



The Kemp Town Society



The Kemp Town Society Closing Statement

Appeal Ref. APP/Q1445/A/09/21022048/NWF

The Kemp Town Society wishes to make it clear to this Inquiry that we do not in general oppose the redevelopment of the Marina's western quarter to overcome the areas poor public realm and to increase the Marina's attraction as a leisure and tourism destination. We would favour a scheme which is clearly sympathetic to the surrounding conservation areas which are of such historic and architectural importance but this should in no way disqualify the inclusion of the best of 21st century architectural design: a design, which is inspirational and uplifting in its flair and where (E.H. advice to LPA) "new buildings harmonize with or compliment their neighbours" We are disappointed that a company such as Laing O'Rourke, whose acknowledged international experience, expertise and secure financial base should in fact be proposing this development which seems inadequate to meet the high demands expected for the Marina's regeneration.

The Appellant, Explore Living and X-Leisure, has produced much written evidence, statements, plans and photomontages, demonstrating the depth and extent to which it believes its application is in compliance with planning policies and clears all policy hurdles for the Secretary of State to allow the Appeal.

The Respondent, Brighton and Hove City Council, has demonstrated the proposal does not sufficiently clear these hurdles, which matter most in the long-term public interest for the City. We endorse this defence as a legitimate fulfilment of their commitment to stewardship of the historic environment (CD4/17).

KTS Members and Public Support for the BHCC refusal of the Appellants' application.

Public statements submitted to the Inquiry by our members underlie the wider public concern over the proposed scheme itself and its incongruence in the immediate and wider context of the Marina and its neighbouring Grade 1 listed Estate and historic seafront. Mr. Granger, our Past Chairman in his statement IP/29, outlined the historic significance of the Marina's prior public inquiries (Widdicombe CD10/2) and their obligations of enduring legitimacy contained therein and in the Brighton Marina Act, which have survived to the present time. Mr. Derek de Young (CD17/3) pointed out that a restrictive covenant of maintaining the public interest at the time of the Marina's formation remains in force into its long term future giving greater weight to this fundamental obligation. Mr. Morris, (CD17/4.1, 4.2) our past vice-chairman, in his statement demonstrated that several hundreds of the general public using the SSSI and Conservation area beach were shocked to learn they would be overlooked by an eleven storey row of buildings along the breakwater thus compromising amenity value of the beach. Mr. Osborne placed great importance on the symmetry of the overall character of the seafront regency terraces and their linear flow along the seashore, which would be abruptly interrupted by the proposed development. Similarly Mr. Eynon, Ms Jill Sewell and Mr. Hadley spoke on similar lines. The independent petition representing thousands demonstrates the wider public's dismay at the blocked views of the sea and cliffs among other reasons.

Sir, you have the unenviable task to make your recommendation as to whether to allow or dismiss the Appeal on the evidence, after applying the weight your experience considers is due.

The Local Character to be upheld.

If this Appeal is allowed it will indelibly change the character of eastern Brighton and the way this City has protected its heritage in the past. We must surely not let such an outcome occur. Our custodial role in 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 of Georgian/Regency set-piece in this country overlooking the sea. Grade 1 listed buildings represent only 2.5% of the national total (KTS2 PoE – Baroness Blackstone Parliamentary Question on Heritage) of which the SE Plan (CD7/1) identifies 5,500 (listed buildings in the south east region. 3,500 or more of these are in Brighton and Hove alone. We urge you, Sir, therefore to take a very close look at our and the Council's evidence and the nationally important policies to preserve this heritage and avoid this impending disaster. Other organisations, including the Regency Society (IP 33.1,2,3), have rallied to the cause to express with authority the planning issues of paramount importance in the short and long-term harmful impact the proposed development will inevitably bring to the character of the seafront and eastern beach.

The Key Question.

The question, which needs satisfying in this Inquiry, is this. "Is it for the community to rally their resources in order to defend its built heritage from highly controversial development proposals such as this proposed development scheme?" or "is it for the proposed scheme to respond substantially to the heritage setting which adjoins it?"

The planning policies and guidance, as we interpret them, as evidenced in our Proof, fully endorse the latter position, supported by further evidence put to this Inquiry.

In our Proof, we state it is self-evident in BHCC's saved Local Plan 2005 (CD8/1), policies QD2, QD4, HE1, HE3, HE6, HE11 and SPG15, which are so compelling. It is for the new incumbent to actively integrate with the historic setting – especially one of outstanding national significance as the KTCA. The determination of this Appeal will demonstrate the level of importance placed on the heritage policy in this City and elsewhere.

Our Representations to the Council.

Our local councillors have taken note, albeit belatedly, of our representations as evidenced (KTS2 section 12), 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. This is why we are supporting them in this appeal. It is as if the final urgings of PPS 15/5 (C4/17) of the Government objectives took root, to *conserve and where appropriate enhance England's heritage assets in a manner appropriate to their significance* and (KTS2 PoE page 14) and their own policy BHCC CD8/1 Introduction Conservation Strategy 2, 2.1,2.2,2.3 (KTS PoE) "The Government urges local authorities to maintain and strengthen their commitment to stewardship of the historic environment" and "Preserving the historic built environment requires broad public support and understanding". Finally BHCC connected with their community after much lobbying.

Our assessment is qualitative rather than technical.

Our assessment of the proposed development is qualitative in the same way the Appellant claims the "quality of design" for its scheme's architecture. We have highlighted policy wording in such terms in the limited time available to us as a voluntary organisation against much greater resources of paid consultants, why we think this development, due to its ungainly dominance and architectural incongruity, does not contribute to Brighton's reputation as the country's finest historic seaside resort.

Inquiry evidence has not swayed our view.

The Society's daily presence at this Inquiry and our participation in the analysis of the proposed scheme during its course to date, has not swayed our own determination that it fails to regenerate the Marina as favoured

by National Policy or the Brighton "saved" Local Plan or its Marina specific guidance as contained in SPG20 or PAN04. Specifically, it remains our conclusion that despite the obvious benefits of affordable housing, the development nonetheless does little else to enrich the Marina's primary function as a leisure and tourism attraction. More specifically, it fails to recognise the overarching expectations to respect, enhance and enrich the important historic fabric of the City in general and its more immediate maritime context. Moreover, its blocking of sea views brings great harm to a wider community.

Flawed Consultation.

The conflict with the proposed development goes back to the flawed consultation process, both by the Appellant and the Council. Much has been stated by the Appellant's Statement of Community involvement (CD2/5.1/5.2) in its claim to have engaged with the Community. Our Society's experience is they presented their proposal after it was formulated with the tacit consent of the Council officers. We had no say in it. Worse, as evidenced by Mr. Derek Granger's statement to the Inquiry, the past Chairman of the Society, and that of Mrs. Gina Bryson and very many others attending the early meetings of 2006, the objections raised by the Society were largely ignored. They were held but not listened to with any degree of alacrity to qualify them as consultations. I enclosed my letter to Jeanette Walsh stating the reasons for our objection in our Proof (KTS2 section 3). The KTS' objection was noted in the Committee Report to the Planning Sub-committee. The suggestion in the Appellant's Community Statement we were consulted is misleading, in contravention of the Community Involvement required in the Statutory Guidance of PPS1 (CD4/1.2), and in BHCC Local "saved" plan CD8/1 (B1.4, C1.5, D1 – as per PoE 1.1) as the primary policies call for the Community to be involved at a very early stage in large scale developments. So KTS was avoided in any effective or meaningful dialogue to engage on the planning of the scheme or even after its presentation.

Even Lord Rogers in his Reith Lecture of 1995, (KTS CD 17/5) states, "what is needed is greater emphasis on citizen's participation in city design and planning. We must put communal objectives centre stage". The Appellant failed to do so in our experience.

The influence of Brunswick Scheme and its approval.

We believe the Appellant's planning team were influenced greatly by the Brunswick Development's scale and height of the outer harbour scheme. Mr. Coleman came to the current proposal with prior working knowledge of the Marina from Brunswick's development planning. It is mentioned 92 times in Vol. 1 of the Design and Access Statement alone. Another 30 times or more in Vol. 2 and 3. Now an approved scheme, we consider the positive merits it brings to the Marina are contained in distinctive design characteristics.

1. 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.
2. Its waterfront buildings are shaped like the prows of moored ships, to give them some maritime flavour.
3. Its striking, elegant silvery tower is even favoured by some.

Brunswick's approval was for the ambitious provision of 852 residential units on the outer harbour contained in 12 tall buildings, consisting of approx 15 storey blocks and the 42 storey tower. This level of development will place a strain on the Marina's infrastructure without the addition of the appellant's scheme.

Importantly, Councillor David Smith has drawn to the attention of the Inquiry that his attendance at the Full Council Meeting for Brunswick's approval made it clear that the decision reached to waive the height restriction imposed by the Brighton Marina Act 1968 (CD10/1) was not to be considered a precedent. Each application, where a scheme exceeded the cliff height, is to stand on its own merit.

The extent of the Brunswick approval is repeated frequently throughout this application, implying that the present developers are relying on the Brunswick approval for its future sanction. (Allies PoE 5.5 2). This assumption in the light of the current financial crisis now has to be called into question.

Stakeholders written assessments.

KTS supports the arguments presented by BHCC (in Reason for refusal 1), that the current development proposal brings excessive harm to the historic setting of views into and out of the Kemp Town Estate and its historic Conservation Area.

Although the Appellant asserts that key stakeholders, English Heritage, the South Down Joint-Committee and Natural England in particular made no objection to their plans, they fail to acknowledge that they have received limited or no endorsement of them either.

Character.

This characterisation of the Kemp Town Estate is specified in the 1992 Kemp Town Enhancement Plan, (KTS 2 PoE Appendix 13), states its character as "visual and physical links with the sea and beaches" (Appendix 4). The magnificence of the built form of the Kemp Town Estate is its size and dominance characterised by "the symmetry and uniformity of the facades" and the "general consistency in the height of the buildings and roofline". "The stucco rendering", "rhythm provided by the sash windows, balconies and pilasters", "projecting cornices" and "front area railings", not only symbolises Kemp Town, but much of the Brighton and Hove's historic seafront residences.

This is the backdrop against which the new development needs to relate, due to its closer proximity (of approx 110m) admitted by Mr. Coleman and Mr. Allies than originally claimed in their TVIA and DAS respective statements.

In contrast, it is totally of another character, imported from another modern urban style more in keeping with a dense city centre setting.

None of the schemes buildings remotely tie themselves into the natural or built setting of the surrounding area or "enhance" it. Not even of a maritime nature. The only maritime connection this scheme exhibits is that of sardines in tins; such is the compactness of its tiny units. Even Mr. Reid confirmed in his cross-examination by Jill Sewell, that the only maritime connection would be indirect; if dropped into Harbour Square would be the smell of the sea or sound of the rigging.

Design – not such good quality.

English Heritage Let 24.10.08. (KTS2 PoE sec 4) (After the amended planning application and approx 2 month before presentation to the LPA Planning Sub-Committee)

"Proposals should aspire to a quality of design and execution which may be valued now and in the future". Clearly, as statement such as this and at the time of its issuance, leads one to conclude the present scheme fails to "aspire".

"(Marina Point) presents a rectangular wide face east, rather than a narrow elevation. A narrow, elegant but less tall building would still provide a focal point in the scheme" This leads one to conclude that EH would prefer a narrow and less tall building.

"English Heritage considers the amended proposal has not significantly changed in respect of our concerns"....."these arise from the height, form and location of the Marina Point building and are not likely to be resolved without further significant revision...". English Heritage remains concerned about the proposal and by implication would wish for this significant revision.

South Downs Joint-Committee (Officers Report CD3/11 P57)

"However, the design of the towers is not acceptable, it has crude, monolithic form and bulk".

Hardly a "discrete tower" as claimed by Mr. Allies (Allies PoE P 79.)

"the design of the tower as submitted is not acceptable".

"In addition, the Joint Committee does not wish to see a plethora of tall buildings appear incongruous...."

Natural England.

"Natural England wishes to make it clear to the Council that in our view the proposed development is too near to the cliffs".

How much clearer can you get than that?

The Cliff building too close, the Towers not acceptable and failure to aspire.

How can one be confident that the buildings are of "high quality design" when confronted with this important "feedback" indicating such high levels of unacceptability by these stakeholders?

In cross-examination by Mr. Simpson of Mr. Coleman, Mr. Coleman admitted his opinion is subjective (with respect to QD4) and that the new buildings were of sufficiently high quality that loss of views of the cliffs by the high quality of buildings was an enhancement. They would enhance the views, despite the adverse impact on the Kemp Town Estate, is a subjective assertion.

We do not share Mr. Coleman's enthusiasm of the degree of enhancement the replacement of views by the design quality of the new buildings might bring. His rebuttal (Fig 7. PoE appendix) supported by the photograph of Greenwich Grade1 listed building is not adversely affected by the new modern Canary Wharf office towers. In our opinion this is negated by 1) the distance between them is far greater, separated by the Thames river and 2) at least half a mile of distinctly changed character of urban mass and 3) It's London, where the pressures for change are much greater. People come to Brighton to get away from the urban pressures of London's density.

Furthermore, we do not agree with Mr. Bob Allies that the "repetition of the balcony form will give Marina Point a similar optimistic ebullience as "the confidence of the city's Regency architecture". (Allies PoE 7.7.1 P79). His ebullient balconies fail to remotely match the symmetry of the Regency Terraces.

Height

The allowance for tall buildings within the western node of the Marina, as envisioned by SPG20 (CD8/9.2) and PAN04 (CD8/12) is not an automatic permission to build an unlimited height or as high as the Brunswick scheme. However, we pointed out in our Statement of Case (KTS1) that ALL the proposed buildings exceed the height of the cliffs.

PAN04 (P28) echoes SPG15 (CD8/8) definition of a tall building to be "6 storeys or more". It also defines the cliff height ranges from 8-10 stories – suggesting this variation be respected. Furthermore, it states that such tall buildings "may be acceptable (in the Marina), subject to meeting a number of detailed criteria".

SPG15 8.3.2 "The Marina is a node with particular sensitivities ..due to the relative proximity to Kemp Town". "will need to have regard to their (buildings') visual impact overall composition when viewed along the coast".

Included in the PAN04 (CD8/12) criteria are the following, (referring to SPG15 (CD8/8) and EH/CABE Guidance for tall buildings – 2007 (CD5/1)):

- ii) display a clear relationship to the site's context, including scale, height, urban grain,important views, panoramas, and the effect on the skyline. (Note also similarity of SPG20, 5 i, ii, (P 58/59).
- iii) ensure the building design allows for visual permeability through the development out to sea, the harbour area and views of the Black rock cliffs.

(Mr. Simpson demonstrated that the sea views in the TVIA from the cliff top opposite Marine Gate would not be seen and the cliffs from the Esplanade would be entirely obscured).

Mr. Allan Roake demonstrated in CD13/13 (T30 TVIA) that if the height of the cliff were to be respected it would reduce the height of the proposed buildings to approx 6 storey's on the seawall buildings and cliff building. This contradicts the Appellants claim "blue line" in CD12/29.2 cliff height, allowing 8 storeys. CD12/29.1 confirms the below the cliff height would be 6 storeys on the west to 8 storeys on the east side.

PAN04 continues..

- vii) "avoid harm to important views and does not detract from important views from the AONB, the setting of the Kemp Town Conservation Area or listed buildings".

Added to this, the National Park will shortly abutt the east side of the Marina and its regulatory impositions on the Marina's visual impact on it will require the greater need to respect them.

English Heritage in their letter 9th June 2008 (KTS2 PoE Sec 4).

P 1. "Concern lies with some adverse impacts of the Marina Point block on the kinetic views of and from the Kemp Town terraces."
"The Point block has some adverse impacts in the way that it challenges the open views east of the terrace perambulations. This amounts to some impact on the setting of the terraces assemblage and thus the conservation area"

P.2."The terraces make a major contribution to the seafront set piecesthey are part of the overall seafront assemblage that sets Brighton apart from any other seaside town."

P 3. "T42 ..show a rectangular block silhouette from Chichester Terrace, ... this will distract the eye from the terraces"

E.H. letter 24 Oct 08. P3. "loss of connectedness with the sea from Arundel Terrace across the scheme remains"

So, again, EH express continued concern on the harmful impact and effect caused by the proposed development.

The constraint to limit height to the immediate cliff height to the north of the building is paramount. No author of the Marina Act or its Inquiry reports (CD10/2) envisaged that unbridled tall buildings would be proposed for such a sensitive site, well acknowledged by the Council in its respect for the cliff height restriction. But Mr. Allies boasts (PoE 5.5.3. P.43) his proposal compared with Brunswick would be lower than Brunswick and (PoE 7.1.2 ii) but, "new buildings in the Marina, (like Brunswick) would have an impact on views both out of Kemp Town and along the Kemp Town frontage to the east". There is no reference to the height restriction. So it is readily concluded there was little intention to respect it either.

The TVIA.

The conclusion from PAN04 is that this development scheme measures itself against the approved Brunswick scheme and not the detailed criteria for tall buildings. It is reasonable to conclude from the following examples the tall buildings will obscure views of the sea.

We provided in our KTS2 PoE (Sec 20) a computer rendering of the Seawall Buildings from within the Historic Kemp Town Gardens. These buildings not only merge with the Lewes Crescent set piece, which English Heritage advocate is not desirable, but they are extremely harmful to the loss of the "sea setting" of the Estate as a whole and the Conservation Area in general. These westerly buildings will have a far greater visual impact than is appreciated in the TVIA or as assessed by English Heritage. We believe these buildings should not be permitted in this scheme at all, bringing so much harm to the sea views and conflict with the historic crescent.

We agree with Ignatius Fronman's (PoE Appendices) assessment of the Architectural and Historic Significance of the Kemp Town Estate at the highest level of "HIGH". Additionally, the seafront Esplanades and lower slopes as "Important", the second highest ranking out of the total of five ratings.

In his Summary Proof 3.5 Mr. Fronman confirms that these Seawall buildings will "close the gap" between the Brunswick development and the cliff setting. This gap "is of critical importance to the Brunswick's scheme acceptability". We agree. Additionally, 3.6 "the visual link" with "the open sea" and "most importantly the hinterland to the east - would be lost". We agree again.

The TVIA C4, C5, C6, C39, C40 all illustrate the Sea Wall building closes this gap and 3.5 "would effectively introduce a continuous development from the cliffs". We agree.

3.12 "first floor principal rooms are integral to their design, these conservation views...from elevated positions... are important in their own

right." And "take in much more than views" that is in the same direction at ground level. We agree again.

Mr. Coleman in cross-examination confirmed T28 and C4 demonstrate harm to townscape and KTCA. Despite denial by Coleman, in C4 the KTCA is replaced by Marina Point and the schemes west exposure buildings as the dominant architectural form of eastern Brighton, should it proceed.

Density.

The allowance for higher density in the Marina is conditioned in PAN04 12.2 with "it should not be presumed that all development proposals will be of a higher density"

"Density levels put forward by developers for the Masterplan area should therefore be a product of a robust and tested design process"

The density levels proposed are confirmed to be subject to urban design conditions. e.g.

"the demonstration of the quality of living conditions for existing and proposed users."

There is no evidence, which I have witnessed that the proposed level of density in the development scheme is conducive to quality living conditions.

The density of the Kemp Town Estate is approx 32 dph. The Cliff building is 239 dph. Over 7 times as dense. Any other comparison is misleading, as the area of the Appellants site is due for further development in the future. If the commercial area is removed from the Cliff building, the density figure would likely be closer to the Marina Point building of 1,000 dph. This well exceeds the desired increase of dph level of 50 for the City as a whole.

The high density being considered combined with the Marina Point building of over 1,000 dph will cause the limited and busy public realm to be overly crowded for the leisurely atmosphere the "café culture" the Marina seeks.

Transport.

i. We do also have concerns about the impact of the buses in Kemp Town. The dedicated bus lane along Eastern Road will remove street parking and have a follow on impact on our neighbouring streets.

ii. The effect of queuing on the ramps and the back-up effect is a concern for general access and movement around Harbour Sq.

iii. The effect of this is to increase parking pressures within the Estate.

District Centre.

- i. We consider the District Centre definition is flawed. The Clinic is now to be private, no post office, no schools. It is just a shopping centre.
- ii. The increase in the size of Asda will put greater pressure on the small shops in Kemp Town, such as the butcher.
- iii. There is no study to show the impact of this enlarged store on these shops.

Infrastructure.

We remain deeply suspicious of the lack of clarity in the determination that the access ramps cannot be moved or redirected to create a public realm as envisioned in the SPG20 and PAN04. There appears to be no rigorous testing or demonstration of the options available. Why not?

The option to redirect them is not recorded in the minutes of the Transport workshop meeting with the Council officers (June 22 2007). The obvious suggestion they be brought down along the inner western wall onto the existing perimeter road, appears to be unexplored. Once the open space of the Asda carpark is built upon, the opportunity to remove the multi-storey car park will be compromised.

The emergency access route from the East has to access the same access point as the western access under the ramps. In the event the ramps are closed, the impending chaos augurs a horrific scenario.

Financial Viability

1. It remains most curious, that the District Valuer's report fails to deliver any market comparison valuations in its determination of revenues. IF market comparisons are to be made, then they should be in evidence. If direct comparisons of sales in the Marina are used with increase of 20% for new properties, the revenue figures will not realise the assumed income advised.
2. The assumption of RSL funding for the affordable housing is not in evidence. If the affordable housing does not meet the stringent and higher standards of the selected RSL, the assurance of the £36 mill required to cover the affordable "revenue" may not be forthcoming. There is no evidence this funding is assured.

Guarantees need to be provided by Explore Living's parent Laing O'Rourke to guarantee delivery of financial performances should be required in order to ensure completion of the proposed project and to meet its s106 obligation for future phases.

The Conclusion.

Building tall buildings in any context is a risky business. Prof. Michael Short demonstrates this in his article written for English Heritage as a PhD thesis (KTS PoE Sec 14).

"Our cities reflect our collective culture and as such represent cultural values and urban life. In order for cities to maintain their distinctiveness, regulatory tools are crucial to determining not only the impacts of tall buildings on their immediate surroundings and wider city, but their siting, form, height and relationship to the built environment in general."

The City of Brighton and Hove have the tools and despite a protracted recommendation by its officers, the LPA finally used them in order to secure the cultural values reflected in the historic setting to the Marina, so vital to the character of Brighton and the importance to the nation.

Another acclaimed expert in Planning, Sir Peter Geoffrey Hall, (CD17/5) in a recent inquiry concerning Ealing Town Centre concluded with the following observation, which I believe replicates the one at hand:

"the basic problem with the proposal under consideration, I would submit, is that it starts from the wrong premise, proceeding through a perverse logic, to a fundamentally mistaken solution. Instead of starting on the basis of the maximum scale that is acceptable in context and then working out what can be profitably achieved at that scale, it starts with the principle of maximising the profitable use of the available ground area without any reference to context...."

Additionally, our conclusion remains the same as per my Proof of Evidence Sec 7 (ODPM Para 17).

This development proposal remains premature. The regeneration of the Marina as proposed is simply a matter of supplying affordable housing, made feasible by building high and as densely as possible. The result would be of great visual harm, which cannot be reversed, if permitted.

Key stakeholders have voiced that many design matters of the Appellants' site need to be thoroughly tested, including the overwhelming need to redirect the ramps in order to open up the public realm. Working with Council to learn the phasing of adjoining sites to the Marina Inner harbour, including the outer harbour, Black Rock, the viability of the RTS, it would be unwise to jeopardize these other sites in the haste to approve this one, as well intended it might be.

Therefore, I on behalf of the Kemp Town Society recommend the Appeal is refused.

December 14th, 2009

Paul Phillips, Chairman.