

**Planning Inspectorate Ref:
APP/Q1445/A/09/2102048/NWF**

**Local Planning Authority Ref:
BH2007/03454**

**STATEMENT OF CASE BY
CGMS LTD**

**ON BEHALF OF
BRIGHTON AND HOVE
CITY COUNCIL**

In respect of

**LAND AT BRIGHTON
MARINA**

Appeal by

**EXPLORE LIVING (NO.1)
LTD & X-LEISURE
(BRIGHTON 1) & X-
LEISURE (BRIGHTON 11)**

**STATEMENT OF CASE
UNDER RULE 6 OF THE
TOWN AND COUNTRY
(INQUIRIES
PROCEDURE)
(ENGLAND) RULES 2000**

SEPTEMBER 2009

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1.0 INTRODUCTION

1.1 This Rule 6 Statement has been produced by CgMs Limited on behalf of Brighton and Hove City Council. This Statement details the response to the appeal against the refusal of planning permission by the City Council. On 18th June 2009 the appeal was recovered by the Secretary of State for determination as the number of proposed units exceeded 150.

1.2 The full application submitted in September 2007 and subsequently amended in 2008 (application reference BH2007 (03454) sought permission for:

'Demolition of Asda superstore to create 3-10 storey building with enlarged store (3112 sqm increase) and 2,025 sqm of other Class A1-A5 (retail/restaurant/drinking) uses on ground floor with 779 residential units above and community hall and new pedestrian/cyclist bridge link from cliff to roof of building and associated engineering works. Demolition of petrol filling station to create 28 storey building with 182 sqm of Class A uses at ground floor and 148 residential units above. Demolition of McDonalds restaurant to create 5 - 16 storey building with enlarged drive-thru restaurant (285 sqm increase) and 131 sqm of other Class A uses and 222 residential units above. Demolition Of estates office to create 3-4 storey building of 35 residential units. Demolition of western end of multi-storey car park to create 6-11 storey building adjacent to western breakwater of 117 residential units with stair access from breakwater to Park Square. Demolition of part of the stern end of multi-storey car park to create single storey petrol filling station, pedestrian footbridge and new lift and stair access. Total: 1301 residential units. Associated car parking spaces (805 residential, 666 commercial), cycle parking (1907 residential, 314 in public realm), servicing, plant, refuse, CHP unit, public and private amenity space, hard & soft landscaping and outdoor recreation areas. Change of use of two A1 retail units (524 sqm) within Octagon to medical use (Class 01). Alterations to vehicular, pedestrian and cyclist access and circulation, including new roundabout and transport interchange behind Waterfront.'

1.3 The application was considered by the Planning Committee on 12th December 2008. The Committee refused permission for the following six reasons:

1. *The proposed development, by reason of siting, layout and height, would be overly dominant and would not relate satisfactorily to existing development within the Marina and would fail to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff which is a Site of Special Scientific Interest. The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, H11 and NC8 of the Brighton and Hove Local Plan and policies S1, S6, EN1, EN2, EN3, and EN26 of the East Sussex and Brighton and Hove Structure Plan.*
 2. *The proposed development would cause material nuisance and loss of amenity to residents living opposite and within the Marina. In addition, by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan.*
 3. *The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan.*
 4. *The applicant has failed to demonstrate that the proposed development would result in a scheme with an adequate provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policy HO6 of the Brighton and Hove Local Plan.*
 5. *The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy HO21 of the Brighton and Hove Local Plan.*
 6. *The proposed development would be in a High Probability Flood Zone as defined in PPS25: Development and Flood Risk and does not pass the Exception Test as set out therein.*
- 1.4 The committee reconsidered its refusal reasons at its meeting on 2nd September 2009 and agreed to pursue the following amended reasons:

1. *The proposed development, by reason of design, siting, layout and height, would be unacceptable, overly dominant and would fail to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff. The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan policies CC1, CC6, CC8, C2, C3, HO4 and BE1 of the South East Plan, PPS1 and PPG15.*
2. *The proposed dwellings within the Cliff Building would not provide good quality accommodation by reason of a preponderance of single aspect dwellings and shaded courtyards, the size of units, coupled with their poor relationship to the cliff, ramps and access road, giving rise to cramped and unsatisfactory living conditions, contrary to policies QD1, QD3 QD27 and HO4 of the Brighton and Hove Local Plan and PPS 1 and PPS 3”.*
3. *The proposed development with its preponderance of one and two bed units and its affordable housing tenure mix, fails to respond adequately to identified housing needs within the City contrary to policies HO2, HO3 and QD3 of the Brighton and Hove Local Plan. Furthermore, the disposition of affordable units within the proposed development would not counter social exclusion or foster the creation of cohesive sustainable communities contrary to PPS 3, in particular paras 9, 10 and 12 and PAN 04 in particular paras 3.2, 13.3 and 16.0, of the Brighton Marina Masterplan.*
4. *The applicant has failed to demonstrate that the proposed development would result in a scheme with adequate design and provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policies QD1, QD2, QD3, HO4 and HO6 of the Brighton and Hove Local Plan and PAN04 in particular paras 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3 of the Brighton Marina Masterplan.*
5. *The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy HO21 of the Brighton and Hove Local Plan.*

- 1.5 The Council agreed to conditionally withdraw Refusal Reason 6. There is no technical objection but the position of the Environment Agency in not objecting was qualified and measures to secure the maintenance of the current sea defences and the provision of future upgrades to sea wall defences need to be secured through the S106.

2.0 THE SITE AND SURROUNDINGS

2.1 The appeal site and its surroundings are described in detail in the Statement of Common Ground (SoCG), Section 2.

3.0 PLANNING HISTORY

- 3.1 The planning history of the appeal site and other relevant planning history in relation to the Marina are described in detail in the Statement of Common Ground (SoCG), Section 3 and Appendix 1.

4.0 THE PROPOSED DEVELOPMENT

- 4.1 A full list of the plans and documents submitted and amended by the appellant that form the basis on which the City Council's decision was taken are found at of the Statement of Common Ground (SoCG) Appendix 3.
- 4.2 The application is a full planning application. A full description of the proposed development can be found in the SoCG section 4.

5.0 PLANNING POLICY

- 5.1 A full list of relevant national, regional and local planning policy and guidance can be found in the SoCG Section 5.0

6.0 THE CASE FOR THE LOCAL PLANNING AUTHORITY

- 6.1 The Local Planning Authority intends to call witnesses to address the following issues having regard to the amended refusal reasons agreed at Committee on 2nd September 2009.
- 6.2 The Local Planning Authority will demonstrate that the proposed development, including the public realm, would be unacceptable in terms of its design, siting, layout and height. [This would include the public realm.](#) In particular it will conflict with a number of development plan policies at regional and local level, together with national planning guidance, that seek [to achieve](#) high quality design in large mixed use schemes.
- 6.3 The Local Planning Authority will refer to the layout of the proposed development, to its design, to its height and to its relationship to physical and natural features both within and [outwith](#) [\[RW1\]](#) [\[02\]](#) the Marina. In particular it will refer to the relationship of the Cliff Building to the Cliff itself, the spaces created to the north of the Cliff Building, the relationship of the Cliff Building to the access ramps and to the quality of spaces created throughout the development [arising resulting](#) from the juxtaposition of the buildings [in terms of their layout and siting such that the development would . fail to achieve the high quality of design sought for the Marina.](#)
- 6.4 [The LPA will refer to how the layout and siting of buildings and the resulting spaces between them will fail to achieve the high quality of design sought for the Marina.](#)
- 6.5 The LPA will demonstrate that the proposed development would result in an unacceptable impact on [heritage assets](#). In this respect the LPA will refer to the relationship of the proposed development on the setting of the Kemp Town Conservation Area and to the adverse effect that it will have on that Area.
- 6.6 In particular the adverse impact of the Cliff Building, Sea Wall Building and Marina Point on views from the conservation area and the streets and buildings within the conservation area will be demonstrated.

- 6.7 The Local Planning Authority will demonstrate that the proposed development would result in an unacceptable impact on the setting of the [South Downs AONB](#) [\[RW3\]](#)^[04] and the Cliff. In this respect the LPA will refer to the relationship of the proposed development to these [natural features](#) [\[RW5\] that \[comprise part of the wider setting of lie adjacent to and beyond\]\(#\) the appeal site and to the adverse effect that it would have on them.](#)
- 6.8 The Local Planning Authority will refer to the proposed heights of the Cliff Building, Marina Point, the Sea Wall Building and the Quay in relation to the Cliff to the north of the site and demonstrate how these would be overly dominant in views from the surrounding area.
- 6.9 The Local Planning Authority will demonstrate that the proposed development will fail to provide good quality accommodation, with its single aspect dwellings, shaded courtyards, the size of units and their relationship to adjoining physical features. It will address amongst other matters the Council's requirements in respect of the size of residential accommodation, the level of accommodation that has only a single aspect either towards the Cliff or the access ramps, and the layout and orientation of communal space within the proposed development and the usability of that space.
- 6.10 The Local Planning Authority will demonstrate that the proposed development will not create a form of residential development that meets the housing needs of the City. The LPA will refer to the mix of accommodation proposed in terms of the level of family units. The LPA will also refer to the affordable housing mix and illustrates how it fails to respond to that sought by the Council [through its local plan and](#) for the Marina through its [housing](#) guidance.
- 6.11 The Local Planning Authority will demonstrate that the proposed development fails to make adequate provision for the needs of the community through an appropriate educational contribution.
- 6.12 The LPA will refer to the methodology for calculating child yield that it uses to assess the level of educational contribution sought. It will refer to the alternative methodology put forward by the appellants that is based upon 2001

census data but which at this point is not agreed. In particular, the LPA will refer to the assumptions as to how the development might be occupied but which are not capable of control through planning conditions for the life of the development and therefore the weight that can be attached to these assumptions. The LPA will refer to the methodology used to calculate the financial contribution sought through adopted policy and to the level of contribution offered and as to how this fails to address the needs of the community.

- 6.13 The Local Planning Authority will demonstrate that the proposed development fails to make adequate provision for the needs of the community through appropriate outdoor amenity and recreational space. The LPA will refer to its policies on open space provision as part of major developments and to the methodology adopted in its draft SPG9 to calculate off site financial contributions. It will refer to the level of contribution offered and as to how this fails to address the needs of the community.
- 6.14 The Council's policies seek to provide for amenity space and outdoor recreation space on site in order to meet the needs of residents. The appeal scheme does not make adequate provision on site in terms of its quantitative and qualitative provision. Further the off site contribution is considered inadequate to meet the needs of the future occupiers of the development.
- 6.15 The SoCG sets out a schedule of conditions for the Secretary of State to consider if she is minded to allow the appeal.
- 6.16 It will be necessary for the appellant to bring forward a planning obligation in advance of the inquiry to address issues relating to the development. These issues will be discussed in advance with the appellant and will be addressed in the Proof of Evidence of the Planning Witness for the Local Planning Authority.

7.0 DOCUMENTS

7.1 Documents that the Local Planning Authority will refer to are set out in the Statement of Common Ground and the Core Document List.