contribution is relevant to planning and is necessary to make this development acceptable. All of these facilities are sufficiently directly related to the development. Those at Rottingdean, although further away from the Marina, do relate to the improvement of the coastal facilities to which the Marina is part. 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 Road. As to the improvement to Madeira Drive, this would concentrate on 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.
- 6.140 The contribution is fairly and reasonably related in scale and kind to the proposed development. It is not a requirement of Circular 05/2005 that contributions should fund improvements in their entirety. To do so would ignore the fact that funding for these projects could come from a number of sources, including other developments and public funding. The Council's suggestions that the contribution to Madeira Drive could be increased, and that it would be better to fund the whole Manor Road Gym project than relying on a successful and uncertain lottery bid, do not warrant a more onerous commitment to funding than the appellants are prepared to give. The circular cannot properly be used as a basis for seeking more money from the developer than is fairly and reasonably related in scale and kind to the development itself. In conclusion, the contribution proposed by the appellants fulfils the Circular tests.
- 6.141 The outdoor amenity and recreation contribution includes a £200,000 endowment for a sports co-ordinator. This person would be based on the site and would ensure that best use is made of the on- and off-site recreational facilities, including those in East Brighton. The appellants would also provide a permanent base for the sports co-ordinator within the Cliff Site building overlooking the recreation areas adjacent to the Asda store, and provide an area for the storage of trolleys used for the transportation of marine/ beach related equipment, thereby supporting water based recreation at the Marina.

Transport

- 6.142 As a result of dialogue with the City Council as highway 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. No transport reason for refusal featured in the City Council's decision notice, nor were any transport-related objections added to the case when the decision notice was "clarified" in September 2009.
- 6.143 The proposals would build on the existing public transport facilities already serving the Marina by updating and modernising the existing transport infrastructure and promoting sustainable transport. The range of measures aimed at promoting smarter travel choices include:
- a new transport interchange to accommodate 6 buses and 2 taxis (including real time information and shelters);
 - off-site junction improvements to facilitate bus movement into the Marina;

- a new route into the Marina for a Rapid Transport System (RTS);
- improvements to the existing vehicular access ramp incorporating speed reducing features;
- a new access for emergency services vehicles;
- reconfiguration of the existing roundabout to a shared space 'squareabout';
- introduction of a site wide car parking management plan;
- Variable Messaging Signs on the A259, to show current parking levels in the Marina;
- a new pedestrian and cycle access via a bridge link from the cliff top into the heart of the Marina;
- a new Toucan crossing on the A259 to encourage cycling and pedestrian movement into the Marina;
- improvement of cycle facilities by enhancing cycle routes, providing a centre for cycle rental and a 'doctor-bike' maintenance facility;
- enhancement of pedestrian and cyclist signage within the Marina;
- a travel plan that includes a car club, discount vouchers for bus and train travel and the purchase of bicycles; and
- monitoring of displaced parking in surrounding residential areas.

6.144 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 resulted in a letter of objection on behalf of BMEMC and BMRMC¹³⁵. Further work with Mouchel resulted in adjustments to the proposals, including two revisions to the Transport Assessment. In November 2008 BMEMC and BMRMC removed their objection to the scheme. Mouchel have recently produced a final report for BMEMC¹³⁶ which concludes that there are no outstanding issues which are felt to cause significant concern. It believes that the third party objections which have been raised, whilst in many instances based on understandable concerns, are unlikely to be warranted.

6.145 The main issues raised in third party objections are the location of the transport interchange, car parking levels, emergency access and egress, and congestion in the Marina and surrounding area. The current bus stop is poorly located by the McDonalds drive-through restaurant, being difficult to find and access. PAN04 supports the proposed relocation to Palm Drive, where it would be at the intersection of the three catchment areas for the superstore, the approved Brunswick scheme and the existing residential quarter. There was not a single objection to the location of the interchange from the businesses along Palm Drive, and the move is supported by Brighton and Hove Bus and Coach Company.

6.146 The Government adopts a restraint-based approach to car parking provision, which seeks to bring about a behavioural change (modal shift) away from single occupancy car usage. This is reflected in BHLF policy TR2. The appeal scheme responds to and accords with these policies by providing car parking

¹³⁵ See Mr Frisby's rebuttal, at Appendix A.

¹³⁶ CD12/33

spaces at less than half the maximum level possible under SPG4¹³⁷, introducing a Car Park Management Plan (CPMP) to control parking, and promoting other measures, including a Travel Plan, to encourage the use of more sustainable modes of transport. The need for an additional access to the Marina for emergency services, as identified in PAN04, would be met by the delivery of a new emergency access under the ramps from the west. The emergency services support this proposal, which would allow choice and ease of access into the Marina should the existing access ramp become blocked.

- 6.147 As to the concerns about congestion, the Transport Assessment (which was accepted by the highway authority) did not consider the impact of modal shift. Towards the end of the inquiry it was agreed with the highway authority that a modal shift of up to 20% in single occupancy vehicles using Brighton Marina was achievable through the delivery of new sustainable travel infrastructure and the appointment of a Sustainable Travel Manager. Thus the queues estimated through parts of the Black Rock interchange, which gives access to the site from the A259, show a worse than “worst-case” position. In practice various factors will combine to ensure that this junction would perform adequately throughout the peak hour.

Education

- 6.148 Local Plan policy HO21 requires proposals for residential development to demonstrate that a suitable range of community facilities will be provided to meet the needs of residents, consistent with the scale and nature of the development. The policy does not suggest that the existing facilities should be ignored in an assessment of relevant needs and how they are to be met. The policy recognises that where it is not practical to integrate community facilities on the site, an appropriate contribution towards provision on an alternative site will be acceptable. That is the position here - the City Council has never sought the provision of a primary school on the appeal site, and current options for a new school site in Brighton do not include the Marina.

Child yield

- 6.149 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 Council¹³⁸. 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 a 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 amount of affordable housing within the scheme. This approach, which takes account of certain characteristics of a residential population in an unusual location of this kind, gives a reasonable starting point.

¹³⁷ CD8/5

¹³⁸ Appendix 6 to Mr Gavin’s rebuttal proof.

- 6.150 The City Council's approach, in contrast, is based on applying a set of city-wide assumptions. These are adjusted to reflect the different sizes of property, but do not reflect that the housing within the Marina will be a development of flats, which typically have 20% fewer children than houses. 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. If it is necessary to reach a firm conclusion on the issue of pupil yield, the appellants' figure is a more refined and realistic estimate.

Capacity in local schools

- 6.151 Three sets of recent figures were supplied by the City Council and made available to the inquiry - the outputs from the school census carried out in May and October 2009, and the expected numbers on the school rolls on 31 August 2009¹³⁹. These figures demonstrate a broadly similar – and significant - level of existing capacity at primary level, with the three nearest primary schools having a combined capacity of 363 places (May 2009 census), 323 places (forecast for August 2009), and 354 places (October 2009 census). From the October figures, only 46 of these places are at the school closest to the Marina (St Marks Primary), with the majority (303 places) at Whitehawk Primary, a larger and more distant school.
- 6.152 Capacity at secondary level is more limited – the nearest school, Longhill High, is currently oversubscribed by 6 pupils and the next nearest, Varndean, has space for 43 pupils (October 2009 census). However, the City Council has approved plans to provide additional capacity (150 places) at Longhill High by September 2010, and has a programme for expansion of other secondary schools. In addition, there is currently an overall capacity in Brighton and Hove of 299 secondary school places, and it is generally accepted that children may have to travel somewhat longer distances to secondary schools than to primary schools.
- 6.153 The Baker Associates report of June 2006¹⁴⁰, prepared as a background document to the LDF and referred to in the Draft Core Strategy, provides a longer term estimate of the need for school places. Its analysis 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 2023.
- 6.154 From this analysis, the appellants contend that there is a significant surplus of places at existing primary schools in the local area, and that within the city there are available places at secondary schools.

Basis for financial contributions

- 6.155 Despite the existing capacity, the City Council indicated it wanted to receive a financial contribution of £1,549,389 towards education. However, no supplementary planning document (SPD) has been adopted to provide guidance to developers. Although the information provided to the appellants

¹³⁹ CD12/52

¹⁴⁰ CD9/10

purports to display a standard approach it 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 investment. Moreover, the Council's draft Education SPD¹⁴¹ states that the need for development to provide additional school places will be guided by the Council's School Organisation Plan and its Asset Management Plan. Neither document was used by the Council to support the requested contribution. Further, 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 draft SPD.

- 6.156 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. This was based pro-rata on the contribution made by the Brunswick scheme, where the Council accepted a contribution of £300,000 despite having estimated a contribution of £1.6 million. The appellants offer was increased to £594,000 through a normal process of negotiation, and was agreed by the City Council officers to be reasonable having regard to other comparable developments. 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. Rather, it was considered it would assist the City Council to increase school capacity when needed at local primary schools and thus enhance parental preference.
- 6.157 The appellants' contribution is specifically related to the provision of up to two new classrooms, as set out in the S106 obligation. If the cost multiplier in the draft SPD were applied, the appellants' sum would yield approximately 44 spaces. The cost multiplier relates to the potential whole cost of the school and so includes an allowance for central facilities, communal areas and so on. Therefore the appellants' believe that the contribution could provide two classrooms, maybe even more. By contrast, in relation to the City Council's requested contribution, there is no indication of how that would be spent or what would happen to it.
- 6.158 Circular 05/2005 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 development. A contribution of £594,000 is fairly and reasonably related in scale and kind to the development. Furthermore, 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.

¹⁴¹ CD13/9

A crisis in education?

- 6.159 It was suggested by the City Council that there is an impending crisis in education provision in Brighton and that by 2014 there will be insufficient places, which justifies the higher contribution sought by the authority. This does not take into account the following matters:
- (i) The local education authority's statutory responsibility under the Education Act 1998 is to provide places for school children, which means that the authority is actively planning for school places on an ongoing basis to cater for the changing demand. This process takes account of a range of factors, including development.
 - (ii) The City Council is actively and successfully securing resources from the Government. This includes the Primary Capital Programme, Building Schools for the Future, Basic Need funding, and Co-Location fund, as well as utilising other resources¹⁴². The City Council has suggested that it can expect to lever in £720 million over seven years.
 - (iii) The pressure on school places (and priority for investment) is to the west (Hove) and in the centre of the city. This pattern is likely to continue. The Primary Strategy for Change 2008 has identified a pressure on spaces in the west, but a considerable surplus in the east. The report of 5 October 2009 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 Marina.
- 6.160 These factors, taken together, show that the City Council has a strategy in place for future education provision, and that this strategy takes into account the proposals at the Marina and their impact on the demand for school places. Thus, the scheme's child yield is already being factored into the education planning process for the short, medium and long term. There is nothing 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.

Conclusion

- 6.161 There is no relevant deficiency in the provision of primary or secondary education in the part of Brighton where the appeal site lies. The proposed development would not create or exacerbate any shortfall in schools provision, either primary or secondary. Instead, there will be sufficient capacity for children who would live in the development. The contribution negotiated with the City Council's officers would improve the quality of provision, is proportionate with the Brunswick scheme, and complies with the Government's policy for planning obligations.

Policing

- 6.162 Clause 10.15 of Schedule 1 of the S106 unilateral undertaking provides for accommodation for the police on the site. As a consequence Sussex Police,

¹⁴² CD12/39 Paragraph 5.1 of Agenda Item 25 of the CYP Meeting of 5 October 2009

who were originally to appear at the inquiry, withdrew their objection to the scheme on the basis of agreed wording¹⁴³. This is therefore no longer an issue to consider.

CONDITIONS AND SECTION 106 OBLIGATION

- 6.163 The conditions have been thoroughly considered and discussed, and in substance are all now agreed with the Council. The only issues outstanding on the unilateral undertaking concern the parties to it, the provision for emergency access and the cascade mechanism.
- 6.164 There is no deficiency in the efficacy and enforceability of 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. There is no conflict here with the Planning Inspectorate advice, nor with the approach of the Inspector and Secretary of State in the Bracknell case.¹⁴⁴ The crucial point is that there is no practical likelihood of either of these two leaseholders 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. Those leaseholders have nothing to do in the terms of the covenants contained in the obligation. 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.
- 6.165 The cascade mechanism in Schedule 2 of the planning obligation is the default position in the highly unlikely event that good quality 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

- 6.166 The scale of the problems in Brighton Marina should not be underestimated. The western end of the Marina has been plagued by fragile viability and piecemeal development, with little or no thought given to the challenge of generating a sense of place and a coherent townscape. As a consequence, this part of the Marina presents a dismal and unattractive environment, fails to be the vibrant and attractive place it 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 land. This is not a matter of dispute. The central message of SPG20 and of draft PAN04 is that the Marina must be regenerated if it is to have a prosperous future and if it is to contribute to the city's strength and growth.

¹⁴³ CD12/53.

¹⁴⁴ CD13/28

- 6.167 Between them the appellants have the will, the means and the experience to achieve the regeneration that is urgently needed. 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 climate, for it has the finance and workforce to be able to carry a substantial risk over a long period. The District Valuer has confirmed that the scheme is viable. Explore Living has subsequently confirmed that the scheme is still viable and deliverable. This should be reassurance enough that, if planning permission is granted, the appeal scheme will be delivered.
- 6.168 It should not be assumed that, if planning permission is refused 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 with officers of the City Council, 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 in December 2008. This appeal is the end to this process. Had there been any alternative scheme waiting to come forward, the inquiry would have been told about it.
- 6.169 Granting permission would 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. The appellants have put forward 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 would be affordable) and a large number of new jobs would be created, in a development that would bring a physical coherence and a vitality to the western end of Brighton Marina. It would establish 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.
- 6.170 The proposals are sound, and there is no cogent planning objection to them. 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.

THE CASE FOR BRIGHTON & HOVE CITY COUNCIL

INTRODUCTION

- 7.1 It is common ground between the parties that Brighton Marina retains an inherent significance. It is the single largest Marina in the UK and the third largest in Europe. Its original conception, design and construction is described by the appellants as a "heroic achievement". There is, however, an equally strong consensus that the Marina has fallen far short of its full potential. The failure to realise the original vision and the resultant piecemeal development is such that the site now exhibits extensive shortcomings. SPG20 characterises the site as "a disjointed, drab

development failing to fulfil its role or potential"¹⁴⁵. It refers to the western end of the Marina in particular as "an environment which is devoid of interesting or inspiring buildings or spaces. This haphazard collection of buildings and arbitrary arrangement of land fails to convey any sense of place or distinctive identity." The appellants agree.

- 7.2 The City Council recognises the importance of the Marina's regeneration and has actively promoted redevelopment through its planning policies. Indeed, the emerging Core Strategy identifies the Marina as one of seven areas where development should be centred¹⁴⁶. However, the Council also recognises that the Marina has suffered from decades of haphazard, compromised development and that future proposals cannot be allowed to continue this trend. On the contrary, in order to realise the Marina's original potential, proposals must be designed with an appreciation of context, exploiting the unique aspects of the site, ameliorating the weaknesses currently exhibited and achieving the highest quality throughout. The extant planning framework reflects this and SPG20, PANO4 and the emerging Core Strategy promulgate an ambitious vision for the Marina.
- 7.3 Whilst the appellants' proposal may superficially appear to offer the regeneration Brighton Marina so desperately needs, on closer inspection it is evident that it fails to achieve the standards required by the development plan. Conflicts with the development plan and other planning guidance illuminate the scheme's inherent weaknesses. These weaknesses undermine and outweigh any benefit which the scheme might bring and, moreover, would prevent the Marina achieving its full potential. They fall into three principal categories - failure to tackle fundamental flaws in the current site; harmful effects of the proposed development; and inadequate provision for the needs of the community.
- 7.4 The appeal scheme fails to address two of the most fundamental shortcomings currently exhibited in the Marina. First, little improvement is proposed to the poor quality of the urban design - in particular the inadequate layout, quality and functioning of the public realm. The proposal does not achieve the "high standards of design" required by the development plan and national policy and it fails to address the concerns of CABE. Second, the proposal fails to provide a sufficient quantity or quality of outdoor amenity and recreational space. The provision of such space appears as an afterthought, squeezed into disparate, inappropriate and often unattractive locations. As a result, the current inadequacies of amenity and recreational space in the Marina would be exacerbated.
- 7.5 The scheme would introduce three new harmful effects. First, it would have a negative impact on views into and out of the Kemp Town Conservation Area, which is acknowledged to include one of the UK's most important Regency townscapes. Second, the development would cause substantial harm to the character of the local area, including the Sussex Downs AONB and future National Park. Finally, dwellings within the Cliff Site building would suffer from numerous failings, both in terms of size and quality of the apartments, which would result in unsatisfactory living conditions.

¹⁴⁵ CD8/9.I

¹⁴⁶ CD8/2.2 page 6

- 7.6 The scheme fails to meet the needs of the community in terms of housing and education. The inadequacies in housing provision are twofold. First, by proposing an affordable housing split of 35:65 between social rented and shared ownership the appellants are out of step with identified priorities for affordable housing provision both locally and regionally. Second, the small percentage of 3+ bedroom properties proposed (11% of affordable housing and 7% overall) does little to contribute towards addressing the insufficient supply of family units that the City currently experiences. As to education, there is a substantial shortfall in the appellants' proposed S106 contribution to education facilities. Moreover, this contribution is entirely arbitrary, based neither on the Council's nor the appellants' own calculations.

APPEARANCE/ VISUAL IMPACT

Design, siting, height and layout of development

- 7.7 The Council does not take issue with the quality of the proposed architecture as such. However, high quality architecture is not synonymous with high quality design. This is recognised in national planning policy; PPS1 states that "securing high quality and inclusive design goes far beyond aesthetic considerations". It is the Council's case that the design of the proposed scheme is unacceptable because the proposal does little to overcome the fundamental urban design flaws which currently impair the appearance and functioning of the appeal site. In this respect the scheme fails to exhibit important hallmarks of good design set out in PPS1 and reiterated in PAN04: "Good design should contribute positively to making places better for people. Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted."
- 7.8 There is much common ground between the appellants and the City Council as to the fundamental problems of urban structure at the appeal site. In particular, both parties recognise the following urban design flaws:
- (i) As a result of the lack of coherence and structure to the building layout, public spaces are fragmented and disconnected.
 - (ii) The site suffers from poor legibility, particularly for those on foot.
 - (iii) There is a distinct lack of enclosure within the site.
 - (iv) Insufficient active frontages ensure that the public spaces found in the western end of the Marina are inhospitable, lifeless places.
 - (v) At the western end of the Marina, the car is dominant over the pedestrian. This is particularly true of the existing roundabout which, as the primary entry point for vehicular access to the site, is especially daunting for pedestrians.
 - (vi) Whether or not they retain an aesthetic quality, the vehicular ramps, together with the multi-storey car park, contribute both to the fragmentation of the public realm and the dominance of the car.
- 7.9 The policy matrix against which the proposal is to be tested assumes high quality, innovative design as a prerequisite. The South East Plan (SEP) policy CC6, for instance, actively promotes sustainable communities through "innovative design processes to create a high quality built environment which promotes a sense of place." Local Plan (BHLP) policy QD1 requires that buildings demonstrate "a high standard of design and make a positive

contribution to the visual quality of the environment.” Moreover, BHLIP policy QD4 indicates that high quality design is necessary “in order to preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings”. Thus achieving high quality design is the beginning, not the end, of ensuring compliance with the development plan, and therefore proposals purporting to achieve such high standards of design should be the norm, not the exception. The appellants’ repeated reliance upon excellent design should not be allowed to justify any special pleading in relation to impacts upon the sensitive elements of landscape and townscape.

- 7.10 The City Council contends that the appeal scheme fails to meet the design standards required by the development plan. The proposal exhibits the same fundamental weaknesses as are currently in evidence at the Marina. In certain instances - in particular the retention of the access ramps and near replication of the existing building layout - the appellants have made no attempt to deal with acknowledged urban design flaws and do not offer a robust justification for their failure to do so. However, even where the appellants have purported to address the issues, they have been unsuccessful.

Building for Life and CABA

- 7.11 The appellants’ failure to overcome the inherent design weakness of the current site and meet the requisite standards for design is revealed when the scheme is appraised against the CABA Building for Life (BfL) criteria. For the Council, Mr Roake contends that the appeal scheme fails outright in respect of 7 of the 20 BfL criteria, and achieves half-marks on 4 of the criteria. With an overall score of 11, the design quality of the scheme falls into the ‘average’ classification on the BfL spectrum. The appellants (Mr Allies) also produced a BfL appraisal, scoring the scheme at 18 out of 20. This appraisal had not been undertaken prior to the Council’s consideration of the scheme, notwithstanding the reference to BfL as relevant guidance in PPS3¹⁴⁷.
- 7.12 It is submitted that greater weight should be attached to the Council’s BfL assessment for the following reasons:
- (i) Mr Allies provided evidence for his score retrospectively, only after his lack of evidence base had been criticised by Mr Roake. This is contrary to the methodology set out by CABA, which indicates that the score for each criterion should be supported by evidence¹⁴⁸.
 - (ii) Mr Allies admitted that his score might have been over-optimistic.
 - (iii) Most significantly, Mr Allies appears to have taken a relativist, rather than an objective, approach to the BfL assessment. He excludes from his assessment consideration of constraints which the scheme has not fully overcome. For example, Mr Allies alleges that Mr Roake is wrong to criticise the scheme for retaining the existing access ramps and multi-storey car park; he also gives credit to the scheme for improving on the existing conditions. This is the wrong approach: the BfL criteria are expressed in absolute terms and should be applied accordingly.

¹⁴⁷ CD4/2 footnote15

¹⁴⁸ CD13/5 Building for Life: Evaluating Housing Proposals Step by Step.

Indeed, in response to questions from the Inspector, Mr Allies accepted as much.

- 7.13 An objective approach undoubtedly requires that elements such as the access ramps and multi-storey car park are taken into account, because these are the primary cause of the dominance of the streets and car parking over the building layout (both in the current Marina and the proposed scheme). Given that the urban design of the Marina is extremely poor, the effect of erroneously employing a relativist approach is that the scheme scores far more highly than would have been the case had the exercise been done properly. Thus, in the proposed scheme, if the building layout does not take priority over the streets and car parking, the scheme must score 0 regardless of the constraints. It would be wrong to score the scheme at 1 or even 0.5. As to the allegation that zero scores imply that no improvement has been made to the current situation, this is wrong. Zero scores do not imply that no improvement has been made. Rather they indicate that the scheme does not meet the requisite criteria. The score is silent as to whether improvements have been made or not.
- 7.14 CABE were critical of the scheme's response to the urban design challenges presented by the Marina. Having previously highlighted the centrality of public realm to the success of the scheme¹⁴⁹, in their final design review CABE made a number of criticisms of the scheme and concluded that "the proposals for the public realm are not yet as convincing as those for the buildings...".¹⁵⁰ The appellants argue that CABE are not critical of the scheme's fundamentals and that most of their criticisms are matters of detailed design which can be dealt with by condition. However, addressing these criticisms would require amendments (in some cases substantial) to the proposed scheme.
- 7.15 The appeal scheme's response to each of the acknowledged urban design issues (paragraph 7.8 above) is now examined.

Fragmented and disconnected public realm

- 7.16 The heart of the problem is that the appeal scheme does not address the public realm in the way it should. It takes six disparate sites and places buildings on them, but does not touch the access ramps or the car park. Because of the deep division created by these features, the public realm would remain physically fragmented. Moreover, the failure to address the fragmented layout severely limits the extent to which the appeal scheme could reconnect the public spaces for pedestrians. Indeed, whilst CABE congratulated the appellants for improving public routes within the site, they did so on the reluctant premise that the access ramps had to be retained for the foreseeable future.

Poor legibility

- 7.17 Improving legibility within the Marina is a requirement of PAN 04¹⁵¹, which is articulating one of the objectives of BHLF policy QD2. There are two areas in

¹⁴⁹ Mr Coleman's Appendices pages 57-58, CABE Letter 29 February 2008

¹⁵⁰ Mr Coleman's Appendices pages 60-62, CABE Letter 3 October 2008

¹⁵¹ CD8/12, paragraph 10.6

particular where the appeal scheme fails to achieve true legibility: the Cliff Site building arrival space and Harbour Square. In relation to the former, CABI indicated that a revised approach was necessary which would have to “consider how the uses, landscape and built form framing this space are configured to....make it a comfortable environment and intuitive route for residents and people passing through it”.¹⁵² Uses and the built form are fundamental planning issues which cannot be revisited at the detailed design stage.

- 7.18 As to Harbour Square, CABI noted that the squareabout is a limited response to the challenges of creating a legible space in the heart of the Marina and believed that there remained scope “further [to] develop the design of Harbour Square as part of the wider pedestrian-focused public space network, by extending it to encompass [the] currently indistinct spaces on its periphery.” Such development of the design could not come forward as part of the detailed design process as reserved matters, but would be entirely reliant on future development in and around Harbour Square. Such opportunities lie outside the control of the appellants.

Lack of Enclosure

- 7.19 The Council and CABI both criticised the lack of enclosure around Harbour Square, a supposedly significant new public space at the heart of the Marina. The appellants agreed with these criticisms, but their responses were limited in their effect: extending the paving, more tree planting and undefined ‘other activities’ to the east and west. The appellants seek to rely on the future evolution of the Marina to provide the necessary enclosure, suggesting as an example that the inclusion of the petrol filling station is not an ideal use to frame the heart of the Marina and may move again. Without control over the relevant sites, however, there is no guarantee that any such enclosure would be achieved. Moreover, even the appellants’ masterplan illustrates only a small amount of future enclosure to this area: the proposals are limited to the building of a 5 storey structure on the private residents’ car park to the north east and a future extension to the hotel over the screened loading bay¹⁵³.

Inactive Frontages

- 7.20 The requirement for active frontage permeates both SPG20¹⁵⁴ and PAN04, the latter referring to it as a ‘key priority’¹⁵⁵. However, much of the public space in the appeal site is characterised by little or no active frontage. The Council’s plan outlining the existing and proposed active frontages¹⁵⁶ is disputed in just three areas: the Asda frontage, south of the multi-storey car park, and the entrance to the MacDonald’s drive-through. The distinct lack of active frontage to Park Square was not challenged, nor was the extremely limited active frontage on the east side of the Quayside building.
- 7.21 The major point of contention relates to the Asda frontage which faces the area under the ramps. The appellants acknowledge that the current Asda has

¹⁵² Mr Coleman’s Appendices pages 60-62, CABI Letter 3 October 2008

¹⁵³ CD2/7.1 paragraph 6.1.4, page 81

¹⁵⁴ CD8/9.1 pages 40,51 and 54

¹⁵⁵ CD8/12, paragraph 13.7

¹⁵⁶ CD13/13

an inactive frontage along its south wall¹⁵⁷, and this reflects the on-site reality. There is no reason to believe that this would change in relation to the appeal scheme. The appellants sought to argue that, in any event, the under ramps area would be overlooked by the dwellings in the Cliff Site building. This is not accepted - it is believed that the plan produced does not accurately depict the lower ramp height, and no account is taken of the various fences and nets which would be necessary for the multi-use games area to function and would inhibit clear views.

Vehicles dominate pedestrians – Harbour Square

- 7.22 The importance of Harbour Square to the proposed design can hardly be overstated. This importance derives both from its position at the heart of the Marina and also from crucial, early decisions taken by the appellants. The decision not to remove the ramps or the multi-storey car park, combined with retention of the existing building layout, ensures that the junction has to perform the function of distributing all the vehicular traffic to the Marina. However, the specific design objectives of SPG20, as well as the general principles of PPS1 and *By Design*, pull in a different direction.
- 7.23 The redesign of Harbour Square appears to be the lynchpin on which the appellants found their assertion that the appeal scheme would transform the fragmentary, disconnected public spaces of the existing Marina into an effective and coherent piece of city. But the appellants' case for the operation of Harbour Square as a 'shared space' is inconsistent and unsubstantiated. They do not appear to have a clear vision of how the space is to operate.
- 7.24 Thus the Design and Access Statement (DAS) asserts that "people may move freely through it, following desire routes to the Marina, shops in Merchants Quay, or the Transport Interchange"¹⁵⁸, but the Transport Assessment (TA) explains that "pedestrians do not have priority" and have to negotiate their movement through the space.¹⁵⁹ Whilst the DAS claims that the "shared surface of the square copes with traffic routes and ...pedestrian movements"¹⁶⁰, the TA states that "Harbour Square is not a shared surface"¹⁶¹. The oral evidence was equally confused. Mr Allies accepted that Harbour Square would not operate as shared space during peak periods, but believed that it would do so off-peak. Mr Frisby indicated, on the other hand, that pedestrians would be able to use the shared space at all times of the day.
- 7.25 Mr Frisby's proposition that Harbour Square would work as a shared space is entirely unsubstantiated. He claimed to base his professional judgement on a combination of previous examples of shared space, VISSIM modelling and discussions with colleagues. However, both precedent and VISSIM modelling contradict his assertions, and his colleagues appear to disagree with him. As to precedents, the only comparable space on which the appellants rely is the

¹⁵⁷ CD2/7.3 III page 22 figure 3.3

¹⁵⁸ CD2/7.1, page 181

¹⁵⁹ CD2/13, Appendix 15

¹⁶⁰ CD2/7.3, page 60

¹⁶¹ CD2/13, Appendix 15

Laweiplein roundabout in Holland¹⁶². Yet Laweiplein is more akin to a traditional roundabout, on which pedestrians use the formal crossings and do not cross the circulating carriageway - the underlying principle of its design is segregation, the antithesis of the design intentions of shared space.

- 7.26 The authors of the Stage 1 Safety Audit reported concerns that the “high volumes and multiple lanes of traffic will make pedestrian priority difficult to achieve, could hinder the passage of pedestrians around the area, and increase the potential for pedestrian conflict and collisions”. They recommended that an alternative access to Asda be provided which would not require traffic to negotiate Harbour Square.¹⁶³ Most damning of all is the VISSIM report¹⁶⁴, which concluded that
- Harbour Square would have to operate at over 11 mph to avoid gridlock;
 - it is therefore not able to offer suitable conditions for a shared space on the circulating carriageway;
 - the only location where a shared space can take place is on the approaches to the square;
 - if pedestrians are expected to enter the central island, it would only be possible through a formal crossing arrangement.
- 7.27 In the absence of any highways testing of Harbour Square’s operation during off-peak periods, there is no evidence for concluding that it could function as shared space at any time of the day, week or year. Harbour Square is nothing more than a fudged compromise. Moreover, it fails to engage with the practical difficulties for disabled people of crossing a dual carriageway gyratory anywhere apart from the pedestrian crossings on the outer arms. This is the opposite of ‘inclusive design’¹⁶⁵, for it perpetuates a situation where the able bodied have more choice open to them than others. Far from being the ‘high quality design’ rightly sought by the BHLP, the scheme is defeated by the premise on which the whole proposal is predicated: retention of the ramps as the principal means of access.
- 7.28 CABE recognised Harbour Square for what it was. They indicated their concern that the design of the square could “exacerbate, rather than diminish, the dominance of the car over pedestrians by encouraging higher traffic speeds than anticipated”¹⁶⁶ and concluded that they had no confidence that “pedestrians will be comfortable using it as the shared space promoted by the design team”.

Retention of vehicular ramps

- 7.29 The decision to retain the vehicular ramps in their current form underlies many of the weaknesses in the design of the appeal scheme. The ramps cause fragmentation of the public realm, ensuring both that the road network remains dominant and that substantial numbers of vehicles are delivered to the heart of the Marina. They constrain the options for amending the building layout and, according to CABE, ‘have a negative impact on the quality of the

¹⁶² CD2/13, Appendix 15, pages 2-6

¹⁶³ CD2/13 Appendix 15

¹⁶⁴ CD2/13.1

¹⁶⁵ CD4/1.1, paragraph 32

¹⁶⁶ Mr Coleman’s Appendices, pages 60-62

pedestrian environment.¹⁶⁷ Indeed, due to the proximity of the Cliff Site building to the ramps, there is a strong argument that they would become even more dominant.

- 7.30 SPG20 explicitly calls for the ramps' removal¹⁶⁸, and whilst PAN04 recognises that "this may not happen in the short to medium term," removal remains an aspiration for the longer term. To that end, it is a requirement of PAN04 that "developers of major schemes... demonstrate that they have given the removal of the ramps due consideration"¹⁶⁹. The appellants have not met this requirement. Whilst they claim in the DAS that it would be neither economically nor operationally viable to remove the ramps, they offer no robust evidence to substantiate these claims.
- 7.31 The oral evidence was contradictory. Mr Allies accepted that removal of the ramps had neither been costed nor given serious consideration, and that it was beyond his remit. Mr Frisby volunteered that structural engineers had concluded that the removal and replacement of the ramps would cost £15,000,000. However, as he had never read the structural engineers' report, he was unable to comment on whether it was based on the full or partial removal of the ramps, whether it assessed different design options, or whether it took account of the potential for extra development options which might be opened up as a consequence of removal.
- 7.32 Even if the Secretary of State finds that the appellants have demonstrated they have given removal of the ramps 'due consideration', development of the appeal scheme would make it extremely unlikely that the long term objective of removal could be achieved. The increase in vehicular load, the addition of 500 residential units in close proximity, and the recreational provision under the ramps all mean that, in operational and/or logistical terms, their removal is made more difficult. More decisively, however, the appeal scheme would significantly reduce the financial capacity of the site, making it much less likely that any future scheme would be able to fund removal of the ramps.

Effect of the development on strategic views

- 7.33 The preservation of strategic views is central to the development plan. BHLP policy QD4 is explicit in its protection of strategic views and is expressed in absolute terms: "Development that has a detrimental impact on [strategic views, important vistas, the skyline and the setting of landmark buildings] 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". Amongst the views of 'strategic importance' specified in policy QD4 are "views of the sea from a distance and from within the built up areas; views along the seafront and coastline; views across, to and from, the Downs; views into and from within conservation areas; and initial views of Brighton & Hove from access points by all modes of transport."
- 7.34 Policy NC8 provides further specific protection in respect of the AONB. This states that development within the setting of the AONB will not be permitted

¹⁶⁷ Mr Coleman's Appendices, pages 60-62

¹⁶⁸ CD8/9.2, page 28

¹⁶⁹ CD8/12, paragraph 8.3

if it would detract from views into, or out of the AONB. Moreover, as the AONB will become a National Park on 31 March 2010, added emphasis should be placed on the protection of such views. Indeed, any development which affects views from or of the future National Park must be examined in the context of section 11A of the National Parks and Access to the Countryside Act 1949. This requires the Secretary of State to have regard to the purpose "of conserving and enhancing the natural beauty, wildlife and cultural heritage of areas designated as National Parks."

7.35 The development would have a detrimental impact on a number of the strategic views specified in policy QD4, in certain instances wholly obscuring them. Moreover, it would detract from views into and out of the AONB/future National Park. In particular it would:

- (i) *Obliterate views of the Black Rock SSSI cliffs from the west.* Views of the cliffs would be entirely obscured from a number of vantage points and significantly impaired in others. The TVIA commentary to view M33¹⁷⁰ admits that views of the purely natural landscape, which at this point are dominated by the cliffs, would be obliterated by the development. This is a particularly significant view because PAN04 identifies it as a 'key local view' which developers should protect and/or enhance¹⁷¹. The cliffs would also be obscured in views further away from the Marina. In view T30, the commentary notes that the listed Regency terrace is separated from the cliffs in the distance: in fact, views of the cliffs would be wholly obscured. In view C40, the TVIA accepts the "adverse loss of cliff views". From the end of the Palace Pier (view C4) the TVIA accepts that the loss of the view of the cliff would be a substantial consequence of the development and would cause a 'moderate' and 'adverse' impact.
- (ii) *Severely reduce views from the west through the site of the seascape beyond.* Views C5, C6, C7, T30 and M33 would be particularly affected by loss of views which currently permeate the Marina and reveal the sea beyond. Whilst view T30 illustrates that there is a gap in the eastward view of the appeal scheme, Mr Coleman accepted that the remaining view of the sea was 'vestigial'. English Heritage concluded that the development would essentially remove the existing visual sea connection.
- (iii) *Block views of Brighton Bay/Palace Pier from the east.* Blockage of views to Brighton Bay and the Palace Pier would be most keenly felt in views C9 and C10. In view C9, the TVIA admits that the development would "shield the viewer from the distant signals of Brighton such as the Palace Pier and other distant landmarks" and accepts the "adverse effect of blocking distant views towards Brighton and Shoreham." Mr Coleman accepted that the landmark parts of the Pier would not be visible from view C10 and, moreover, that the coastal path, from which the view is taken, is of the highest level of sensitivity.
- (iv) *Inhibit views of the South Downs AONB/future National Park.* Where views of the cliffs are obscured, so too are views of the South Downs

¹⁷⁰ CD2/10.3 page 184

¹⁷¹ CD8/12 page 29

beyond the cliffs. Despite views into the AONB/future National Park being explicitly protected by BHLF policies NC8 and QD4, these losses attract little consideration in the TVIA.

- (v) *Have a detrimental effect on views out of the AONB/future National Park.* The development would detrimentally affect views from within the AONB/future National Park because it would introduce further urbanisation. This would begin to change the character of the AONB. This assessment accords with the conclusions of the South Downs Integrated Landscape Character Analysis¹⁷², which recommended that opportunities should be sought to reduce the visual impact of existing visual intrusive elements on the Downs. These include the prominent urban fringes to Brighton.
- 7.36 Thus it is evident that many strategic views would be lost or impaired as a result of the appeal scheme. The Council considers that the appeal scheme is therefore contrary to the development plan, in particular BHLF policy QD4.
- 7.37 The appellants advance two primary arguments against the proposition that the appeal scheme would have a detrimental effect on views of strategic importance. First, it is said that the site specific policies for the Marina in SPG20 and PAN04, which designate the site as a node for tall buildings and highlight the opportunity to 'bookend' the city, are such that losses of views of the cliff, sea and hinterland are inevitable. This assertion is misconceived. These policies do not affirm that losses of strategic views, including those of the sea, cliffs and hinterland, are the necessary quid pro quo for development on the Marina. SPG15 notes that tall buildings will need to have regard to their overall composition when viewed along the coast. Encouragement of landmark buildings in SPG20 is tempered by the caveat that disruption of key views should be avoided. In particular, proposals for the Asda site are required to "take into consideration views of the Black Rock geological site".
- 7.38 PAN04 is particularly clear about the need for development to respect strategic views. Where buildings of six storeys or taller are proposed, PAN04 seeks to ensure (i) that the building design allows for visual permeability through the development out to sea, to the harbour area and to views of the protected Black Rock cliffs, and (ii) does not detract from views from the AONB, the setting of the Kemp Town Conservation Area or listed buildings. It states that "new development in close proximity to the Black Rock cliffs must generally conform to or be lower than the existing cliff height".
- 7.39 On the 'Superstore Site', where the Cliff Site building would be, PAN04 specifies that development should secure visibility of the SSSI cliffs. At the 'Leisure Area', where Marina Point is proposed, it not only indicates that the cliff views should be preserved, but also that there should be visual permeability through the development out to sea and to the harbour. Finally, on the 'Western Gateway', site of the Sea Wall building, it specifies that there should be visual permeability to prevent detrimental impact on strategic views to the east and west, and that proposals should also be sensitive to the site's proximity to Kemp Town and East Cliff Conservation Areas.

¹⁷² Relevant extracts in Mr Allen's Appendix 7

- 7.40 Unlike SPG20 or SPG15, PAN04 was the subject of consultation and was approved after the Outer Harbour (Brunswick) scheme had been granted planning permission. Indeed, the Brunswick planning permission is acknowledged in PAN04 as one of the circumstances which prompted production of the document. The Council and its consultees would clearly have been influenced by the design of the Brunswick scheme. There are no references to 'bookending' the city; this omission is understandable in the light of the permission granted for the 40-storey Brunswick tower. And whilst references to creating 'landmark buildings' are to be found within PAN04, the only key site identified as having potential for such a building is the location of the Brunswick development.
- 7.41 The increased emphasis placed on visual permeability and preservation of strategic views in PAN04 has been entirely omitted from the appellants' analysis of this guidance, both at the time of the application and at this appeal. Instead they rely on the 'policy matrix', arguing that views should be considered in the context of policy which supported intensive development of the Marina. Indeed Mr Coleman acknowledged that, had he not taken the policy framework into account in compiling the TVIA, his conclusions might have been different.
- 7.42 This approach confuses the assessment of impacts with questions of balance and justification, which are for the decision maker. It is difficult to see, for instance, how the visual experience of individuals, or the impact on a given landscape, is altered depending on whether or not the planning context encourages development in a given location. The proper approach is to assess the visual impact of the development and then to consider whether the results of that assessment demonstrate compliance with the planning policy matrix (or can otherwise be justified). In any event, to interpret the relevant policy in the way which regards the obscuration of strategic views as a necessary corollary of that policy is demonstrably false. It is not the vision that SPG15, SPG20 and, in particular, PAN04 espouse.
- 7.43 The second primary argument advanced by the appellants is that any loss of strategically important views is mitigated by the high quality of design which, in their view, the appeal scheme would exhibit. This approach is clearly taken in the TVIA, in which Mr Coleman expresses the view that the loss of some coastal views would be adequately replaced by the fine urban planning, high quality of architecture and the regeneration credentials of the scheme.
- 7.44 Approaching a visual impact assessment from a standpoint of positivity because of a personal belief that the design is of high quality is flawed in a number of respects. PPS1 recognises that good design is indivisible from good planning; among the stated characteristics of good design are that it should be integrated into the existing urban form and the natural and built environments. The contextual approach is thus enshrined in national policy. Before a judgment can be made that a proposal is good (let alone 'outstanding') the scheme must be objectively tested. To justify prominence on the basis of the scheme's 'outstanding' design is to beg the questions posed by PPS1 and to drive a wedge between the indivisible pair of 'good planning' and 'good design'.
- 7.45 The proposition that assessing the quality of design includes consideration of the impact on existing environments finds further support in BHLP policy

QD4. The phrase ‘high quality of design’ in QD4 does not just mean that what is built must be aesthetically pleasing in the abstract, but rather that, to be considered high quality design, it must be integrated into and assess the impact upon the surrounding environment. This means ensuring that strategic views are preserved or enhanced, not replaced (regardless of the quality of the replacement architecture). The conclusion that a development is of good design should therefore be the product of, amongst other things, a robust TVIA. It should not be a preconceived standpoint from which one approaches the TVIA.

Effect of the development on views into and out of the Kemp Town Conservation Area

- 7.46 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on those exercising powers under the Planning Acts to pay special attention to the desirability of preserving and enhancing the character or appearance of a conservation area. This duty is extended in PPG15, as a matter of policy, to cover the settings of conservation areas and views into and out of such areas. Similar protection is provided within the BHLP, notably under policy HE6. Views into and out of the conservation area are specifically protected by policy QD4.
- 7.47 The significance of the Kemp Town Conservation Area is beyond doubt. English Heritage (EH) refer to the Kemp Town Terraces as “one of the best set pieces in Brighton. Perhaps after Regents Park, London and Bath, Brighton and Hove’s terraces rank alongside Edinburgh and Cheltenham as the best of the Regency period in Britain”. They conclude that the Conservation Area “arguably represent[s] town planning at its most handsome.”¹⁷³ The appellants share this view, acknowledging that the heritage assets of the Kemp Town listed building group require the highest level of protection and preservation.
- 7.48 The Kemp Town estate was originally conceived as a development separate from Brighton, with its setting consisting of undeveloped downlands to the north, east and west and the sea to the south. As the easterly views constitute the only remaining part of the area’s once undeveloped landward setting, they contribute greatly to the character of the Conservation Area. The importance of the easterly views is accentuated by the fact that they influenced the design and layout of Kemp Town. The opening of the development to the south and, in particular, the construction of the esplanade allowed for far reaching views to the east and west. Indeed, formalised viewing places were included within the design of the esplanade, inviting people to pause and look both out to sea and along the coast to the east and west – as they still do.
- 7.49 This ‘perambulation’ along the front was – and is – part of the essence of Kemp Town. EH recognised this function of the esplanade, stating that it enabled views “to the pier and sea to the west and to the cliffs and sea eastward, together with oblique views of the terraces.”¹⁷⁴ Included within the significant views that EH identify are the kinetic views along the terrace

¹⁷³ CD13/19, EH Letter 15 January 2008

¹⁷⁴ CD13/19, EH Letter 15 January 2008

obtained by a perambulation of the façade via the entry and exit points of the esplanade. Their concerns about the appeal scheme are directly related to the adverse effect which it would have on the historically significant easterly views. They were especially, though not solely, concerned about the effect of Marina Point on these views and recommended that the proposal “only be accepted if there is a clear and demonstrable public benefit”¹⁷⁵.

- 7.50 The appellants argue that any direct connection between Kemp Town and the cliffs, sea and the Downs to the east has long been lost by the subsequent development east of the Kemp Town group. However, neither the Council nor EH accept that the original views – and therefore the direct relationship with the cliffs, sea and Downs – have been lost. EH note that the existing ‘corridor’ views are currently to the sea horizon to the east, although some interventions are seen just above the cliff in the photograph T30. The Council uses photograph C6, taken from one of the formalised viewing points on the esplanade, to demonstrate that the cliffs, the Downs and the sea can all be appreciated, together with oblique views of the Kemp Town terraces. Thus it is apparent that the development which has been constructed east of Kemp Town does not obscure or impair this view.
- 7.51 Mr Coleman acknowledges in the TVIA the loss of views of the cliff (though not of the Downs or sea), but he does not take account of the historical relationship between the esplanade and undeveloped easterly views, despite EH’s correspondence on this matter. Once again he relies on the high quality design to justify his ‘Substantial-Beneficial’ rating, coupled with the argument that the policy matrix ‘almost inevitably’ gives rise to the loss of cliff views. He backs up his wholly misconceived interpretation of the policy matrix by reference to paragraph 8.3 of SPG15, where ‘visibility of the cliff’ is not one of the special characteristics listed as important.
- 7.52 This betrays a complete misreading of SPG15. Firstly, the classification of the Marina as a node for tall buildings does not mean that tall buildings can be placed in any location, or be of any form or height. Regard must be had, when deciding the height, location and form of the buildings, to the sensitivities of the individual site. Secondly, far from countenancing the blocking of cliff views, SPG15 specifically requires developers to take account both of the proximity of the Marina to Kemp Town and of the views along the coast. It is simply wrong to conclude, as Mr Coleman does, that SPG15 ‘anticipates’ the loss of cliff views from Kemp Town.
- 7.53 Moreover, as discussed above, the site specific guidance (particularly PAN04) places great emphasis on ensuring visual permeability across the site and the retention of cliff views from the east. PAN04 also takes account of the Marina’s proximity to Kemp Town, specifying that “Proposed developments should ensure the preservation and/or enhancement of the setting of historic buildings and conservation areas nearby.” Similarly, section 15.2 notes that tall buildings will need to “avoid harm to important views and not detract from...the setting of the Kemp Town Conservation Area or listed buildings.” Further, the preservation of the setting of the Kemp Town Conservation Area is part of the reason given in PAN04 for the statement that new development

¹⁷⁵ EH letter of 24 October 2008, Mr Coleman Appendices pages 63-64.

in close proximity to the Black Rock cliffs must generally conform to or be lower than the existing cliff height.

7.54 It can therefore be concluded that:

- (i) all parties agree that the Kemp Town Conservation Area is of the utmost importance and therefore deserves the highest level of protection;
- (ii) all parties agree that the easterly views of the cliffs, the Downs and the sea form part of the Conservation Area's setting;
- (iii) EH consider the easterly views to be of historical significance and believe that they deserve to be considered in relation to the appeal scheme;
- (iv) whilst there has been development to the east of Kemp Town it has not substantially affected the original views, which constitute the only reminder of the Conservation Area's once undeveloped setting;
- (v) all parties agree that the development will obscure much of the natural landscape in these easterly views.
- (vi) the appellants' failure to consider the obscuration of such views – or at least their belief that such obscuration is acceptable - is founded on a wholly misconceived reading of the relevant policy matrix.

7.55 In the light of these findings, it follows that the setting of the Kemp Town Conservation Area, as well as the setting of views into and out of it, far from being preserved or enhanced, would be seriously compromised. These effects amount to harm to important heritage assets. The appellants' justification of them by reference to the design qualities of the appeal scheme is as unconvincing in this context as it is in relation to other important strategic views.

INFRASTRUCTURE

Outdoor amenity and recreation space

Policy context

- 7.56 Local Plan policy HO5 requires the provision of "private useable amenity space in new residential development where appropriate to the scale and character of the development". Paragraph 4.43 states that front and back gardens and balconies are to be taken into account. In the appeal scheme, no flats have private gardens, though the majority have balconies and/or access to terraces. The appellants accepted that the absence of private gardens means that such communal space as is provided on site would be important to future residents.
- 7.57 Local Plan policy HO6 is clear as to the standard required for residential development: the outdoor space generated should be "suitably provided in accordance with the 2.4ha/1,000 population standard". The provision is to be split between children's equipped play space, casual/ informal play space and youth outdoor sports facilities. The policy allows for an element of judgment as to the location of this provision, for it recognises that where it is impracticable for all or part of the requirements to be met on site, contributions to their provision on a suitable alternative site may be

acceptable. The text notes that the cumulative effect of a series of developments without such open space provision on site would exacerbate any existing deficiencies. There are acknowledged deficiencies of children's and young persons' play space, both city wide and at the Marina.¹⁷⁶

- 7.58 A sizeable increase in population would occur as a result of the introduction of 1,301 units of accommodation. The exact numbers are disputed – the overall figures are in a range of 1,950-2,080, the appellants' lower figure being based on a multiplier of 1.5 persons per household, the Council's higher figure using the 1.6 multiplier derived from draft SPG9. There is a much greater variation in the predicted numbers of nursery/school age children – the appellants suggest 169, the Council contend the number would be 348. If the appellants wish to depart from the well established FiT 2.4ha standard, it is incumbent on them to demonstrate that their proposed provision would have the capacity to cope satisfactorily with the needs of the development. There had been no attempt at such a capacity analysis, in respect of either on- or off-site facilities.

Quantity of on-site open space

- 7.59 The amount of on-site outdoor amenity and recreational space proposed is insufficient for the numbers of inhabitants and would exacerbate the existing deficiency. The provision of only 9% of that which is required by draft SPG9 is unacceptably low and, therefore, contrary to policy HO6. It has always been accepted by the Council that it is impracticable to provide all of the HO6 open-space requirements on-site. However, that does not mean that the developer is free to choose within policy how much on-site provision to provide and how much to make up by way of off-site contributions. It is for the appellants to justify why they cannot provide more than 9%, but they have failed so to do. Instead they have attempted to rationalise the amount of on-site provision by reference to at least two alternative standards, neither of which forms part of the development plan.
- 7.60 Mr Allies' approach is to apply the recommendation within the 'Open Space, Sport and Recreation Study'¹⁷⁷ (PPG17 Study) that "approximately 20% of the site be earmarked for on-site space, sport and recreation facilities." In doing so he failed to acknowledge that the PPG17 Study was produced by consultants; it has not been adopted by the authority and does not constitute Council policy. Irrespective of the validity of his approach, Mr Allies has had to fudge the figures in order to 'demonstrate' that the appeal scheme meets that 20% standard. His claim that 39.3% of the site is allocated for open space is obtained by counting private amenity space, communal open space, outdoor recreation space and public realm towards the standard. But the worked example in the PPG17 Study illustrates that the 20% standard applies to the cumulative total of 6 typologies of open space: parks and gardens; amenity green space; natural and semi-natural green space; provision for children and young people; outdoor sports facilities; and allotments.
- 7.61 The appellants sought to explain their calculations by producing a table¹⁷⁸ which contrasts the open space assessment under draft SPG9 (Area Analysis

¹⁷⁶ CD9/14, paragraphs 6.21 and 6.29; CD8/12 paragraph 12.3

¹⁷⁷ CD9/14

¹⁷⁸ CD12/27

- 1) with, amongst other things, the analysis carried out by Mr Allies (Area Analysis 4). This table only serves to illustrate the extent to which, in arriving at the 39% figure, Mr Allies drew on spaces which fell outside any of the seven PPG17 Study typologies. It includes, for instance, 2,635 sq m of space under the ramps (west) which is the land surrounding the climbing wall area, 1,468 sq m of the existing west breakwater, 1,009 sq m of cascading staircase, and a 134 sq m slither of land between Harbour Square and the petrol filling station. These are just a few examples of the many areas which would fall outside the PPG17 Study typologies.
- 7.62 Many of the areas included within the 39% also fall outside the typology of open space that policy HO6 is designed to provide. The text of policy HO6 states that the open space required will be “in addition to incidental amenity and landscaped areas”. Thus much of the 21,039 sq m of public realm included in the 39% figure – such as the 1,165 sq m of Harbour Square North – is outwith the terms of HO6. Likewise, policy HO5 specifically provides for private amenity space and thus, logically, none of the 10,220 sq m of private terraces and balconies can be included for HO6 purposes.
- 7.63 The second approach, by Mr Reid, is based on the much lower recommended level of child and young person’s provision in the PPG17 Study (0.055 ha per 1,000 population) compared to draft SPG9 (which specified 0.7 ha per 1,000). However, the PPG17 Study adopts an entirely different methodology from draft SPG9: whilst the latter initially divides the open space requirement into just 2 typologies, children’s play space and adult/youth outdoor sports facilities, the PPG17 Study utilises the 6 different typologies discussed above. Thus the authors of the PPG17 Study recommended a standard for children and young people in the context of the provision of the five other types of open space, clearly taking the view that a lower level of dedicated children’s provision is acceptable if children have a range of alternatives available.
- 7.64 These attempts to justify the lack of on-site open space provision support the contention that the appellants’ approach was not design-led, but residual. This much is apparent from the acknowledgement that, of the total area of 4.3 hectares available to build on within the six development sites, 3.9 hectares were already allocated. Thus, inevitably, the existing public realm provides the only meaningful location for open space provision. Of course, had the appellants taken into account the vast under-provision of open space at the design stage, they could have reduced the open space requirement simply by reducing the number of dwellings. The fact they did not suggests that the number of dwellings was broadly fixed prior to the consideration of the on-site open space provision.
- 7.65 The area available for the open space sought by policy HO6 was further reduced by the clients’ brief, which presupposed retention of the ramps and the multi-storey car park. There is no evidence before the inquiry to demonstrate that the client’s decision to retain these monolithic structures was design-led. The significance of their retention in the current context is that it further limited potential locations for open space: not only were the six ownership sites not available, but large sections of the remaining area within the red line planning boundary were also off-limits.
- 7.66 It is quite clear, therefore, that the density calculations, the floor space allocations and certain fundamental urban design decisions were all made

before the appellants considered how much open space to provide on site. The product of this residual approach is a level of on-site open space provision which is contrary to policy HO6.

Quality of on-site outdoor and recreation space

- 7.67 A consequence of the appellants' residual approach to the quantity of on-site open space is the distinct compromise of its quality. Inevitably the left-over locations available are severely constrained and often incongruous to the activities proposed. These constraints and incongruities form the basis of the very many practical criticisms made by the Council of the quality of open space provision. Thus, contrary to the case advanced by the appellants, the failings of the open space provision are not superficial issues which can be addressed at the detailed design stage; they are symptoms of the fundamental failure to take a design-led approach to open space provision.

Cliff Park LEAP/Geo Learn Space

- 7.68 The most significant issue is the proximity of the LEAP to the residential dwellings in the Cliff Site building. Draft SPG9 recognises the importance of providing buffer zones to protect the amenities of the surrounding properties¹⁷⁹. In relation to LEAPs, draft SPG9 adopts the NPFA minimum recommendation of 20m from the edge of the activity area to the nearest building. At its nearest point the Cliff Site building would be a mere 4m away from the Cliff Park LEAP. It is true that FiT recognised that buffer zones may have to be reduced in high density developments, but that guidance makes clear that where the buffer zone is reduced, design is of key importance. In the current instance a significant proportion of the 'buffer zone' is a footpath which lies 1m away from the nearest terrace/balcony. As there is no fencing around the LEAP, the practical reality is that the footpath will act not as a buffer zone, but as an extension to the children's play area.
- 7.69 The second concern is the location and accessibility of the Cliff Park. Mr Allies agreed that it might take a resident of the Cliff Site building more than 10 minutes to get from their flat to the Cliff Park, a journey which in some cases would involve taking two separate lifts, walking along the RTS route and ascending the steps (or a further lift) to get to Cliff Park itself. Ironically, because of the design of the Cliff Site building, those flats closest to Cliff Park – and thus worst affected by the lack of buffer zone - are likely to have one of the longest and most tortuous journeys. Finally, it is unclear how the Cliff Park LEAP would function simultaneously as an equipped play area for children and an educational area for up to 50 people at a time to view the cliff. The proposed activities are simply incompatible and the argument that viewings will not occur on a daily basis does not resolve the conflict.

Cliff Park NEAP

- 7.70 Many of the concerns expressed in relation to the Cliff Park LEAP are equally applicable to the NEAP. In particular, accessibility would be just as difficult and the lack of buffer zones is, if anything, more pronounced. The recommended buffer zones for NEAPs are greater than for LEAPs because the

¹⁷⁹ CD8/7, page 6

former are designed for older children and for more boisterous playing¹⁸⁰. FIT recommend a minimum buffer zone for NEAPs of 30m (to the boundary of the nearest property) and, by contrast with the LEAPs, do not countenance the possibility of its reduction on high density sites. The distance from the nearest property to the NEAP is only 4.5m, and the buffer zone is a footpath which lies a mere 0.8m from the nearest property.

Climbing facilities

- 7.71 The location of the climbing facilities under the inbound ramp is entirely inappropriate. The proximity of the climbing walls to the carriageway and the limited and uneven floor space are sufficient alone to render this a poor location for climbing. It is made even less attractive, however, by the fact that a number of the climbing walls would be air vents which would not only pump out 'used' air from Asda, but also prevent the climbing wall from having a stable platform at the summit of the climb.

Under the ramps

- 7.72 This area is in many ways a microcosm of the problems inherent in the appeal scheme, for is an unmitigated compromise. The visual fly-through and many of the sketches in the DAS give a false impression of the space available under the ramps, particularly the lower outbound ramp. Comparisons are made with Westway in London, but Westway is situated under the A40 flyover which is far higher than even the higher inbound ramp.¹⁸¹ In reality, in the location of the five-a-side football pitch, the lower ramp (which would cover at least half of the pitch) is between 2.44m and 2.49m high; at the site of the urban sports area, the lower ramp is between 2.49m and 2.59m high; and for the Parkour area the ramp is between 2.6m and 2.72m high. In each case the lack of head clearance would severely inhibit the proposed activity.
- 7.73 According to the Architect's Journal handbook, the minimum indoor height for football is 6.7m; outdoors a rebound wall of 1.2m is required together with netting or fencing up to 5m. None of this is achievable in the space to be provided under the ramps. On a practical level, the dangers and limitations are obvious. Moreover, the notion that we should not be too concerned about the quality of the space because it is meant to be an informal kick-about area begs the question as to why the future residents of the Marina should be subject to a five-a-side football pitch so compromised that it is only suitable for kick-about.
- 7.74 As to basketball, despite the DAS showing people playing basketball in this area with plenty of room to spare¹⁸², a full size basketball net and backboard simply would not fit under the lower ramp. The suggestion that it be placed off-centre under the higher ramp would not only prevent a proper game being played, but also fails to overcome the inherent difficulty that basketball is a game where balls are regularly (and purposefully) thrown over a height of 2.5m. Finally, the limited size of the area proposed for Parkour, and

¹⁸⁰ CD12/7, paragraph 6.2.13

¹⁸¹ CD2/7.3 See the photograph on page 121

¹⁸² CD2/7.1 DAS Volume I, page 55

particularly the lack of head clearance, is inimical to the 'free-running and jumping' philosophy of this activity.

- 7.75 SPG9 specifies that "all outdoor recreational areas should be on land suitable for the purpose....and appropriately located"¹⁸³. The open spaces under the ramp fail in both regards.

LAPs

- 7.76 The Sea Wall and Quayside LAPs would be inappropriate due to their location on the roofs of buildings. According to FiT, LAPs should be "a doorstep play area by any other name" and should be designed "to allow for ease of informal observation."¹⁸⁴ In practice, the Sea Wall and the Quayside LAPs would be destinations and would require parents to accompany children. In addition, there would need to be attenuation from wind. The position about this is unclear from the two reports. In the first¹⁸⁵ these rooftop areas had not been tested for wind, but were thought to be acceptable with mitigation. In the second¹⁸⁶ they had been tested and pronounced to be "tolerable" and "acceptable", but no details were given about mitigation assumptions.

Quality of on-site space - Conclusion

- 7.77 The supporting text to policy HO6 indicates that "it is imperative that provision is taken into account at the initial design stages of a scheme so that it is suitable, ie appropriately located, accessed,...adequately buffered and designed". The appeal scheme, having failed to heed this imperative, fails to provide suitable on-site open space provision in each of these respects.
- 7.78 The appellants have placed great emphasis on the fact that Sport England (SE) have not maintained their original objection to the scheme. However, there is considerable doubt over whether SE's decision to withdraw their objections was made on a fully informed basis. In their original response¹⁸⁷, SE indicated a particular concern with the under-ramp area and on that basis felt unable to support the application. In order to overcome their concerns, the appellants wrote to SE setting out their rationale for locating the sports area under the ramps. This included an appendix with sketched images showing an apparently full sized basketball court and five-a-side pitch, while the accompanying text suggests that the pitches would be used in a variety of ways, which include "formal events and competitions". Clearly this is an idealised view of what is actually proposed. Of more concern, however, is the fact that these sketches give a false impression of the height of the ramps; an impression which is not corrected in the text and is compounded by the direct comparison made to Westway.

Off-site recreation provision

- 7.79 Even assuming that all the proposed on site areas are regarded as suitable and appropriate, there remains more than a 90% shortfall in provision measured in terms of policy H06 and SPG9. Applying the methodology of

¹⁸³ CD8/7, page 5

¹⁸⁴ CD12/1/7, paragraph 6.2.1

¹⁸⁵ Mr Gavin's Appendix 13 paragraph 6.13.3

¹⁸⁶ Mr Gavin's Rebuttal, Appendix 2, pages 6, 7, 8, 12, 18, 32

¹⁸⁷ CD12/13

SPG9, that shortfall translates into a sum of some £1.8m. Initially the appellants offered £845,000 (including £100,000 for a sports co-ordinator). Faced with objections from SE, the figure was increased to £1.04m, whereupon SE withdrew their resistance. There has been no transparent assessment of this offer relative to needs and/or existing capacity, the appellants relying instead on the District Valuer's (DV) report and the ubiquitous viability argument.

- 7.80 There was also much reference to discussion and consultation with the Council's leisure officers, who had pointed the appellants to a range of projects within a 3km radius of the Marina.¹⁸⁸ However, the inquiry was unable to discern how the cut-off points were decided. On Marine Parade, why just lights, and why only 13 of them? At Manor Road Gym, why not fund the court fully, instead of leaving provision dependent on the uncertainty of a Lottery bid? East Brighton Park is relied on, at least in part, as a (relatively) close NEAP, but no contribution is proposed to upgrade that facility despite evidence of its poor state. The connection between spending £120,000 at Rottingdean and the requirements of the development is not entirely clear, nor is the cut-off for proposed expenditure at City College explained. The proposed endowment of £200,000 for the sports co-ordinator is not translated into a practical explanation of how many years' worth of enabling this sum would buy, nor is it known what would happen when the money is all spent.
- 7.81 Overall, therefore, the departure from the SPG9 quantification/funding methodology is unjustified. The appellants have failed to demonstrate that the policy HO6 objectives of meeting the outdoor recreation requirements of future residents on and/or off site would be satisfied. This is a serious omission because, in the words of PAN04, "There is only so much development the Marina can take to meet the open space requirements of residents and visitors".

Education

- 7.82 Local Plan policy HO21 provides that developers of residential and mixed use schemes should demonstrate that a suitable range of community facilities will be provided to meet the needs of residents, consistent with the scale and nature of the development. This policy is clearly consistent with Circular 05/2005, and clearly applies to educational provision. Whilst it would be better if the Council's proposed SPD on developer contributions had been finalised, the fact that it has not does not detract from the principle enshrined in the development plan.
- 7.83 The appellants' offer of £594,000 is included within the S106 unilateral undertaking and compares with the contribution sought by the Council of £1,549,389. The sum offered has not been calculated by reference to the Council's formula, nor the ES as revised at the inquiry¹⁸⁹. Instead it was based upon a negotiation with Council officers and, essentially, boiled down to perceived parity with the Brunswick scheme, which was granted permission in 2006. At the inquiry the appellants' witness had difficulty in

¹⁸⁸ Summarised in Mr Goodwin's Appendix H
¹⁸⁹ Mr Gavin's Rebuttal, Appendix 6

justifying the offer in terms of the Circular tests because the only basis for it was Brunswick. There was particular difficulty with test (ii) "Necessary to make the development acceptable in planning terms".

- 7.84 The £594,000 offer was said to represent two new primary classrooms, but no costings were produced and information from a recent Cabinet report indicated that the reality might well be considerably less¹⁹⁰. It is agreed that there is existing capacity in some primary and secondary schools, but the position relating to the life of the development is not certain. The same Cabinet report notes that by 2011, 135 further primary places will be required and that there is an immediate and ongoing need for additional school places in the city as a whole. The fact that the immediate need is most acute in Hove does not detract from the generality of the point.
- 7.85 The Council's request is logical because it could fund the provision of classrooms to serve all the children in the scheme as they move through their primary school. To be useful, one – or even two – classrooms would need to be complemented by a much greater investment to ensure real expanded capacity.

LIVING CONDITIONS FOR OCCUPIERS OF THE CLIFF SITE

- 7.86 The living conditions for future residents of certain dwellings in the Cliff Site building would be deleteriously affected by a number of factors. Some dwellings would be an inadequate size, some would receive insufficient daylight and/or sunlight, and some would enjoy only single aspect views. A number of the dwellings would suffer from two or more of these 'afflictions'. Moreover, the fact that the appellants have failed to provide the appropriate quality and quantity of on-site open space will also have a direct bearing on the living conditions of future residents, which should be borne in mind when judging the adequacy of the accommodation overall.
- 7.87 The City Council produced a Housing Brief for the Marina which specified minimum sizes for affordable housing units. 220 (43%) of the 520 units proposed fall below these minima. The Council's minima are closely modelled on English Partnerships (EP) size standards, and whilst the EP standards are only applicable to EP projects, they demonstrate the reasonableness of what was sought. A 46 sq m one bed flat (which may be occupied by two people) is very small, especially when combined with poor outlook and light. Open plan lounge/kitchens have their advantages, but are not well suited to family life. It is accepted, however, that the HCA size minima are met and that their Housing Quality Indicators are met (for the categories tested).
- 7.88 Whilst an agreed statement has been presented on daylighting¹⁹¹, a number of concerns remain which need to be considered when determining what life would be like for residents of the Cliff Site building. First, the appellants have applied a lower than recommended standard to the combined kitchen/living room areas.¹⁹² Second, in order to achieve even that standard, the appellants have had to factor in certain interior assumptions - such as light coloured interior finishes - over which they will have no control. Finally, the

¹⁹⁰ Mr Gavin's Rebuttal Appendix 7, Appendix 2.

¹⁹¹ CD12/35

¹⁹² CD12/35 paragraph 2

applicable British Standard specifies three separate tests which should be applied to determine the acceptability of daylighting, whereas the appellants have applied just one. Clearly a lack of daylight in dwellings can have an adverse effect on living conditions, especially when combined with other unsatisfactory elements. There is no daylight/sunlight objection as such, but the Council's concerns will have to be considered 'in the round' when making a practical judgment on the acceptability or otherwise of living conditions.

- 7.89 The preponderance of single-aspect dwellings in the Cliff Site building is also of concern to the Council, especially when the view consists of vehicular ramps or a sheer cliff face in close proximity. Those opposite the cliff would, additionally, receive no direct sunlight at any time of the year. An unlit, single aspect dwelling with a view of a 30m high cliff some 40m away would be unattractive and, especially when combined with little indoor and outdoor space, would fail to achieve the quality of design sought by the BHLF, let alone the appellants' claimed high quality.
- 7.90 The impact of these compromised living conditions would be felt disproportionately by residents of the affordable housing as a result of the concentration of all such provision in the Cliff Site building. Moreover, despite the protestations that the scheme would be tenure blind, it is evident that the affordable housing units would suffer from the worst constraints of the Cliff Site building. Each of the dwellings on the southern elevation, on each of the 8 levels, would be a social rented home. It is thus only residents of affordable housing dwellings who would 'enjoy' views - in most cases single aspect views - of the vehicular ramps. These residents of the southern elevation would also be located furthest away from the Cliff Park and have no ready access to the LAPs within the Cliff Site building courtyards.
- 7.91 Of the eight reasons given in the Housing Statement¹⁹³ for the concentration of affordable housing in the Cliff Site building, two are viability arguments, three are based on anecdotal evidence or evidence not put before the inquiry, and one is no longer of relevance. A further justification was premised on an attempt to avoid compliance with Code for Sustainable Homes Level 4, another matter which has been overtaken by events. The final argument is an evasion: it is claimed that because Brunswick and the Brighton International Arena may provide other affordable housing at the western end of the Marina, there is no need for the appellants to worry about integrating affordable housing in their own development.

HOUSING

- 7.92 Brighton Marina does not currently exhibit the characteristics of a cohesive, mixed, sustainable residential community as envisaged by PPS3. There is, at present, no affordable housing at all, and a preponderance of non family accommodation. It is important to make full use of the opportunities presented by the Marina to achieve national, regional and local policy objectives for making improvements. Brighton Marina redevelopment is an engine for change, not only in the physical environment, but also in the functioning of the Marina as a sustainable mixed community. The meeting of

¹⁹³ CD2/12

housing needs should be assessed in this context: in the words of the SEP, it is “more than just a numbers game”.¹⁹⁴

- 7.93 The 2005 Housing Needs Survey (HNS) for the City recommended an overall target of 45% affordable housing, with a split of 25% social rented to 20% intermediate/shared ownership. This equates to 55% social rented: 45% shared ownership, expressed as a total.¹⁹⁵ The emerging Core Strategy (CS) proposes a “required” tenure split in the proportions 55% social rented to 45% intermediate, guided by up to date assessments of local housing need and site/neighbourhood characteristics. The site specific housing brief prepared by the Housing Authority reflects that preferred affordable housing tenure split, seeking approximately 60% social rented: 40% intermediate.¹⁹⁶ PAN04 seeks a mix of unit sizes within major developments, with varied tenures which include a greater proportion of social rented to shared ownership in the affordable housing element.¹⁹⁷
- 7.94 The affordable housing tenure split is now addressed in the SEP, the most up to date part of the development plan. Policy H3 sets out a regional target of 35% affordable housing overall, split 25% social rented: 10% intermediate (ie 71%:29% expressed as a total percentage). The policy states that sub-regional targets, where set out, should take precedence over the regional target. Sub regional policy SCT6 states that, as a general guideline, 40% of new housing should be affordable, but is silent on tenure split. Therefore the policy H3 proportions (71% social rented: 29% intermediate) apply. Nevertheless, the general target for housing delivery must be read alongside strategic and local policy objectives for the creation of mixed and sustainable communities. SEP policy H4 specifically enjoins local authorities to identify the likely profile of household types requiring market housing and the size and type of affordable housing required.
- 7.95 The appellants’ market evidence in this regard consists of a short letter from agents who were asked, in October 2009, to comment on the scheme that was put to them¹⁹⁸. The letter is quite clear about the market thrust of the scheme: “first time buyers, those relocating within the area from existing flatted developments or couples seeking to move down (empty nesters) thereby releasing a family home onto the market.” The appellants’ claim that empty nesters coming to the Marina would help to stem the loss of larger family properties noted in the SHMA,¹⁹⁹ is not backed up by any evidence to ensure that this would be so, either in the affordable or market sectors. Unlike, for example, the scheme at King’s Cross Triangle, there is no particular intermediate housing package aimed at teasing long established under occupying tenants out of their social rented family properties. Nor is there any guarantee that providing one and two bed flats at the Marina would attract owner occupiers away from 3+ bed family dwellings elsewhere in Brighton, or, if it did, that such properties would not be redeveloped/ subdivided, especially given the supportive stance in SEP policy H6.

¹⁹⁴ CD7/1, paragraph 7.12

¹⁹⁵ CD9/2, page 13

¹⁹⁶ Mr Goodwin’s Appendix C

¹⁹⁷ CD8/12, paragraph 13.3

¹⁹⁸ Mr Spry’s Rebuttal, Appendix 1

¹⁹⁹ CD9/5, paragraph 6.28

- 7.96 As a matter of logic, the provision of more 3 (or larger) bed properties would increase opportunities for families to live at the Marina. Whilst it is true that a small family can live in a 2 bed flat, this would clearly not be the perceived main buyer profile, as the agent's letter identified. This much is also clear from the points made by the appellants in the context of arguing for a lower than city-average child yield for the purposes of the education contribution. In that context it was argued that the Marina is likely to have a lower proportion of dwellings occupied by families with school age children, and that there were no grounds for believing current occupation patterns would be different from the past. If provision simply follows the market rather than the planning objectives for change, then the vision of PPS3/PAN04 will not be realised.
- 7.97 There is no policy rationale for the overall number of 1,301 units, for the proposed tenure split, or for the proposed mix of sizes. As to the overall number, the 2008 Strategic Housing Land Availability Assessment (SHLAA) identified the site for 1,000 units, which was reduced to 650 in the 2009 version. Judging the right level of provision involves questions of site capacity, having regard to its physical characteristics and context. If the site cannot accommodate more than 1,000 consistent with policy and other material constraints, then that fact would amount to a local circumstance in principle capable of justifying reliance on windfalls in the emerging CS.
- 7.98 All three elements have, throughout the process, been justified on the basis of viability, a matter that is considered in the next section. Specifically with regard to tenure, however, the history is pertinent. When discussions over affordable housing commenced in May 2006, the contract price was £34m. In December 2006, Explore Living proposed 35% social rented: 65% intermediate but agreed to take on board the many issues raised by the housing team, subject to financial viability²⁰⁰. In September 2007 the contract price was reduced from £34m to £20m²⁰¹. The planning application was submitted 4 days later with the split at 40% social rented: 60% intermediate, a slight improvement though still not in line with PAN04 or the Housing Brief.
- 7.99 Meanwhile, negotiations had been underway with RSLs and sometime after the application was submitted, a local authority partner RSL made an offer which resulted in a proposed 50:50 split. Explore Living indicated that they were content to proceed on this basis and amended the application accordingly in June 2008. In September 2008 the planning application was amended again, for the last time, back to the proportions first discussed against the background of a £34m contract price: 35% social rented to 65% intermediate. The appellants argue that the revised split was necessary for the scheme to remain viable. The change was attributed to the increase to Code for Sustainable Homes (CSH) 'Level 4' and, for non residential properties, BREEAM 'Excellent'.
- 7.100 However, these sustainability levels are "expected" by PAN04, adopted in March 2008, and the appellants indicated in June 2008 that Level 4 would be achieved for the five primary areas of the CSH, with an aspiration to achieve

²⁰⁰ Housing Statement CD 2/12. 3rd page of text, 2nd paragraph

²⁰¹ Mr Gavin's Rebuttal Appendix 3, paragraph 3.21

BREEAM Excellent. Thus the CSH/BREEAM position in the September 2008 revision remained exactly as it had been in June. There is no explanation as to why the appellants changed their mind in this period; all that is known is that the change from 50:50 to 35:65 was accepted by the District Valuer. Since so much stress has been placed on “viability” in connection with tenure split (as with many other matters), this is a highly material gap in the appellants’ case.

- 7.101 To conclude, whilst the appeal scheme would provide housing, it would not fully or even adequately achieve the objectives of national, regional or local policy for building sustainable mixed communities. The most recent study of the topic, the SHMA, notes the need for prioritisation in terms of the type of affordable housing secured, with the emphasis on securing social rented accommodation first to cater for the vast majority of households who have been identified as in housing need²⁰². In terms of unit size, the SHMA indicates that while the overall number of those seeking 2 bed affordable dwellings is higher than those in need of larger units, the greatest pressure is on larger (4 bed plus) affordable dwellings, partly because of the lower turnover of larger homes. Given the preponderance of small dwelling completions in the City over recent years, the resulting imbalance and the loss of families from Brighton, the SHMA suggested that the Council might wish to prioritise larger affordable units through new development.²⁰³ It would be wrong, given the significance of the Marina, to fail to make the most of these opportunities without any clearly demonstrated reason.
- 7.102 A final matter that arose during the inquiry is the affordable housing cascade included in the S106 unilateral obligation. The City Council resists a cascade from affordable to open market housing. If grant is not forthcoming, the Council would prefer a cascade on tenure alone, ie. from social rented housing to grant-free intermediate/shared ownership housing. The cascade should operate in 5% tranches from social rented to intermediate housing corresponding with a proportionate fall in social housing grant. The Council would not accept a reduction in the number of affordable homes from 40% to 21% because of the significance of this proposal to the challenge to deliver a flexible supply of land for housing in the city and the impact the substantial loss in the number of affordable housing units would have on the creation of a mixed and balanced community.

VIABILITY

- 7.103 Viability is relevant in this appeal because the appellants have invoked it at almost every turn. Their consideration of all matters relating to housing tenure, mix, disposition and size of units was predicated on the Company’s assessment of viability. It surfaced in explaining the need to build tall. In seeking to explain why the ramps were to be kept, the DAS claimed that removal would render any development unviable. The absence of any reasoned justification for the sum of money chosen by way of off-site open space payment was qualified by reference to the DV’s report and viability. Even more basically, the process of allocating areas for built development and open space was described as a fundamental point of overall site viability

²⁰² CD9/5 paragraphs 11.37 - 38

²⁰³ CD9/5 paragraphs 10.55 - 6

and the need to achieve critical mass. It is clear from English Heritage's final letter²⁰⁴ that viability was advanced by the appellants in discussions with them. It is also clear from the Committee Report that officers accepted, in general terms, the financial viability case that was put to them.

- 7.104 Bearing all these matters in mind, the way in which viability has been dealt with evidentially at the inquiry is surprising and unsatisfactory. At the pre-inquiry meeting, the Inspector asked whether there was to be evidence on viability. Nothing appeared in the appellants' proofs of evidence. The Council dealt with the matter as best it could, which provoked a written statement from Mr Dennis, exhibiting the DV's report (though not its associated appraisals). Eventually agreement was reached on the mathematics of projections of costs and values²⁰⁵ based on Savills and BCIS, the two sources referred to by Mr Dennis.
- 7.105 It is clear that the appellants negotiated the final land price against the background of a market at rock bottom. Whereas the September 2007 contract assessed by the DV allowed the benefit of market improvements to accrue to X Leisure (the £20m was a minimum payment), the December 2008 amendment, where the £20m was both a minimum and a maximum payment, achieved the opposite result. As the market improves, there is the potential for greater profit to accrue to the appellants. But it has not been possible to explore the implications of this contractual position with Explore Living because Mr Dennis was not called. And as noted above, the DV's report does not engage with questions of viability at the point of implementation in a recovering market.
- 7.106 The Council's initial assessment, made in the absence of any information from the appellants, suggested that the difference between the September 2008 affordable housing tenure split amendment (35:65) and the June 2008 one (50:50) was some £4m. The subsequent recasting²⁰⁶ of Mr Dennis' viability table demonstrates that projecting forward to implementation date produces a net additional profit to the developer of some £9m, allowing for the reduction in value attributable to a 50:50 rather than 35:65 tenure split. This calculation is independent of the benefits accruing from the December 2008 contract variation referred to above.
- 7.107 When considering viability generally, it is useful to have regard to the background insofar as has been disclosed to the inquiry. The initial feasibility study by Reid Architecture²⁰⁷ established a financial model based on retaining the ramps and multi-storey car park, and siting 30m high buildings next to the cliffs. Shortly after the appellants entered into a conditional contract for the land at a price of £34m in December 2005, Allies and Morrison were instructed to design and obtain approval of a scheme of 1,382 units in an undisclosed mix, with reprovision of Asda and McDonalds and assuming retention of the ramps and car park. One "critical assumption in the financial model" (undisclosed) was said to be "the belief that the package of benefits the scheme will provide ... will allow us to reduce the policy prescription of

²⁰⁴ Mr Coleman's Appendix pages 63-64

²⁰⁵ CD 13/2(b) and CD 12/25

²⁰⁶ CD 13/2(b)

²⁰⁷ Reid Architecture feasibility study, Mr Allies Appendix 2 and CD 13/16.

40% affordable housing to 28% ... this will be achieved by viability calculations..."²⁰⁸. The number of units in the final version of the appeal scheme was 1,301, but a reduction of 81 units is a small proportion of such a high figure.

- 7.108 It is strange that a contract should be negotiated apparently with the intention of subsequently using viability as the reason for departing from an important development plan target. At some stage it was evidently decided not to dispute the overall quantum of affordable housing and to transfer the argument to other matters, but the underlying oddity remains unexplained. In particular, although Mr Dennis claims that by the date of the application Explore Living had negotiated down the land value as low as possible,²⁰⁹ there is no evidence from X-Leisure to support this. In any event, Mr Dennis did negotiate a significant (and at that stage confidential) improvement one day before consideration of the application by Committee.
- 7.109 It may be that the appellants will seek to rely on the King's Cross Triangle decision²¹⁰ to argue that all these submissions on viability are irrelevant. If so, the differences between the two cases need to be borne in mind. The appeal site in that case was a small part of the massive King's Cross regeneration site which, because of the quirks of local government boundaries, was dealt with by a different local planning authority (LPA) from the rest of the site. The objecting LPA's case at the inquiry solely concerned the affordable housing offer (quantum, tenure split and affordability/recycling provisions of intermediate housing); it raised no environmental, design or other objections of land use principle. The developers had not submitted a viability appraisal in support of their proposed mix. The supporting LPA had commissioned an appraisal, but not based on an open book principle of the kind undertaken here by the DV. They called detailed evidence to justify the provisions of their package.
- 7.110 The Inspector concluded that it was right to view the appeal site as part of the larger project and that there was no need for further viability evidence, doubting whether more "could be achieved for a development of the scale and complexity involved without compromising either commercial sensitivity or the independence of the analysis". He also found that there were socio-economic and housing reasons for providing more intermediate housing, having regard to the circumstances of the surrounding area. The Secretary of State agreed with the Inspector's recommendation and reasoning.
- 7.111 The position here is very different. Explore Living have, throughout the process, relied on viability to counter the many objections to the scheme, including those concerning the adequacy of the proposed S106 contributions to open space and even fundamental questions of design (ramps, intensity of development and form of Marina Point tower), as well as the details of the housing elements of the scheme.
- 7.112 To the extent that reliance has been placed on the Brunswick S106 obligation, two matters are pertinent. Firstly, the contrast with King's Cross highlights the fact that Brunswick and the appeal scheme are two separate

²⁰⁸ CD 13/16 paragraphs 7.1.5, 7.1.7

²⁰⁹ Mr Gavin's Rebuttal Appendix 3, paragraph 4.3 bullet 3.

²¹⁰ Mr Spry's Appendices 2 and 3

projects, both in terms of design and delivery. The details of that project are not before this inquiry and there is no evidential basis for concluding that Brunswick's circumstances and development economics are the same. Therefore there is no basis for concluding that it is unreasonable for the appeal scheme's contributions to be calculated differently.

- 7.113 Secondly, to the extent that design and social infrastructure objectives are compromised in the appeal scheme (for example, removal of the ramps with attendant consequences for pedestrian movement, achievement of PAN04 objectives for affordable housing tenure mix, and retention of visual permeability), the opportunities for addressing these matters through later development are eroded by (i) diminishing supplies of developable land to generate value and (ii) the physical implications of new buildings fixing future layout options. To compromise now on the basis of an alleged viability argument would have long term ramifications in relation to the achievement of these established policy objectives.

SECTION 106 UNDERTAKING

- 7.114 There are several elements of the unilateral undertaking with which the City Council profoundly disagrees. Three matters relevant to the issues in this case – open space and education contributions and the affordable housing cascade – have already been discussed. A fourth matter that was of concern, the requirement that the Council reimburse the developer the cost of the construction of the emergency access if and when the adjacent Black Rock site is developed, has been deleted from the final version of the obligation and is no longer at issue.
- 7.115 There is also the overriding question of the interests to be bound. It was not made clear to officers at the time of the original decision that it was proposed to exclude the two principal leaseholders, Asda and McDonalds. The Council has been advised by the developer that the leases to those sites restrict development, but the authority does not wish to rely on asking the developer to enforce the terms of the leases in order to ensure that the development, or aspects of it, is not implemented without compliance with the terms of the S106. The Council seeks to resist any circumvention of the S106 obligations.
- 7.116 The Planning Inspectorate advice note makes clear that all landowners of any affected land should be included in a S106 obligation. Plainly this means that all legal interests should be bound in. The ability to bind the land, as opposed to just parties to a contract, is one of the defining features of section 106 of the 1990 Act, which has enabled it to become an important vehicle for securing planning benefits and mitigation in the public interest. If there is a break in the chain of interests bound, then there is a lack of control by the local planning authority and a falling short of what a S106 should achieve. Such a gap in control inevitably brings the risk of a situation being engineered whereby the Asda and McDonalds sites could be freed from the covenants.
- 7.117 Even if the risk is small, the consequences are potentially extremely serious, given the range of important matters covered by the obligation. Clearly the stance of the appellants is that the obligations are required to enable the development to go ahead. Not all the matters would be capable of recompense by means of an award of damages, and the Council's powers of

direct enforcement would not apply in the case of any land which had been freed from the obligation. No reason has been given for seeking to foist this risk upon the authority unilaterally.

- 7.118 The position is similar to that which arose in an appeal last year at Bracknell in respect of the TRL site at Crowthorne²¹¹. There the appellant was a very long leaseholder and was disinclined to bind the freeholder (the Department of Transport). Various covenants and conditions were offered similar to clause 4.7, but the Inspector considered it unreasonable to place the Council in the position of having to assume the risk, notwithstanding that it was so slight.

NATURE OF THE COUNCIL'S DECISION

- 7.119 Clearly a project of this magnitude has to be considered against a range of development plan and other policies. Some matters are not in dispute between the City Council and the appellants. There is no quarrel with the proposed land use or with the proposition that the site requires major development. It is the form and quality of that redevelopment that is at issue. The Council recognises that the proposal would contribute to the achievement of certain policy objectives, including a contribution towards meeting general housing targets, and plainly the proposals would bring certain economic benefits. This recognition, however, does not mean that the appeal scheme is in accordance with the development plan or national policy overall. National, regional and local policy for housing, brownfield land and economic growth do not derogate from the principles of good site planning, which are required of all proposals by the development plan.
- 7.120 The Secretary of State recently reaffirmed this requirement in the SEP. Core objective (i) seeks "a sustainable balance between planning for economic, environmental and social benefits". The sustainable development priorities identified in Cross Cutting policy CC1 include achieving "sustainable levels of resource use", ensuring that "the physical and natural environment of the South East is conserved and enhanced", and achieving "socially inclusive" communities based on "equal opportunity". A further important Cross Cutting policy is CC6, which seeks a local shared vision which "respects, and where appropriate enhances, the character and distinctiveness of settlements and landscapes". Thus reaching a true judgment on sustainability requires consideration of all factors, including the environmental objections to the scheme.
- 7.121 The appellants have relied heavily on the officer's report to Committee which recommended in favour of a grant of planning permission. Ultimately, all the matters in issue between the Council and the appellants in this case are ones of planning judgment. Even the infrastructure contributions are put forward on this basis since the appellants seek to depart from the authority's practice in relation to open space and education contributions. The democratically elected members of the Council reached different judgments on these questions, as they are entitled to do. Moreover, it should be remembered that the planning officers were not the only professionals to express a view on several of the points at issue. CABE were not persuaded that the design

²¹¹ CD13/28

of the scheme overall was right, expressing concern about the layout and functioning of the public realm, including parts of the recreational provision. EH left to the decision maker the judgment of whether the harm done by Marina Point to the Kemp Town composition was justified by financial necessity; they were clearly not convinced on design grounds. Natural England, whilst they withdrew their objections, nevertheless opined that the Cliff Site building would be too close to the Black Rock cliffs.

CONCLUSION

- 7.122 Brighton is a distinctive place, a unique blend of exquisite Regency architecture, popular seaside entertainment, splendid natural scenery, and a defining and egalitarian sense of quirkiness. The Marina is influenced by all of this and, to be true to the city, its redevelopment will have to respect, respond to and reconcile these strands. Reconciliation, however, is not the same as compromise. The elected members recognised that the appeal scheme is shot through with compromise. They may have struggled to express this realisation in professional planning terms, but their decision to reject the proposal has been vindicated by the thorough exploration which has been undertaken at the inquiry.
- 7.123 Of course, there are benefits to be had from any form of major development at the Marina, and the City Council has recognised that regeneration is needed. However, as the Government itself says,²¹² the consequences of development, for good but also for ill, endure for a long time. The public price of the development proposed by the appellants is damage to the unique setting of the Marina, unsatisfactory conditions for those who would come to live in the scheme, especially in the affordable housing units, and under-provision of the social infrastructure required to make the scheme work properly in the long term. This compromise is too high a price to pay for the regeneration advantages; it is not environmentally or socially 'viable'.
- 7.124 There is widespread agreement that a visit to the Marina is not, at present, all that it should be. The appeal scheme, which leaves in place so much of what has proved disappointing about the Marina, only partly fulfils the important expectations of policy and the legitimate expectations of residents, present and future. Accordingly, the Council submits that the appeal should be dismissed.

THE CASE FOR BRIGHTON MARINA RESIDENTS ASSOCIATION

Introduction

- 8.1 BMRA represents the largest stakeholder in the Marina, the 861 existing residential property owners. Brighton Marina was created to be a Marina: its primary purpose is to be a first class yachting harbour of international repute. It was not created to be a housing development with ancillary moorings, but rather a Marina with ancillary residential accommodation. The BMRA are not against development per se, and accept that the western end of the Marina needs some further development to tidy it up. However, that development

²¹² Mr Spry's Appendix 1 paragraph 1.1 "World Class Places"

should enhance, be sympathetic, be proportionate, be appropriate, be empathetic and be in character.

- 8.2 The Explore Living application simply would not provide the high quality development that the western end of the Marina needs and deserves. It would be a gross overdevelopment that is out of character, out of place and wholly disproportionate. The Marina has the potential to be one of the crown jewels of Brighton and the UK if appropriately developed, but the proposal would not achieve this. Fundamentally, the thoroughly compromised piecemeal development of six disparate parcels of land would be a missed opportunity.

Design and density of development

- 8.3 Brighton Marina is located in a unique setting in one of the most beautiful spots on the South Coast. It is immediately beneath the white chalk cliffs which provide a magnificent backcloth. The proposed design takes no account of the Marina itself, or the wonderful seascape location and, as such, could be developed anywhere. This is exemplified in the submitted design statements, which refer to 'urban space' rather than a maritime or leisure environment. The proposed buildings take no account of the height, scale and design of existing buildings, but would be excessively tall and over-dominant. Their sheer mass and height would create a claustrophobic and repressive environment throughout the Marina. Instead of blending with and enhancing the existing architecture within the immediate area, the development would be alien and out of character.
- 8.4 The application represents overdevelopment of a restricted site with 'town cramming'. It would lead to an overall deterioration in the quality of life for the existing householders in the Marina. The siting and location of the Cliff Site building, immediately adjacent to the natural backdrop of the white cliffs, would by virtue of its bulk, mass, height, density and lack of permeability be a retrograde design to that achieved by the 1974 masterplan. The development would lead to a massive loss of strategic views, vistas, skyline and panoramas which are of great importance to Brighton. The clear intensification of the site would cause harm and be unsustainable, and would not address the wider visions and aspirations for the Marina.

Cliff height restriction

- 8.5 The Brighton Marina Act 1968, which authorised the construction of the Marina, includes a clause which prohibits the erection of any building or structure which is greater than the height of that part of the cliff face immediately to its north. Following a public inquiry in 1974, David Widdecombe QC accepted and fully relied upon the cliff height restriction imposed by the 1968 Act as a necessary means of protecting visual amenity and the character of the local environs. His recommendations were fully accepted and embraced by the then Secretary of State.
- 8.6 It is evident that the height restriction had been considered and conceived over an extended period of time. The sound reasons for this restriction - to protect strategic views and not to interfere with the character of the environs of Brighton in the neighbourhood of the site - hold just as true today. BMRA believe that the cliff height restriction represents a legitimate expectation on which residents can rely. It was a material consideration for Mr Widdecombe

and it should continue to be so for the current Secretary of State. Indeed, the cliff height restriction has recently been adopted by the Brighton & Hove City Council in their Core Strategy Document (policy DA2) in December 2009.

Tall buildings and SPG15

- 8.7 SPG15 says that the Marina may be suitable for 'tall' buildings, defined as buildings of 18m or taller (approximately 6 storeys). The document does not say that the Marina is suitable for 'very tall' buildings (meaning buildings over 15 storeys in height). The Marina already has tall buildings which sit in sympathy and are successful, such as Hotel Seattle at 21m high and the residential buildings at 18m on the south side of the Strand.
- 8.8 It is important to note that SPG15 recognises the particular sensitivities of the Marina arising from the proximity to Kemp Town, and refers to the ability of the cliffs to mitigate, up to a certain height, the visual impact of tall development. The proposed development, however, fails to have regard to the sensitivity given to the classic Grade 1 architecture of Kemp Town. It is also not mitigated by the cliffs; coast views would be obscured or diminished and the beautiful sweeping coastline would be lost forever. The development would manifestly result in an unacceptable loss of strategic views, both within and without the Marina, and would catastrophically impinge upon the natural features of the coast. It should be dismissed on these grounds alone.

Housing

- 8.9 The Explore Living proposal represents a highly unsympathetic, high-rise and high density housing estate with a stigmatised ghetto of poorly situated affordable housing. As the applicants admit in the Health Impact Assessment "It is a shame that the Cliff Site which houses 100% of the affordable housing has the only units that will have partial sight of sun and daylight". The duty to provide affordable housing does not mean that future generations should be saddled and condemned with totally unsuitable housing which is not fit for purpose.
- 8.10 The proposed flats would be tiny and undersized. The draft London Housing Design Guide sets out larger than before minimum sizes for new affordable housing, which may be extended across the UK. This Guide proposes that the smallest flats should be significantly larger than what is proposed by this development. The draft Guide is also highly critical of new flats with single aspect views. CABI supports the draft Guide and has cited its own survey of new private sector homes built between 2003 and 2006, where most occupiers complain of too little space to prepare food easily, have friends to dinner or find a quiet place to relax.²¹³ Many major housing developers are recognising that housing has been built to an unacceptably small size and support the drive for larger homes as a way of ensuring good quality.

Highway safety and traffic

- 8.11 Brighton Marina Bye Law 7 imposes a speed limit of 15mph which starts at the bottom of the ramps and carries penalties in the event of excess speed. This is not an arbitrary limit but is necessary for safety in what is essentially

²¹³ CD14/9

a leisure destination where people do not expect speeding traffic. The 15mph limit has served the community well and, as far as BMRA are aware, there has never been a serious/fatal traffic accident in the Marina.

- 8.12 Explore Living have predicated their scheme on the basis of a maximum speed of 20mph. BMRA consider that, with more people and vehicles sharing less space, this development should necessitate not an increase but a reduction in the speed limit. Any increase above the existing 15mph maximum speed manifestly leads to an unacceptable potential increased risk of injury and fatalities to residents and users of the Marina.

Parking

- 8.13 BMRA object to the reduction in the provision of parking in the multi-storey car park and changes to the access and egress configuration. The reduction to 1,353 spaces would leave only 103 spaces 'free' for other users once spaces have been allocated under existing leases to various groups. The resultant pressure on spaces would lead to overspill in and outside the Marina. As to the configuration, there are currently three entrances and two exits, compared to the proposed single entrance at level 9 and the single exit at level 3. The exit directly onto the ramp would conflict with traffic leaving the Marina, with significant potential for congestion and accidents. In addition, it would no longer be possible to drive into the multi-storey car park from within the Marina, or into the Marina from the multi-storey car park, causing traffic to leave and re-enter the Marina to gain access.
- 8.14 The existing planning conditions controlling the multi-storey car park have not been taken into account in the future car park management plan, which has serious implications for highway safety. Moreover the car park management scheme is complex and demonstrates that the development would put a strain on the infrastructure. Further, the obligations for the provision of coach parking within the Marina have been ignored. It is considered that the proposed development does not comply with car park policy SP4.

Harbour Square

- 8.15 Harbour Square is situated at the most vital junction of the Marina. It has been conclusively shown in this inquiry that the much heralded "squareabout" is a flawed concept which cannot work. It would not be a public square or part of the public realm, and it would not function as a shared space given the conflicting needs of cars, buses, boats, coaches, pedestrians and cyclists. Rather it would be an inaccessible refuge in the middle of a roundabout, noisy and polluted by fumes and a danger to users of the Marina, especially those who have impaired mobility or are visually challenged.
- 8.16 Harbour Square would have to cope with significant extra traffic and the concept requires a high speed of traffic flow to work. The appellants have admitted that if traffic speeds are low then the "squareabout" would be gridlocked and congested, and they accepted that it would not work at weekends. BMRA believe that the traffic infrastructure of the Marina would simply not cope with the significant additional strains imposed by the proposed development. This would represent a significant loss of amenity to residents. A fall-back scheme is clearly required, but there is no proof that a

scheme of traffic lights could ever work either. Thus the development is likely to lead to chaos and the real possibility of accidents and injury.

Palm Drive and Inner Harbour

- 8.17 The proposed location of the Bus Station on Palm Drive is inappropriate and would result in a loss of amenity for residents of the Marina. Palm Drive is an area of existing pleasant café culture which is more suitable for shared space. It should be noted that the Bus Station has been tried before in this location and had to be moved to overcome issues of noise and pollution. Further, SPG20 proposes a much more ambitious and appropriate transport interchange at the eastern end of the multi-storey car park, which is a far more suitable location. Indeed, if both the Brunswick and Explore Living developments were to be built, the central locus of the Marina would be here and not in Palm Drive.
- 8.18 The mini-roundabout at the eastern end of Palm Drive is vital for the smooth running of the Marina, being the location of the Controlled Entry System to the existing residential estate. The appellants are predicting significant queuing at this junction at peak times. Given the number of buses and coaches using the roundabout for turning, this would lead to gridlock and major disruption for residents (and boat-owners) for whom this is the only entry and exit point to The Strand.
- 8.19 The appellants admit that there would be loss of light to residents of the Octagon and Neptune Court. Six flats would fall outside the guidelines by more than 5%, which BMRA believe is material. The appellants' claim of reflected light lacks credibility and, even if were true, reflected light is borrowed light and is not as good as direct light.

Recreation and outdoor play areas

- 8.20 The Marina is already deficient in open and green space. The proposed development would provide inadequate recreation and outdoor space for new residents, thereby exacerbating the deficiency to a substantial extent. Further, what little there is to be provided on site would be of poor quality and in left-over areas that would suffer from shade and wind. The concept of children playing under ramps or far from home is not acceptable, nor would it contribute to a safe environment for the community. The proposal fails to comply with the policy that seeks provision on-site to meet the needs of residents.
- 8.21 Furthermore, what is to be provided outside the Marina is not immediately accessible. Far from being close by, East Brighton Park is over 500m away and is reached up a steep incline at the exit from the Marina and across a very busy road junction (which would not be safe for children to cross). Even the walk on level ground to the Peter Pan fun area would have to be at a brisk pace to be within the time sought by the feasibility study, and thus would not be accessible on foot by a two year old. More distant sites such as the Rottingdean informal sports area and the Rottingdean terraced gardens would be of little, if any, direct relevance to residents within the Marina. Self evidently, a walk or drive for two to three miles is not close by.

Conclusion

- 8.22 The Marina is a unique location that does not have any disturbing impact on its immediate surroundings. It does not interfere with the visual aspect in any direction, and is a sympathetic development that was ahead of its time. The Marina has a distinct sense of place and care must be taken to not inflict fatal wounds upon the spirit of this place as a Marina.
- 8.23 The western end of the Marina does need development, but the current proposal is not the right solution. The building of 1,301 residential units would be a massive overdevelopment which would result in unacceptable loss of strategic views both within and without the Marina. The excessive height and dominance of the proposed buildings would be alien and out of character. BMRA believes that Explore Living's ill considered scheme would fatally mar the UK's largest marina as a marina. The proposal is a missed opportunity, is fundamentally inappropriate and the appeal should be dismissed.

THE CASE FOR KEMP TOWN SOCIETY*Introduction*

- 9.1 The Kemp Town Society does not in general oppose the redevelopment of the Marina's western quarter to overcome the area's poor public realm and to increase the Marina's attraction as a leisure and tourism destination. KTS would favour a scheme which is clearly sympathetic to the surrounding conservation areas, which are of such historic and architectural importance, but this should not disqualify the inclusion of the best of 21st century architectural design. KTS is disappointed that a company such as Laing O'Rourke, whose international experience, expertise and secure financial base is acknowledged, should be proposing a development which seems inadequate to meet the high demands expected for the Marina's regeneration.

Character of Kemp Town Estate

- 9.2 The custodial role of the Kemp Town Society is to conserve the character and setting of the Kemp Town Estate and the surrounding Conservation Area. It is the most important architectural and historic estate in Brighton and the unique example in this country of a Georgian/Regency set-piece overlooking the sea. All of the buildings in the Estate are listed Grade I (except the Kemp Town Place stable cottages); nationally, only 2.5% of the listed buildings in England are Grade I. The Conservation Area incorporates the seafront and the sea (at which point it is about 110m from the appeal site), while the Kemp Town Enclosures are recorded in the Register of Parks and Gardens of Special Historic Interest.
- 9.3 The Conservation Area derives its character from the uniform nature of the Estate, its striking layout and graceful appearance, complemented by the individual symmetry and clarity of form of the buildings themselves. But besides being a great set-piece formed by its terraces, crescents and squares laid out around its two gardens, Kemp Town also exploits the marine setting

as one of the chief components of its grand design. The Council's 1992 appraisal²¹⁴ makes reference to the symmetry and uniformity of the façades and the general consistency in the height of the buildings and roofline. Details such as the stucco rendering, the projecting cornices, the front area railings and the rhythm provided by the sash windows, balconies and pilasters are highlighted. This is the backdrop against which the new development needs to relate.

Nature of consultation

- 9.4 The Society's objection to the proposed development goes back to the flawed consultation process, both by the appellants and the Council. There was no real engagement by the Council with the community in the process of "place making", for KTS was not consulted in the preparation of PAN04. And despite the appellants' claim in the Statement of Community Involvement²¹⁵ to have engaged with the community, KTS's experience is that they presented their proposal after it was formulated with the tacit consent of the Council officers. Not only did KTS have no say in it, but the objections raised by the Society were largely ignored. Thus the national and local policies which call for the community to be involved at a very early stage in large scale developments were contravened. There was no effective or meaningful dialogue with KTS in the planning of the scheme or even after its presentation.
- 9.5 Brighton & Hove local councillors did take note, albeit belatedly, of KTS's representations, along with other parties represented here, by holding a public meeting to listen properly to the local community's organised opposition to the planning application. As a result of connecting with their community, the City Council finally had regard to their duties to conserve and enhance heritage assets and to strengthen their commitment to stewardship of the historic environment.

Policy context

- 9.6 There is a plethora of planning considerations in this appeal which cannot all be given equal weight. The policy influences which encourage this proposal are at odds with those that influence the context of the proposal. SPG15 refers to the Marina as a node for tall buildings, but notes that it has particular sensitivities due to the proximity to Kemp Town²¹⁶. SPG20 refers to being acutely aware of "the relationships between the Marina and the important historic areas along Marine Parade"²¹⁷. PAN04 requires tall buildings to "avoid harm to important views and not detract from important views from the AONB, the setting of the Kemp Town Conservation Area or listed buildings"²¹⁸. KTS believes that the appellants have been selective and have failed to give adequate weight to the policy context of the proposal, both within and outside the Marina. The policies make clear that it is for the new incumbent to actively integrate with the historic setting – especially one of such outstanding national significance as Kemp Town.

²¹⁴ CD17/1

²¹⁵ CD2/5.1/5.2

²¹⁶ CD8/8 section 8.3

²¹⁷ CD8/9.2 page 13

²¹⁸ CD8/12 15.2 page 28

Design and visual impact of proposed development

- 9.7 KTS considers that, because of its ungainly dominance and architectural incongruity, the development would not contribute to Brighton's reputation as the country's finest historic seaside resort. The proposed modern urban style is more in keeping with a dense city centre setting and fails to recognise the overarching expectations to respect, enhance and enrich the important historic fabric of the immediate maritime context. Moreover, the blocking of sea views would bring great harm to a wider community.
- 9.8 The feedback from a range of stakeholders demonstrates high levels of unacceptability. English Heritage remarked that the proposals "should aspire to a quality of design and execution which may be valued now and in the future". Such a statement leads one to conclude the scheme fails to "aspire". EH were particularly concerned about the height, form and location of the Marina Point building, stating that their concern was not likely to be resolved without further significant revision. Similar concern was expressed by the South Downs Joint-Committee, who thought that the tower design displayed "crude, monolithic form and bulk" and was not acceptable. Natural England felt that the development would be too near to the cliffs.
- 9.9 The appellants argue that the replacement of views of the cliffs by new buildings would be an enhancement as a result of the high quality of the proposed buildings. That is a subjective assertion which KTS does not share. The example given, which showed the relationship between Grade I listed buildings at Greenwich and the modern Canary Wharf office towers, is not a valid comparison given the substantial distance between those sites and the significantly different context of London. KTS also does not agree with the assertion that the repetition of the balcony form would give Marina Point "a similar optimistic ebullience as the city's Regency architecture", for those balconies fail to match the symmetry of the Regency Terraces.
- 9.10 In terms of building heights, the allowance for tall buildings within the western node of the Marina, as envisioned by SPG20 and PAN04, is not an automatic permission to build to an unlimited height or as high as the Brunswick scheme. The constraint to limit height to the cliff height immediately north of the building is paramount. The Council demonstrated²¹⁹ that if the height of the cliff were to be respected, the proposed buildings would reduce to approximately 6 storeys rather than the 8 storeys claimed by the appellants, particularly on the western part of the development. KTS also agrees with EH that the height of Marina Point would impact adversely on the kinetic views of and from the Kemp Town terraces, and would challenge the open views east of the terrace perambulations. In views from the western side of Lewes Crescent, for example, the graceful sweeping curve of the crescent silhouetted against a backdrop of sea and sky would be replaced by an ugly juxtaposition with modern residential blocks. Thomas Kemp's beautifully calculated effect would be destroyed.
- 9.11 KTS considers that the Sea Wall building would have a far greater visual impact than is appreciated in the TVIA or as assessed by EH. Not only would it merge with the Lewes Crescent set-piece, as described above, but it would

²¹⁹ in CD13/13

be extremely harmful to the loss of the sea setting of the Estate as a whole and the Conservation Area in general. The Sea Wall building would also close the gap between the Brunswick scheme and the cliff setting, effectively introducing a continuous development out from the cliffs. The Council felt that this gap was of critical importance to the Brunswick scheme's acceptability; the Society agrees. Because the Sea Wall building would cause so much harm to the sea views and conflict with the historic crescent, KTS believes it should not be permitted.

Density

- 9.12 One of the aspirations in the City Council's mind when setting out their vision for the Marina in SPG20 and PAN04 is to fulfil a centralised policy in PPS3 to provide housing. An important element of this policy is the provision of social housing alongside dwellings for private purchasers. Laing O'Rourke states that the provision of affordable housing has necessitated a high density of development, resulting in tall buildings. Although PAN04 makes allowance for higher density in the Marina, it also states that "it should not be presumed that all development proposals will be of a higher density". Instead, PAN04 requires density levels to be a product of a robust and tested design process, and to demonstrate the quality of living conditions for existing and proposed users. There is no evidence that the proposed density of the development scheme would be conducive to quality living conditions.
- 9.13 The density of the Kemp Town Estate is approximately 32 dph. The Cliff Site building would be 239 dph, over seven times as dense. If the commercial area is removed from the Cliff Site building, the density figure would likely be closer to the Marina Point building of 1,000 dph. This substantially exceeds the desired increase to a level of 50dph for the City as a whole. The high density would cause the limited and busy public realm to be overly crowded for the leisurely atmosphere - the "café culture" - the Marina seeks.

The Brunswick scheme

- 9.14 Planning permission has been granted for the ambitious provision of 852 residential units contained in twelve tall buildings, consisting mainly of 15 storey blocks and a 40 storey tower. The Brunswick scheme has distinctive design characteristics which would bring certain positive merits to the Marina. Its position is "of the sea", given its location at the mouth of the Marina harbour entrance and distinctly "off-shore" from the nearby cliffs. Its waterfront buildings would be shaped like the prows of moored ships to give them some maritime flavour. Its striking, elegant silvery tower is even favoured by some. Nevertheless, this level of development would place a strain on the Marina's infrastructure even without the addition of the appellants' scheme. Thus, for reasons of excessive height and density, and harm to the Kemp Town Estate, KTS opposed the Brunswick plans.
- 9.15 The Society believes that the appellants' planning team were influenced greatly by scale and height of the outer harbour development. Mr. Coleman came to the current proposal with prior knowledge of the Marina from working on Brunswick's development planning. The Brunswick permission is repeated frequently throughout the appeal proposal, implying that the present developers are relying on the Brunswick development for its future sanction. In the light of the current financial crisis, this assumption has now

to be called into question. Equally importantly, the City Council has made it clear that the decision to waive the height restriction imposed by the Brighton Marina Act 1968²²⁰ was not to be considered a precedent. Where a scheme exceeds the cliff height, each application is to stand on its own merit.

Other matters

- 9.16 KTS considers that the District Centre definition is flawed. It would just be a shopping centre, with no post office or schools. There is no study to show the impact of the enlarged Asda store on the small shops in Kemp Town, such as the butcher.
- 9.17 The queuing on the ramps and the back-up effect is a concern for general access and movement around Harbour Square. It could increase parking pressures within the Kemp Town Estate. Overspill parking on neighbouring streets could also result from the dedicated bus lane along Eastern Road, which would remove street parking on that road.
- 9.18 There is a lack of clarity in the determination that the access ramps cannot be moved or redirected to create a public realm, as envisioned in SPG20 and PAN04. Once the open space of the Asda car park is built upon, the opportunity to remove the multi-storey car park will be compromised.
- 9.19 It is curious that the District Valuer's report fails to deliver any market comparison valuations in its determination of revenues. If direct comparisons of sales in the Marina are used with an increase of 20% for new properties, the revenue figures will not realise the assumed income. There is also no evidence that the RSL funding for affordable housing is assured. If the affordable housing does not meet the standards of the selected RSL, the assurance of the £36m required to cover the affordable "revenue" may not be forthcoming.

Conclusion

- 9.20 Building tall buildings in any context is a risky business. The City of Brighton & Hove has the regulatory tools that are crucial to determining the impacts of tall buildings on their immediate surroundings and the wider city. Despite a contrary recommendation by its officers, the local planning authority finally used these tools in order to secure the cultural values reflected in the historic setting to the Marina, so vital to the character of Brighton.
- 9.21 The development remains premature. The regeneration of the Marina as proposed is simply a matter of supplying affordable housing, made feasible by building as high and as densely as possible. If permitted, the result would be of great visual harm which cannot be reversed. Key stakeholders have voiced that many design considerations of the appeal site need to be thoroughly tested, including the overwhelming necessity to redirect the ramps in order to open up the public realm. The Council's Core Strategy Amendment underscores the need to consider the whole of the Black Rock area as one site. It would be unwise to jeopardise these other sites in the haste to approve this scheme. Accordingly, KTS recommends that the appeal proposal is refused.

²²⁰ CD10/1

THE CASE FOR MARINE GATE ACTION GROUP

Introduction

- 10.1 During the inquiry the Rule 6 witnesses have exposed the inaccurate documents and subterfuge employed by the appellants during the 'public participation' process. There are many examples of misleading information in the publications by the developer. The glossy brochures produced periodically by the appellants rarely reflected the frustrated mood or critical comments of those attending the 'consultation' events. Instead what we read were sanitized versions intended to sweep aside our objections and proceed regardless. This attitude more than anything else has fuelled the massive public backlash and the huge petition.
- 10.2 The Townscape and Visual Impact Analysis that is intended to support the appellants' submission is a serious indictment of the whole development. The categorical statement by Explore Living that "all our photomontages are genuine and have not been distorted in any way" has been shown by Mr Simpson to be inaccurate. By the selective use of self-congratulatory text, this document sought to convince the local planning authority that the development would be relatively benign. The document refers on numerous occasions to what the author considered to be 'high quality design' that would be 'beneficial'. Closer examination of the photographs reveals a tendency to gloss over the negative aspects of the development.

Scale and density of development

- 10.3 1,301 residential units would be a massive overdevelopment of this special coastal site. When added to the 863 existing dwellings, the 853 approved for the Brunswick development and the dwellings proposed by Brighton International Arena, there would be a total of 3,121 apartments and (assuming an occupancy rate of 1.5 persons) a resident population of 4,681 people, with the proportionate demand for car parking spaces and amenity space. This would destroy the identity of the Marina as a place primarily for boats and leisure. Its maritime image would be diluted to create a high-rise, high-density residential suburb, and the very qualities that attract visitors to the Marina Village would be lost.
- 10.4 The suggestion that Marine Gate is a higher density than the proposed development is nonsense. Marine Gate consists of 132 dwelling units on a 11,250 sq m site, a density of 117 dph. Even if we were to compare Marine Gate with the 1,301 dwellings on the 8ha appeal site, the density on the latter would be 163 dph which is 25% higher than Marine Gate. But this is hardly a comparison of like with like. When expressing density it is easier to compare the Floor Area Ratio (FAR). Marine Gate has approximately 14,880 sq m of floor space, a FAR of 1: 1.32. Explore Living proposes 188,208 sq m of residential and commercial floor space, giving a FAR of 1: 2.32. Thus the density of the appeal proposal would be almost twice that of Marine Gate.

Design and visual impact

- 10.5 Marina Point is an unremarkable 28-storey point-block design that would tower over the cliff top and cast a shadow over the public realm. Having the form of a simple rectangle extruded vertically with some inexplicable corner features, it would not win accolades for elegant design. Nor would it be a

sustainable form of construction, for there are no discernable 'green' features. It is not as elegant as Wilkinson Eyre's design for the 40-storey tower in the Outer Harbour, which responds far better to the context and the seaward views. Marina Point is in comparison a poor relation that does nothing to lift the spirits. It might not be out of place in an inner London suburb, but it would be inappropriate in a highly visible location in front of the cliffs.

- 10.6 The Cliff Site building is a vast super-block, 235 metres in length, which is entirely the product of development economics and nothing to do with beauty or the quality of life. The architect has been obliged to provide a larger store for Asda and all the affordable housing has been pushed into this location. The introduction to the famous undercliff path could not be more dismal, for the block would create a 30m high, inhospitable 'canyon' along the undercliff. Sunlight would rarely penetrate into this gloomy space, and numerous north-facing apartments would receive zero sunlight. The west elevation would be almost entirely devoted to an energy centre, with mundane elevations facing the main access into the Marina. The windows of the Asda supermarket would dominate the south elevation at ground level and would not activate the public realm.
- 10.7 The major design failure of the Cliff Site block is its lack of permeability. It would form a massive physical and visual barrier to connections from the undercliff path to the core of the Marina. Similarly, the visual connection between the cliff top and the ocean would be destroyed, and panoramic views of the cliffs from within the Marina would be obliterated. The Cliff Site building would also destroy the continuity of cherished views from Lewes Crescent and Marine Drive along the south coast cliffs from Brighton to Newhaven. Looking along the sea front from the west, the distant views of the South Downs National Park/AONB, the listed Roedean School and St Dunstan's, Rottingdean Windmill and the historic white cliffs that extend east from Black Rock would all be obscured by this building.
- 10.8 The Sea Wall building would be compressed into a narrow site parallel with the western breakwater. Once again the design is driven by the requirement to have the maximum number of dwellings, resulting in cramming of an excessive number into a confined space. The most serious criticism of the Sea Wall building is its very poor relationship with the Kemp Town Conservation Area by virtue of its height and bulk. The 11-storey elements would dominate views from the lower part of Lewes Crescent and Arundel Terrace, blocking off the view of masts in the harbour from Marine Drive when approaching from the west. In distant views from Palace Pier and Madeira Drive the building would form a solid, impenetrable 'wall' and obscure the rolling hills of the South Downs National Park/AONB.
- 10.9 The Quayside building is designed as a 5 to 16-storey perimeter tower block encircling a four-storey car park. It represents excessive development on a restricted site with a bulky, ponderous and unappealing form that is too tall. Contrary to the claim that this building would create a link between Marina Point and the previously approved Brunswick towers, the Quayside building would simply block many of the gaps that were created by Brunswick following the refusal of their initial application. The block is distinctly lacking in elegance, the result of cramming far too much accommodation on the site.

- 10.10 The cumulative effect of all the buildings is demonstrated in the TVIA. The effect on the residents of Marine Gate is misrepresented in view T31. The notion that the view of the 28-storey tower and the rear elevation of the Cliff Site block would be 'beneficial' is absurd. The horizon would be obscured and the cumulative effect of the Explore Living and Brunswick developments would be an intrusive assemblage of dislocated elements that contribute nothing to the visual harmony of the area. The Marina Point tower would appear stunted as it rears above the cliff – there is no elegance in the silhouette. Similarly, walkers on the cliff top (view M32) would have views of the horizon and the harbour obscured by the two developments, and the 'spirit of place' of the Marina would be lost.
- 10.11 The development would be a major imposition on the Kemp Town Conservation Area, particularly when seen from Arundel Terrace and Marina Drive (views T30, C39 and C40). The buildings would obscure the view of the masts of boats in the outer harbour, thereby severing the visual connection between the town and the Marina. The sense of place would be lost and replaced by bulky residential blocks. The rooftops of the Cliff Site building would rise above the cliffs and cut off the connection to the coastline east of the Marina and to the South Downs National Park/AONB.
- 10.12 For all these reasons, the appeal proposal fails to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the BHLP and falls far short of the quality of design required for such an important site on the edge of the city. Tellingly, nowhere in SPG20 is there any suggestion that buildings of the bulk, height and overwhelming dominance of these proposals were ever intended. Explore Living have ignored the intentions of SPG20 in respect of the height of the development and have crammed excessive development onto the site.

Dwelling size, mix, design and sustainability

- 10.13 The design of many dwellings in the development is inadequate and smaller than BHCC recommended minimum sizes. There are too many one and two bed apartments, and the mix of dwelling sizes falls below the requirements in terms of provision of larger family units. Furthermore, locating all the affordable housing in the Cliff Site building goes against good planning practice, which favours integration of social housing with market housing. The proposal groups together all families who are most in need, including key workers on low incomes, unemployed workers and families on benefits. Inevitably 'ghettoisation' would occur, where those on low incomes or income support are seen to be stigmatised.
- 10.14 There would be numerous north-facing apartments with limited views, and many more would be single aspect. A substantial proportion of dwellings would have internal bathrooms and kitchens without natural daylight, both requiring mechanical ventilation. Some living rooms and dining rooms would not have an adequate view of the sky. It is difficult to see how these can be rated highly in terms of sustainability, casting doubts on the claimed Eco Homes rating of Very Good. The claim that 81% of energy in the development would come from 'sustainable and renewable sources' is also questionable given the lack of information about the source of biomass, and the indication that the Combined Heat and Power system would use gas, which is not a renewable resource.

Amenity of existing residential occupiers

- 10.15 MGAG contends that the 28-storey Marina Point would dominate the existing residential property in the Marina, tower over the cliff top and cast a shadow over the public realm. There would be loss of daylight to premises in the Octagon and Neptune Court. Marine Gate, the 140-apartment block to the north, would find its garden overlooked with a consequent loss of amenity. It would suffer from light pollution from the Cliff Site building and Marina Point. Marine Gate residents would be adversely affected by noise and pollution from increased traffic in Marina Way and joining the A259. There would also be increased vibration from traffic waiting at a red light in the tunnel close to the southeast corner of Marine Gate.

Outdoor recreation space

- 10.16 The provision of outdoor recreation space would be totally inadequate. The Cliff Park, a NEAP and a LEAP would be located on the north side of a 250m long, 10-storey high super-block. They would be dark, isolated and dangerous places. A climbing wall would be sited under the entrance ramp, a dark, inhospitable leftover space rather than planned space. The urban sports and five-a-side court would be similarly gloomy places. Another LEAP located behind Pizza Hut would be a cold windswept place for much of the year. The outdoor recreation space is simply what is left over after the massive residential and retail quantum has been located on the site. None of these recreation areas would be accessible, sunlit, safe areas for children.
- 10.17 MGAG do not consider it acceptable for the developer to fund improved lighting in Madeira Drive, new football pitches for Manor Road Gym, refurbishment of Wilson Avenue and East Brighton Park facilities, terraced gardens in Rottingdean and sports facilities for youth in Rottingdean. This would not solve the problem of a deficiency of public recreational space in the Marina, and is thus a 'red herring'. The public and private recreation space would be inadequate and less than required under Local Plan policies.

Public realm spaces

- 10.18 Whatever qualities Palm Drive has at present are likely to be eroded by the deterioration in environmental quality when it becomes, in effect, a large bus terminus. No layover space is provided in the development, so buses will simply layover in Palm Drive. There is no location for a taxi stand. The seating outside the restaurants that currently provides street life would struggle to retain its attraction in an area polluted by fumes. Access for existing Marina residents and boat owners would be almost impossible when 4 to 6 bus services arrive simultaneously.
- 10.19 Park Square would be essentially the same as the existing space. The same buildings would surround the square and they would contain the same activities that do not activate the edges of the space or contribute any life to the public realm. A children's playground to the west of Pizza Hut would be in the most inhospitable part of the square. The addition of an interactive fountain and a few trees is unlikely to be the catalyst for a major revival of this area.
- 10.20 Harbour Square is an attempt to resolve the entrance to the Marina and introduce the concept of 'shared space', but the bus turning circles look

decidedly difficult. Access to the Asda car park, the service area and the car park for residents of the Cliff Site would be from the same spur, creating the potential for major congestion and tail back up the entrance ramp. The single entrance and exit from the existing multi-storey car park also threatens to be chaotic. Someone dropping off an elderly relative at the Seattle Hotel would then have to exit the Marina and return to the upper level of the multi-storey car park before walking across the footbridge to rejoin the relative. There are many similar scenarios – for example, doing the weekly shopping in Asda after going to the cinema. What is currently a simple operation would require careful planning to avoid multiple trips into and out of the Marina.

Education facilities

- 10.21 The nursery schools nearest to the Marina are oversubscribed. The only undersubscribed primary school is Whitehawk Primary School. The nearest secondary schools (Longhill High School and Cardinal Newman Catholic School) are oversubscribed. The applicant acknowledges the fact that the high density development would generate a minimum of 71 school children in addition to the 64 in the approved Brunswick project. BHCC believe that the figure of 71 is based on erroneous assumptions and their calculations suggest as many as 241 pupils would be generated by the Explore Living development alone. Even using the developers' figures, the Inner and Outer Harbour developments would add up to 135 (71 +64) youngsters of which approximately 60% would be of primary school age. Yet there are no primary school places within walking distance. Making 'a significant financial contribution' would not solve the problem - that would only be overcome by providing a new primary school.

Conclusion

- 10.22 MGAG is not against development per se. But it cannot stand aside when the landscape below the cliffs is threatened with a development that would alter the lives of Marine Gate residents and those of its neighbours, and not for the better. It would be a massive overdevelopment that would permanently destroy two of Brighton's greatest assets – the views along the coast towards the South Downs National Park and the setting of the world class Kemp Town Estate.
- 10.23 The City Council is proposing a change in relation to the Marina. The amended emerging Core Strategy would see the reinstatement of the cliff height as the major determinant of the height of future development. This is a clear statement of intent by BHCC and as such it should be accorded considerable weight. The current proposal would clearly frustrate the Council's aspirations for a medium rise development below the height of the cliffs. For all these reasons the appeal should be refused.

THE CASE FOR SAVE BRIGHTON

Introduction

- 11.1 Brighton Marina was originally conceived as a pleasure harbour. But it was also recognised that, yachting being largely a summer pursuit, it was

important to provide the Marina with a permanent population as well as leisure and commercial facilities. The idea was to make the Marina a lively, attractive and successful place all year round. The housing and other facilities were intended to integrate with the harbour so that throughout the Marina one would see water, boats and the cliff, and the sense of place would never be lost. Essential to the architectural conception was the cliff, a vigorous natural reminder of what a dramatic site this is. By virtue of its geographical separation by the cliff from the urban development of Brighton, the Marina is naturally more a part of the seascape than the landscape.

- 11.2 It was never envisaged that this extraordinary man-made harbour would one day be regarded as a mere brownfield building site to accommodate the overflow from the city's urban sprawl. But times change and there is currently such a housing shortage that the Marina will need to play its part in accommodating new development. Few people would argue against this. Indeed, sympathetic new housing, built on an appropriate scale and designed to harmonise with the rest of the Marina, would be a welcome enhancement. But the proposed city-scale housing development would obliterate strategic views of the cliffs and sea, and would compromise views into and out of the Kemp Town Conservation Area and the proposed South Downs National Park. It would destroy what should be the brightest of futures for the Marina as well as doing significant damage to the charm, quality of life and economic viability of Brighton as a whole.

Consultation process

- 11.3 So-called 'consultation' events relating to the development of Brighton Marina were held both by the appellants and the local planning authority. Neither party appeared to have any expertise or interest in running a genuine consultation. They usually made it clear to participants what aspects of development they would be allowed to discuss and what they would not be allowed to discuss. Specifically, both the appellants and the Council planning officers sought to stifle genuine debate about the height or density of development. They also made it clear that questioning the way they ran the consultations would not be acceptable.
- 11.4 The officers appeared to be far more interested in working with the appellants than they were in working with the local community. Their involvement with the developers significantly predated any discussion with the local community, and they appeared systematically to ignore much of the key negative feedback. Events run by the appellants were in reality merely marketing events, run by a 'facilitator' who was uninterested in hearing the opinions of people who opposed the scheme. It became obvious to most of the residents who attended these events that neither the appellants nor the local planning authority were genuinely interested in residents' views.

Visual impact of development

- 11.5 The Marina effectively marks the gateway between the Regency seafront and the proposed South Downs National Park. As such it is one of the most sensitive locations imaginable for a new built development. Moreover, a unique and spectacular feature of the Brighton seafront is the way it visually connects with the countryside beyond. Walking east along the cliff-top road south of Kemp Town, the splendid Regency façade of Arundel Terrace and

Lewes Crescent is complemented by an eleven-mile vista of high chalk cliffs fringing the South Downs National Park all the way to Seaford Head. The development would put a stop to that continuity and block outright this charming view. It would also obscure the strategically important views from the western edge of the proposed National Park coastline looking in a westerly direction towards Brighton seafront.

- 11.6 The scale, density and height of the proposed development are completely inappropriate for the setting. The development consists of boxy buildings that would clash not only with the listed Regency terraces but also with the higher quality architecture of the already approved Brunswick scheme. It would also clash with existing homes in the Marina. The most prominent feature of the development, Marina Point, would be a dull, clumsy building with none of the architectural merit of Brunswick's 40-storey tower. It would vastly exceed the cliff height limit in the 1968 Brighton Marina Act. Moreover, the visual separation of the Brunswick scheme from the coast (it was conceived as an 'island' of tall development) would be destroyed by the appeal scheme, and the visual permeability of the Brunswick scheme when viewed from the cliff top would be 'filled in'.
- 11.7 Whether the development is seen from near or far, and whether or not it would obliterate or compromise a view of the cliff, the pier or the sea, it is invariably regarded in the TVIA as having a beneficial impact. This is on account of what Mr Coleman regards as the quality of the architecture in general and the sculptural quality of Marina Point in particular. But even if Marina Point were exceptionally beautiful, which is not accepted, to be aesthetically acceptable a building needs to look good not just in itself, but in its context. New buildings should either integrate with, enhance or complement the existing built environment; this development would do none of these.
- 11.8 The appellants' evaluations of the impact of the development on views are often implausible and dismissive of cherished aspects of current views. For example, in the view from the cliff east of the Marina to Hove seafront (view C10), various aspects are described as 'of little quality', 'poorly related', and lacking 'composition'. No justification is provided for any of these comments. By contrast, Save Brighton consider this to be a superb view²²¹. The impact of the development from this point is described as "substantial but essentially beneficial; the new buildings being well designed and the existing Marina development already dominating this view of the city". In fact the existing Marina development in no way dominates this view, unlike the proposed new buildings, whose impact on the view would be devastating.
- 11.9 The view from Arundel Terrace (T30) is described in the TVIA thus: *"There is an adverse aspect to the fact that the development separates the listed terrace from the eastern seascape in this view and the cliffs in the distance. It is clearly a substantial impact but its composition and architectural detail is of a high quality in design terms, and if the viewer accepts the city scale future of the Marina, its redeeming qualities assist in making it beneficial"*. Save Brighton do not accept the "city scale" future for the Marina upon which this assessment is predicated. It would represent a completely new

²²¹ Mr Simpson's proof, photograph on page 8

departure from everything that has been hitherto envisaged or promised for the Marina and is totally unjustified.

- 11.10 From ground level in front of Marine Gate (view T31) the Marina is not visible. The TVIA concludes that *"On the basis that all the visual elements are of high design quality, the impact is substantial and beneficial"*. Even if the buildings were intrinsically of high design quality, which is disputed, that would not compensate for their intrusion into an inappropriate context. How it will benefit the residents of Marine Gate to see the tops of tower-blocks ahead of them, instead of the currently uninterrupted expanse of sky, is not explained. Similarly, in the view close to the pedestrian crossing on Marine Parade (view T40), the proposed obliteration of cliff views is described as a substantial, beneficial change in view of the 'loss of the negative sprawl' and the 'high quality approach to urban planning, townscape legibility and architecture'. For the appellants to write off a cherished cliff view in this manner, with the implication that their own buildings are more worth looking at, is an unfounded assertion that has no credibility.

Natural elements – light, wind and flooding

- 11.11 It is self-evident that if you pack tall buildings as closely together as those in the appeal scheme, most of the intervening spaces will be in the shadow of other buildings most of the time. Of course, from time to time during the March to September period, a shaft of sunlight will briefly illuminate odd bits of the ground as the sun emerges from behind one building before disappearing behind the next. During the period from October to February, however, the sun will rarely, if ever, penetrate the housing courtyards. And after 4pm at any time of year the courtyards and gardens are likely to be submerged in deep shadow, even on midsummer's day. Satisfactory sunlight has not been demonstrated.
- 11.12 The modelling of wind that has been undertaken is questionable, for two main reasons. Firstly the wind data was based upon the long-term records from the anemometer at Shoreham Airport; despite the claim that the records were corrected for the effect of the 'fetch', it is difficult to see how such theoretical corrections can properly take into account key differences in the local topography (hills, valleys, cliffs etc) as well as local land humidity and land and sea temperatures. Secondly, the effects of the cliff have not been properly considered. The appellants' claim that their wind-tunnel model takes into account the significant local effects of downdrafts and turbulence, but on the model there is only a short section of cliff which terminates with a vertical cut-off curving around behind Marine Gate. This would create turbulence in different parts of the airflow from that occurring naturally - only on-site measurements could determine the true impact of this cliff.
- 11.13 Other witnesses were rightly concerned that the costs of any enhancement to flood defences required as a condition of development should be paid by the developer and not charged to existing residents. Another worry is the potential for some catastrophic breakdown of flood defences, either as a result of an accident during construction or for reasons that are unpredictable, perhaps consequent upon the constant revising upwards of forecasts of sea-level rises.

Conclusion

- 11.14 Few would deny that the western end of the Marina has suffered from low quality piecemeal development in the past. The three leisure sheds have an unfortunate hangar-like appearance, the multi-storey car park is ugly to look at and awkward to use, and the greatest architectural crime has been the construction of the Asda car park. We have still not reached a point, however, where the problem is irreversible. Landowners could and should get together to see if they can develop a true holistic plan for the integrated development of the Marina's western end and its aesthetic integration with the rest of the Marina.
- 11.15 If, however, the appeal scheme is approved, it would effectively mop up nearly every scrap of available building land, leaving no space, let alone any financial incentive, for remedial development in the future. Worse still, it is hard to see how reconstruction of the entry/exit ramps will be physically possible once all the surrounding land has been filled with buildings. The appeal scheme would represent the final triumph of mediocrity over aspiration, of piecemeal exploitation over integrated planning. It would be the final nail in the coffin of a world-class Marina from which the people of Brighton and its visitors could have derived immeasurable pleasure and benefit for generations to come.

THE CASE FOR BRIGHTON & HOVE ECONOMIC PARTNERSHIP

- 12.1 Brighton & Hove Economic Partnership is comprised of 30 individuals who represent various sectors of the local economy. It receives grant funding from the South East England Development Agency (SEEDA) but is an independent body. It writes the city's Economic Strategy in consultation with a wide range of stakeholders, the latest edition of which was adopted by the City Council's Cabinet in March 2009. The Economic Partnership's aim is to ensure that the city's economy thrives to meet the needs of current and future generations while reducing adverse impact upon the environment.
- 12.2 In its simplest form the economy must provide jobs and homes for its people. And preferably in the same place, because people that live and work in the same place have a much greater vested interest in both. And people with common vested interests make more sustainable, cohesive communities. "Jobs" and "homes" are inextricably linked and there is considerable research demonstrating the limiting effect of housing supply on economic development. The City Council's own Strategic Housing Market Assessment (SHMA) states: *"Dwelling constraints will obviously restrict population growth. Population determines the supply of labour; a limited labour supply will act as a further constraint on economic growth"*²²².
- 12.3 It is not within BHEP's expertise or remit to offer views on the architectural merits of the scheme. The reason BHEP supports the appeal is because of the substantial regeneration and economic benefits that the development would bring to the city and the wider region. The merits of the proposed development are considered on four levels based on its economic relevance

²²² CD9/5 page 67

to the South East Region, the wider Brighton & Hove "City Region" (what is termed the "Diamond for growth and investment"), the City of Brighton & Hove, and Brighton Marina district centre.

South East Region

- 12.4 The South East Plan includes Brighton in the Sussex Coast section, which it identifies as suffering from *"higher levels of multiple deprivation, lower levels of Gross Value Added (GVA), lower earnings, higher levels of unemployment and lower rates of business formation"*²²³. The SEP aims to improve the sub-region's economic performance to at least match the regional average. Brighton's GVA — a measure of productivity — stands at £19,470 per head, which is £40 higher than the UK average but £675 lower than the South East average. Unemployment rates in Brighton are higher than the UK average, while employment rates are lower than all five neighbouring district councils and even lower than the UK average. Residents' salaries are above the UK median salary but only because 33,000 of them commute out of the city every day, and even then they only earn 98% of the South East median.
- 12.5 The SEP identifies the city as a "regional hub" and a potential growth point. Policy SCT2 specifically includes Brighton & Hove as a location for national and regional assistance and expenditure, suggesting that it has a key role to play as a catalyst for economic activity across a wider region. The SEP recommends a housing allocation of 570 dwellings per annum up to 2026. However the SHMA points out that *"the difficulty in allocating land within the city means that there is significant uncertainty about whether this rate of delivery can be continued in the future"* and that *"recent completions have been heavily reliant on windfall sites"*. In view of the physical constraints that surround the city, it is imperative that the most is made of previously built-on land such as the Marina if the catalytic role identified in the SEP is to be realised.
- 12.6 The Regional Economic Strategy (RES), published by SEEDA, characterises the Coastal South East as an area which has seen continued economic and social decline, but also an area of substantial untapped economic potential. The RES makes clear that *"the prime focus for development in the South East should be urban areas, in order to foster accessibility to employment, housing, retail and other services, and avoid unnecessary travel"*. The sustainable element of the RES urges development to be on brownfield sites, especially where there is already infrastructure in place to support development. The appeal proposals comply perfectly with these priorities. The Marina already possesses adequate infrastructure and excellent public transport accessibility, which would be enhanced by the addition of improved transport, leisure and retail facilities. The regeneration of the Marina would stimulate employment, housing, retail and other services that would in turn feed into the local economy.

City Region Diamond

- 12.7 The RES identifies Brighton & Hove as one of eight Diamonds for investment and growth in the South East region, which it defines as: *"a major concentration of growth potential, which can act as a catalyst to stimulate*

²²³ CD7/1 Section C paragraph 17.1

prosperity across wider areas, and with the potential for further sustainable growth through targeted investment in infrastructure". The Diamonds are effectively functional economic areas linked via housing markets, travel to work areas, retail catchments and travel to learn patterns. The Brighton Diamond extends into neighbouring East Sussex and Adur, perhaps as far as Worthing. The Diamonds are expected to contribute 45% of the future growth in the entire South East economy and to spread success to surrounding areas.

- 12.8 With a host of economic issues including lower than South East average salaries and employment rate, higher than South East average unemployment and a shortage of affordable housing, Brighton & Hove is one of the poorest performing Diamonds in the South East. Nevertheless, it is seen by SEEDA as key to turning around the fortunes of more economically weak areas on the Sussex Coast. Consequently, it was highlighted as a focus for investment in infrastructure in the Regional Funding Allocation guidance submitted to the Government in 2006. In practice this means that, instead of a scattergun approach, new investment should be targeted where it will deliver the greatest benefit. It is increasingly important that the city complements public funds (likely to be much reduced over the next three years) with private sector investment such as that proposed in this appeal.

City of Brighton & Hove

- 12.9 The population growth of the city accelerated to 17.6% over the period 1991-2006, as against 15.5% for the South East. But during this period the level of household growth exceeded the level of new housing completions, which suggests that households have continued to form despite constraints on the supply of new homes. In terms of employment, over the period 1995-2006 the number of jobs in Brighton and Hove has grown by 17%, compared with 7% in the South East as a whole. Yet the City Employment & Skills Plan predicts that Brighton & Hove will have to generate another 8,000 jobs over the next nine years just to stand still at the current employment rate of 75.6% (against a South East average in excess of 80%). To reach the Government target of 80% employment, an additional 16,000 jobs would have to be found.
- 12.10 Brighton & Hove has a dearth of available space on which to build homes and offices. The Economic Partnership has produced a guide of 20 potential sites in and around the city, but four of them have ownership constraints, three of them are on the urban fringe upon which the revised Core Strategy seeks to put a blanket protection, and one is in the National Park and hence beyond reach. And to add to the problem, six of them are more or less a single hectare in size. Disappointingly, the revised Core Strategy is not likely to help with the delivery of housing. Its reliance on windfall sites to deliver 37% of housing targets up to 2025, contrary to Government guidance, does not instil confidence. Neither does the inclusion of locations like the Gasworks site, which are likely to be heavily contaminated and may therefore not be an attractive proposition to developers. Conversely the appeal site is a key part of the housing land supply which, if delivered at the right density, could reduce the reliance on windfalls.

- 12.11 The Brighton and Hove Employment Land Study (2006)²²⁴ highlights the possibility of 'constrained' employment growth as a consequence of the dwellings allocation in the city. This actually forecasts a decline in employment in Brighton and Hove by around 1,150 jobs up to 2016 and around 2,300 jobs up to 2026. When considering the Marina proposals – essentially a residential-led development – it is important to highlight the reciprocal relationship between economic development and the provision of housing. The economy cannot grow unless the population grows and the population cannot grow without new housing.
- 12.12 Unlike other coastal locations the workforce in the city is getting younger, but with median earnings well below the regional average, there is a housing problem exemplified by an acute lack of affordable housing. Assuming a 10% deposit (unlikely in the current market) and a mortgage of 3.25 times earnings, a salary of £41,730 is needed to buy a first-time buyer's one-bed flat in the city and a salary of £78,401 is required to buy a three-bedroom house. This is against a median residential salary of just £26,743. Consequently Brighton & Hove has a higher level of overcrowding than any comparable area in Sussex, with 13% of its stock with fewer rooms than reasonably required by the occupants. This compares to 6% for other areas of Sussex and the South East Coastal strip.
- 12.13 The level of affordable housing needed each year to address the backlog and meet the need likely to arise over the next five years far exceeds what is likely to be delivered by way of new affordable housing. The City Council's Housing Needs Survey identified a shortfall of 1,202 affordable homes per annum²²⁵. As a consequence, lower income (and intermediate) households may decide to move out of Brighton & Hove and access housing in cheaper areas. This process works against mixed income communities and also affects the ability of key workers to live and work within the city. Some 28,000 people commute into the city each day to do lower paid jobs, which exacerbates transport problems. And it is not only workers that may be forced to leave the city; significant house price increases associated with restricted supplies of housing subsequently lead to declines in employment and income. In the short run, high housing costs force firms to pay higher wages but in the long run, firms generally leave high-cost areas.

Brighton Marina District Centre

- 12.14 Conceived in the 1970s in a spirit of considerable optimism, Brighton Marina was always intended to be a place where people would live and work while offering leisure pursuits that extended beyond the nautical. Despite some investment over the years, the Marina continues to disappoint and fails to be either a destination in its own right or make a meaningful contribution to the city's wider destination offer. Brutal architecture, poor public realm and unattractive access routes have all contributed to its perceived (and actual) separation from the city centre. The third largest Marina in Europe should be high on the list of "must see" attractions for the leisure visitor to the city, and yet it receives something over 3 million visitors per annum compared to 8.5 million visitors to Brighton & Hove.

²²⁴ CD9/9.1 Brighton & Hove Employment Land Study, August 2006

²²⁵ CD9/2 Brighton & Hove Housing Needs Survey, 2005

- 12.15 The multi-million pound investment proposed by Explore Living/X-Leisure offers the chance to halt the endless cycle of piecemeal additions and make the Marina a meaningful and thriving part of the city. Further development of the residential element of the Marina would contribute towards the evolution of a vibrant local community with sufficient critical mass to sustain economic activity even in the winter months when visitor numbers are reduced (one major economic problem suffered at the Marina at present is the seasonal variation in visitors and business). The proposed commercial element would go a long way towards making the Marina a destination in its own right.
- 12.16 The proposals also offer much-needed affordable and family housing. With 27% of the workforce employed in the public sector, the city has a large number of key-workers that would benefit directly from 40% of the proposed residential units being affordable. The link between affordable housing and the local economy, and the link between Brighton & Hove's success and the wider sub-region are vitally important. People who live and work in the same place have a much greater vested interest in that place and develop more cohesive communities. Their contribution to the wider economy and the vibrancy of the city can only be enhanced by them being residents as well as workers.
- 12.17 The Marina development would generate significant employment opportunities, both during the construction phase and after. The value of the construction phase is enhanced by the willingness of the appellants to commit to offering apprenticeship opportunities to local residents at a time when the construction industry is in crisis. Many of the 185 permanent employment opportunities would be entry level jobs, invaluable in a city with some 25,000 people on unemployment benefits of one kind or another. The development would also help to safeguard the 1,130 existing jobs, many of which are under threat from the under-performing micro-economy of the Marina.

Conclusion

- 12.18 Permission for this development should be granted because it complies with strategies for economic development at the national, regional and local level and it amply satisfies the requirements of the Brighton & Hove Local Plan and Strategic Housing Market Assessment. The provision of 40% affordable housing would play an important role in addressing the shortfall that has been identified by a series of reports over the past decade.
- 12.19 BHEP consider the proposals to be deliverable. As a cash-rich company employing its own workforce, Laing O'Rourke is perhaps one of the few developers that can realistically build in the current economic climate. In 2008 Brighton & Hove had £2.2bn of developments in the pipeline but most have been postponed, abandoned or placed under review. The redevelopment of the Marina would go a long way to restoring confidence in the city and marking it out as the "Diamond" it could be for future investment when the recession ends.

THE CASE FOR INTERESTED PERSONS

Objectors

- 13.1 At the inquiry, 40 members of the public spoke against the proposal. Most of them raised matters that have already been covered at great length in the cases for the City Council and the four opposing Rule 6 parties. Without repeating these matters in detail, there was widespread concern at the scale and design of the proposed buildings, the very high density amounting to overdevelopment, the height constraint of the 1968 Act and the history of compliance thereafter, the loss of the prime maritime function of the Marina, the impact on the historic environment of Kemp Town and the seafront, the loss of views of the cliffs and Downs, the small size and poor quality of some of the accommodation, the misleading photographic images, and traffic and parking.
- 13.2 A wide range of other matters was mentioned. These included assertions from Miss Higgins that the shadowy spaces around the Cliff Site building would become a haven for crime and anti-social behaviour, that poor quality housing could cause people to react adversely and impact on public order in the Marina, and that the long construction period would be an intolerable intrusion into her human rights. Ms McKay and others expressed similar views, and feared for the impact on the present sense of community at the Marina. Miss Higgins and Ms Price argued that the costs of any increased flood risk arising from the development should not be borne by existing Marina residents. Ms McKay and Ms Brickman stressed the importance of the Marina to the yachting community and as a tourist attraction.
- 13.3 Mr Mouldsdale argued that many of the plants and trees proposed for the site stood little chance of surviving the challenging maritime conditions. Mr De Young worried about the problems of congestion at a location that is served by a single access. Ms Sheppard expressed concern at the pressure the development would place on local doctors' practices. Mrs Pettit feared for her health if construction traffic to the site was to use Shoreham Harbour and the route past her property. Mr Clifford compared the proposal to the marina at Eastbourne, where there is much better separation of vehicles and pedestrians. Ms Mitchell, who is registered blind, was worried about crossing the Harbour Square shared space.
- 13.4 Ms McCrickard presented a petition against the proposal with 4,793 signatures. Mr Boyce believed that the car parking provision for berth holders would be inadequate. Ms Jones was concerned about the ability of boats to access the boatyard and the structural integrity of the access ramps. Ms Sewell criticised the retention of the ramps and the limited vision for achieving a green, eco-friendly development. Professor Rush expressed the concerns of the diving community about difficulties with the delivery and collection of equipment and vehicle parking. Ms Davies criticised the publicity campaign conducted by the appellants over many years, believing it to be misleading. Mr Glanville questioned why the appellants did not offer up a witness to enable its viability argument to be tested.

Supporters

- 13.5 9 members of the public spoke in favour of the proposal. Most of them raised matters that have already been addressed in the cases for the appellants and

BHEP. These focus on the poor quality environment of the present day Marina, the high quality of the proposed architecture, the sustainable nature of the development, the dire need for new housing and the importance of affordable housing, and the vital need for further investment to support the business community and instil confidence in the future of the Marina. In addition, Ms Forester and Mr Frier referred to the employment benefits of the scheme, especially for opportunities in the construction industry. Mrs Simpson regretted the loss of vision by a Council that in the 1960s/70s had sanctioned the building of the Marina and the conference centre.

WRITTEN REPRESENTATIONS

- 14.1 Over 570 letters of objection were received in response to the publicity about the appeal. The writers focus on the same main issues as those who spoke at the inquiry, including overdevelopment of a sensitive site, the loss of maritime character, excessive height and contravention of the 1968 Act, detriment to the coastline and Kemp Town, increased congestion and insufficient car parking, overloaded infrastructure and a poor environment. Very many other matters were raised, broadly consistent with the detailed listing of objections in the Council's report to Committee²²⁶.
- 14.2 There were over 220 letters of support, the majority in the form of a circular letter. Again these raise issues largely covered already, such as the attractive architecture and design, much needed investment that would boost tourism and jobs, the sustainability of the development and the need for affordable housing.

CONDITIONS AND OBLIGATIONS

Conditions

- 15.1 A preliminary list of planning conditions is included in the Planning Statement of Common Ground²²⁷. This list was discussed between the parties during the inquiry and revised versions were subsequently produced²²⁸. At Annex A to this report I attach a suggested list of conditions, with reasons, which is based on the final agreed version but amended to reflect the discussion at the inquiry. Where necessary, I have made minor adjustments to the wording to ensure compliance with Circular 11/95: *The use of conditions in planning permissions* or to improve consistency. I am satisfied that, for the reasons given, the suggested conditions are necessary and meet the other tests of the Circular. Most are self-explanatory and are based on the requirements of development plan policy. A five year period for the commencement of development (condition 1) is justified by the long lead-in time for this complex major scheme, the earliest possible start of building being in 2013²²⁹.

²²⁶ CD3/1.1

²²⁷ CD1/3

²²⁸ CD12/57

²²⁹ See Mr Dennis's Note on Deliverability, Mr Gavin's rebuttal Appendix 3

Unilateral planning obligation

- 15.2 The S106 obligation would, as part of the development, ensure the provision of a wide range of on- and off-site works, infrastructure provision and other community benefits. The principal matters are summarised below.
- 15.3 Transport and traffic measures include a contribution of £1,094,000 to be used for sustainable traffic and transport initiatives, which may include a rapid transport system; £250,000 towards bus priority measures on the surrounding road network; £70,000 for a car club and shopmobility scheme within the development; £100,000 for a visual messaging system of the A259 and £50,000 for a pedestrian crossing across that road; a new public transport interchange along The Strand; and a Travel Plan.
- 15.4 A sum of £1,045,000 would be made available for off-site recreation and sports provision. The facilities specifically listed are East Brighton Park (£220,000), City College (£180,000), Madeira Drive (£100,000), Rottingdean Sports Arena and Rottingdean Terraces (£60,000 each), and Manor Road Gym (£25,000). In addition, £200,000 is allocated to fund a Sports Co-ordinator; the balance of the total would go to facilities to be notified by the Council. There would also be £594,000 towards the provision of two new classrooms at any of three local primary schools.
- 15.5 On-site provision would include a community centre built as part of the Cliff Site building, the construction of an emergency access through the western end of the Marina with a link to Madeira Drive, £600,000 for the installation of public art across the public realm of the site, £30,000 towards the provision of geological interpretation boards, a surgery or healthy living centre in the Octagon, and access to viewing platforms overlooking the cliff. A ground floor unit in Marina Point would be made available to Sussex Police for 10 years at a peppercorn rent. Works to raise the inner wall sea defences would be carried out by 2018, and investigations would take place to determine whether further works to sea defences would be necessary between 2050 and 2060. A sum of £40,000 is included towards the Council's costs of monitoring the S106 obligations and discharging planning conditions.
- 15.6 The intention is to provide 40% of the residential units (520 dwellings) as affordable housing. 35% of these units would be for social rent and 65% for intermediate (shared ownership) housing. However, provision at the full 40% level depends upon the RSL being able to achieve the level of social housing grant upon which the stated sale price to the developer has been calculated. If grant is not available at this rate, the S106 includes a cascade mechanism whereby, in the first instance, the ratio of shared ownership to social rented units increases whilst maintaining (i) the 40% proportion of affordable housing and (ii) the stated sale price to the developer. If the level of grant proves to be insufficient to enable the first component of the cascade to be achieved (in effect, if the level of grant cannot fund 40% of the dwellings being shared ownership, with no social rented units), then a second component comes into play in which the proportion of shared ownership dwellings is successively reduced below the 40% level until the stated sale price is achieved. The minimum provision in this instance, the level at which affordable housing would be provided without any social housing grant, is 21% of dwellings being shared ownership.

- 15.7 It is necessary to consider whether the provision to be made in the S106 obligation satisfies the tests of Circular 05/2005: *Planning Obligations*. The draft obligation was seriously deficient in this respect, in my view, because for many contributions there was little indication of the facilities that would be provided or where the money would be spent. Most of these shortcomings were addressed during the inquiry, though as I indicate in my conclusions, I believe that certain aspects of the proposed off-site recreation provision do not satisfy the tests. Turning to the structure, content and wording of the covenants and the ability of the obligation to deliver what is intended, the Council has serious reservations that the Deed is fatally flawed because not all landowners are party to it. I discuss this later in my conclusions. There are also two minor typographical and procedural errors in the document which, again, I address later.

Other matters

- 15.8 Additional requirements were sought by some Rule 6 parties²³⁰, some of which were suggested as conditions and others as supplements to the S106. Some matters, such as the full provision of the emergency access, are adequately addressed; others, such as suitable working hours for the construction phase, remain to be determined but are subject to approval under the suggested conditions. I share MGAG's concern about the appearance of the roof of the buildings and have added 'mechanical and electrical equipment' to the list of items requiring detailed approval under condition 24. MGAG's request for restrictions on subsequent changes to the external appearance of the buildings is not a matter that is necessary to control by condition because any material changes would require planning permission.
- 15.9 BMRA's concern about a different speed limit at Harbour Square to that in the Marina byelaws is not a planning matter, but one for the authority that enforces the byelaws. KTS's suggestion for improvement works to Kemp Town Conservation Area was not part of the S106 offer and does not meet the Circular 11/95 tests of necessity and relevance. The Society's suggested indemnity against damage by heavy goods vehicles to the tunnel under the A259 would be very difficult to enforce and its reasonableness is questionable.

²³⁰ CD14/24, CD16/3 and CD17/7

CONCLUSIONS

(In this section the numbers in square brackets refer to the relevant paragraphs in the preceding sections of the report)

- 16.1 Based on the evidence presented at the inquiry, I believe that the main considerations to be examined in this appeal are as follows:
- (i) **Appearance/ visual impact issues** – including the design, height, siting and layout of the development, the effect on the rest of the Marina, and the effect on the surrounding area, including Kemp Town Conservation Area and the South Downs National Park
 - (ii) **Residential amenity issues** – the size and quality of living conditions for occupiers of the proposed dwelling units, and the impact on neighbouring occupiers;
 - (iii) **Housing issues** – whether the mix of housing types (especially the preponderance of small units) meets current needs, and the appropriateness of the affordable housing provision;
 - (iv) **Infrastructure issues** – whether the demands that occupiers of the development would make on existing infrastructure are to be adequately mitigated, with particular regard to education and outdoor amenity and recreation space.

APPEARANCE/ VISUAL IMPACT

- 16.2 There is broad agreement among most parties that the urban structure and physical environment of much of the appeal site are extremely poor. The buildings are undistinguished, predominantly functional structures that relate poorly to each other and to the surrounding spaces. The layout is dominated by vehicle routes and parking, with the result that pedestrian circulation is disconnected, lacking in legibility and involves frequent crossing of roads. Many of the public spaces are desolate expanses of hard-surface that serve little purpose or utility; the few soft-landscaped areas around Harbour Square are largely inaccessible and have limited effect in relieving the drabness. The eastern part of the site is better, particularly The Waterfront and the boardwalk which connects it to the multi-storey car park, though north-south pedestrian linkages and legibility remain compromised. [6.2, 6.18, 7.1, 7.8, 8.1, 9.1]
- 16.3 As a result, there is broad support for some form of regeneration at the western end of the Marina. The City Council has led the way, identifying the appeal site as suitable for a much denser, more urban form of development that could include tall buildings. This was epitomised in 2006 by the grant of planning permission for the Brunswick scheme on the seaward side of the appeal site, which includes a 40 storey tower and other residential blocks of up to 17 storeys. Though not yet built, this permission remains extant by virtue of the commencement of the development; the Brunswick scheme is therefore an important part of the context against which the appeal proposals must be assessed. [6.2, 6.18, 7.1, 7.8, 8.1, 9.1]
- 16.4 Objections to the intrinsic scale, density, height and architecture of the buildings come mainly from local residents and amenity groups, not the City

Council. The Council's main concern is with the public realm and what it regards as the failure of the scheme to grapple with features, notably the access ramps and multi-storey car park, which are major visual and physical impediments at present. There is substantial opposition from local people and the Council to the impact of the development on cherished views of the cliffs and on the historic environment of Kemp Town. *[8.1, 10.3, 11.1]*

Design of buildings

Scale and density

- 16.5 Much of the concern revolves around the loss of character and the change in the identity of the Marina as a place primarily for boats and leisure. It is true that the western part of the Marina would become a high density residential neighbourhood that might be found in many cities, for the design and layout of the buildings draws only limited inspiration from the maritime influences of the location. On the other hand, the special nature of a site which extends into the sea from the foot of a cliff would be apparent from many parts of the development, and the presence of the cliff, the sea and the boats would be clearly felt as one moved through the site. Thus it is the setting of the Marina that would continue to make the place distinctive, and although the maritime influence would be diluted, it would not be lost. *[8.1, 10.3, 11.1]*
- 16.6 The assertions about town cramming, over-development and excessive density are not backed by convincing analysis. Existing Marina residents and visitors would undoubtedly experience a dramatic change to the western end of the Marina, but such a change is sought by policy and, in principle, is not inherently harmful, especially when accompanied by improvements to the public realm. The various density calculations merely demonstrate that the scheme would be what it appears, a high density urban development, and in my view they do little to assist a meaningful understanding of its magnitude. The spacing between the proposed buildings (or elements thereof) and the relationship to surrounding development, both existing and proposed, has been carefully designed and, overall, would not convey the feeling of an unduly cramped or overbearing quarter of the city. I deal separately with the specific impacts of certain buildings on the amenity of those living close by. *[8.3, 9.13, 10.4, 11.2]*
- 16.7 Fundamental to this matter is the acknowledgement that, in its present form, the Marina is far from the 'jewel in the crown' of Brighton that so many wish it to be. The history of developers over-reaching themselves and going bankrupt is revealing and suggests that a focus on boats and leisure is unlikely to succeed. Nor has the diversification into retailing proved to be an unqualified success, for even before the current downturn there was a high level of vacancies and, The Waterfront apart, the shopping environment is not as attractive as might be expected. There is no credible challenge to the Council's analyses in the Marina masterplans²³¹ that a substantial investment is needed to transform both the environment and the economy of the Marina, and that such a transformation would best be achieved by high density mixed use development that includes a large amount of housing. *[3.1-2]*

²³¹ SPG20 and the more recent supplement, PAN04

Height

- 16.8 Much reliance is placed by objectors on the cliff height restriction written into The Brighton Marina Act 1968. The fact that some buildings would be taller than the cliff is clearly an important planning consideration when assessing the impact of the development on the locality. But the inclusion of a specific restriction in the 1968 Act is a separate matter, for the planning regime operates independently of this legislation. Thus if planning permission is granted for the appeal scheme, a separate consent of the City Council would be required under the terms of the 1968 Act before the development could be built as proposed. As to the findings of David Widdicombe QC following a public inquiry some 35 years ago, he determined the particular application before him and his conclusions were based on the policy background and other considerations pertinent at that time. This appeal proposal must be determined on its own merits having regard to the current development plan and other material considerations; the relevance of the 1975 decision therefore depends on the extent to which circumstances have changed since then. *[6.24, 8.5-6, 11.6]*
- 16.9 The current development plan does not specifically identify the Marina as a site for development and does not include a policy which restricts buildings to the height of the cliff. SPG20 and SPG15 both identify the Marina as a location for tall buildings, albeit one with particular sensitivities, the latter referring to the opportunity to 'bookend' the edge of the city. PAN04 reiterates the suitability of the appeal site for tall buildings, subject to certain criteria and the view that buildings close to the cliff should generally conform to the existing cliff height. A firmer line is taken in the recently submitted CS with the stipulation that development within the Marina should not breach the cliff height. Thus the evolution of policy guidance in recent years, since the Brunswick approval, is to seek to impose progressively more stringent limitations on the height of buildings at the Marina. *[4.11-15]*
- 16.10 The proposed 28 storey Marina Point tower and the 15 storey Quayside building would both substantially exceed the height of the cliff. Neither would be in close proximity to the cliff, however, so the height of these buildings would conflict with the CS but not with PAN04. The Cliff Site building is close to the cliff and elements of this structure would exceed the height of the nearest part of the cliff by up to 2+ storeys, though the building would not materially exceed the 33m or so maximum height of the cliff. Whether the CS height restriction relates to the maximum cliff height or the height of the nearest part of the cliff (as in the 1968 Act) is not clear, so it is not possible to say whether the Cliff Site building would comply with the CS. *[6.21-22, 8.7, 9.10, 10.10, 11.10]*
- 16.11 The 'general conformity' to the cliff height sought by PAN04 gives a degree of latitude. Having regard to the fact that Cliff Site building would reduce in height at the western end where the cliff is lower, and that the elements of the building which would exceed the nearest cliff height would be set back from the north elevation and would be at least 40-50m from the top of the cliff, I consider that the PAN04 height test is satisfied. The Council does not argue otherwise. Overall, therefore, the proposals conflict with the height restriction of the emerging CS, but not with that of current policy or guidance. *[6.21, 6.23]*

Architecture

- 16.12 Marina Point tower would patently dominate the area around Harbour Square and would be highly conspicuous from the rest of the Marina. But the focal point at the main entrance to the Marina is a prime location for a tall building, and I share CABE's view that its scale and proportions are appropriate. Although it would not have the simplicity and streamlined elegance of the Brunswick tower, I believe that criticisms of the design as clumsy and inelegant are overstated. The prominent, alternating curved corner balconies would add interest and movement to what would otherwise be a fairly plain façade, creating a distinctive landmark building. While I accept that the break in the balcony line weakens the clarity of the design from close by, I believe that it contributes to the movement and overall appearance of the building in distant views. In common with the other proposed buildings, the quality of the materials and detailing are crucial to the success of the design; this matter is addressed by proposed condition 24. *[6.19, 6.23, 10.5, 11.7]*
- 16.13 The massive size of the Cliff Site building would be broken up into discrete residential elements rising above a series of raised podiums which frame landscaped courtyards over the superstore and car park. This treatment, coupled with the location of the structure at the foot of the cliff and the partial concealment of the weakest part of the building, its west elevation, by the access ramps, demonstrates a skilful design which relates quite well to its context. Although the permeability of the building from the cliff top would be limited, glimpses through the residential blocks would be gained which, combined with the varied heights and articulated upper storeys, would ensure that the structure did not appear monolithic or overbearing. I consider that there is sufficient separation from the cliff to create a reasonably attractive and usable space which would receive adequate natural light. The separation is also sufficient, in my opinion, not to cause harm to the nature conservation interest of the cliffs, which are a Site of Special Scientific Interest. Moreover, the provision to be made for viewing the cliffs would help to foster a better understanding of their particular scientific value. *[6.20, 6.23, 8.4, 10.6]*
- 16.14 The Quayside building would be a complex and somewhat ungainly structure, with no recognisable logic to the varied heights of the elements rising from the podium level. Its design conveys the impression of responding more to the surrounding constraints, notably the proximity of the approved Brunswick development, than to expressing a coherent and confident form. Whilst the relatively simple and repetitive treatment of the elevations and the use of a limited palette of high quality materials would be sufficient to create an acceptable piece of townscape, with a satisfactory relationship to the Brunswick scheme, in my view it is by far the least assured and accomplished of the building designs. *[6.20, 10.9]*
- 16.15 The division of the long, narrow Sea Wall building on the western breakwater into 10 storey pavilions linked by 4 storey blocks set back from the main frontage would create a striking and dramatic introduction to the Marina on the coastal approach from the west. Positioning a building to directly overlook the beach would clearly be a significant change to the existing arrangement, but is not inherently unacceptable. The building would successfully hide the unattractive west elevations of the multi-storey car park and leisure building, and though the east elevation would be somewhat

bland, there would be sufficient and appropriately positioned fenestration to avoid a monotonous barrier effect. *[6.20, 9.11, 10.8]*

- 16.16 The Inner Harbour building would conform to the lower height and scale of the buildings at the eastern end of the Marina. Although it would have the contemporary styling of the other buildings, it would sit comfortably at the entrance to the gated lower density residential sector. The replacement automated petrol filling station would be smaller than the existing operation and in a less conspicuous location at the eastern end of the multi-storey car park. Moreover, the cladding proposed to the east elevation of the car park and the planted screen separating the facility from Harbour Square would significantly improve the appearance of this functional facility. *[6.20]*

Design of public realm

- 16.17 Across much of the appeal site, legibility and connectivity would be significantly enhanced. Movement across the Cliff Site would be substantially improved by the new pedestrian footbridge from the cliff top and the cascading street (with a lift as an alternative) into the heart of the Marina. I do not believe that there would be any real difficulty for visitors in deciding how to navigate through the arrival space on level 5 of this building but, regardless, the proposed landscaping condition would enable such concerns to be addressed. Elsewhere there would be better pedestrian and cycle routes to and within the site, rationalised public transport arrangements and new or remodelled public spaces. Overall there would be appreciable improvements to the quality of the public realm and the ease of movement across the site. *[6.28, 6.37, 7.17]*
- 16.18 The main areas of dispute at the inquiry focused on the retention of the access ramps, the treatment of Harbour Square, and (to a lesser extent) the amount of active frontage.

Access ramps

- 16.19 The stated aim in SPG20 of removing the access ramps is tempered in PAN04 by the recognition that this may not happen in the short to medium term because of the limited options for alternative provision. As the appellants point out, the notional solution in SPG20 of a roundabout close to the cliffs appears impractical given a plethora of constraints, not least the steepness of the gradient that would ensue. To my mind there is a large measure of ambiguity in PAN04, for the requirement to give "due consideration" to the removal of the ramps contrasts with the indication that removal is a long term aspiration, and with the clear assumption in the rest of the document that the ramps will stay. Indeed, removal of the ramps is not one of the Masterplan 'key objectives' listed in section 3.2. In this context I am satisfied that the explanation given by the appellants in the DAS for retaining the ramps satisfies the "due consideration" test. *[6.33-35, 7.30-31]*
- 16.20 In practical terms there is little incentive to remove the ramps at present. There is no evidence that they are structurally unsound or coming towards the end of their useful life. Replacement would undoubtedly be very

expensive²³² and could potentially threaten the viability of the appeal scheme – a matter I turn to later. And whilst it is true that the ramps form a barrier to movement, they do so in combination with the multi-storey car park, which PAN04 accepts will remain in the short to medium term. Moreover, the ability to move under the sections of the ramps that are elevated means that they are much less of a barrier than the car park. Direct pedestrian linkages to the existing tunnels through the car park are proposed, thereby improving the informal routes across the existing surface parking area under the ramps. *[6.36, 7.29]*

- 16.21 Visually the concrete ramps are not attractive features and they represent a significant intrusion into the western end of the Marina. That said, they do have a certain sculptural form and, coupled with their slender columnar supports, they are noticeably less rudimentary than many such structures. Furthermore, the proposal to utilise the under-ramp areas for a range of sport and recreation would bring life and activity to spaces that are currently bleak and uninviting, improving both their use and appearance. I agree with CABE that a high quality treatment of these areas is necessary to ensure that they are made as hospitable as possible; this is capable of being achieved by diligent scrutiny of the details required to be submitted by conditions. *[6.35, 7.72]*
- 16.22 It may be, as the Council suggests, that the appeal development would make it more difficult to achieve the removal of the ramps in the long term. The logistical reasons it suggests, whilst formidable, would not in my view be insurmountable; more significant, I suspect, would be the reduction in the financial capacity of the remaining parts of the site to fund replacement of the ramps. But that does not amount to sufficient reason to reject a proposal which complies with PAN04 in this respect. Had PAN04 required removal of the ramps at this stage, it would have said so. *[7.32]*

Harbour Square

- 16.23 Harbour Square, the junction at the end of the access ramps, is the main vehicular interchange within the Marina. As presently configured, this conventional five-arm roundabout is surrounded by barriers which act as a major deterrent to pedestrian movement along the desired routes across the Square. The proposal aims to replace this traffic dominated environment with a paved shared space through which pedestrians and cyclists would be able to move whilst vehicles circulate in two designated traffic lanes. The absence of traffic signs and controls, railings, high kerbs and other clutter is intended to reduce vehicle speeds and thereby combine the functions of a public square and a roundabout (the “squareabout”). *[6.38, 7.32]*
- 16.24 There is much concern about the practicability of such a solution. Its success would depend upon pedestrians feeling sufficiently safe to use the route through the central, tree-lined space. In highway terms the experimental nature of the design means that it has proved difficult to model with conventional tools. The findings of the VISSIM model, which suggests that formal crossing arrangements would be necessary if pedestrians are to enter

²³² I place little reliance on the figure of £15m that was suggested at the inquiry, as it was not supported by evidence. Nevertheless, there can be little doubt that the cost of replacing the ramps would amount to many millions of pounds.

the central island, are not encouraging. Contrary to the claims made, the Dutch Laweiplein example appears not to be comparable because pedestrian movement occurs on the arms to that junction, not across the central space. And the many examples of shared-space streets are of limited value because traffic moves very differently around a gyratory junction. On the other hand, the operation of the 'squareabout' has not been disputed by the local highway authority, or by highways consultants acting for the Brighton Marina Estates Management Company. *[6.40-41, 7.25-26, 8.15-16, 10.20]*

- 16.25 In response to concerns about the successful operation of the 'squareabout', the appellants have proposed a fall-back position which involves installing traffic signals at key points around the junction. This would be implemented if the shared space design is deemed to have failed. To my mind this is an eminently sensible way forward. The creation of a clutter-free shared space through which pedestrians could freely move is clearly desirable, and the significance of the benefit justifies carrying out an experiment. And even if movement across the central island would only occur when traffic flows are light, it does not necessarily follow that the shared-space concept is not a success. But if the experiment does fail, the installation of traffic signals (which no-one has said would not work) would ensure that many advantages to the public realm were maintained whilst allowing for the controlled movement of vehicles and pedestrians through the space. *[6.41]*
- 16.26 As to the public realm aspects of the design, I agree with CABE and the Council that the irregular arrangement of buildings around Harbour Square makes it difficult to create a legible space, and that the treatment of the spaces in front of these buildings is weak. I believe that visitors arriving at Harbour Square on foot from the Asda store or via the cascading street would be struggling for visual clues about where to go or how best to get there. Notably, there is little indication that the shared space has been designed to encourage pedestrians to cross it, for the only obvious crossing points would be on the roads feeding into Harbour Square rather than on the 'squareabout' itself. *[6.39, 7.18, 7.28]*
- 16.27 My own view is that strangers and the more cautious/less able pedestrians would benefit from a more coherent and legible treatment of Harbour Square and the adjoining spaces. It may be, for example, that the main pedestrian desire routes (particularly the north-south route to the steps up to the Boardwalk) could be demarcated in some subtle way, perhaps by a uniform surface treatment and/or street furniture and planting that adopted a recognisable, consistent theme. Confident pedestrians would still be able to use the shared space as intended by crossing at any point, whilst the existence of identifiable routes would increase the likelihood that the more cautious would access the central island. The appellants accept that work remains to be done on the detailed design of the shared space, and propose a two-stage process in which the principle of the approach is confirmed by the grant of planning permission, with the optimum solution arrived at following further work which would be required by condition²³³. *[6.39]*

²³³ Although the conditions agreed between the parties would probably allow for this to happen, I consider that further work to the design of Harbour Square should be made a more explicit requirement. I have therefore made a small adjustment to the agreed form of condition No 33 to address this matter.

- 16.28 Whether it remains as a shared space or whether the fall-back position has to be implemented, Harbour Square would remain a compromise as a result of having to distribute the vehicular traffic to the Marina and to facilitate important pedestrian routes on the same piece of land. It may be, as the Council submits, that a better solution could be found if the access ramps were removed, but as discussed above, that is not likely to happen at present. Matters such as better enclosure around Harbour Square are also projected into the future because some sites where improvements could be made are not controlled by the appellants. Nevertheless, despite its limitations, the proposal for Harbour Square would be a significant improvement on the current, car dominated junction which is inimical to pedestrian movement. [7.29]

Active street frontages

- 16.29 Dealing firstly with the Asda frontage, I believe that the fully glazed south elevation of the proposed superstore would provide clear sight of activity in the store behind and make an important contribution to the vitality and safety of the pedestrian route to the south. I acknowledge that a view of a line of check-outs does not represent the most attractive of shop frontages, but it would be immeasurably better than a blank frontage in this location. And as with many other frontages throughout the site, the mere presence of windows through which people can look and be seen, whether it be on commercial or residential property, provides surveillance that would contribute to an increased sense of security. [6.42-43, 7.21]
- 16.30 Overall I consider that the new buildings have been designed with quite good amounts of active frontage, particularly those that abut the main routes and spaces. The main exceptions are the rearward eastern elevations of the Quayside and Cliff Site buildings, but as these sections serve necessary utility and functional areas of the buildings, active frontages would not be practical. Thus the requirements of SPG20 and PAN04 are satisfied. [6.43, 7.20]

Building for Life

- 16.31 Neither of the Building for Life (BfL) assessments carried out qualifies as a formal, recognised assessment according to CABE's guidelines. Whilst BfL provides a useful tool for assessing residential developments by imposing a structure on the analytical and evaluation process, there is nothing inherently new in the criteria themselves, which focus on current best practice. Aside from differences in the specific scores on individual criteria (the underlying reasons for which I mostly address throughout this report), there was a more significant disparity with regard to the relevance of existing constraints. Whilst the appellants are correct to point out that certain criteria require consideration of what already exists (for example Nos 7 and 14), the phraseology of most of the criteria requires an absolute judgement to be made rather than a relative judgement about the extent to which a particular criterion would be improved as a result of the development. [6.44-45, 7.11-12]
- 16.32 Consequently the shortcomings to movement and legibility that would endure as a result of the retention of the access ramps and multi-storey car park must be factored into the BfL assessment, notwithstanding the improvements that would be made in these areas. In these respects it seems to me that the Council's approach is to be preferred. Indeed, this may account for the

moment when the appellants conceded that a score of 18 out of 20 – higher than any score yet achieved on schemes elsewhere – was probably over-optimistic. And whilst it is apparent from my conclusions on other matters that I do not agree with all of the Council's assessments (such as criteria 3, 15, 18), on many of the design-orientated criteria the failure to overcome fundamental existing constraints means that a score of 1 is not merited. On the other hand, I do not always agree with the Council that the deficiencies are so substantial as to warrant a 0 score. [6.46, 7.12-13]

- 16.33 Overall, therefore, I find that a score somewhere between those of the two assessments carried out is likely to be a more accurate reflection of the true BfL appraisal in this case. In light of the conclusions I reach elsewhere on the main matters in dispute, it is not necessary for me to set out in this report a fully justified criterion-by-criterion assessment. Suffice to say that I would expect the scheme to score somewhere around 14, the lower margin of the 'silver' standard.

Effect of development on surrounding area

Townscape and Visual Impact Assessment

- 16.34 I dealt in Chapter 1 with the alleged deficiencies in the TVIA in the context of the adequacy of the ES. I concluded that the images presented in the TVIA were adequate to enable a true indication to be gained of the effects of the development on the locality. But I also noted that because of the very small size of the existing images, a true impression could only be gained by carefully comparing at each location what is observed in the 'existing' view with the computer-generated image of the proposed development. This is the practise that I consistently follow when dealing with such computer visualisations, and I have no reason to doubt that other professionals would do the same. Therefore the contention that English Heritage, for example, had been misled by the TVIA is without merit unless backed by evidence; no such evidence was adduced. [1.12-18]
- 16.35 It does not follow, however, that the criticism about the small size of the 'existing' images and the use of a wide-angle lens is unfounded. The appellants' argument that a wide-angle lens is more appropriate in a city context may be valid for central London, where tall buildings constrain most views, but that is not the situation on the coast at Brighton Marina. The majority of views in the TVIA are medium- and long-distance panoramas that demonstrate the impact of the proposal on a mix of coastline, downland and mostly low-rise residential development. Using the results of the exercise carried out by the appellants at my request, I am in no doubt that computer visualisations based on a 50mm lens as recommended in the GLVIA (ie 40° field of view) would have made it much easier for the general public, in particular, to appreciate the full extent of the impact of the development²³⁴. Even with the wide-angle format, having the same size image for proposed and existing views would have assisted. Better still would have been the provision of a 50mm photograph as well as the wide angle view for comparison, as recommended in the GLVIA if an alternative focal length is used. [1.12-18]

²³⁴ See, for example, view C6 at page 10 of the TVIA Technical Appendix, CD12/30

- 16.36 Consequently, whilst the TVIA *can* provide a true indication of the proposed development, that requires a degree of skill and knowledge that would not have been necessary had the images been displayed in a larger, standard format that allies more closely with the GLVIA guidance. This is particularly pertinent in circumstances where the loss of cherished landscape features is an important consideration in policy terms. Thus although the TVIA is manifestly produced to a very high standard in terms of the quality of the images, the fact that these cover such a wide field of view means that the document cannot be regarded as an exemplar of best practice, in my opinion.

Strategic views

- 16.37 BHLP policy QD4 seeks to protect views of strategic importance; these include views of the sea from within built-up areas, views along the seafront and coastline, views to and from the Downs, views into and out of conservation areas, and initial views of Brighton from access points. PAN04 seeks to protect similar key views. I deal with the conservation area aspect when addressing the effect on the Kemp Town estate, and with the Downs aspect when considering the impact on the National Park. [4.8, 6.52, 7.33]
- 16.38 The TVIA demonstrates that the development would intrude into some views of the sea from within the urban area. From most inland parts of the city this would be within the context of views of a relatively wide expanse of sea, so the proportion of sea which would be obscured would be quite small. A number of tall buildings (including Marine Gate) already interrupt many views of the sea, and whilst the development would add visibly to the urbanisation of the coastline, I do not believe that the limited additional losses of sea view would harm the strategic importance of views from inland. The same principle applies to reverse views from the sea itself – although the buildings would obstruct views of the existing coastline, including a stretch of the chalk cliffs, the degree of obstruction would be a very small proportion of the wide panorama of the coastline that is obtained from the sea and would not be harmful. A similar outcome pertains to views from the end of Palace Pier, albeit that the amount of obstruction is greater because of the acute angle of view. I reach the same conclusion whether the proposal is considered on its own or in combination with the approved Brunswick scheme. [7.35, 11.7]
- 16.39 Of greater significance is the impact on views *along* the seafront and coastline. Brighton is situated on a gently curving section of coastline, enabling views from Rottingdean to Shoreham (and in good visibility, places some distance beyond). It is a simple fact of geometry that buildings of any significant scale that are built on the shore are likely to cause some obstruction to views along this coastline; the extent of obstruction will depend upon the complex interaction of the size and position of the buildings and the distance and elevation of the viewpoint. For example, the existing buildings at the Marina already interrupt certain views of and from the shoreline, albeit to a limited extent; the Brunswick scheme would have a hugely greater impact, though its position out to sea would leave a gap through which some views along the coastline would remain. [6.59, 7.35]
- 16.40 In distant views along the coast, such as from the Rottingdean area to the east and King's Road/ Grand Junction Road to the west, the interruption to recognisable features of views as a result of the proposed development would be minimal. Moreover, I believe that any losses of long distance view would

be more than offset by the distinctive outline of a group of buildings that would effectively mark the edge of the city, either standing alone or in association with the Brunswick scheme. When approaching the city from the east along the cliff top in the Ovingdean area, the existing development at the Marina appears as a low mass of development projecting into the sea below the cliff. Although Palace Pier and the built form of Brighton and Hove are visible beyond, the former is not instantly recognisable as a pier and the city has few distinguishing features. At this distance, the low-key sense of arrival currently felt by an awareness of the approaching urban area would be replaced by the cluster of large buildings at the Marina, announcing the arrival of the city in a sharply defined and much bolder manner. In my view this heightened sense of anticipation would represent a beneficial change. *[6.58-59, 7.35]*

- 16.41 From the cliff top at Roedean School and closer, Palace Pier is recognisable and there is an appreciation of the large size of the approaching urban area. In the foreground the maritime and residential functions of the Marina are obvious and dominate seaward views; further on still, the poor quality townscape of the commercial area comes into view. The introduction of a group of large buildings as a backdrop to the Marina would be a dramatic change. Marina Point tower would command the attention, rising above buildings that, for the most part, would be approximately level with the horizon. The attractive style and design of Marina Point would be evident, though the individual merits of the other buildings would be less apparent. If the Brunswick scheme is built, the appeal development would add to and complement a part of the city already subject to substantial change. *[6.58-59, 7.35]*
- 16.42 Whether individually or with Brunswick, I believe that the cluster would exhibit sufficient interest and quality to compensate for the loss of view of the Pier and city beyond. The cluster would also robustly demarcate the eastern edge of the city, an edge that is weakly expressed at present by the Marine Gate and Courcels buildings. Moreover, the fact that the view of the Pier and Brighton seafront would suddenly be revealed at the western end of the Marina, at which point the city is plainly a major attraction, creates an additional delight on the eastern approach. Overall, therefore, I conclude that the impact on views along the coastline from the east would be beneficial.
- 16.43 The most significant change would be from the west, where cherished views would be lost of the cliffs which form the seaward edge of the countryside beyond the city. From the western end of Marine Parade, eastward views comprise a typical seafront panorama of grand white painted terraces on one side and beaches at a lower level on the other, with the existing buildings on the Marina masking most of the distant cliffs. At present the cliffs and the sea horizon beyond the Marina gradually come into view as Marine Parade rises above the shore, but both would be obscured by the proposed development. Up to Marine Square I believe that the contrasting vertical and horizontal built forms of the proposal (with or without the Brunswick scheme) would appear as a counterpart to the long strip of buildings on Marine Parade, thereby successfully bookmarking the end of the city. Whilst it is arguable whether, as the appellants contend, this change would be beneficial, at this location I do not believe that the loss of cliff and distant sea views would be harmful. *[6.58-59, 7.35, 11.7]*

- 16.44 The cliffs increase in prominence in the Kemp Town section of the westerly approach along Marine Parade, appearing as a thin but conspicuous white line receding into the distance, with the Marina on the seaward side in the foreground. From here Marina Point tower and the Sea Wall building would be seen as largely discrete structures built in an attractive, contemporary style which would complement the fine Regency façades of Kemp Town. But the western elevation of the Cliff Site building, which is the structure that would extinguish the cliff view, would present a less coherent and legible form, particularly in more distant views from where the stepped nature of the upper storeys would not be apparent. Overall I consider that, at this closer range, the architectural merits of the development would not be sufficient to outweigh the loss of an iconic link with the countryside beyond the city. Apart from fleeting glimpses between buildings, most sightings of the sea beyond the Marina would also be lost. Consequently the development would detract from the strategic views along the coast in this locality. *[6.64-66, 7.49-51]*

Kemp Town listed buildings and Conservation Area

- 16.45 The Kemp Town estate is one of the country's finest Regency townscapes and includes a very high proportion of Grade I listed buildings. Its special character derives from the formality of the crescents and square, the symmetrical arrangement of the terraces around the Enclosures (a Registered historic garden), the location overlooking the sea, and the direct link to the sea through the slopes and esplanades that form part of the Kemp Town Conservation Area. The protection and preservation of these key heritage assets is an important consideration in the determination of this appeal. *[6.60, 7.47-48, 9.2-3]*
- 16.46 At its nearest point on the western breakwater, the proposed development would be just over 100m from the shoreline part of the Conservation Area. Thus there would be no direct impact on the fabric of the protected buildings or landscape. Nor would there be any material effect on views of Kemp Town on the approach from the east. Views of Kemp Town from the Marina itself are quite limited; although many would be obscured by the development (such as those from the eastern breakwater and the top deck of the multi-storey car park), these views are not widely experienced and their loss would not be significant. The main impact would be on views within Kemp Town looking towards the east or south-east, from where the development would be seen as a backdrop to the listed set piece and would impact on its setting. *[6.61-62, 7.50-51]*
- 16.47 As I have already observed, viewed from the section of Marine Parade that passes through the Kemp Town Conservation Area, the Marina Point and Sea Wall buildings would provide a contemporary foil for the Regency terraces. Despite the greater height of Marina Point, I believe that there would be sufficient perception of distance and lateral separation from the terraces as not to compete with the set piece – in effect, as with the Brunswick tower, Marina Point would be clearly identified as part of a distinct nucleus of development below and on the seaward side of the thoroughfare. And notwithstanding my finding that, by obscuring the cliffs, the west-facing façade of the Cliff Site building would be detrimental to views along the coast, this building would be visually separate from the Regency terraces and at a

sufficiently lower level as not to detract from the set piece along this stretch of Marine Parade. *[6.65, 7.50]*

- 16.48 It is the perambulation from west to east along the front of the terraces that particularly concerns English Heritage, who contends that the block silhouette of Marina Point would distract the eye from the terraces. From the western end of Chichester Terrace the tower would undoubtedly feature prominently in the view, but I do not believe that it would be an undue distraction. The immediacy and greater visible massing of the listed façades would clearly distinguish the set piece from the more distant new quarter of the city which, as with the view from Marine Parade, would appear as a discrete cluster of development much closer to the sea. Moreover, I believe that Marina Point would display sufficient quality to allow it to be seen in the same view as the listed terrace without detracting from the historic character of the latter. Though I do not agree with the appellants' assertion that the change from this location would be beneficial, neither do I regard it as adverse. *[6.64-65, 7.49-51]*
- 16.49 Moving east along the front of Chichester terrace and into the west side of Lewes Crescent, the planting within the central Enclosures would restrict views of the development to the tops of the taller buildings. On Lewes Crescent there are instances where Marina Point and then Quayside and the Sea Wall building would merge with the south-east corner of the terrace in an awkward juxtaposition, creating momentary adverse impacts. There would also be a small intrusion of the top of Marina Point above the roof line. Whilst these impacts from within the heart of Kemp Town would detract from the clarity of form of the terraces, similar juxtapositions already exist and the slight and/or transitory nature of those now proposed means that there would be no significant harm to the set piece. *[6.64-65, 7.49-51, 11.8]*
- 16.50 By far the greatest conjunction would occur along the front of Arundel Terrace, where the proposal would be seen as a continuous band of built form in views to the south east with Marina Point rising up in the middle (and, if built, the Brunswick tower at the outer edge). There is no intrinsic reason why views out from the edge of Kemp Town should not encounter other development, however, provided the qualities which make up the area's special character are not harmed. In this case the buildings of Arundel Terrace would remain the dominant elements of the view, and the location of the Marina at the foot of the cliffs means that, despite its proximity, the proposed development would still be perceived as a separate quarter of the city. And despite the loss of cliff and sea views to the east, the open panorama southwards to the sea which is so critical to the setting of the listed terraces would be unaffected. *[6.64-65, 7.49-51, 11.9]*
- 16.51 The Council and EH argue that the historic link between the set piece and views of the cliffs and seascape to the east, which is seen as the last remnant of the original concept of Kemp Town as a separate entity from Brighton, would be destroyed by the development. But Brighton has long since encroached, with urban development now surrounding the historic estate on three sides, so I find it difficult to accept that such a link remains. The fact that modern development on the eastern side of Kemp Town is tucked out of sight until reaching the end of Arundel Terrace does not mean that it should be ignored. The kinetic experience which is so much part of the essence of Kemp Town ensures that this development comes into view on the eastern

edge of the set piece, a clear demonstration that the historic separation no longer exists. Moreover, the fact that the Council's Kemp Town Conservation Area study makes no mention of the cliffs or seascape to the east supports my view that such views are not crucial to the area's character or setting. Thus the conclusion that the loss of cliff and sea views would be detrimental to strategic views along the coastline is, to my mind, a separate argument from that relating to the historic context of Kemp Town. [6.67, 7.50]

South Downs National Park

- 16.52 The boundary of the newly created South Downs National Park extends to the coast just beyond the eastern limit of the Marina. The development would have no direct impact on the National Park, so the main consideration is the effect on the setting of the National Park, and views from and to it. As I have already indicated, the proposed cluster of buildings (with or without the Brunswick scheme) would create a sharper and more abrupt distinction between the South Downs and the city, significantly increasing the visibility of the city on the coastal approach from the National Park. Importantly, however, the position of the cluster at the foot of the cliffs means that the visual connection with the South Downs would be weak. Instead of being located on the area of Downs beyond the National Park boundary, where there is significant potential to affect its setting, the site is physically detached from the rolling downland landscape that is the prime focus of the designation. And although from certain inland locations the tops of the tallest buildings would project above the sweep of the Downs, such intrusions would be limited in extent and not unduly harmful. [6.72-73, 7.34-35]
- 16.53 The cliffs are an important component of the National Park in this locality, for the boundary extends to the shoreline. However, the development would not materially disturb views of the cliffs on the coastal approach to the site across the Downs. The cluster of buildings would abut the cliffs on the seaward side, seen behind the existing Marina complex in the foreground. Thus the undulations and indentations of the interface between rolling downland and sea which give the cliffs much of their iconic status would still be visible in views from the National Park and its environs. Despite the obvious increase in urbanisation that would result, the essential features which make up the scenic beauty of this part of the National Park would not be materially diminished. Consequently, the development would have no significant adverse effect on the setting or views from the National Park. [6.72-73, 7.34-35]
- 16.54 Of course, as already stated, views towards the cliffs and Downs in the National Park from the city west of the Marina would be obstructed by the development. The effect would be to delay the point at which the connection to the highly valued countryside beyond the city would be engaged. Whilst this would be a significant drawback of the proposal, I do not believe that it would conflict to any material extent with the aims and objectives of National Park designation.

Appearance and visual impact - conclusion

- 16.55 Overall the proposed development represents a high quality design which would bring about a major beneficial change to the poor urban structure and physical environment of the western end of Brighton Marina. It is not without some shortcomings, however, including constraints deriving from the

retention of the access ramps, concerns about the success of Harbour Square, the loss of strategic cliff and sea views from parts of the western approach to the site, and the interaction between the taller buildings and listed Regency terraces in certain views from Kemp Town.

- 16.56 Assessed in the round, the design and architecture of the proposal is of sufficient quality to satisfy BHLP policy QD1. The principles of neighbourhood design expressed in policy QD2 are broadly met; whilst some concerns about permeability and legibility remain, these are mainly a function of the impracticality of removing the access ramps at the present time and, specifically with regard to Harbour Square, measures are in place to secure improvements. There can be little doubt that the proposal would make the efficient and effective use of land sought by policy QD3. The proposal would also bring about a sustainable, high density mixed-use development which would create a distinctive sense of place (either alone or in conjunction with the Brunswick scheme), thereby satisfying BHLP policy HO4 and SEP policies CC1, CC6 and BE1.
- 16.57 BHLP policy QD4 imposes a particularly high test for development that impacts on strategic views, seemingly seeking to prevent a scheme that would obscure or be out of context with, even briefly, views of the coastline, the Downs, conservation areas and the setting of listed buildings. The appellants argue that because the part of the policy which requires a high quality of design is satisfied, the proposal would not be in conflict. But even if that is the correct interpretation of the policy, which to my mind is doubtful, I consider that the test is not fully met. Strategic views of the coastline and the Downs that are currently obtained from certain locations west of the Marina would be totally obscured by the west-facing elevation of the Cliff Site building, one of the least successful aspects of the development. My finding that the architectural merits of the development in this view would not be sufficient to outweigh the loss of an iconic link with the coastline and Downs means that the proposal conflicts with policy QD4. It also conflicts with the guidance on key views in PAN04. The loss of most glimpses of sea beyond the Marina adds to the policy conflict. *[6.52, 6.71, 7.45]*
- 16.58 Though it is arguable whether BHLP policy NC8 should still apply, as it relates to the former AONB rather than the National Park, the test of undue prominence or detracting from views would (subject to the matter discussed above) be met. Similarly the proposal would not conflict with SEP policies C2 and C3, which give recognition to the National Park status of the South Downs and the setting of the former AONB. Nor would there be any significant conflict with BHLP policies HE3, HE6 and HE11, which aim to prevent development that would adversely affect the setting of listed buildings, conservation areas and registered historic parks and gardens. By preserving the setting of these designated heritage assets, the proposal also complies with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and with PPG15. *[4.8]*
- 16.59 In short, whilst there is broad compliance with the development plan, the loss of certain strategic views means that the proposal does not fully comply. I turn in due course to consider whether the benefits of the scheme are sufficient to outweigh this (and any other) conflict with policy.

RESIDENTIAL AMENITY

Living conditions for future occupiers of proposed flats

- 16.60 Dealing firstly with the size of the proposed flats, the Council bases its concern on the 43% of affordable housing units that would be below the minimum size it seeks (51 sq m based on EP standards). Yet it is not only these affordable units that would be small – a significant number of private flats would also be up to 5 sq m below this standard. Nevertheless, flats of 46 sq m meet the current minimum size sought by the HCA for affordable homes, and all the affordable flats would satisfy the HCA's Housing Quality Indicators. To my mind these are the critical criteria because they determine acceptability for social housing grant. The development plan does not specify a minimum unit size, and the housing brief from which the 51 sq m figure is taken carries little weight because it has not been ratified by a Council committee. Moreover, flats of 46 sq m have recently been sanctioned by the Council on other major sites in the city. Overall, whilst a sizeable proportion of the proposed flats would undoubtedly be small, the minimum unit size would nevertheless be acceptable. *[6.75-81, 7.87]*
- 16.61 Turning to daylight and sunlight, the Council does not object to the proposal on the basis of inadequate internal light, though it has concerns which are shared by other parties. From the extent of the adjustments made during the inquiry to certain units in the Cliff Site building, it is clear that securing full compliance with the BS Code of Practice for Daylighting was not straightforward. For example, in some flats the 'average daylight factor' test recommended by the BS would be achieved only by the use of light coloured interior wall and floor finishes; further, where there are combined living rooms and kitchens, only the lower standard that applies to living rooms would be achieved in some cases. The position with regard to sunlight is broadly acceptable: though some east and west facing rooms would not meet the BS sunlight guideline because of obstruction by buildings, this is compensated by the relatively small proportion (10%) of living rooms that are north facing and thereby unable to receive sunlight as a result of their orientation. *[6.83-85, 7.88]*
- 16.62 The standards in the BS are not mandatory, and achieving 100% compliance in dense urban developments is not always practicable, in my experience. In this instance the number of dwellings that would only just satisfy the BS daylight criterion (or perhaps just fail it on a strict interpretation) is a very small proportion of the total. Overall I conclude that the residential component of the development would be provided with adequate levels of daylight and sunlight.
- 16.63 There is also concern that the single aspect nature of some of the flats is unsatisfactory, notably those units in the Cliff Site building that face the cliff or the access ramps. Only a small number of single aspect flats would face the cliff, however, and while the closest would be about 17m from the base of the cliff, in most cases the gap would be 30m or more. Despite the lack of sunlight to these north-facing units, I consider that the size of the gap and the outlook onto a light-coloured and – at times – sunlit cliff would not be unattractive. Arguably it is preferable to the outlook from those single aspect units on the Cliff Site that would face each other at close range (12m or so)

across the internal street, about which no objection has been raised. [6.86-87, 7.89]

- 16.64 As to overlooking the ramps, only a handful of flats on the third level of the south elevation would directly face the inbound ramp at the same level, for all other units (including those on the west elevation) would be above the ramps and much less affected. The closest flat would be 8.4m from the ramp, while the others would be 10m away. I acknowledge that such proximity to the sole vehicular access to the Marina would be far from ideal, though as the appellants point out, similar separation distances from a busy road are not uncommon in urban areas. Having regard also to the relatively limited height of the visual obstruction caused by the ramp²³⁵, and the sunlit southerly aspect, I consider that the outlook from the small number of flats closest to the ramp would not be so compromised as to be unacceptable. [6.88, 7.90]
- 16.65 A related matter is the ability of the proposed ventilation system to prevent overheating of those flats which would be affected by noise to the extent that windows would need to be kept closed to achieve satisfactory internal noise levels. The main source of noise would be vehicles using the ramps, but the appellants' overheating study also looked at flats close to outdoor recreation areas. Although this exercise was not fully resolved by the end of the inquiry, the evidence demonstrates that a whole house mechanical ventilation system should be capable of addressing the overheating problem. A condition which requires a scheme to be submitted for the Council's approval is proposed in the event that planning permission is granted.
- 16.66 The Council is concerned that the narrow buffer zones around the proposed LEAP and NEAP in Cliff Park would result in noise and disturbance for the occupiers of the flats that overlook these play spaces. A gap of only 4m between the LEAP and the nearest dwelling would be small, though the FiT guidance does recognise that the normal 10m buffer may have to be reduced in high density developments. The recommended separation from a NEAP is considerably more. The authority has provided no evidence to suggest that unacceptable noise conditions for nearby residents would arise, however, and the proximity of the play spaces to dwellings has not been criticised by Sport England. Much would depend upon the detailed design of the activity zones, a matter that would be controlled by a condition. Nonetheless I accept that the potential for some disturbance to nearby residents would exist. [6.95, 7.68]
- 16.67 The notion that the least desirable living conditions would be felt disproportionately by residents of the affordable housing has some validity, but only because all the affordable units would be in the Cliff Site building (a matter I return to later). I do not accept that the worst constraints within that building would fall disproportionately on affordable housing residents. For example, the flats closest to the cliff face would be private; most of the social rented homes on the south elevation would be above the ramps with good daylight and (in many cases) glimpses of the sea; and the greatest concentration of small units would be in the east-west facing blocks where daylight is generally good. [7.90]

²³⁵ See for example CD12/23

- 16.68 In any large, high density housing scheme there will be some dwellings that, because of their position and outlook, provide a lower quality living environment than the norm for that development. In this case I am satisfied that the conditions experienced in the least agreeable flats would not be below the standard that residents should reasonably expect of 21st century housing. Moreover, with all units being built to Lifetime Homes Standards and achieving Level 4 of the Code for Sustainable Homes, the occupiers of those units that are compromised would benefit from greater energy efficiency and adaptability of the accommodation than is typically found in comparable developments. I conclude that the proposal complies with BHLF policies QD27 and HO4.

Living conditions for occupiers of neighbouring dwellings

- 16.69 BMRA, MGAG and some local residents (though not the Council) argue that the development would cause an unacceptable loss of light for existing residents living close to the proposed buildings. Occupiers of The Octagon and Neptune Court would be most affected. The appellants' daylight and sunlight analysis, which was not disputed, applies the 'vertical sky component' (VSC) test, an accepted measure of the amount of daylight received, to the affected properties. Whilst there would be some loss of light to dwellings on the north-facing elevation of Neptune Court, that loss would be less than the comparative component (0.8 times its former value) of the VSC test, indicating that the loss would be small and within acceptable limits. *[6.100-101, 8.9, 10.15]*
- 16.70 Applying the same test to dwellings in The Octagon, six first floor windows on the south and south-west elevations would be below both the comparative component and the baseline component (a 27% VSC), which typically means that the loss of light would be noticeable and cause a material loss of amenity. The extent to which the VSC test is not met is small, however, and when the high reflectance of the white walls of the proposed buildings is taken into account, the appellants demonstrate that the amount of daylight received at all the residential windows in The Octagon would be greater than for an equivalent building which met the VSC test. Despite BMRA's concern about the reliance on reflected light to pass the test, there is no evidence that this assessment is flawed. *[6.100-101]*
- 16.71 Overall I conclude that, whilst the development would result in some loss of light to a relatively small number of residents living at the Marina, that loss would be within commonly accepted guidelines and would not cause a material nuisance to those occupiers. The proposal thereby accords with BHLF policy QD27.
- 16.72 Some residents of properties that overlook the site from dwellings on the cliff top object to the intrusion of tall buildings into their views of the sea. I saw on my visit that this would particularly apply to those living in Marine Gate, though it would also affect some Kemp Town residents and others in dwellings to the north-east. I understand the concern, for the development would clearly have a dramatic impact on seaward views, introducing tall buildings into a wide unbroken panorama. Although the approved Brunswick scheme would have the same effect, for most people those tall buildings would be appreciably further away. *[10.10, 11.10]*

- 16.73 The appellants argue that replacing the currently unattractive views over the bleak commercial part of the Marina with high quality buildings would be beneficial. I find little merit in this assertion, however, because for many the uninterrupted sea view is the fundamental reason for living in this location. But the planning system does not exist to protect individual property views. The nearest cliff top dwellings would be some 80m from the closest visible part of the development and over 200m from Marina Point tower. These distances are more than sufficient to ensure that the development would not be overdominant or overbearing and that there would be no loss of privacy for cliff-top dwellers. *[6.50, 7.43-45]*

HOUSING

Number of dwellings and unit size

- 16.74 The SEP seeks an average annual provision of 570 dwellings from Brighton & Hove in the period to 2026. Although (on the Council's figures) this annual rate was exceeded in the five year period to 2008, the challenging environmental constraints on the availability of land in the city means that achieving this rate in future years places a heavy reliance on windfall sites coming forward. The emerging Core Strategy assumes that 1,000 dwellings would be built on the Inner Harbour site²³⁶, so the provision of 1,301 on the appeal site would significantly exceed this expectation and would help to reduce the reliance on windfalls. Given the recent (and perhaps continuing) downturn in supply as a result of the recession, the delivery of the equivalent of 2.25 years' supply on a single site would be a major boost to meeting the city's overall housing need. *[6.103, 6.106, 7.97]*
- 16.75 The SHMA forecasts that most of the growth in the period to 2026 will be driven by the increase in small (mostly single person) households. The proposal is clearly aimed at this sector of the market, for 41% of the units would be one-bed flats and 52% two-bed flats. The Council contends that the preponderance of small unit completions in recent years, coupled with the greater pressure on larger affordable dwellings because of the lower turnover of larger homes, and the desire for a more balanced community at the Marina, justifies the provision of a greater proportion of three or more bed units. *[6.103, 7.101]*
- 16.76 There is some appeal to the argument that an increase in larger units would facilitate a better balanced community by enabling more families to live at the Marina. However, given the scale of under-occupation in the private sector, there is no guarantee that a greater number of larger private flats would result in a commensurate increase in family occupation. It is different in the affordable sector, where there is generally a better match between unit size and household size, but to an extent the appeal scheme responds to this by providing 11% of the affordable units as three bed flats (all for social rent), compared to just 4% of private flats having three bedrooms. And whatever the desirability of a better mix of household types at the Marina,

²³⁶ This is the same yield as the Interim SHLAA of 2008, but higher than the 650 units assumed in the Final 2009 SHLAA. There was no evidence before the inquiry of how this capacity has been calculated and no justification for the changes in yield.

the reality is that many families would prefer a house with a garden rather than a flat in a high density urban node, as the SHMA demonstrates. [6.109-110, 7.101]

- 16.77 BHLP policies HO3 and HO4 seek a mix of dwelling types and sizes that reflect and respond to local needs. There is no policy that requires individual sites, even very large ones, to provide a particular mix of house sizes. Given the substantial and continuing need for one and two bed properties to meet the demand from an ever-growing number of small households, there is no basis for rejecting the proposal on the ground of inappropriate dwelling sizes. And given the policy framework which promotes this part of the Marina as a high density urban node, I consider that there is an adequate range of dwelling sizes to ensure a reasonably mixed and sustainable community. [6.109]

Tenure / affordable housing

- 16.78 A fundamental consideration in the achievement of a mixed community is the availability of affordable housing. Currently there are no affordable dwellings at the Marina, so there is a clear imbalance in this respect. The proposal aims to provide 40% of dwellings (520 units) for the affordable sector, thereby meeting the targets of SEP policy SCT6 and BHLP policy HO2. These policies do not specify a particular split between different types of affordable housing²³⁷. The emerging Core Strategy seeks a split of 55% social rented and 45% intermediate housing across the city, with the tenure split for individual sites being guided by needs assessments and site characteristics. The setting of separate targets in this way is recommended by PPS3. The 55:45 split is based on the findings of the 2005 Housing Needs Survey, a housing brief for the Marina which seeks 60% social rented to 40% shared ownership, and PAN04 which states that the affordable housing element should have a greater proportion of social rented to shared ownership units. [6.113-114, 7.93-94]
- 16.79 When the appeal application was submitted to the Council, a split of 40% social rented: 60% shared ownership was proposed based on offers from two registered social landlords (RSLs). Although an improved RSL offer resulted in an amended proposal with a 50:50 split, a further amendment led to the final (and current) tenure split of 35% social rented to 65% shared ownership. The appellants argue that this change was necessary to ensure that the scheme remains viable and deliverable. Effectively, and as often happens in schemes such as this, the composition of the affordable housing offer is the variable which is subject to adjustment once all other social and community infrastructure requirements have been agreed. [6.115-117, 7.98-100]
- 16.80 I shall examine the merits of the viability argument in due course. In principle, however, the policy framework does allow for variations in the amount of affordable housing in circumstances where this can be justified.

²³⁷ SEP policy H3 sets an overall regional target of 25% of all new housing as social rented accommodation and 10% as intermediate affordable housing, but also states that sub-regional targets, where given, take precedence. Policy SCT6, which gives the sub-regional target, is silent as to the tenure of affordable housing. As it takes precedence over policy H3, I do not accept the Council's argument that the tenure split of policy H3 should apply – if the SEP had intended to apply a tenure split to the South Coast sub-region, it would have done so.

Both BHLP policy HO2 (which in any event is satisfied by the 40% overall provision) and the emerging Core Strategy refer to a negotiation process, with consideration being given to the particular costs associated with the development of a site and the realisation of other planning objectives. The process is made even more explicit in the SEP: one of the principles behind policy SCT6 is that the proportion of affordable housing sought should be the maximum that the viability of a particular development can support. *[6.112, 6.117]*

- 16.81 The supply of 40% of the dwellings as affordable homes would comply with the development plan and would go some considerable way towards making the Marina a more mixed and inclusive community. Although the proportion of social rented accommodation, which serves those in greatest housing need, would be significantly below that sought by the emerging Core Strategy and the Council's site specific briefs, there is recognition that some variation can be accepted if the viability of the scheme so dictates²³⁸. Therefore, subject to my conclusion on the viability issue, the proposal would be consistent with both the extant and emerging development plan policies. It would also be comparable to the Brunswick and King Alfred developments, where broadly similar splits between social rented and shared ownership provision have been permitted recently. *[6.112]*
- 16.82 The Council objects to the mechanism in the S106 obligation whereby, if the level of social housing grant is insufficient to enable 40% of the housing to be provided as shared ownership dwellings, the proportion is allowed to reduce in stages to a grant-free minimum of 21%. I fully accept that such a reduction would be undesirable and would diminish the ability of the scheme to deliver a mixed and balanced community. However, in my view it is reasonable for the developer to seek to maintain a cost-neutral position by achieving the anticipated sale price from the affordable housing in circumstances where it has no control over such a critical variable as the level of social housing grant. Mechanisms like this are quite common in schemes which involve large amounts of affordable housing, in my experience, and I consider this fall-back position to be acceptable. *[6.165, 7.102]*
- 16.83 A further concern of the Council is the concentration of all the affordable housing in the Cliff Site building. There is little doubt that the objective of creating a mixed and inclusive community would be better served had the affordable housing been distributed through all the main residential blocks. That said, one-third of the Cliff Site building would comprise private flats, all three tenures would be distributed across the building (though concentrations would remain), and individual units would be "tenure blind" in terms of their appearance. But more importantly, the particular circumstances of this case, where very high costs would be incurred early on (primarily as a result of rebuilding the Asda store), give validity to the argument that the benefits of securing funding from an RSL at an early stage of the residential development, and thereby lowering the level of peak debt, are important to overall viability. Subject (again) to being satisfied that the viability arguments are sound, I consider that the distribution of affordable housing is acceptable. *[6.123, 7.90-91]*

²³⁸ This argument also applies if my interpretation of SEP policies H3 and SCT6 (see footnote above) is wrong and the requirement for 25% social rented accommodation is part of the development plan.

INFRASTRUCTURE PROVISION

Outdoor recreation and amenity space

On-site provision - quantity

- 16.84 BHLF policy HO6 states that outdoor recreation space should be provided in conjunction with residential development in accordance with the FIT 2.4ha per 1,000 population standard. This is broken down in draft SPG9 into separate standards for children's play space (both for equipped and casual play) and adult/youth facilities. Based on occupancy levels set out in SPG9 for the city as a whole, the total open space provision would amount to 6.7ha. Even using the lower occupancy levels that are specific to the Marina, some 4.7ha would be needed. Both these requirements exceed the area of the six sites proposed for development in the appeal application, and the larger figure would represent over half of the total site area; full provision on site is therefore unrealistic. *[6.127-128, 7.90-91]*
- 16.85 Policy HO6 allows for contributions to be made to recreation provision on suitable alternative sites where it is not practicable for the full requirement to be provided on site. SPG9 cites as an example very high density areas which have good access to public transport, are ideally situated in other respects, and where there is a justifiable need for additional housing. The Council agrees that the Marina is a location where some off-site provision would be acceptable, but seeks to ensure that the maximum feasible provision is made on site. *[6.127, 7.59]*
- 16.86 In these circumstances it seems to me that the welter of data produced at the inquiry which seeks to demonstrate the extent to which the policy HO6 standard would not be met (the Council's evidence), or to justify certain elements of provision against the more recent PPG17 compliant study which has not been adopted by the Council (the appellants' approach), is not particularly helpful. This is especially so given the confusion and lack of agreement over which kinds of open space should be included within (or fall outside) the wide ranging open space typologies. It appears that the assessment framework in Brighton is currently in a state of flux: the Council is intending to move away from the somewhat rigid BHLF/FIT standards approach to a more locally based and practical system based on the PPG17 study, but that has not yet emerged. *[6.129-132, 7.60-64]*
- 16.87 In the absence of clear, up-to-date guidance, and given the acceptance that some provision will occur off-site, a more subjective judgement about the quantum of on-site open space and recreation will have to be made. The provision would include children's play areas (one NEAP, two LEAPs and six LAPs), a small park by the cliff, urban sports areas under the access ramps, communal courtyards within the individual buildings, and the use of some squares and public realm spaces for sport and recreation. The focus is on providing play facilities for children close to their homes, intensive/multi-use sports facilities for youths and adults which have small space requirements, and casual/ informal open spaces either within the residential environment or as part of the public realm. Also within the site are an existing bowling alley and a private indoor sports centre which has a swimming pool. *[6.127]*
- 16.88 Given the high density and flatted nature of the accommodation, the approach and the specific range of facilities seem appropriate. Although it is

not clear whether this amount of on-site provision would fully meet the needs of residents, there is no real evidence that the quantum would be so deficient that significant problems would arise as a result of excessive demand for the facilities. Policy HO6 gives no minimum requirement for on-site provision, so the Council's contention that there would be conflict with policy is difficult to understand. And whilst there may be some truth in the Council's submission that the on-site provision is residual rather than design-led, it does not follow that such provision would be contrary to policy HO6.

On-site provision - quality

- 16.89 The Council believes that a consequence of the residual approach to on-site recreation provision is a compromise in its quality. In certain instances this is clearly the case: it would not be ideal to have a five-a-side football pitch under ramps with a minimum headroom of 2.4m, and it was never properly explained how basketball, in which balls are thrown substantially above head height, could be played in a multi-sports area where the headroom is not much greater. On the other hand, the limited headroom would not prevent games of five-a-side football from taking place, and sports other than basketball could be played in the multi-games space. Facilities that are suitable for informal 'kick-about' can be a useful addition to higher quality provision by taking the pressure off the proper facilities. The increasing heights for the Parkour area should facilitate a range of free-form jumping activities, and the practical difficulties of the climbing area – which has been welcomed by a local club – would perhaps be reflective of some real life situations. Moreover, I believe that the proposal to put to good use spaces which would otherwise remain as dark, unappealing areas that serve no useful purpose should be welcomed. Overall, despite the obvious constraints, I regard this aspect of the sports provision as making good, innovative use of the limited space available. *[6.59, 6.94, 7.73-74]*
- 16.90 Another contention is that the amenity spaces available to the occupiers of the Cliff Site building would be of poor quality as a result of their location in courtyards that would be shaded by the structure. The appellants' analysis demonstrates that the relevant BRE guideline (that no more than 40% of an area requiring sun should be prevented from receiving sunlight on March 21st) is comfortably met. In the absence of any evidence that this test is not the correct approach, or that it has been incorrectly applied, there is no basis for concluding that the internal courtyards and the open space adjacent to the cliff would experience unacceptably low amounts of sunlight. A related concern is exposure to strong winds, but the evidence suggests that most amenity spaces would provide acceptable conditions. I acknowledge that the rooftop location of the LAPs on the Sea Wall and Quayside buildings would not be ideal and could limit their use, but that does not render such facilities unacceptable. *[6.89, 6.96, 8.20]*
- 16.91 I believe the criticism about the accessibility of the children's play spaces from certain residential units to be unfounded given that many of the small exceedances of the FiT recommended guidelines are the result of people having to travel from the top floors of large buildings to reach facilities that are close to the base of those buildings. I accept that the rooftop LAPs on the Sea Wall and Quayside buildings are likely to require young children to be accompanied, but there is no indication in the FiT guidelines that LAPs should be designed specifically for children who are not accompanied. Moreover, in

practice I think it likely that most young children would not be allowed to use such facilities on their own, wherever they were sited. As to the climatic challenges to successful planting in the amenity areas, an important factor in terms of quality, I see no reason to doubt that careful plant selection and good ground preparation are the key. The diversity of plants that have established in the existing residential areas of the Marina and at Sussex Square demonstrate that the maritime conditions can be mastered. [6.92, 7.69]

Off-site provision

- 16.92 There is no suggestion that the shortfall in provision which is to be met off-site should take the form of new land for outdoor sport or recreation. Instead the Council seeks contributions towards the improvement of existing nearby sites, thus enabling established facilities to cater for the increased patronage that would arise from the development. Using the methodology in draft SPG9, the sum of money sought by the Council for such improvements is approximately £1.87m, based on a resident population of around 2,800 persons. This reduces to a net figure of about £1.83m when allowance is made for the on-site provision. Using the much lower occupancy rates that are currently found in Brighton and Hove, the appellants estimate that the gross contribution would fall to some £1.3m. The sum offered in the S106 obligation is £1.045m, which includes a figure of £200,000 for an on-site sports co-ordinator. [6.133-135, 7.79]
- 16.93 To my mind, when determining the acceptability of the current offer, more weight should be placed on the scale, quality and range of off-site recreation opportunities that would be available for residents of the proposed development, than on whether there is adherence to a particular formula for calculating contributions. Justification for the maximum contribution would be far less if there was extensive good quality provision in the vicinity of the Marina which had ample spare capacity, than if existing provision was limited, over-used and of poor quality. That said, I do believe that the evidence of a much lower occupancy rate than is used in the Council's methodology would support a gross contribution closer to the appellants' £1.3m in the event that the HO6/SPG9 process were to be followed to the letter. [6.134]
- 16.94 Overall, the quantity and range of provision close to the Marina is good. Being on the coast and close to the Downs, the site has the huge advantage of having these two major natural resources on its doorstep. Access to the beach and the water-based opportunities offered by the sea could hardly be bettered, and there are well-used walking and cycling routes eastwards along the coast into the National Park, plus a network of footpaths reaching the Downs to the north through East Brighton Park. This extensive (24ha) Park is the focus of the outdoor sports provision, providing a significant number of pitches and courts as well as a playground and grass running track. A golf course abuts the Park and there is miniature golf nearby. All these facilities are within a 10 minute walk from the site. Indoor sports provision is also good: as well as the existing leisure centre and bowling alley on the site, City College leisure centre and Manor Park Gym are about a 15 minute walk away. [2.4, 6.137]
- 16.95 Many of the existing facilities require investment to improve their quality: this is the aim of the contributions offered in the S106 obligation. The sums proposed for works to East Brighton Park, including drainage for football

pitches and resurfacing tennis courts, should both encourage and enable greater use. The same applies to the sums allocated to City College and Manor Road Gym. The money for improved lighting on Madeira Drive would facilitate greater evening/night time use of the main pedestrian link westwards, improving safe access to the sports and recreation facilities in that direction. The funding for a sports co-ordinator would help to ensure that best use is made of the on- and off-site provision. I consider that all these contributions would satisfy the tests at paragraph B5 of Circular 05/2005. *[6.139-140, 15.4]*

- 16.96 Two other contributions offered in the S106, totalling £120,000, would provide enhancements for the terraced gardens at Rottingdean and enable the creation of an informal sports area at Rottingdean Beach. Both these facilities are a considerable distance from the appeal site and, given the wide scope of nearer opportunities, are unlikely to be much used by Marina residents. Indeed, the Statement of Common Ground suggests that the latter “would become a popular venue for the local youth of Rottingdean village”. Whilst I have no reason to doubt that the improvements to these facilities would be desirable, I do not accept that they are necessary to enable the development to proceed, or that they are directly related to the appeal proposal. *[6.139, 7.80]*
- 16.97 There is also an unspecified £200,000 in the S106 obligation which would be allocated to “such other facilities as the Council shall notify.....”. In the complete absence of information about the purpose of this contribution, the need it would meet, and its relationship to the proposed development, it is not possible to conclude that it satisfies any of the tests in the Circular. Because neither the Rottingdean nor the unspecified contributions accord with paragraph B5 of the Circular, I give no weight to these matters in my consideration of this appeal. *[6.139, 7.80]*
- 16.98 The appellants’ offer of £1.045m was made after a process of negotiation with Council officers. It was sufficient (along with other matters) to cause an earlier objection from Sport England to be withdrawn. The appellants assert that a negotiated offer is normal – indeed, they point out that a similar process occurred with the Brunswick scheme, whereby much smaller on- and off-site provision was agreed, as a matter of judgement, under the same policy framework. *[6.133-136, 7.79]*
- 16.99 The Council questions not only the adequacy of the sums offered, but also how the cut-off points were decided in the instances where improvements would not be fully funded. Whilst I accept that there is an arbitrariness to some of the contributions offered, there is no reason in principle why a scheme should not be part funded by a development. The test is whether the contribution is fairly and reasonably related in scale and kind to the proposal. In truth the evidence on this matter is limited – and this applies to all the specified recreation contributions. As an example, the appellants have not given details to demonstrate how the increased capacity or attraction of the improved facilities would correspond with the numbers of additional people likely to use those facilities as a result of the development. On the other hand, there is no evidence from the Council to suggest that the funded improvements would not be sufficient to cater for the anticipated increases in use, nor that the full sum sought under policy HO6 and SPG9 is necessary to enable the development to proceed. *[7.80, 6.140]*

16.100 Given the limited information, there is a considerable subjective element to the judgement which has to be made. Taking into account the good range and quantity of outdoor recreation and amenity space that is available in the vicinity of the Marina, the amount and nature of the on-site provision, the scale of the contributions that would go to improving those facilities to which weight should be given, the lack of objection from Sport England, and the level of contribution made by the adjacent Brunswick scheme, I conclude that the proposed package is adequate to meet the needs of the development. Although provision in accordance the 2.4ha standard of BHLP policy HO6 would not be achieved, there is no conflict with the policy because it allows for contributions to be made to alternative sites, which I have found to be acceptable. In addition, because I have determined that the design of the open space provision is satisfactory, there is no conflict with BHLP policies QD1, QD2, QD3 and HO4. *[6.138-140, 7.79]*

Education

- 16.101 BHLP policy HO21 seeks provision for a range of community facilities to meet the assessed needs generated by residential development. As with policy HO6, contributions towards off-site provision are sanctioned where it is not practicable to make land available on site. Unlike policy HO6 and its accompanying text, however, there is no reference in the BHLP to any supplementary planning guidance or document in which the assessment process is set out. Further, no such guidance has been adopted. The Council uses a standard spreadsheet to calculate the education contribution, but this has not been subject to consultation and has not been endorsed by a Council committee. Similarly the draft Education SPD has no formal status. *[6.155, 7.82]*
- 16.102 The Council's spreadsheet employs a cost per dwelling methodology which varies according to the size of the property and the nature of the provision (in this case, primary and secondary). This produced a figure of about £1.55m and is the basis for the contribution sought by the authority. It is suggested that this would provide a notional half form of entry throughout the 7 forms of a primary school, though this was not the rationale behind the calculation. The Council gives no firm indication of how or where the contribution would be spent. The appellants offer is £594,000 which, it is claimed, would fund up to two new classrooms at primary level, to be provided at any of the three primary schools that are closest to the Marina. This figure was derived, as with the recreation contribution, through negotiation with the Council and is based on a much smaller education contribution accepted by the authority for the Brunswick scheme. *[6.156, 7.83]*
- 16.103 I place little reliance on the discussion about child yield that took place at the inquiry because, whatever the true figure, the product of that process is not used to inform either the contribution sought by the Council or that offered by the appellants. The debate about capacity has greater relevance because the Council acknowledged that if there is no need, a contribution would not be sought. The most recent (October 2009) figures indicate a current capacity of about 350 places at the three local primary schools, but only a small surplus at the two closest secondary schools. The education authority has plans to provide 150 extra places at the nearest secondary school (Longhill High) by September 2010, and a programme for secondary expansion elsewhere in the city. It is also looking at ways to meet what it

sees as its most urgent priority, additional primary provision in the western part of the city. *[6.149-150, 7.83]*

16.104 Taking planned provision into account, the evidence suggests that there is no shortage of school places in the primary and secondary catchments of the Marina in the immediate future. The proposed development would not start to be occupied until 2013/14, however, when roll numbers are expected to rise and provision is less assured. For this reason I consider that justification does exist for a contribution to be made to meet future needs. The proposal therefore meets the “necessary to make the proposed development acceptable” and “directly related to the proposed development” tests of Circular 05/2005. *[6.151-153, 7.84]*

16.105 Turning to the “reasonably related in scale and kind” test of the Circular, the evidence is limited. The Council’s £1.55m figure is based on a methodology that has no formal status and the authority offered no evidence to support the assumptions about child yield that, presumably, are built into its spreadsheet. Coupled with the lack of cogent analysis about the future demand for school places in the locality and the absence of information about how and where the contribution would be spent, I conclude that the sum sought by the authority is not justified in terms of the Circular test. *[6.155, 7.83]*

16.106 There is similarly no rationale for the appellants’ £594,000 offer in terms of balancing child yield with school capacity. However, by specifying the nature and locations of the provision, it is evident that it would directly meet part of the education demand arising from the development. There is also an element of proportionality in that the sum bears some relation to the figure that the authority accepted for the smaller Brunswick scheme a few years ago. For these reasons I consider that there is sufficient evidence (just) that the sum is reasonably related in scale and kind to the education needs of the proposed development and therefore that it meets this test of the Circular. As a result, there is no conflict with BHLP policy HO21. *[6.156-158, 7.84]*

OTHER MATTERS

Transport

16.107 There is no objection to the proposal on highway or transport grounds from the City Council and the scheme has the support of the local highway authority. However, many local residents have concerns about the ability of the highway network to cope with the traffic generated by the development. Brighton Marina Estate Management Company commissioned Mouchel to independently examine third party concerns. Although some detailed matters are not fully resolved, the consultants conclude that there are no outstanding issues which cause significant concern. Whilst recognising the fears of third party objectors, Mouchel believe that these are unlikely to be warranted. *[6.144, 8.11-12, 8.18]*

16.108 The underlying philosophy of the transport strategy is to manage travel demand through a range of restraint-based measures rather than to improve the road network to cater for unfettered traffic growth. This is wholly consistent with development plan policy and with the Government’s promotion of sustainable travel in PPG13. The success of this strategy

depends in large measure on the Travel Plan, which aims to achieve a 20% reduction in single occupancy car travel and public car parking. These are challenging targets, and they need to be met if significant congestion is to be avoided, particularly if the Brunswick scheme is built. Nevertheless, there is no real evidence that these targets would not be achieved. *[6.143, 6.146-147]*

- 16.109 Coupled with a substantial package of improvements to public transport and the pedestrian and cycle network, and various traffic management measures and parking controls, the evidence suggests that the development would bring about an integrated and highly sustainable transport system at the Marina.

Viability

- 16.110 At the pre-inquiry meeting I indicated that, as well as examining the substantive planning matters identified in the Council's reasons for refusal, I wanted to be able to report to the Secretary of State on the viability of the proposal in the current depressed market conditions. Whilst the initial response from the developer²³⁹ was extremely brief and not supported by evidence, a more detailed and reasoned Note on scheme deliverability²⁴⁰ was submitted shortly before the inquiry opened. This contends that because costs and revenues will return broadly to 2008 levels by 2013, the earliest possible time for the commencement of building, the viability assessment undertaken by the DV remains sound notwithstanding events which have occurred since. *[6.118, 7.104-108]*
- 16.111 To my mind the reasoning in the Note is plausible and appears consistent with the BCIS and Savills forecasts on which it is based. The Council argued that the small predicted divergence between values and costs at 2013 would increase the potential profit to the developer by £9m, but that seems to me to ascribe a much greater degree of precision to the forecasts than is appropriate. Particularly in such volatile economic times, I believe that the year-on-year forecasts should be regarded as a general guide to the direction and pace of economic change, especially as even minor variations in the early years could significantly alter the position in five years time. And the notion that a few key variables can be plucked from a complex set of assumptions and subjected to scrutiny without similar attention being paid to the overall model is inherently suspect. As to the Council's concern about whether the land payment properly reflected the bottom of the market, there is no real evidence that it did not, and the DV concluded that the land cost was modest and reflected good value. *[6.118, 7.104-108]*
- 16.112 Even if reliance were to be placed on the Council's forecast of increased profit, it does not automatically follow that this should be translated into more money for affordable housing or infrastructure, or that it would fund removal of the access ramps. Based on finding profits at the bottom end (15%) of the normally accepted range, the overall tenor of the DV's appraisal is that the project is at the margin of viability – indeed, the DV expressly factored-in the ability of the parent company, Laing O'Rourke, to control costs. Moreover, the Council does not submit that the potential increase in

²³⁹ Explore Living letter 8 October 2009

²⁴⁰ Gavin rebuttal appendix 3

profit it identified would result in profits being excessive. When coupled with the much greater risk aversion of institutional lenders as a result of the recent financial crisis, I believe that the arguments about whether the scheme is sufficiently profitable to prove attractive to investors have greater resonance than the arguments about whether profit would be excessive. In these circumstances, the possibility that one constituent of a complex set of assumptions might turn out better than forecast could simply serve to boost the prospect of the development proceeding, in my view, and should not be assumed to free-up profit for distribution elsewhere. [6.118]

16.113 The Council's criticism of the failure of the appellants to call Mr Dennis to give in chief his evidence on viability would have had greater merit if the authority had presented its own evidence on this subject. However, in the absence of an expert viability appraisal from the Council, the appellants decided not to call him. Whilst there is some justification to the argument that it was not necessary to call Mr Dennis, one consequence is that his viability Note cannot be attributed the weight that would normally be given to evidence that has been properly tested. Despite my view that the challenges to Mr Dennis's Note have little merit, the lack of testing of his evidence means that less weight can be placed in its conclusions than would normally be the case. [6.119]

16.114 Clearly full weight can and should be given to the DV's appraisal, especially as it was commissioned jointly by the appellants and the Council. The Council's objective in approaching the DV was to establish whether there was sufficient profit in the scheme to support a mix of affordable housing with a higher proportion of social rented units. At the end of the negotiation process, the DV thought not. He concluded that the scheme now proposed, taking into account the infrastructure contributions and a 35% social rented to 65% shared ownership split for affordable housing, would deliver a profit level approaching the market norms. Nothing that has arisen since, including the Council's point about a fixed land price negotiated at the bottom of the market, causes me to depart materially from the DV's analysis and conclusions. [6.118, 7.105]

Section 106 unilateral obligation

16.115 The main procedural matter in contention is the absence of Asda and McDonalds as parties to the obligation. The Council believes that these two principal leaseholders should be bound in to the obligation so as to remove any possibility, however slight, that a break in the chain of interests could lead to a lack of control by the local planning authority and a failure to achieve all that the S106 should provide. It argues that such a gap in control could lead to a situation being engineered whereby the Asda and McDonalds sites could be freed from the covenants, with potentially serious consequences for the development. Although the leases to those sites restrict development, the Council does not want to have to rely on the developer to enforce the terms of the leases to ensure full compliance with the S106. [6.164, 7.115-117]

16.116 There is no obligation or covenant in the S106 which requires Asda and McDonalds to do anything. Furthermore, their interests as leaseholders are subsidiary to those of the parties to the obligation, who are the superior leasehold owners of the site (with The Brighton Marina Company Limited

being the head landlord to the freehold owner, Brighton & Hove City Council). In these circumstances the appellants contend that there is no legal or practical reason for Asda and McDonalds to be bound in to the S106, for they would not be able to avoid the timely performance of covenants binding interests superior to theirs. Nor, it is said, would they be inclined to act against their own interests in frustrating the delivery of the commitments that are the responsibility of the parties to the S106. [6.164]

16.117 Ostensibly there is considerable logic to the appellants' arguments, for it seems unlikely that businesses who would be provided with new premises as a result of the development would then seek to prevent the implementation of covenants in which they have no interest. Even if they did wish to frustrate delivery in this way, it was not made clear to me how their subsidiary interests could prevail over those of superior leaseholders. However, one of the tests for a S106 obligation is that it must be legally robust; for this reason Circular 05/2005 advises that all who have a legal interest in the land, including the freeholder and any lessees, should be bound in to the Deed. Asda and McDonalds are leasehold owners of the three most important sites for new buildings within the application site (Cliff Site and Marina Point (Asda) and Quayside (McDonalds)). [7.115]

16.118 "Robustness" requires consideration of what could go wrong with the S106 and the potential consequences of that eventuality. Given the paucity of information available at the inquiry about the legal position of Asda and McDonalds, or about their attitude to the development, trying to determine what might or might not happen would be pure speculation. The plain fact is that important leaseholders are not joined into the Deed and no cogent reason has been given.

16.119 It is also necessary to consider the position of the City Council, the freehold owner of the site. This was not raised by any party at the inquiry, and at the time I took the view that it might be difficult for the Council as landowner of the site to enter into a Deed with itself as local planning authority. I was also mindful of the fact that a separate consent of the Council, acting in a corporate capacity, would be required under the Brighton Marina Act if the development was to proceed, irrespective of the grant of planning permission. But on reflection I must also consider the possibility, however remote this may be, of the Council disposing of its freehold interest in the site. Were this to happen, the successor in title to the Council could safely implement the planning permission without any legal requirement to comply with the obligation. It is perhaps for this reason, rather than for the reasons propounded by the Council, that a parallel with the Bracknell case might be drawn.

16.120 The consequences of certain provisions of the S106 not being achieved are potentially very serious. If the release from covenants applied solely to the development built on Asda and McDonalds land, this could affect the delivery of all the affordable housing, the achievement of sustainable construction and sustainable transport measures on those sites, the provision of the community centre and police accommodation, and perhaps the ability to implement the Harbour Square fall-back scheme. Manifestly the wholesale release from all the covenants would have very serious consequences for the quality, sustainability and social cohesion of the development itself, for the quality of life and safety of the existing community at the Marina, and for the

wider community who would face greater pressures on existing, unimproved infrastructure. [7.117]

- 16.121 Either of the above eventualities would result in a substantial conflict with development plan policy and would be sufficient, in my view, to warrant the appeal being dismissed. Given the seriousness of the consequences of non-compliance with the S106, I believe that the appellants' "practical likelihood" test is not sufficient; instead, a cautious approach is required. I consider that the decision maker needs to be satisfied that there is no foreseeable risk of the covenants in the S106 being circumvented. Because key interested parties are not joined into the Deed, I conclude that there is a risk of the development being freed from the obligation. Consequently, the appeal proposal is not acceptable in its current form. The Secretary of State may wish to take legal advice on this matter. [7.117-118]
- 16.122 It is necessary to highlight two other, albeit less significant, procedural shortcomings of the S106. The first is that the five plans bound within the document are signed by one of the parties (Explore Living), but not by the others. The second is an error in paragraph 4.5 of the obligation, which should read Recital (F) rather than Recital (E). The latter is quite clearly a typographical error and should not affect the efficacy or enforceability of the obligation. Whilst I doubt whether the omission of some signatures on the plans is sufficient to invalidate the obligation, as the plans are clearly identifiable as those referred to in the Deed, this is a further matter on which legal advice may need to be sought.
- 16.123 If it is thought to be necessary to correct the two minor errors cited above, this could easily be done by returning the S106 obligation to the parties for amendment. If the omission of Asda and McDonalds (and/or the City Council) as signatories to the Deed is deemed to make the proposal unacceptable, the appellants' suggest that the matter be made known to the main parties so that they have an opportunity to seek a solution. Subject, of course, to the Secretary of State being minded to allow the appeal and grant planning permission, this would seem to be a sensible way forward.

Miscellaneous

- 16.124 I have taken into account the huge number of representations which oppose the development and the wide ranging matters they raise. In response to the most commonly expressed concerns, I believe that fears about flooding, which were initially a concern of the Environment Agency, are adequately addressed in the S106 obligation. There is no evidence that the development would give rise to problems of crime and public disorder, nor that the impacts of construction could not be suitably controlled by the CEMP. The provision of an emergency access to the west is a major benefit of the proposal and should overcome many local residents' worries about safety; with this in place, I do not believe that a third access from the east is needed. [11.13]
- 16.125 It is necessary to consider the implications of the recently published PPS4, particularly in terms of the retail element of the proposal. PPS4 replaces the retail needs test of PPS6 with a wider-ranging impact test (policy EC16). However, there is no reason to doubt that the findings of the submitted Retail Impact Study remain broadly valid. In addition, the proposal accords with the criteria of policy EC10.2, aimed at securing sustainable economic growth.

BALANCE OF CONSIDERATIONS

16.126 The starting point is the Council's identification of the western end of the Marina as the location for a high density residential quarter of the city which incorporates tall buildings. The permission already granted for the Brunswick scheme goes a considerable way towards achieving that objective, but the most recent guidance in PAN04 suggests that there is further substantial capacity on the appeal site. In principle the appeal proposal would take up that capacity; the fact that it would provide more dwellings than the notional 1,000 does not make it unacceptable provided the normal design and other criteria are deemed appropriate.

16.127 Almost every aspect of the proposal has been subject to detailed scrutiny. I believe that the residential blocks would not be excessively large, cramped or overbearing and that the architecture would generally be of high quality. Although some buildings would exceed the current cliff height, this would not result in a conflict with current planning policy; moreover, the major shift in policy approach since the 1970s means that different considerations now apply. I acknowledge that the emerging CS seeks to re-impose the cliff height limitation, but that carries less weight because it has yet to be tested through independent examination. It is also pertinent that the most prominent tall building, Marina Point, would be an attractive landmark design. The development would have an acceptable relationship with the permitted Brunswick scheme, if that is built, but would also stand alone successfully.

16.128 Certain aspects of the public realm are rather weak and unresolved. The problem stems from the retention of the access ramps and multi-storey car park, which present significant barriers to movement across the site, but removal is not a requirement of current policy and, coupled with the likely threat to viability, it is unrealistic to expect the ramps to be replaced at present. The design for Harbour Square, the pivotal location within the site, is experimental and remains to be finalised; however the benefits of a shared space justify experimentation and a more conventional solution awaits should this fail. Elsewhere, connectivity and permeability across the site would be much improved for pedestrians and cyclists, many new public spaces would be created and others remodelled, and public transport would be rationalised.

16.129 In terms of the impact on the surrounding area, Brighton Marina occupies a sensitive location at the foot of protected chalk cliffs and close to a major Regency set piece and the South Downs National Park. These natural and man-made assets are highly valued, and strategic views of these features are protected by BHL policy QD4. Seen from the east on the approach across the Downs, I believe that the dramatic impact of an attractive cluster of large buildings sited on the shore (with or without the Brunswick scheme) would have a beneficial impact on westward views along the coastline. In reverse, from within the city to the west of the site, the development would obscure much cherished views of the ribbon of white cliffs extending into the distance, thereby causing harm; the loss of sea views beyond the Marina adds to this harm. Though there would also be an obstruction of views into the National Park, any conflict with the aims and objectives of this designation would be limited. There would be no material impact on the setting of the National Park.

- 16.130 Kemp Town is situated on top of the cliffs to the west of the Marina. I believe that the combination of distance, height difference and visual separation is sufficient to ensure that the proposed high quality contemporary buildings would not be a distraction to the superb historic architecture of the Grade I listed terraces or significantly impact on the setting of the Conservation Area. At certain points on the perambulation along the front of the Regency set piece the taller buildings would be seen to merge with the end of one of the terraces, but any loss of character would be transitory. The fundamental relationship between Kemp Town and the sea would remain undisturbed and there would be no significant harm to this highly valued townscape.
- 16.131 Some of the accommodation would be small and close to the margin of acceptability in terms of daylight, outlook and potential for noise disturbance from external sources. On the other hand, all the dwellings would be constructed to a good standard in terms of energy efficiency and, for their size, would be capable of adaptation to meet the changing needs of residents. Overall, and bearing in mind the pleasure most people would gain from living by the sea, living conditions for occupiers of the flats would be acceptable. A small number of existing Marina residents would experience a noticeable loss of daylight and outlook as a result of the development, but that would be within commonly accepted guidelines. For many more in the surrounding area there would be a significant intrusion into their outlook towards the sea, but there is no right to a view.
- 16.132 Overall the proposal would comply with the design-specific policies of the development plan. It would also provide the sustainable, high quality and inclusive design sought by paragraphs 33-36 of PPS1. In the absence of any significant adverse effect on the Kemp Town set piece, there is compliance with BHLF policies HE3 and HE6. By the same token, my conclusion that the setting of the Conservation Area and listed buildings would be preserved means that there is no conflict with national guidance in PPG15. However, the loss of certain strategic views means that there is conflict with BHLF policy QD4.
- 16.133 In terms of housing provision, the development would constitute a major component of the Council's new housing supply in the short to medium term. The preponderance of small units would target the bulk of the anticipated need, for most of the forecast growth is in small households. Although the number of larger units would be limited, a high rise flatted housing scheme is generally favoured more by smaller households than by large families, who tend to prefer suburban locations.
- 16.134 The provision of 40% affordable housing is a major benefit of the proposal and would make an important contribution towards the creation of a mixed community at the Marina. I accept that the proportion of social rented accommodation (for those in greatest housing need) would be lower than is currently sought, but there is evidence of a risk to the viability of the scheme if the desired tenure split were to be achieved. The concentration of the affordable housing in the Cliff Site building, whilst not ideal, is acceptable; moreover a more scattered distribution could have adverse consequences for viability. The proposal complies with the housing policies of the development plan and is consistent with the PPS3 objectives of creating sustainable, inclusive, mixed communities. It would also make effective and efficient use of previously-developed land.

16.135 The Marina is well served by public transport and the proposal would increase accessibility by a range of travel modes other than the private car. Access to the shops, jobs and other services of the city centre is good and there is a wide range of community facilities within a reasonable distance of the site. The additional demand that residents would place on these facilities would be adequately mitigated through contributions to a range of off-site sport and recreation opportunities and to increasing capacity at local primary schools. Some community and health provision would also be provided on site as part of the development. Although on-site recreation and open space provision would be limited, a variety of children's play and other facilities (some quite innovative) would cater appropriately for the demand for facilities close to homes. Moreover, the huge benefit to residents from having a beach, a marina and the Downs immediately adjacent should not be forgotten. The proposal complies in these respects with the development plan and with the PPS3 requirement for housing in locations which offer good access to jobs, key services, infrastructure and a range of community facilities.

Summary conclusion

- 16.136 The fundamental context to this decision is the identification of the Marina as a location for major development, both in order to regenerate a currently unattractive and economically fragile part of the city and to facilitate much needed housing in a sustainable location. The proposal would meet these objectives. Although not without some shortcomings, for the most part the development would be a high quality solution to a challenging site. In my judgement the limited conflict with the development plan and the other limitations of the proposal are outweighed by the major benefits that would flow from the creation of a new, sustainable and inclusive community at the Marina that would help to sustain the local economy and regenerate the poor environment.
- 16.137 It is abundantly clear from the massive local opposition that many people fear that the development would destroy the Marina and the treasured natural landscape and historic townscape nearby. I have given very careful consideration to these objections, which were comprehensively tested at the inquiry. The proposal would undoubtedly bring about a massive change to the character of the Marina, with some loss of its original maritime focus, though that process of change has already been set in motion by the approval of the Brunswick scheme. There would be some adverse impacts on the surrounding locality, but mostly these would be slight; in my view the loss of iconic views of the cliffs, the Downs and eastward glimpses of the sea beyond the city, whilst regrettable, would not be sufficient to justify rejection of the proposal.
- 16.138 Accordingly, the planning balance favours the grant of planning permission. I reach that conclusion on the assumption that the proposed development would be delivered in its entirety. However, for the reasons given, I have concerns that the S106 obligation is flawed and that there is a risk of the development being built without some or all of the community and infrastructure provision that is critical to the scheme's overall acceptability. Consequently, in its current form, the proposal is not acceptable and planning permission should be refused.

16.139 It may be that, if the Secretary of State agrees with my conclusion on the planning merits of the proposal, there is scope to refer back to the parties in an attempt to resolve the flaws in the S106 obligation. If it is thought that there is a realistic prospect of the matter being resolved in this way, it is an approach I would commend.

RECOMMENDATION

- 17.1 As submitted, the proposal is unacceptable and I recommend that the appeal be **DISMISSED**.
- 17.2 If, however, the flaws in the S106 obligation could be resolved, then I recommend that the appeal be **ALLOWED** and planning permission granted subject to the conditions set out in Annex A of this report.

Martin Pike

INSPECTOR

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BRIGHTON MARINA RESIDENTS ASSOCIATION:

P Martin	Chairman, BMRA
M Higgins	Brighton Marina resident
J Smith	Brighton Marina resident
A Nicholson	Brighton Marina resident
Dr G Parish	Brighton Marina resident

KEMP TOWN SOCIETY:

P Phillips	Chairman, KTS
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SAVE BRIGHTON:

B Simpson	Brighton resident
Prof J Watts	Brighton resident

BRIGHTON & HOVE ECONOMIC PARTNERSHIP:

A Mernagh	Executive Director, BHEP
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INTERESTED PERSONS:

M Higgins	<i>speaking as a local resident</i>
Prof M Lipton	Research Professor of Economics, Sussex University
D Forester RIBA	Senior Lecturer, University of Brighton
A Thompsett	Local resident
A Simpson	Local resident
P Brickman	Local resident
J Wilson	Local resident
D Winchester	Local resident
Cllr D Smith	Ward Councillor
K Harris	Site Marketing Manager, Brighton Marina
A Hadleigh	Local resident
B Betts	Brighton Marina Car Wash Company
M Osborne	Local resident
P O'Callaghan RICS	Parkridge Developments Limited
L Groves	Brighton Marina store manager
Dr G Parish	<i>speaking as a local resident</i>
J Mouldsdale	Head Gardener, Sussex Square
S Grant	Local resident
D De Young	Local resident and member of KTS
R Sheppard	Chair, Roedean Residents Association
Mrs Pettit	Local resident
B Stern	Local resident
C Clifford	Local resident
M Eynon	Local resident
J Griffiths	Local resident
S McCrickard	Local resident
S Jones	Local resident
E O'Neill	Local resident
J Sewell	<i>speaking as a local resident</i>
A Lowenthal	Local resident
G Bryson	Local resident
C O'Reilly	Blackrock Residents Association
C Rowbotham	Local resident
T Secrett	Business owner, Brighton Marina

P Frier	Chief Executive, City College
P Wallace	Local resident
D Granger	Local resident
F Price	Local resident
J Boyce	Local resident
S Kirby	Local resident
H McKay PPRTPI	Regency Society of Brighton and Hove
K O'Dwyer *	Vice Chair, Roedean Residents Association
B Impey *	Local resident
Mr Phillips *	Roedean Residents Association
Prof H Rush	Professor of Innovation Management, University of Brighton
K Hogber	Local resident
M Smith	Local resident
G Meredith	Local resident
A Nicholson	<i>speaking as a local resident</i>
V Davies	Local resident
H Glanville	Local resident
* <i>Put questions to witnesses but did not give evidence</i>	

DOCUMENTS

General Inquiry Documents

CD1/1	Pre-inquiry meeting note
CD1/2	Core Document referencing
CD1/3	Statement of Common Ground
CD1/4	Transport Statement of Common Ground
CD1/5	Planning Inspectorate letter to parties, 21 January 2010

Planning Application and Environmental Statement (as amended)

CD2/1.1	Application form and covering letter dated 14 September 2007
CD2/1.2	Covering letter dated 23 October 2007
CD2/1.3	Covering letter dated 30 June 2008
CD2/1.4	Covering letter dated 15 September 2008
CD2/2.1	Further information requested under Regulation 19, November 2007
CD2/2.2	Non Technical Summary (NTS) regarding further information requested under Regulation 19, November 2007
CD2/3.1	Public Art Statement, May 2007
CD2/3.2	Public Art Statement Addendum, June 2008
CD2/4	Construction Environment Management Plan, September 2007
CD2/5.1	Statement of Community Involvement, September 2007
CD2/5.2	Statement of Community Involvement Addendum, June 2008
CD2/6	Health Impact Assessment, January 2008
CD2/7.1	Design and Access Statement, Volume 1, June 2008
CD2/7.2	Design and Access Statement, Volume 2, June 2008
CD2/7.3	Design and Access Statement, Volume 3, June 2008
CD2/8	Flood Risk Assessment, June 2008
CD2/9	Retail Impact Statement, June 2008
CD2/10.1	Environmental Statement Vol. 1, June 2008
CD2/10.2	Environmental Statement Vol. 2, June 2008
CD2/10.3	Chapter 9 Townscape and Visual Impact Assessment, June 2008
CD2/10.4	Environmental Statement NTS

CD2/11	Planning Statement, September 2008
CD2/12	Housing Statement, September 2008
CD2/13	Transport Assessment, September 2008
CD2/13.1	Vissim report
CD2/14	Planning Drawings (A3 bound document)

Local Planning Authority committee meeting documents and Decision Notice

CD3/1.1	Officer's report to the planning committee 12 December 2008
CD3/1.2	Minutes of the planning committee 12 December 2008
CD3/1.3	Late list of the planning committee 12 December 2008
CD3/2	Decision Notice dated 19 December 2008
CD3/3.1	Planning committee 2 September 2009 agenda
CD3/3.2	Minutes of the planning committee 2 September 2009

National Planning Policy

CD4/1.1	Planning Policy Statement 1: Delivering Sustainable Development (2005)
CD4/1.2	Companion Guide Planning and Climate Change – Supplement to Planning Policy Statement 1 (2007)
CD4/1.3	The Planning System: General Principles (2004)
CD4/2	Planning Policy Statement 3: Housing (2006)
CD4/2.1	Delivering Affordable Housing (2006)
CD4/3	Planning Policy Statement 6: Town Centres (2005)
CD4/4	Planning Policy Statement 9: Biodiversity and Geological Conservation (2005)
CD4/5	Planning Policy Statement 10: Planning for Sustainable Waste Management (2005)
CD4/6	Planning Policy Statement 12: Local spatial Planning (2008)
CD4/7	Planning Policy Statement 22: Renewable energy (2004)
CD4/8	Planning Policy Statement 23: Planning and Pollution Control (2004)
CD4/9	Planning Policy Statement 25: Development and Flood Risk (2006)
CD4/10	Planning Policy Guidance 13: Transport (2001)
CD4/11	Planning Policy Guidance 15: Planning and the Historic Environment (1994)
CD4/12	Planning Policy Guidance 16: Archaeology and Planning (1990)
CD4/13	Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation (2002)
CD4/14	Planning Policy Guidance 20: Coastal Planning (1992)
CD4/15	Good Practice Guidance, Planning for Tourism (2006)
CD4/16	Draft Planning Policy Statement 4: Planning for Prosperous Economies (2009)
CD4/17	Consultation paper on a new Planning Policy Statement 15: Planning for the Historic Environment (2009)
CD 4/18	Planning Policy Statement 7: Sustainable Development in Rural Areas (2004)

Other National Planning Policy and Guidance

CD5/1	Guidance on Tall Buildings, English Heritage / CABI (2007)
CD5/2	By Design - Urban design in the planning system: towards better practice (DETR/CABI, 2000)
CD5/3	Better Places to Live by Design: A Companion Guide to PPG3 (DfLR/CABI, 2001)
CD5/4	Guidance on Transport Assessment (DfT/CLG, 2007)
CD5/5	Manual for Streets (DfT/CLG, 2007)
CD5/6	Urban Design Compendium (English Partnerships / Housing Corporation, 2007)
CD5/7	Design and Quality Standards (Homes and Communities Agency, 2007)
CD5/8	The National Affordable Homes Agency Housing Quality Indicators, Version 4 (2007)

CD5/9	Building in Context – New development in historic areas (EH/CABE, 2002)
CD5/10	Draft English Heritage Practice Guide to Draft PPS15 for Consultation (July 2009)
CD5/11	Making Smarter Choices Work (DfT 2005)

Government Circulars

CD6/1	Circular 11/95: The use of conditions in planning permissions
CD6/2	Circular 2/99: Environmental Impact Assessment
CD6/3	Circular 05/05: Planning Obligations
CD6/4	Circular 01/06: Guidance on changes to the development control system

Regional Publications

CD7/1	The South East Plan - Regional Spatial Strategy for the South East of England (2009)
CD7/2	East Sussex and Brighton and Hove Structure Plan, 1991–2011 (1999)
CD7/3	Regional Planning Guidance for the South East, RPG9 (2001)

Local Planning Policy

CD8/1	Brighton and Hove 'saved' Local Plan (2005)
CD8/2.1	Brighton and Hove Core Strategy, Revised Preferred Options (June 2008)
CD8/2.2	Brighton and Hove Core Strategy, Proposed Amendments (June 2009)
CD8/3	Supporting Evidence Document Core Strategy June 2009
CD8/4	Local Transport Plan (LTP2- 2006/2011)
CD8/5	Supplementary Planning Guidance 4: Parking Standards (2000)
CD8/6	Supplementary Planning Guidance 5: Black Rock Development Brief (2001)
CD8/7	Supplementary Planning Guidance 9: A Guide for Residential Developers on the Provision of Recreation Space (draft)
CD8/8	Supplementary Planning Guidance 15: Tall Buildings (January 2004)
CD8/9.1	Supplementary Planning Guidance 20: Brighton Marina, Volume 1 "An Urban Design Analysis" (January 2003)
CD8/9.2	Supplementary Planning Guidance 20: Brighton Marina, Volume 2 "Development Brief" (January 2003)
CD8/10	Supplementary Planning Document 08 Sustainable Building Design (June 2008)
CD8/11	Planning Advice Note 03 Accessible Housing and Lifetime Homes (2008)
CD8/12	Planning Advice Note 04 Brighton Marina Masterplan (March 2008)
CD8/13	Planning Advice Note 05 Design Guidance for the Storage and Collection of Recyclable Materials and Waste (2007)
CD8/14	Draft Issues and Options Study – Brighton Marina (2008)
CD8/15	Brighton & Hove Annual Monitoring Report (2007 – 2008)

Local Authority Background Documents

CD9/1	Brighton and Hove Tall Building Study (October 2003)
CD9/2	Housing Needs Survey (2005)
CD9/3	Demand for Different Sizes of Properties in Brighton and Hove over the next three years (2005-2008)
CD9/4	Update Study - Affordable Housing Development Viability (December 2007)
CD9/5	Strategic Housing Market Assessment (April 2008)
CD9/6	Strategic Housing Land Availability Study (2009)
CD9/7	Creating the City of Opportunities: A sustainable community strategy for the

	City of Brighton & Hove (June 2006)
CD9/8	Retail Study (2006)
CD9/9.1	Employment Land Study (2006)
CD9/9.2	Employment Land Study Update (2009)
CD9/10	Infrastructure Capacity Assessment: 2005 – 2026 (2006)
CD9/11.1	Strategic Flood Risk Assessment (March 2008)
CD9/11.2	PPS25 Sequential and Exception Tests for the Brighton and Hove Core Strategy DPD
CD9/12	Urban Characterisation Study (January 2009)
CD9/13	A Green Network for Brighton and Hove (2009)
CD9/14	Open Space, Sport and Recreation Study (2009)

Miscellaneous Core Documents

CD10/1	Brighton Marina Act, 1968
CD10/2	Brighton Marina Public Inquiry chaired by Mr David Widdicombe QC 1975

Decisions and associated documents relating to other developments

CD11/1.1	Brunswick (Outer Harbour) Planning Statement (April 2006)
CD11/1.2	Brunswick (Outer Harbour) Committee Report (June 2006)
CD11/1.3	Brunswick (Outer Harbour) S106 Agreement (July 2006)
CD11/2.1	King Alfred Waterfront Planning Statement (September 2006)
CD11/2.2	King Alfred Waterfront S106 Agreement (July 2007)
CD11/3	Decision and Inspector's Report, Shard of Glass Tower, London Bridge
CD11/4	High Court Judgement, Doon Street, London
CD11/5	Decision and Inspector's Report, Lots Road, London
CD11/6	Appeal decision of R. J. Yuille regarding 37 Effra Parade, London SE2
CD11/7	Appeal decision of D Lavender regarding 120-138 Walworth Road, London
CD11/8	Brighton & Hove City Council Report of Chief Executive, 13 July 2006
CD11/9	Brighton & Hove City Council Minutes, 13 July 2006
CD11/10	Follow-up meeting Agenda and Minutes, 20 July 2006

Appellants - Core Documents

CD12/1	1973 Brighton Marina Masterplan, Louis De Soissons
CD12/2	Housing Quality Indicators Assessment (HQI) prepared by Churchill Hui
CD12/3	Joseph Rowntree Foundation Lifetime Homes Standards
CD12/4	BRE Report: Site Layout Planning for Daylight and Sunlight a Good Practice
CD12/5	Code for Sustainable Homes
CD12/6	Secured by Design
CD12/7	Fields in Trust Guidance 'Planning and Design for Outdoor Sport and Play'
CD12/8	Supplementary Planning Guidance: Providing for Children and Young People's Play and Informal Recreation March 2008
CD12/9.1	ES Chapter 9 Townscape and Visual Impact Assessment, September 2007 (superseded)
CD12/9.2	ES Chapter 9 Townscape and Visual Impact Assessment Addendum, November 2007 (superseded)
CD12/10.1	Draft Unilateral Planning Obligation 2 November 2009
CD12/10.2	Draft Unilateral Planning Obligation 19 November 2009
CD12/10.3	Draft Unilateral Planning Obligation 20 November 2009
CD12/10.4	Draft Unilateral Planning Obligation 8 December 2009
CD12/10.5	Draft Unilateral Planning Obligation 15 December 2009
CD12/10.6	Draft Unilateral Planning Obligation 16 December 2009
CD12/11	Email trail regarding daylighting

CD12/12	GIA report for BHCC, Daylight and Sunlight Assessment, May 2008
CD12/13	Bundle of correspondence of Sport England
CD12/14	Correspondence with Natural England
CD12/15	Mr Dennis' response of 6 November 2009 to Mr Roake's viability comments
CD12/16	Letter from Sussex Police confirming non-appearance at Inquiry, 15 November 2009
CD12/17	Response to Mr Roake's response to Mr Dennis's note on viability and deliverability, 6 November 2009
CD12/18	Floor area figures for residential flats and commercial property
CD12/19	Viability figures and response from Explore Living
CD12/19.1	Mr Dennis' note of clarification on CD13/2a and 2b
CD12/20	Proposed Statement of Common Ground in respect of daylight
CD12/21.1	Letter of 11 November 2009 concerning proposed Statement of Common Ground in respect of whole house ventilation at Cliff Site
CD12/21.2	Ramboll Overheating Analysis, 1 December 2009
CD12/22	Aerial photo of East Brighton
CD12/23	Overlooking diagrams
CD12/24	Mr Allies Building For Life assessment
CD12/25	Note in response to Mr Roake's substitution note CD13/2b (revised)
CD12/26	Sunlight and shadowing to Palm Drive and Black Rock
CD12/27	Open space area analyses
CD12/28	Updated HQI Assessment from Churchill Hui
CD12/29.1	South elevation of cliff site showing heights of 8 and 10 storeys
CD12/29.2	View from Arundel Terrace showing heights of 8 and 10 storeys
CD 12/30	Townscape Visual Impact assessment: Technical Appendix November 2009
CD 12/31	View looking east along Arundel Terrace
CD12/32	Section drawings: distances from cliff
CD12/33	Mouchel's report dated 30 November 2009
CD12/34	Ramboll report on Code for Sustainable Homes, November 2009
CD12/35	Agreed statement of common ground on daylight and amended plans
CD12/36	Education document – Primary Strategy for Change, March 2009
CD12/37	BHCC Children & Young People Cabinet report, April 2009
CD12/38	List of sections of Mr Gavin's evidence to be covered by Messrs Spry and Reid
CD12/39	Briefing note on education
CD12/40	Response to Kemp Town Society questions on Mr Gavin's evidence
CD12/41	Response to Save Brighton questions on Mr Gavin's evidence
CD12/42	Response to BMRA questions on Mr Gavin's evidence
CD12/43.1	Draft planning conditions 10 December 2009
CD12/43.2	Draft planning conditions 14 December 2009
CD12/43.3	Draft planning conditions 16 December 2009
CD12/44	Draft contamination condition
CD12/45.1	First draft Phasing Plan to Public Realm
CD12/45.2	Second draft Phasing Plan to Public Realm
CD12/46	Email correspondence with BHCC concerning sustainability, December 2008
CD12/47	Travel Plan, 14 December 2009
CD12/48	Transport technical note, 15 December 2009
CD12/49	Note on David Lloyd Leisure facilities
CD12/50	Updated drawing register
CD12/51	Building for Life assessment exercise handout
CD12/52	School capacity note 15 December 2009
CD12/53	Email correspondence from Mr Clements for Sussex Police, 15 December 2009
CD12/54	Plan showing distances between Cliff Site building and the cliff recreation areas
CD12/55	Drawings showing dimensions of under ramp recreation area
CD12/56	Plans showing distances to LEAPS and NEAPS
CD12/57	Planning Conditions, final version
CD12/58.1	Ramboll Overheating Analysis, 15 December 2009
CD12/58.2	Mr Roake's comments on updated Overheating Analysis
CD12/59	Response to Inspector's questions on Mr Gavin's evidence

CD12/60	Letter and multiple S106 Planning Obligations, 15 January 2010
CD12/61	Response to Planning Inspectorate letter of 21 January 2010, 3 February 2010
CD12/62	Letter and final S106 Planning Obligation, 12 February 2010
CD12/63	Response to matters raised by Rule 6 parties, 23 February 2010

Brighton and Hove City Council - Core Documents

CD13/1	Extracts from Guidelines for Landscape and Visual Impact Assessment (2 nd edition)
CD13/2a	Mr Roake's table of BCIS predictions and profit
CD13/2b	Mr Roake's revised note of BCIS predictions and profit
CD13/3	Mr Roake's Active Frontages diagram
CD13/4	Mr Roake's comments on Daylighting Schedule of ES
CD13/5	CABE Building For Life, 2008 edition
CD13/6	CABE Evaluating Housing Step By Step
CD13/7	Extract from District Valuer's report, spreadsheet
CD13/8	Draft BS - Research material of Littlefair-Fuller document
CD13/9	Education contribution - BHCC background papers
CD13/10	Handwritten response from Mr Goodwin, 11 November 2009
CD13/11	BHCC Environment Committee, infrastructure capacity - 9 November 2006
CD13/12	BHCC Planning DC and Policy Consultation Proforma
CD13/13	Visual illustration of 6 storey height
CD13/14	BHCC Local Development Scheme, December 2008
CD13/15	Minutes of PAN04 meeting, November 2007
CD13/16	Brighton Marina: Explore Living Client's Brief
CD 13/17	Table of affordable housing flat sizes
CD 13/18	Email from Mr Shepherd regarding Affinity Sutton bid to HCA, 30 November 2009
CD13/19	English Heritage letter, 15 January 2008
CD13/20	Coastal Rapid Transport System frequently asked questions
CD13/21	Email correspondence regarding technical note on ramps (see Mr Frisby Appendix K)
CD13/22	Email from Mr Pope concerning developer contributions
CD13/23	Education contributions calculations
CD13/24	Expected numbers on school rolls, August 2009
CD13/25	BHCC document 'Outstanding items for S106'
CD13/26.1	Unilateral Planning Obligation with BHCC comments, 11 December 2009
CD13/26.2	Unilateral Planning Obligation with BHCC comments, 15 December 2009
CD13/27	BHCC Ms Seale's letter, March 2008
CD13/28	Appeal decision and Inspector's Report, TRL site, Crowthorne, Berkshire, June 2009
CD13/29	Planning Inspectorate Planning Conditions and Obligations
CD13/30	Planning Inspectorate Checklist for Planning Obligations
CD13/31	Amendments to BHCC Core Strategy, report to Council 10 December 2009
CD13/32	Response to S106 Planning Obligation, 14 January 2010
CD13/33	Response to final S106 Planning Obligation, 3 February 2010

Brighton Marina Residents' Association - Core Documents

CD14/1	Transport Assessment Review 19 August 2008: Mouchel
CD14/2	Appeal decision, Royal Alexandra Hospital, Brighton, 12 June 2009
CD14/3	Extract from Open University T241
CD14/4	Guide Dogs 'No to shared streets'
CD14/5	Ashurst letter to Planning Inspectorate, 21 April 2009
CD14/6	Water space feasibility report, British Waterways
CD14/7	Information sheet from Brighton Marina Management Company 1996

CD14/8	BMRA correspondence with BHCC concerning children's playground, 2004
CD14/9	Residential satisfaction with Space in the Home – CABE
CD14/10	Number of residential properties at Brighton Marina
CD14/11	Brighton and Hove Economic Partnership letter, December 2007
CD14/12	Brighton Marina Act July 2006 – legal Opinion of Mary Macpherson
CD14/13	BHCC Minutes of Council meeting, 20 July 2006
CD14/14	Email to councillors from BHCC Head of Law, 12 July 2006
CD14/15	Brighton Marina Company Byelaws
CD14/16	Conditions relating to planning permission 86/1860/F
CD14/17	Email from Mr Luker, Environment Agency, 12 December 2008
CD14/18	Email from Cllr Mary Mears, 10 November 2009
CD14/19	BMRA Slides
CD14/20	Information regarding Parkridge UK
CD14/21	Representations from BMRA regarding PAN04
CD14/22	Email from Mr Luker, Environment Agency, 19 November 2009
CD14/23	Photographs showing 15mph signs
CD14/24	BMRA comments on Unilateral Planning Obligation
CD14/25	Decision notice, land south of The Strand – 96/0824/FP
CD14/26	Emergency Services response, Mr Moody email, 11 November 2008
CD14/27	Extract from Estates Gazette, 28 November 2009
CD14/28	Questions on Mr Gavin's evidence
CD14/29	Response to final S106 Planning Obligation, 12 February 2010

Save Brighton - Core Documents

CD15/1	Email from John Hare to Brian Simpson regarding photographs in TVIA
CD15/2	Save Brighton photographs
CD15/3	GLVIA Appendix 9: Guideline on photomontage and CAD, & extract from CABE + English Heritage: Guidance on tall buildings
CD15/4	Evening Standard article regarding Doon Street tower, 15 June 2009
CD15/5	Explore Living response to question regarding photo-montage
CD15/6	Photograph from Marine Gate
CD 15/7	Email from Penny Causer to Brian Simpson, 23 October 2009
CD/15/8	Letter from Roedean Residents Association
CD15/9	Questions on Mr Gavin's evidence
CD15/10	Response to S106 Planning Obligation, 3 February 2010

Marine Gate Action Group - Core Documents

CD16/1	Comments on PAN04
CD16/2	Questions on David Gavin's evidence
CD16/3	Request for conditions
CD16/4	Response to S106 Planning Obligation, 17 January 2010
CD16/5	Rule 6 parties' letter 4 February 2010 regarding rock fall

Kemp Town Society - Core Documents

CD17/1	Kemp Town Conservation Area Study, January 1992
CD17/2	Brighton and Hove City Council Conservation Strategy, September 2003
CD17/3	Land registry extract, Brighton Marina, 30 October 2003
CD17/4	Letter from Mr Morris to The Argus newspaper
CD17/5	Supplementary material included in KTS presentation
CD17/6	Letter to Councillor G Theobald regarding PAN04, 25 March 2008
CD17/7	Request for provision in Unilateral Planning Obligation
CD17/8	'Fifty years on' referred to in closing statement

CD17/9	Questions on Mr Gavin's evidence
CD17/10	Response to S106 Planning Obligation, 3 February 2010
CD17/11	Response to final S106 Planning Obligation, 12 February 2010

Brighton & Hove Economic Partnership - Core Documents

CD19/1	The Regional Economic Strategy 2006 – 2016
CD19/2	NOMIS labour market statistics

Statements and Proofs of Evidence

Brighton and Hove City Council (BHCC)

BHCC/1	Statement of Case
BHCC/2	Opening Statement
BHCC/3.1	Proof of evidence of Mr Roake
BHCC/3.2	Appendices of Mr Roake
BHCC/3.3	Summary proof of Mr Roake
BHCC/4.1	Proof of evidence of Mr Allen
BHCC/4.2	Appendices of Mr Allen
BHCC/4.3	Summary proof of Mr Allen
BHCC/5.1	Proof of evidence of Mr Froneman
BHCC/5.2	Appendices of Mr Froneman
BHCC/5.3	Summary proof of Mr Froneman
BHCC/6.1	Proof of evidence of Mr Goodwin
BHCC/6.2	Appendices of Mr Goodwin
BHCC/6.3	Summary proof of Mr Goodwin
BHCC/6.4	Rebuttal proof of Mr Goodwin
BHCC/7	Closing Submissions

Appellants - Brighton Marina Regeneration Project (BMRP)

BMRP/1	Statement of Case
BMRP/2	Opening Statement
BMRP/3.1	Proof of evidence of Mr Allies
BMRP/3.2	Appendices of Mr Allies
BMRP/3.3	Rebuttal proof of Mr Allies
BMRP/3.4	CD illustrations of Mr Allies
BMRP/4.1	Proof of evidence of Mr Spry
BMRP/4.2	Appendices of Mr Spry
BMRP/4.3	Rebuttal proof of Mr Spry
BMRP/5.1	Proof of evidence of Mr Coleman
BMRP/5.2	Appendices of Mr Coleman
BMRP/5.3	Rebuttal proof of Mr Coleman
BMRP/6.1	Proof of evidence of Mr Bean
BMRP/6.2	Appendices of Mr Bean
BMRP/6.3	Rebuttal proof of Mr Bean
BMRP/7.1	Proof of evidence of Mr Reid
BMRP/7.2	Rebuttal proof of Mr Reid
BMRP/8.1	Proof of evidence of Mr Frisby
BMRP/8.2	Appendices of Mr Frisby
BMRP/8.3	Figures and Drawings of Mr Frisby
BMRP/8.4	Rebuttal proof of Mr Frisby
BMRP/8.5	Rebuttal appendices of Mr Frisby
BMRP/9.1	Proof of evidence of Mr Gavin (<i>presented by Messrs Reid and Spry</i>)*

BMRP/9.2	Appendices of Mr Gavin (<i>presented by Messrs Reid and Spry</i>) *
BMRP/9.3	Summary proof of Mr Gavin (<i>presented by Messrs Reid and Spry</i>) *
BMRP/9.4	Rebuttal proof of Mr Gavin (<i>presented by Messrs Reid and Spry</i>) *
BMRP/10	Closing Submissions

** Shortly before the appellants' planning witness, Mr Gavin, was due to give evidence, he became ill and was medically unfit to attend the inquiry. His evidence on recreation provision was given by Mr Reid, and that on education provision by Mr Spry – see CD12.38. Other matters in his proofs were taken as written evidence on which the parties were given the opportunity to put questions that were answered in writing by the appellants' team.*

Brighton Marina Residents Association (BMRA)

BMRA/1	Statement of Case
BMRA/2	Opening Statement
BMRA/3.1	Proof of evidence and appendices of Mr Martin
BMRA/3.2	Rebuttal proof of Mr Martin
BMRA/4	Closing Submissions

Marine Gate Action Group (MGAG)

MGAG/1	Statement of Case
MGAG/2	Opening Statement
MGAG/3.1	Proof of evidence and appendices of Mr Powell
MGAG/3.2	Summary proof of Mr Powell
MGAG/4	Closing Submissions

Kemp Town Society (KTS)

KTS/1	Statement of Case
KTS/2	Opening Statement
KTS/3.1	Proof of evidence and appendices of Mr Phillips
KTS/3.2	Further statement of Mr Phillips
KTS/4	Closing Submissions

Save Brighton (SB)

SB/1	Statement of Case
SB/2	Opening Statement
SB/3.1	Proof of evidence of Mr Simpson
SB/3.2	Rebuttal proof of Mr Simpson
SB/4	Closing Submissions

Sussex Police (SP)

SP/1	Statement of Case
SP/2	Proof of evidence of Mr Clements (<i>not presented at inquiry</i>)

Brighton and Hove Economic Partnership (BHEP)

BHEP/1	Statement of Case
BHEP/2	Proof of evidence of Mr Mernagh
BHEP/2.1	Further statement of Mr Mernagh

Interested Parties (IP)

IP/1.1	Statement of Ms Higgins
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IP/1.2	Documents of Ms Higgins
IP/2	Statement of Prof Lipton
IP/3	Statement of Ms Forester
IP/4	Statement of Mr Thompsett
IP/5	Statement of Ms Simpson
IP/6.1	Statement of Ms Brickman
IP/6.2	Further statement of Ms Brickman
IP/7	Statement of Mr Winchester
IP/8	Statement of Ms Harris
IP/9	Statement of Mr Hadley
IP/10	Statement of Mr Betts
IP/11	Statement of Mr Osborne
IP/12	Statement of Mr O'Callaghan
IP13	Statement of Ms Groves
IP14	Statement of Dr Parish
IP/15	Statement of Mr Mouldsdales
IP/16	Statement of Ms Grant
IP/17.1	Statement of Mr De Young
IP/17.2	Appendix of Mr De Young
IP/18.1	Statement of Mrs Pettit
IP/18.2	Appendix of Mrs Pettit - Letter to West Sussex CC dated 24 May 2003
IP/19	Statement of Mr Clifford
IP/20	Statement of Mr Eynon
IP/21	Statement of Mrs Griffiths
IP/22.1	Statement of Ms McCrickard
IP/22.2	Statement of Ms Mitchell (read by Ms McCrickard)
IP/23	Statement of Ms Jones
IP/24	Statement of Ms Sewell
IP/25.1	Statement of Ms Lowenthal
IP/25.2	Photomontage of Ms Lowenthal
IP/26	Statement of Mr Secrett
IP/27	Statement of Mr Frier
IP/28	Statement of Mr Wallace
IP/29	Statement of Mr Granger
IP/30	Statement of Ms Price
IP/31	Statement of Mr Boyce
IP/32	Statement of Mr Kirby
IP/33.1	Statement of Ms McKay
IP/33.2	Representations by the Regency Society
IP/33.3	Email from Ms McKay
IP/34	Statement of Ms Hogber
IP/35	Statement of Prof Rush
IP/36	Statement of Mr Smith
IP/37	Statement of Ms Meredith
IP/38	Statement of Mr Nicholson
IP/39	Document of Prof Watts
IP/40	Statement of Ms Davies
IP/41	Statement of Mr Glanville

SCHEDULE OF PLANS

No	Drawing Ref	Rev	Description
<u>Existing Site-Wide Drawings</u>			
A1	CL10578-008	/	Boundary of Planning Application
A2	CL10578-013	/	Site Location Plan
A3	SW_00_A_07_010	P5	Existing Ground Level Plan
A4	SW_-0_A_07_030	P5	Existing Sections AA & BB
A5	SW_-0_A_07_031	P5	Existing Sections CC & DD
A6	SW_-0_A_07_032	P5	Existing Sections EE & FF
A7	SW_-0_A_07_033	P5	Existing Sections GG & HH
<u>Proposed Site-Wide Drawings</u>			
B1	SW_00_A_07_100	P9	3.1m AOD Level Plan <i>(formerly Ground Level Plan)</i>
B2	SW_01_A_07_101	P9	8.4m AOD Level Plan <i>(formerly First Floor Level Plan)</i>
B3	SW_00_A_07_110	P6	Ground Level Red Line Plan GP Surgery / Healthy Living Centre
B4	SW_00_A_07_120	P3	Masterplan Showing Future RTS Route
B5	SW_00_A_07_121	P2	Masterplan plan and section through ramps
B6	SW_00_A_07_131	P2	Future Masterplan Ground Floor Level Plan
B7	SW_00_A_07_132	P2	Future Masterplan 8.4m AOD level plan
B8	SW_00_A_07_135	P2	Future Masterplan Roof Level Plan
B9	SW_RF_A_07_199	P9	Roof Level Plan
B10	SW_-0_A_07_300	P8	Sections AA & BB
B11	SW_-0_A_07_301	P9	Section CC & DD
B12	SW_-0_A_07_302	P8	Section EE & FF
B13	SW_-0_A_07_303	P8	Section GG & HH
B14	SW_-0_A_07_330	P1	Future Masterplan Sections 1 and 2 (north-south)
B15	SW_-0_A_07_331	P1	Future Masterplan Sections 3 and 4 (east-west)
B16	SW_01_A_00_127	P2	Indicative Phasing Plan
<u>Cliff Site</u>			
C1	S1_00_A_07_010	P1	Existing Asda ground floor site plan
C2	S1_RF_A_07_012	P1	Existing Asda roof plan
C3	S1_0_A_07_030	P1	Existing Asda store elevations east, west and south
C4	S1_0_A_07_031	P1	Existing Asda store north elevation
C5	S1_00_A_07_040	P1	Existing Asda ground and first floor internal layouts
C6	S1_00_A_07_100	P12	Ground Floor Plan
C7	S1_01_A_07_101	P12	First Floor Plan
C8	S1_02_A_07_102	P12	Second Floor Plan
C9	S1_03_A_07_103	P11	Third Floor Plan
C10	S1_04_A_07_104	P12	Fourth Floor Plan
C11	S1_05_A_07_105	P13	Fifth Floor Plan
C12	S1_06_A_07_106	P11	Sixth Floor Plan
C13	S1_07_A_07_107	P10	Seventh Floor Plan
C14	S1_08_A_07_108	P9	Eighth Floor Plan
C15	S1_09_A_07_109	P9	Ninth Floor Plan
C16	S1_RF_A_07_110	P8	Roof Plan
C17	S1_-0_A_07_200	P9	South Elevation
C18	S1_-0_A_07_201	P9	West Elevation
C19	S1_-0_A_07_202	P11	North Elevation

C20	S1_0_A_07_203	P11	East Elevation
C21	S1_0_A_07_300	P11	Lengthwise Section AA
C22	S1_0_A_07_301	P10	Lengthwise Section BB
C23	S1_0_A_07_302	P11	Lengthwise Section CC
C24	S1_0_A_07_303	P11	Lengthwise Section DD
C25	S1_0_A_07_304	P10	Cross Section EE
C26	S1_0_A_07_305	P10	Cross Section FF
C27	S1_0_A_07_306	P10	Cross Section GG
C28	S1_0_A_07_307	P9	Cross Section HH
C29	S1_0_A_07_308	P10	Cross Section JJ
C30	S1_0_A_07_309	P9	Cross Section KK
C31	S1_0_A_07_310	P10	Cross Section LL
C32	S1_0_A_07_311	P9	Cross Section MM
C33	S1_0_A_07_312	P10	Cross Section NN
C34	S1_0_A_07_313	P9	Cross Section OO
C35	S1_0_A_07_314	P11	Cross Section PP
C36	S1_0_A_07_315	P9	Cross Section QQ
C37	S1_0_A_07_400	P6	1 bed (smallest)
C38	S1_0_A_07_401	P6	1 bed (average) <i>(formerly called 1 bed (typical))</i>
C39	S1_0_A_07_402	P6	2 bed (smallest)
C40	S1_0_A_07_403	P6	2 bed (average) <i>(formerly called 2 bed (typical))</i>
C41	S1_0_A_07_404	P6	3 bed (average) <i>(formerly called 1 bed (smallest))</i>
C42	S1_0_A_07_405	P6	2 bed (largest) <i>(formerly 3 bed (largest))</i>
C43	S1_0_A_07_406	P6	3 bed largest <i>(formerly 4 bed)</i>
C44	S1_0_A_07_407	P6	1 bed largest <i>(formerly Wheelchair Housing unit 1 bed (smallest))</i>
C45	S1_0_A_07_408	P6	2 bed wheelchair (largest) <i>(formerly Wheelchair Housing unit 1 bed (largest))</i>
C46	S1_0_A_07_409	P6	2 bed wheelchair (smallest) <i>(formerly Wheelchair Housing unit 2 bed (smallest))</i>
C47	S1_0_A_07_410	P6	2 bed wheelchair (average) <i>(formerly Wheelchair Housing unit 2 bed (largest))</i>
C48	S1_0_A_07_411	P6	Flat type - Wheelchair Housing unit 3 bed
C49	S1_0_A_07_800	P4	Bay Study: South Elevation
C50	S1_0_A_07_801	P5	Bay Study: North Elevation
C51	S1_0_A_07_802	P4	Bay Study: Internal Courtyard Elevation
C52	S1_0_A_07_900	P5	Footbridge
<u>Sea Wall Site</u>			
D1	S2_00_A_07_100	P9	Lower Ground Floor Level Plan
D2	S2_01_A_07_101	P9	Upper Ground Floor Level Plan
D3	S2_02_A_07_102	P9	First Floor Level Plan
D4	S2_03_A_07_103	P8	2nd Floor Level Plans
D5	S2_04_A_07_104	P8	3rd - 4th Floor Level Plan
D6	S2_05_A_07_105	P8	5th Floor Level Plan
D7	S2_06_A_07_106	P7	6th Floor Level Plan
D8	S2_07_A_07_107	P7	7th Floor Level Plan
D9	S2_08_A_07_108	P7	8th Floor Level Plan
D10	S2_09_A_07_109	P5	9th Floor Level Plan
D11	S2_RF_A_07_110	P8	Roof Plan
D12	S2_01_A_07_121	P2	Upper Ground Floor Plan + context incl Brunswick
D13	S2_0_A_07_200	P9	West Elevation
D14	S2_0_A_07_202	P9	East Elevation

D15	S2_0_A_07_204	P9	North & South Elevation
D16	S2_0_A_07_300	P9	Cross Sections
D17	S2_0_A_07_301	P6	Cross Sections
D18	S2_0_A_07_400	P5	One bed (Average) <i>(formerly 1 bed (smallest))</i>
D19	S2_0_A_07_401	P5	1 bed (largest) <i>(formerly 1 bed (average))</i>
D20	S2_0_A_07_402	P5	2 bed (largest) <i>(formerly 2 bed (smallest))</i>
D21	S2_0_A_07_403	P5	2 bed flat <i>(formerly 2 bed (average))</i>
D22	S2_0_A_07_404	P5	3 bed flat (penthouse) <i>(formerly 3 bed)</i>
D23	S2_00_A_07_800	P5	Bay Study West elevation 1
D24	S2_00_A_07_801	P5	Bay Study West elevation 2
D25	S2_00_A_07_802	P4	Bay Study East elevation 1

Marina Point

E1	S3_00_A_07_010	P2	Existing PFS Ground Plan and North Elevation
E2	S3_00_A_07_100	P10	Ground Floor Plan
E3	S3_01_A_07_101	P8	Floor Plans
E4	S3_04_A_07_104	P7	Floor Plans
E5	S3_09_A_07_109	P4	Floor Plans
E6	S3_26_A_07_127	P4	Floor Plans
E7	S3_RF_A_07_129	P8	Roof Plan
E8	S3_0_A_07_200	P10	Elevation South
E9	S3_0_A_07_201	P10	Elevation North
E10	S3_0_A_07_202	P10	Elevation East
E11	S3_0_A_07_203	P10	Elevation West
E12	S3_0_A_07_300	P8	Sections
E13	S3_0_A_07_400	P5	1 bed
E14	S3_0_A_07_401	P5	2 bed
E15	S3_0_A_07_402	P5	2 bed maisonette - lower
E16	S3_0_A_07_403	P4	2 bed maisonette - upper
E17	S3_0_A_07_404	P5	3 bed maisonette - lower
E18	S3_0_A_07_405	/	3 bed maisonette - upper
E19	S3_0_A_07_800	P4	Bay Study - East/West Elevation

Quayside

F1	808 – 4	/	Existing McDonald's Elevations
F2	S4_00_A_07_010	P1	Existing McDonald's Plan and Elevation
F3	S4_00_A_07_100	P10	Ground Floor Plan
F4	S4_01_A_07_101	P9	First Floor Plan
F5	S4_02_A_07_102	P9	2nd Floor Plan
F6	S4_03_A_07_103	P9	3rd Floor Plan
F7	S4_04_A_07_104	P9	Fourth Floor Plan
F8	S4_05_A_07_105	P10	Fifth Floor Plan and roof garden
F9	S4_06_A_07_106	P8	6th and 7th Floor Plans
F10	S4_08_A_07_108	P8	8th and 9th Floor Plans
F11	S4_10_A_07_110	P8	10th to 11th Floor Plans
F12	S4_RF_A_07_112	P5	12th to 13th Floor Plans
F13	S4_RF_A_07_114	P5	14th to 15th Floor Plans
F14	S4_RF_A_07_117	P9	Roof Plan
F15	S4_RF_A_07_120	P1	Quayside roof plan and section showing Brunswick context
F16	S4_0_A_07_200	P9	North Elevation
F17	S4_0_A_07_201	P9	South Elevation

F18	S4_-0_A_07_202	P9	East Elevation
F19	S4_-0_A_07_203	P9	West Elevation
F20	S4_-0_A_07_300	P9	Section A
F21	S4_-0_A_07_301	P8	Section B
F22	S4_-0_A_07_302	P8	Section C
F23	S4_-0_A_07_303	P8	Section D
F24	S4_-0_A_07_400	P4	1 bed (average)
F25	S4_-0_A_07_401	P4	1 bed (smallest)
F26	S4_-0_A_07_402	P4	2 bed (average)
F27	S4_-0_A_07_403	P4	2 bed (smallest)
F28	S4_-0_A_07_404	P4	2 Bed Wheelchair Housing unit
F29	S4_-0_A_07_405	P1	1 Bed Studio (average)
F30	S4_-0_A_07_800	P4	Bay Study - North elevation
F31	S4_-0_A_07_801	P4	Bay Study - West elevation
F32	S4_-0_A_07_802	P4	Bay Study - East elevation
F33	S4_-0_A_07_803	P4	Bay Study - South courtyard elevation

Inner Harbour Site

G1	S5_00_A_07_010	P3	Existing Site and Elevations
G2	S5_00_A_07_100	P10	Ground Floor Plan
G3	S5_01_A_07_101	P7	First to Third Floor
G4	S5_RF_A_07_104	P9	Roof Plan
G5	S5_-0_A_07_200	P9	Elevations North & South
G6	S5_-0_A_07_201	P8	Elevations East & West
G7	S5_-0_A_07_300	P5	Section AA, BB and CC
G8	S5_-0_A_07_400	P4	Flat type - 1 bed (smallest)
G9	S5_-0_A_07_401	P4	Flat type - 1 bed (average)
G10	S5_-0_A_07_402	P4	Flat type - 2 bed
G11	S5_-0_A_07_403	P4	Flat type - 3 bed
G12	S5_-0_A_07_800	P4	Bay Study - South Elevation

Replacement Filling Station

H1	S6_00_A_07_100	P6	
H2	S6_RF_A_07_101	P6	
H3	S6_-0_A_07_200	P5	South Elevation
H4	S6_-0_A_07_201	P5	East Elevation
H5	S6_-0_A_07_300	P5	Section AA

Multi Storey Car Park

J1	XB005_AM_S7_-0_A-07_200	P2	North Elevation
J2	XB005_AM_S7_-0_A-07_202	P3	South Elevation
J3	XB005_HYSW_XXC_01	/	MSCP – Level 1-2 (Existing) Sheet 1 of 2
J4	XB005_HYSW_XXC_02	/	MSCP – Level 1-2 (Existing) Sheet 2 of 2
J5	XB005_HYSW_XXC_03	/	MSCP – Level 3-4 (Existing) Sheet 1 of 2
J6	XB005_HYSW_XXC_04	/	MSCP – Level 3-4 (Existing) Sheet 2 of 2
J7	XB005_HYSW_XXC_05	/	MSCP – Level 5-6 (Existing) Sheet 1 of 2
J8	XB005_HYSW_XXC_06	/	MSCP – Level 5-6 (Existing) Sheet 2 of 2
J9	XB005_HYSW_XXC_07	/	MSCP – Level 7-8 (Existing) Sheet 1 of 2
J10	XB005_HYSW_XXC_08	/	MSCP – Level 7-8 (Existing) Sheet 2 of 2
J11	XB005_HYSW_XXC_09	/	MSCP – Level 9 (Existing) Sheet 1 of 2
J12	XB005_HYSW_XXC_10	/	MSCP – Level 9 (Existing) Sheet 2 of 2
J13	HG 5384_A-A	/	Existing Elevation Section A-A

J14	HG 5384_D-D	/	Existing Elevation Section D-D
J15	HG 5384_K-K_1	/	Existing Elevation Section K-K 1 of 3
J16	HG 5384_K-K_2	/	Existing Elevation Section K-K 2 of 3
J17	HG 5384_K-K_3	/	Existing Elevation Section K-K 3 of 3
J18	HG 5384_L-L_1	/	Existing Elevation Section L-L 1 of 3
J19	HG 5384_L-L_2	/	Existing Elevation Section L-L 2 of 3
J20	HG 5384_L-L_3	/	Existing Elevation Section L-L 3 of 3
J21	XB005_HYSW_XXC_11	P3	MSCP – Level 1-2 (Proposed) Sheet 1 of 2
J22	XB005_HYSW_XXC_12	P3	MSCP – Level 1-2 (Proposed) Sheet 2 of 2
J23	XB005_HYSW_XXC_13	P3	MSCP – Level 3-4 (Proposed) Sheet 1 of 2
J24	XB005_HYSW_XXC_14	P4	MSCP – Level 3-4 (Proposed) Sheet 2 of 2
J25	XB005_HYSW_XXC_15	P3	MSCP – Level 5-6 (Proposed) Sheet 1 of 2
J26	XB005_HYSW_XXC_16	P3	MSCP – Level 5-6 (Proposed) Sheet 2 of 2
J27	XB005_HYSW_XXC_17	P3	MSCP – Level 7-8 (Proposed) Sheet 1 of 2
J28	XB005_HYSW_XXC_18	P3	MSCP – Level 7-8 (Proposed) Sheet 2 of 2
J29	XB005_HYSW_XXC_19	P3	MSCP – Level 9 (Proposed) Sheet 1 of 2
J30	XB005_HYSW_XXC_20	P3	MSCP – Level 9 (Proposed) Sheet 2 of 2

Landscaping Proposals

K1	LN00125_200-001-PL	E	Composite Landscape Plan
K2	LN00125_200-002-PL	C	Cliff Park
K3	LN00125_200-003-PL	C	Geo Learn Space
K4	LN00125_200-004-PL	H	Harbour Square
K5	LN00125_200-005-PL	D	Under Flyover
K6	LN00125_200-006-PL	C	Arrival Space
K7	LN00125_200-007-PL	C	Cascading Street
K8	LN00125_200-008-PL	F	Palm Drive and Inner Harbour
K9	LN00125_200-009-PL	E	Park Square
K10	LN00125_200-0010-PL	B	Cliff Site Area
K11	LN00125_200-0011-PL	B	Sea Wall Roof Top
K12	LN00125_200-0012-PL	C	Quayside Roof Top
K13	LN00125_200-0013-PL	C	Car Park and Access Ramp
K14	LN00125_200-0014-PL	F	Roof Plan Identifying Recreational Space
K15	LN00125_200-0015-PL	C	Quayside Environmental Improvements
K16	LN00125_200-0016-PL	/	Village Square
K17	LN00125_200-0017-PL	A	Habitat Creation
K18	LN00125_400-001-PL	D	Landscape Detail, Harbour Square, paving plan and cross-sections
K19	LN00125_400-002-PL	C	Section of Cliff Park and Geo-Learn Space
K20	LN00125_400-003-PL	C	Section through Geo-Learn Space
K21	LN00125_400-004-PL	C	Section through climbing area underneath the flyover
K22	LN00125_400-005-PL	C	Section through the RTS and sports courts underneath the flyover
K23	LN00125_400-006-PL	C	Landscape Detail – Harbour Square – Paving cross-sections
K24	LN00125_400-007-PL	C	Section through Harbour Square Environs (w-e)
K25	LN00125_400-008-PL	/	Section through Park Square (s-n)
K26	LN00125_400-009-PL	/	Section through Parkour under flyover

ANNEX A**CONDITIONS**

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
Reason: To comply with section 91 (as amended) of the Town and Country Planning Act 1990 as amended by section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) Notwithstanding the illustrative Phasing Plan as described in Chapter 6 of the Environmental Statement, the development shall be carried out in accordance with the Indicative Phasing Plan (drawing reference XB005_AM_SW_01_A_00_127 rev. P2²⁴¹ and associated Indicative Phasing Schedule) unless any variation or amendment is agreed in writing with the Local Planning Authority.
Reason: To ensure that key objectives in the Brighton & Hove Local Plan are delivered, including the delivery of high quality landmark buildings and bridges, associated infrastructure and affordable housing, in accordance with policies QD1, QD2, QD3, QD4, QD6, QD15, HO2, HO3, HO4, HO6, TR1, TR8, TR13, TR15, HE3 and HE6 of the Brighton & Hove Local Plan.
- 3) With the exception of the McDonalds restaurant and the Asda retail unit the premises for Use Class A (A1, A2, A3, A4 and A5) hereby permitted shall not be open or in use except between the hours of 07.00 and midnight on Mondays to Saturdays and between 10.00 and 18.00 hours on Sundays and public holidays.
Reason: To safeguard the amenities of the occupiers of adjoining residential properties and to comply with policy QD27 of the Brighton & Hove Local Plan.
- 4) Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments, and any indication of proposed uses on the plans hereby approved, the following units shall be used only as follows:
 - (i) Cliff Site building, ground floor (twelve units in total), Asda Use Class A1, six units Use Class A1, A2 or A3, four units Use Class B1, one unit Use Class D1.
 - (ii) Quayside building, ground floor (two units) McDonalds Use Class A3 and one unit Use Class A1.
 - (iii) Marina Point building ground floor (two units) one unit Use Class A1 and 1 unit Use Class B1.
 - (iv) Sea Wall Building, one unit, seasonal kiosk, Use Class A1 or A3.*Reason: To control the proposed uses in accordance with the objectives of policies QD27 and SR5 of the Brighton & Hove Local Plan.*
- 5) The offices (Use Class B1) shall not be open except between the hours of 07.00 and 23.00 hours Mondays to Fridays, and between 07.30 and 23.00

²⁴¹ See Plan B16 in the Schedule of Plans listed above

hours on Saturdays and between 08.00 hours and 22.30 hours on Sundays or public holidays.

Reason: To safeguard the amenities of the occupiers of nearby residential properties and to comply with policy QD27 of the Brighton & Hove Local Plan.

- 6) The community centre in the Cliff Site shall not be open to the public except between the hours of 07.00 and 21.00 hours Mondays to Fridays, and between 07.30 and 21.00 hours on Saturdays and between 08.00 hours and 19.00 hours on Sundays or public holidays.

Reason: To safeguard the amenities of the occupiers of adjacent residential properties and to comply with policy QD27 of the Brighton & Hove Local Plan.

- 7) Loading or unloading of vehicles in connection with the non-residential uses hereby approved shall only take place between the hours of 07.00 and 19.00 hours Monday to Fridays, 07.30 and 19.00 hours on Saturdays and 09.00 to 10.00 hours on Sundays or public holidays.

Reason: To safeguard the amenities of the occupiers of nearby residential properties and to comply with policy QD27 of the Brighton & Hove Local Plan.

- 8) Opening hours of the pedestrian bridge are to be controlled by a time lock. The bridge shall not be brought into use until the hours of opening have been submitted to and approved in writing by the Local Planning Authority. The bridge shall be operated in accordance with the approved hours thereafter.

Reason: In the interests of crime prevention to comply with policy QD7 of the Brighton & Hove Local Plan.

- 9) The development hereby permitted shall incorporate measures to ensure the development meets 'Secure by Design' standards. Each phase of the development (as identified in the Indicative Phasing Plan under condition 2) shall not be commenced until details for that phase have been submitted to and approved in writing by the Local Planning Authority to demonstrate compliance with the standard and measures. The development shall be built in accordance with the approved details.

Reason: In the interest of crime prevention to comply with policy QD7 of the Brighton & Hove Local Plan.

- 10) No plant or machinery associated with the development, including the Combined Heat and Power unit, (not including during construction) shall be first brought into use until a scheme to insulate the plant/ machinery against the transmission of sound and gaseous emissions has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented to the satisfaction of the Local Planning Authority before any buildings within which the plant/machinery are proposed are first occupied. The mechanical plant and machinery associated with the development shall not give rise to an increase in noise levels above -5dB LAeq in respect of the background levels expressed as LA90 measured 1m from the façade of the nearest residential premises. All plant and machinery shall be maintained in accordance with the manufacturer's instructions.

Reason: To safeguard the amenity of occupiers of the development from noise arising within or from the scheme to comply with policies QD27 and SU10 of the Brighton & Hove Local Plan.

- 11) A scheme for the fitting of odour control and gaseous emissions equipment, which shall include sound insulation, to the non-residential buildings where commercial kitchen facilities are proposed shall be submitted to and approved in writing by the Local Planning Authority. The agreed odour control and gaseous emissions works shall be implemented in accordance with the approved details before the premises it relates to is brought into use. Thereafter, the equipment shall be maintained in accordance with the manufacturer's instructions.

Reason: To safeguard the amenity of occupiers of the development from odours, noise and emissions arising within or from the scheme, to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

- 12) Each phase of the development (as identified in the Indicative Phasing Plan under condition 2) other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 12.a to 12.d have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 12.d has been complied with in relation to that contamination.

12.a Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - (a) human health,
 - (b) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - (c) adjoining land,
 - (d) groundwaters and surface waters,
 - (e) ecological systems,
 - (f) archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

12.b Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local

Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

12.c Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

12.d Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 12.a, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 12.b, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 12.c.

12.e Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 5 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

Reason (common to all): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers,

neighbours and other offsite receptors in accordance with policy SU11 of the Brighton & Hove Local Plan.

- 13) No development shall take place within the application site until the developer has secured a programme of archaeological work in accordance with a written scheme of investigation and the maintenance of an on-site watching brief by a suitably qualified and experienced archaeologist during construction work in accordance with written details which have been submitted to and approved in writing by the Local Planning Authority. In the event of important archaeological features or remains being discovered which are beyond the scope of the watching brief to excavate and record and which require a fuller rescue excavation, then construction work shall cease until the developer has secured the implementation of a further programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to provide a reasonable opportunity to record the history of the site and to comply with policy HE12 of the Brighton & Hove Local Plan.

- 14) No dwellings hereby approved shall be constructed until details have been submitted to and approved in writing by the Local Planning Authority to demonstrate full compliance with Lifetime Homes standards as referred to in policy HO13 of the Brighton & Hove Local Plan and detailed in PAN03 'Accessible Housing & Lifetime Homes'. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the full and comprehensive range of Lifetime Homes measures are identified and implemented so as to secure satisfactory provision of homes for people with disabilities and to meet the changing needs of households, thereby complying with policy HO13 of the Brighton & Hove Local Plan.

- 15) A minimum of 65 of the residential units within the overall scheme shall be built to wheelchair accessible standard. Included within the 65, 10% of the affordable housing units (equating to 52 units) shall be built to wheelchair accessible standard. Details, including plans, of how the units will be built to a wheelchair accessible standard within each phase of the development (as identified in the Indicative Phasing Plan under condition 2) shall be submitted to and approved in writing by the Local Planning Authority before that phase of the development is commenced.

Reason: To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households and to comply with policy HO13 of the Brighton & Hove Local Plan which seeks a 5% provision of wheelchair accessible units in schemes overall including a 10% provision within the affordable element.

- 16) All the non-residential uses hereby permitted shall incorporate measures to ensure they are fully accessible to the disabled, including the provision of flush entrance thresholds. Details of these measures shall be submitted to and approved in writing by the Local Planning Authority before development of the non-residential uses is commenced. The measures shall be carried out in accordance with the approved details before the buildings are first brought into use and shall thereafter be retained.

Reason: To ensure satisfactory access for people with disabilities, to comply with policies HO19 and QD10 of the Brighton & Hove Local Plan.

- 17) Notwithstanding the details hereby approved, no development of each phase (as identified in the Indicative Phasing Plan under condition 2) shall commence until details of the green walls and green roofs for that phase have been submitted to and approved in writing by the Local Planning Authority. The details shall include a specification for their construction, irrigation, and future maintenance. The development shall incorporate the approved green walls and roofs before first occupation of that phase and shall thereafter be maintained in accordance with the approved details.
Reason: In the interests of nature conservation and to comply with policy QD17 of the Brighton & Hove Local Plan.
- 18) Notwithstanding the details hereby approved, no development of each phase (as identified in the Indicative Phasing Plan under condition 2) shall commence until details of the nesting boxes for birds and bats have been submitted to and approved in writing by the Local Planning Authority. The details shall include the number, location and type of boxes. The agreed bird and bat boxes shall be incorporated in each phase of the development before first occupation of that phase and thereafter be retained.
Reason: In the interests of nature conservation and to comply with policies QD17 and QD18 of the Brighton & Hove Local Plan.
- 19) Notwithstanding the details hereby approved, no development shall commence until the detailed design and management of the GeoLearn Space and other equipped play facilities have been submitted to and approved in writing by the Local Planning Authority. The agreed facilities shall be constructed as approved before first occupation of each phase of the development (as identified in the Indicative Phasing Plan under condition 2), and thereafter be managed in accordance with the approved details.
Reason: To ensure public appreciation of, and access to, sites of nature and local nature conservation importance, to comply with policies NC2 and NC4 of the Brighton & Hove Local Plan.
- 20) Notwithstanding the details hereby approved, no development shall commence until the detailed design and management of the Arrival Space within the Cliff Site building, including hard and soft landscaping, has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed and thereafter managed in accordance with the approved details.
Reason: In the interest of good design and to comply with policy QD2 of the Brighton & Hove Local Plan.
- 21) Notwithstanding the details hereby approved, no development shall commence until the detailed design of the pedestrian bridge to the Cliff Site building has been submitted to and approved in writing by the Local Planning Authority. The pedestrian bridge shall be constructed in accordance with the approved details.
Reason: To ensure public safety and appreciation of, and access to, sites of national and local nature conservation importance to comply with policies QD7, NC2 and NC4 of the Brighton & Hove Local Plan.
- 22) Notwithstanding the details hereby approved, no development shall commence until a photographic survey of the Brighton-Newhaven SSSI cliffs and a copy of the pre-construction archaeological investigations report

has been submitted to and approved in writing by the Local Planning Authority. The photographic survey shall include high resolution digital electronic and hard copies of images of the cliff face.

Reason: In the interests of nature conservation and to comply with policies NC2 and NC4 of the Brighton & Hove Local Plan.

- 23) Development shall not commence until a detailed habitat management plan has been submitted to and approved in writing by the Local Planning Authority. The management plan shall be implemented in accordance with the agreed details on completion of each phase (as identified in the Indicative Phasing Plan under condition 2).

Reason: In the interests of nature conservation and to comply with policy NC2 and NC4 of the Brighton & Hove Local Plan.

- 24) No phase of the development (as identified in the Indicative Phasing Plan under condition 2) shall commence until details of the proposed materials to be used within the exterior of all buildings and structures within that phase, including a cleaning and maintenance regime, have been submitted to and approved in writing by the Local Planning Authority. The external building materials shall be of a reflectance level of no less than 0.45. These details shall include large scale drawings and/or construction details (and samples if required) of the treatment of roof surfaces, balustrading, roof parapet and eaves design, balcony design, surface cladding systems, windows, entrances, roof plant, satellite dishes and antennae, and mechanical and electrical equipment. The development shall be carried out and maintained in accordance with the approved details.

Reason: To ensure a very high quality design to comply with policies QD1, QD4, HE3 and HE6 of the Brighton & Hove Local Plan.

- 25) No phase of the development (as identified in the Indicative Phasing Plan under condition 2) shall commence until the location, details and samples of the proposed materials to be used for the hard landscaping, highways, street furniture and amenity and outdoor recreation areas associated with each phase of the development have been submitted to and approved in writing by the Local Planning Authority. The agreed landscaping measures shall be carried out before first occupation of each phase. The details shall include the following:

- paving and building materials, including details of colour and texture;
- boundary walls, gates, seating, fencing, refuse stores, steps, handrails;
- rails, raised planters, seating, pergolas and screens;
- street paving plans, to include size, direction and pattern of paving;
- vents;
- cabinets;
- litter and dog waste bins;
- external lighting.

Reason: To ensure that sufficient detail is provided to ensure that the appearance of the development is of a high quality and is sustainable to comply with policies QD1, QD4, QD15, QD25, SU2, HE3 and HE6 of the Brighton & Hove Local Plan.

- 26) No buildings in each phase (as identified in the Indicative Phasing Plan under condition 2) shall be commenced until details of a Design Strategy for pedestrian, cycling and general informative signage throughout the site

have been submitted to and approved in writing by the Local Planning Authority. All signage shall accord with the broad principles contained in the approved Design Strategy and shall be implemented before occupation of that phase of the development.

Reason: To ensure that the appearance of the development will be acceptable and to ensure a cohesive appearance to the development to comply with policy QD1 of the Brighton & Hove Local Plan.

- 27) No unit intended for Use Class A1, A2, A3, A4, A5 or B1 shall be occupied until full details, including large scale drawings and/or construction details and samples, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure that the appearance of the development will be acceptable and to ensure a cohesive appearance to the development to comply with policies QD1 and QD10 of the Brighton & Hove Local Plan.

- 28) No unit intended for Use Class A1, A2, A3, A4 or A5 within the Cliff Site building shall be occupied until a strategy for internal shopfront display has been agreed in writing by the Local Planning Authority. The agreed strategy shall be maintained thereafter in all the aforementioned units.

Reason: To ensure active frontages to the commercial units are provided and maintained and in the interest of crime prevention to comply with policies QD5 and QD7 of the Brighton & Hove Local Plan.

- 29) Development of the Marina Point building shall not take place until a strategy for aviation lighting, including the phasing arrangements for its installation, has been submitted to and approved in writing by the Local Planning Authority. The agreed lighting shall be installed in accordance with the approved details.

Reason: In the interests of safety to comply with policy QD27 of the Brighton & Hove Local Plan.

- 30) The development hereby permitted shall not be commenced until details of secure cycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. Each phase of the development (as identified in the Indicative Phasing Plan under condition 2) shall not be first occupied until the approved cycle parking facilities associated with that phase have been implemented and made available for use. The cycle parking facilities shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car in accordance with policies TR1 and TR14 of the Brighton & Hove Local Plan.

- 31) Notwithstanding the details hereby approved, no development shall commence until details of the proposed bus shelters located in The Strand/ Palm Drive have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details before completion of the phase in which the Transport Interchange is contained (as identified in the Indicative Phasing Plan under condition 2).

Reason: In the interests of safety to comply with policy TR5 of the Brighton & Hove Local Plan.

- 32) Development shall not commence until an integrated car park management plan for all sites within the terms of this permission has been submitted to and approved in writing by the Local Planning Authority. This management plan shall include details of the location of 16 additional disabled car parking bays, providing 157 in total. The car parking areas shall be clearly laid out, signed and retained for each respective type of user (ie. for residents, disabled users, visitors and the car club). The management plan shall be implemented in accordance with the agreed details on the first occupation of each phase of the development (as identified in the Indicative Phasing Plan under condition 2). The vehicle parking areas shall not be used otherwise than for the parking of private vehicles and motorcycles belonging to the occupants of and visitors to the residential and commercial development hereby approved.

Reason: To ensure the development provides for the demand for travel it creates, provides parking for people with mobility related disabilities and to comply with policies TR1 and TR19 of the Brighton & Hove Local Plan.

- 33) Notwithstanding the details submitted as part of the application, development of the phase containing Harbour Square (as identified in the Indicative Phasing Plan under condition 2) shall not commence until further details of the design of the Harbour Square shared space (including the adjoining spaces) and traffic calming on the ramp have been submitted to and approved in writing by the Local Planning Authority. The approved shared space design and traffic calming measures shall be implemented before the new Harbour Square is first brought into use.

Reason: To ensure the development provides for the demand for travel it creates and to comply with policy TR7 and TR10 of the Brighton & Hove Local Plan.

- 34) Notwithstanding the details submitted as part of the application, development shall not commence until further details of the cycle routes have been submitted to and approved in writing by the Local Planning Authority. The agreed cycle routes shall be implemented in accordance with each phase of the development (as identified in the Indicative Phasing Plan under condition 2).

Reason: To ensure that the development has adequate provision for cyclists and to comply with policies TR1 and TR15 of the Brighton & Hove Local Plan.

- 35) No building shall be occupied until the refuse and recycling storage facilities serving that building, dimensions as set out in chapter 14 (waste) of the Environmental Statement submitted on 15/09/08, have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.

Reason: To ensure provision of satisfactory facilities for the storage of refuse and recycling to comply with policy SU2 of the Brighton & Hove Local Plan.

- 36) The two units in the Octagon shall be used as a Use Class D1(a) Medical or Health facility (excluding animal treatment) only and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). This facility shall be implemented in accordance with the Indicative Phasing Plan under condition 2.

Reason: To control future changes of use in the interests of safeguarding the amenities of occupiers of nearby residential properties and the amenities of the

locality and to ensure the demand created by the development for health facilities is met to comply with policies QD27 and HO21 of the Brighton & Hove Local Plan.

- 37) No development of the Sea Wall building shall take place until mitigation measures against adverse wind related effects for the pedestrian cut-throughs and entrance doors have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details before the Sea Wall building is first occupied and thereafter be retained.
Reason: In the interest of amenity and safety to comply with policy QD27 of the Brighton & Hove Local Plan.
- 38) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping and its management, which shall include hard surfacing, means of enclosure, planting of the development and identification of all existing trees and hedgerows on the land. The landscaping scheme shall include plants to enhance biodiversity. Any planting adjacent to the cliff must be low level and of native provenance (i.e. herbs and low level shrubs <60cm in height) with planting away from the base of the cliff to allow access for study.
Reason: In the interests of amenity to comply with policy QD15 of the Brighton & Hove Local Plan.
- 39) All planting, seeding or turfing agreed as part of the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the first occupation of each phase of development (as identified in the Indicative Phasing Plan under condition 2) that the landscaping is in. Any trees or plants that die or become seriously damaged or diseased between planting and up to 5 years after completion of each phase of the development shall be replaced with others of a similar size and species unless otherwise agreed in writing with the Local Planning Authority.
Reason: To ensure the landscaping scheme is completed within a reasonable time in the interests of visual amenity to comply with policies QD15 and QD17 of the Brighton & Hove Local Plan.
- 40) Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include a Noise and Vibration Monitoring Strategy which takes account of the impact on the integrity of the SSSI cliffs, a method of controlling groundwater, construction haulage routes, hours of working, a construction phasing plan showing the site compounds for each phase of development (as identified in the Indicative Phasing Plan under condition 2) and provision for the Community Liaison Group. The approved CEMP shall be implemented during all phases of construction.
Reason: In the interests of amenity to comply with policies QD27, NC2, SU10 and SU13 of the Brighton & Hove Local Plan.
- 41) No building shall be commenced until a Public Art Plan has been submitted to and approved in writing by the Local Planning Authority. The measures in the approved Plan shall be implemented as part of each phase of the development (as identified in the Indicative Phasing Plan under condition 2) before first occupation of that phase.

Reason: In the interests of amenity of the area to comply with policy QD6 of the Brighton & Hove Local Plan.

- 42) Neither the Cliff Site building nor the Marina Point building shall be occupied until a scheme to provide for and maintain public access to all viewing platforms within that building has been submitted to and approved in writing by the Local Planning Authority. Access to the Marina Point building shall be subject to 48 hours notice and shall be made available only between 09.00 and 17.00 hours, Monday to Friday. Public access to each building shall be implemented in accordance with the approved scheme.

Reason: In the interests of safety and amenity and to comply with policies NC2 and NC4 of the Brighton & Hove Local Plan.

- 43) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) (June 2008) and the following mitigation measures detailed within the FRA:
- (i) Demonstration within the FRA that the provision, improvement and protection and maintenance of existing flood defences will be provided.
 - (ii) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.

Reason: To prevent the increased flood risk to comply with policy SU4 of the Brighton & Hove Local Plan.

- 44) The development hereby permitted shall not be commenced until a scheme for the provision and implementation of foul drainage works has been submitted to and approved in writing by the Local Planning Authority. Any such works required to provide sufficient capacity for the new development shall be undertaken prior to implementation of the buildings. No occupation of buildings shall be undertaken prior to the completion of the agreed foul drainage works.

Reason: In the interests of safety to comply with policy SU5 of the Brighton & Hove Local Plan and to provide adequate drainage and sewerage.

- 45) The development hereby permitted shall not be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage works shall be completed in accordance with the details and timetable agreed.

Reason: To prevent the increase risk of flooding and to improve water quality to comply with policy SU4 of the Brighton & Hove Local Plan.

- 46) The development hereby permitted shall not be constructed otherwise than in accordance with the detailed drawings listed under "Schedule of Plans"²⁴² and indicated in the Drawing Register dated 15 December 2009 (CD12/50). The approved drawings include the final amendments to the Cliff Site building shown on the following drawings:
- Second Floor Plan, XB005_AM_S1_02_07_102 Rev. P12
 - Third Floor Plan, XB005_AM_S1_03_07_103 Rev. P11

²⁴² See pages 165-169

- Fourth Floor Plan, XB005_AM_S1_04_07_104 Rev. P12
- Fifth Floor Plan, XB005_AM_S1_05_07_105 Rev. P13
- Sixth Floor Plan, XB005_AM_S1_06_07_106 Rev. P11
- Section CC, XB005_AM_S1_-0_A_07_302 Rev. P11
- Section JJ, XB005_AM_S1_-0_A_07_308 Rev. P10
- Section LL, XB005_AM_S1_-0_A_07_310 Rev. P10
- Section MM, XB005_AM_S1_-0_A_07_311 Rev. P9
- Section NN, XB005_AM_S1_-0_A_07_312 Rev. P10
- Section OO, XB005_AM_S1_-0_A_07_313 Rev. P9
- Section PP, XB005_AM_S1_-0_A_07_314 Rev. P11
- Section QQ, XB005_AM_S1_-0_A_07_315 Rev. P9

Reason: For the avoidance of doubt, and to protect the amenity of future residents to comply with policy QD27 of the Brighton & Hove Local Plan.

- 47) No development shall take place until a scheme of acoustic insulation for the residential accommodation hereby permitted in Blocks G, H, J, K and L in the Cliff Site building has been submitted to and approved in writing by the Local Planning Authority. The maximum noise level to be permitted within the residential units with windows shut and any other necessary means of ventilation provided shall not exceed the 'reasonable' limits contained in BS8233: 1999, these being LAeq16hour = 40 dB in living rooms, a night (23:00 to 07:00 hours) LAeq8hour = 35 dB and LAFmax = 45 dB in bedrooms. The approved scheme shall be implemented prior to occupation and retained thereafter.

Reason: To safeguard the amenity of residents and to comply with QD27 of the Brighton and Hove Local Plan.

- 48) No development shall take place until a scheme of whole house mechanical ventilation for the residential accommodation hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that a temperature of 28 degrees C shall not be exceeded for more than 1% of occupied hours (08:00 to 20:00) in all living rooms and a temperature of 26 degrees C shall not be exceeded for more than 1% of occupied hours (20:00 to 08:00) in all bedrooms. The approved scheme shall be implemented prior to occupation and retained thereafter.

Reason: To safeguard the amenity of residents and to comply with QD27 of the Brighton and Hove Local Plan.

ANNEX B**INSPECTOR'S NOTE ON NEW NATIONAL POLICY AND OTHER CHANGES SINCE CLOSE OF INQUIRY**English National Parks and the Broads: UK Government Vision and Circular 2010

- (1) The Circular indicates that the Government continues to regard National Park designation as conferring the highest status of protection as far as landscape and natural beauty is concerned. It states that major development in or adjacent to the boundary of a Park can have a significant impact on the qualities for which they were designated.
- (2) The Circular also refers to Government planning policy as set out in PPS7, and states that it is not the role of the Circular to repeat planning policy and guidance. Consequently, as there is no change to the extant planning policy framework for National Parks, I consider that the issue of the Circular has no material effect on the consideration of this appeal.

Planning Policy Statement 25 (Revision) and Coastal Change Supplement*PPS25 Revision*

- (3) The revision to PPS25 relates primarily to amendments to the definition of Flood Zone 3b in Table D1 and to some of the Flood Risk Vulnerability Classifications in Table D2.
- (4) The appeal site is in Flood Zone 3a, the definition of which has not changed. None of the changes to the classifications in Table D2 concern buildings, operations or uses that are the subject of the appeal proposal. Consequently I consider that the revision to PPS25 has no material effect on the consideration of this appeal.

*Development and Coastal Change and
Development and Coastal Change: Practice Guide*

- (5) The PPS25 Supplement defines coastal change as "physical change to the shoreline, ie erosion, coastal slip, permanent inundation and coastal accretion". It replaces the policy on managing the impacts of coastal erosion to development set out in PPG20.
- (6) There is a brief reference to PPG20 in the Environmental Statement. There was no discussion at the inquiry of PPG20 or the Consultation Paper on Development and Coastal Change issued in July 2009. There was no evidence at the inquiry of significant coastal erosion or coastal change; the Marina at Brighton has existed since the 1970s and there was no reference to any material change in the position of the coastline since then. For these reasons I think it likely that the Supplement to PPS25 has no material effect on the consideration of this appeal.

- (7) However, it is pertinent to bring one matter to the attention of the Secretary of State. This is the occurrence of minor rock falls from the chalk cliff on the northern boundary of the site. Local residents point to the recent spate of rock falls which have led to the closure of the pedestrian route along the base of the cliff. Natural England had concerns about the impact of the works on the stability of the cliff (which is a SSSI), but subsequently withdrew their objection. However, they remain of the view that the proposed development is too near to the cliff, and state that in the event of a future cliff failure, they will object to any subsequent stabilisation measures that could impact on the visibility of the cliffs (letter 14 October 2008). The Environment Agency does not object to the development.
- (8) Whilst I do not think that these limited rock falls would come within the ambit of the Supplement, it is possible that a different view could be taken. For this reason I explore below the potential implications of the Circular if it was decided that it is material.
- (9) The development management policies in the PPS25 Supplement relate to applications in Coastal Change Management Areas. Local planning authorities are required by policy DCC3.1 to identify such areas, being areas likely to be affected by physical changes to the coast. I was not made aware at the inquiry of there being a CCMA affecting this section of coast or of the Council's intention to make one.
- (10) Development management policy DCC5.1 indicates that applications for development in CCMA's should be considered appropriate where it can be demonstrated that, inter alia, the development will be safe over its planned lifetime, the character of the coast is not compromised, and the development provides wider sustainability benefits. Aside from the argument about the relevance of this policy in the absence of a CCMA, it seems to me that the application of policy DCC5.1 could, arguably, be material to the consideration of this appeal.

Planning Policy Statement 5: Planning for the Historic Environment

- (11) PPS5 divides valued features of the historic environment into 'designated heritage assets' and 'heritage assets'. The Grade I listed buildings at Kemp Town and the Kemp Town Conservation Area are designated heritage assets. One of the objectives of PPS5, as expressed in paragraph 7 and policy HE6, is that sound information should be provided to enable informed decisions to be made about decisions affecting all heritage assets, with the level of detail being proportionate to the importance of the asset. Paragraph 7 also seeks to ensure that the positive contribution of heritage assets to local character and sense of place is recognised and valued.
- (12) Policy HE10.1 sets out the principles guiding the consideration of applications for development affecting the setting of a designated heritage asset. It states:

When considering applications for development that affect the setting of a heritage asset, local planning authorities should treat favourably applications that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset. When considering applications

that do not do this, local planning authorities should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval.

- (13) The companion *Historic Environment Planning Practice Guide* gives detailed advice about understanding 'setting' and its contribution to significance, and on how to assess the implications of change affecting setting. The approach to 'setting' appears to draw heavily on the Draft PPS15 issued for consultation in July 2009 and the *English Heritage Practice Guide Living Draft* that accompanied it. PPG15 includes much shorter guidance about setting at paragraph 2.16.
- (14) There is no change to the statutory tests relating to the setting of a listed building (preserve) or conservation area (preserve or enhance). Nevertheless, PPS5 does seem to draw more attention to the setting of a heritage asset than had hitherto been the case, and there are other subtle differences in approach.
- (15) At the inquiry there was a very thorough examination of the setting of the Kemp Town listed buildings and Conservation Area, based on a detailed evidence base. Reference was also made by the two principal parties (though not by the Rule 6 parties) to Draft PPS15 and the draft English Heritage Practice Guide. However, it is fair to say that a specific assessment of the proposal against the draft guidance was not carried out, the parties (rightly) giving greater weight to PPG15 and aligning their cases accordingly.
- (16) In these circumstances, and given the importance of the designated heritage assets at Kemp Town, I think that the policy changes are material to the consideration of this case.

Community Infrastructure Levy Regulations 2010

- (17) The Community Infrastructure Levy (CIL) is a levy which local authorities can choose to introduce in order to fund infrastructure in their areas. CIL is intended to provide additional funding for facilities such as roads, public transport, open space or schools. Developments which are capable of being charged CIL include "anything done by way of, or for the purpose of, the creation of a building". Local authorities can choose the CIL rate that they wish to set, but must set this out in a charging schedule which is independently examined to ensure that it is evidence-based and appropriate for the local area. For developments that are not capable of being charged CIL, the policy tests in Circular 05/2005, together with the other policy therein, will continue to apply.
- (18) Part 11 of the Regulations places into law for the first time the Government's policy on the use of planning obligations. Regulation 122 applies to a determination made from 6 April 2010 which results in planning permission being granted for a development. Clause (2) states:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is

- a. necessary to make the development acceptable in planning terms;*
- b. directly related to the development; and*
- c. fairly and reasonably related in scale and kind to the development.*

- (19) Plainly the CIL Regulations are material to the consideration of this appeal, for the proposed development is one which is capable of being charged CIL and there is a S106 unilateral obligation. There are two matters to address:
- i. Whether the application of the new tests under Regulation 122 to the appeal proposal leads to a different conclusion being reached compared with the application of the five tests in paragraph B5 of Circular 05/2005, and
 - ii. The implications of the application of the Regulation 122 tests to the determination in this case.
- (20) The three statutory tests are based upon three of the five policy tests in paragraph B5 of the Circular (tests (ii), (iii) and (iv)). The consultation document *New Policy Document for Planning Obligations* published in March 2010 states that the two remaining tests from the Circular (tests (i) and (v)) have been omitted from the new statutory tests as they were considered unnecessary or repetitive. In my opinion there is no material difference in this case in the application of the three new tests compared with the five old tests. However, the consequences of the application of the new tests could potentially be very different.
- (21) In my report I conclude that certain elements of the off-site recreation provision do not meet the tests of the 05/2005 Circular. These are £120,000 for enhancements to gardens at Rottingdean and the creation of an informal sports area at Rottingdean Beach, and an unspecified £200,000 which would be allocated to "such other facilities as the Council shall notify.....". Because neither the Rottingdean nor the unspecified contributions accord with paragraph B5, I determine that no weight should be given to these matters in my consideration of this appeal.
- (22) As these particular elements of the S106 do not meet the three tests of Regulation 122, the question that arises is whether it is necessary to conclude that the obligation *as a whole* does not comply with the Regulations, as a matter of law. If this were the case, a decision which took into account the submitted obligation, which this one must do if it is to be acceptable (because the bulk of its provisions do satisfy the new tests and planning permission would not be granted without these provisions), would be unlawful. Alternatively, if non-compliance with the Regulations *in respect of two of the obligations* in the S106 Deed does not render the deed as a whole to be fatally flawed so that the remaining obligations would have no effect, then there is no material change to the current approach in Circular 05/2005 and the conclusion I have reached (that no weight be given to these non-complying provisions) does not change.
- (23) Although I end my consideration of this appeal by stating that the planning balance warrants the grant of planning permission, my recommendation is that planning permission should be refused unless flaws that I have already identified in the S106 can be resolved. I also state that the Secretary of

State may wish to consider going back to the parties to see whether these already identified flaws can be resolved. In these circumstances I believe it would be sensible, irrespective of the decision about whether the whole obligation is or is not fatally flawed following CIL, to seek the parties' views on addressing those provisions which do not comply with the Regulation 122 tests. In my view this could simply be done by removing the non-complying provisions from any new obligation that is prepared. The Secretary of State could then indicate in his decision that weight should be given to the new obligation but not to the one already submitted.