

STATEMENT OF CASE

ISSUED BY

**THE KEMP TOWN SOCIETY
(KTS)**

TO

**The Planning Inspectorate,
Room 321E
Temple Quay House,
2 The Square,
Temple Quay,
Bristol,
BS1 6PN**

**With respect to The Appeal
By The Appellant:**

Application Ref: BH 2007/03454

**Explore Living (No.1) Ltd.,
X-Leisure (Brighton 1) Ltd., and
X-Leisure (Brighton 11) Ltd.
(EL)**

**The Kemp Town Society
supports the decision of
Brighton and Hove City Council (BHCC)
Planning Sub-Committee of
December 12th 2008.**

Planning Inspectorate Reference:

PINS: APP/Q1445/A/09/2102048/NWF

Dated: September 3rd, 2009

Authored by:

Tel: 07799560220

**Paul Phillips, Chairman
c/o11 Caldwell House,
48 Trinity Church Road,
Barnes,
London, SW13 8EJ**

CONTENTS

- 1. The Developers description of their proposed development**
- 2. KTS' summary of the retail, residential and amenity facilities proposed in the developers description**
- 3. Reasons given by Brighton and Hove City Council (BHCC) for rejection of the Planning Application as they relate to the Kemp Town Conservation Area**
- 4. All Reasons provided by BHCC for their rejection of the Planning Application**
- 5. Kemp Town Society's Statement of Case**
- 6. Statement of Significance. The Grade 1 Kemp Town Estate and Conservation area, Brighton's Seafront and the South Down National Park as the dominant heritage setting to the proposed development**
- 7. Appendix of supporting documents**

The Developers description of plans

07 APR 2009

APPENDIX 1: REVISED DESCRIPTION OF DEVELOPMENT

This planning application seeks planning permission for the following development¹:

- 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 (CHP);
- 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.

The KTS' Summary of Developers Proposed Facilities

The revised (2008) application, in summary, is to

- a) Build 1301 flats in 8 (or 13 towers) buildings
 - a. 28 storey; 148 units (Current location: Asda petrol station)
 - b. 16 storey; 222 units (McDonald's site)
 - c. 4 X 11 storey; 117 (Western Seawall)
 - d. 1 mix use super block divided into 6 residential buildings of 10 storeys above parking and retail stores; 779 units (Asda store and parking site)
 - e. replace existing management office with 4 storey; 35 units
- b) increase the Asda store by 3,112 sq.m to total of 11,412 sq. m. (122,793 s.f.)
- c) add 2,370 sq .m. (total) (25,500 s.f.) of commercial space
- d) add 421 sq. m. (total) (4,530 s.f.) of office accommodation
- e) add 342 sq. m. (3,680 s.f.) Community hall
- f) provide a Healthy Living Centre of 516 sq. m. (5,552 s.f.) to replace existing retail space
- g) 1,301 units (of which 520 affordable) divided into predominantly 2 Studios and 531 x1 bedroom flats, 682 x 2 bedroom, 86 x 3 bedroom units.
- h) Reduction of multi-storey public carpark spaces by approx 200 spaces, increasing allocated parking to special interests, leaving approx a further reduction of 106 public spaces. resulting in a loss of 306 in all
- i) Provision of 805 (107 disabled) residential parking and 1905 cycling places within Cliff/Asda building

The Decision by BHCC LPA (Dec 12th 2008)

We support BHCC's decision to reject the application as provided in their 6 listed reasons (below). * Specifically, KTS cites the following reasons for easy reference in adjoining the reasons provided.

A. Kemp Town Conservation Area is singled out in Reason 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 national 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, HE11**, 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."

B. Kemp Town Conservation Area is impacted in Reason 2.

“The proposed development would ***cause material nuisance and loss of amenity to residents living opposite and within the Marina.**”

(* bold added by author)

KTS will make reference to the amended terms of the refusal as passed by Council on September 2nd. 2009

A. BHCC’S REASONS FOR REFUSAL. (Prior to amendment)

Reason 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, HE11 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.

Reason 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.

Reason 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.

Reason 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.

Reason 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.

Reason 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.

THE KTS STATEMENT OF CASE

1. Conservation Area.

KTS will outline the status of a Conservation Area in law, the background of the Kemp Town Conservation Area, its importance to Brighton and the Nation

2. Grade 1 Listed Estate and Conservation Area

KTS will state the significance of the outstanding values of the Kemp Town Estate's Grade 1 Conservation Area, the only listed Georgian inspired Regency Estate and Conservation Area on the coast of national importance, highlighting its coverage over the beach area in very close proximity to the proposed development

3. KTS Aims and Duty

KTS will demonstrate the value BHCC attaches to the Estate and the guidelines/responsibilities of BHCC and KTS' stewardship over 25 years to protect its integrity and setting as provided under The Town and Country Planning Act 1971

4. Secretary of State's Guidance on Planning in Historic Settings

KTS will highlight the need to respect the PPS 15 (Communities and Local Government Consultation June 2008), which acknowledges the impact of the proposed development will be a material consideration in the determination of the subject planning application.

5. Tall Buildings' impact on Conservation Areas

KTS will cite PPS1 and PPG15 (Tall building Guidelines) and illustrate how the proposed development makes greater visual impact on the setting of the Conservation Area than is represented in the visual assessments with loss of strategic views caused by the impermeability of its proposed multiplicity of buildings of differing styles, excessive density and height

6. BHCC Guidelines in Historic Settings

KTS will demonstrate that the proposed development contravenes BHCC Strategy and Policy for building in Historic Built Environment

and Conservation Areas. (HO4, QD2, QD4 and HE3, HE6, HE11). KTS will highlight key statements within the Design and Access Statement

7. National Guidelines in South East Plan.

KTS will demonstrate that the proposed development is not in accordance with CC1 CC6, CC8, C2, C3, HO4 and BE1 of the South East Plan.

8. CABE and ENGLISH HERITAGE Guidelines

The proposed development is inadequate in architectural form, destroys the marine setting and brings harm to and changes the over-riding character of the "architectural set piece" of the Grade 1 listed Kemp Town Estate and its conservation area, contrary to the proper interpretation of national and local guidelines provided by CABE and English Heritage, where tall buildings are planned at close proximity to a Conservation Area (Guidance on Tall Buildings July 2007 and predecessors). References to the debates on Tall buildings will be made

9. The Planning Act (1990)

Due to the proximity of the development to the Conservation Area, the development proposal fails the test as contained in The Planning Act 1990 which requires new developments to preserve or enhance Conservation Areas and listed buildings settings, which includes the beach some 110 metres (360 ft) from the proposed 11 storey buildings of approx 40 metres (130 ft) high. KTS will demonstrate the erroneous information, which potentially has allowed consensus to develop, without appreciation of the misleading representations as contained in the Design and Access Statement

10. Excessive interpretation of the Tall Buildings policy

The proposed development has relied on the excessive interpretation of the Tall buildings SPD 15 and the developers' "vision" to build new without adequate respect of the historic and natural setting of national importance which adds value to their proposed development

11. The Brunswick Scheme

The development has relied unreasonably on the precedent of the approval of the Brunswick Scheme, as frequently referred to in their application. KTS considers this to be inappropriate and inadequate. At the time of Brunswick's approval, it was specifically stated that no precedent was set by its approval, which requires a specific meeting of the Full Council as required under the Brighton Marina

(1968) Act. At the time of the approval, the over-riding consideration given was the significant distance away from the Cliff face, which allowed uninterrupted views of the cliff and the sea to be enjoyed.

12. The Brighton Marina Act

KTS' past experience with the interpretation of The Brighton Marina (1968) Act and its restriction on buildings in excess of cliff height will be revisited. Its importance and significance will be recalled as it relates to the proposed development for the benefit of the Inspectorate.

13. Amenity of the Conservation Beach

KTS will give witness to the effect that the proposed development, especially the seawall buildings, has a major impact with the loss of strategic seascape amenity from within the conservation area, its incongruous built form in contrast to the uniformity of the seafront, to the detriment of both the local and visiting population using the Conservation area beach and seafront

14. Lost Marine Character

The proposed development, specifically the seawall buildings, fails to recognise and enhance the marine character of the Marina and its cliff setting and fails to respect the conservation area contrary to the BHCC Brighton Marina Scoping report June 2008 and Core Strategy, forming part of the LDF and other related guidelines stated herein

15. Parking Impact

The proposed development will have a high impact on the surrounding area with respect to parking, due to the reduction in the number of public parking spaces and high restriction on new parking spaces for the expanded uses and occupancy of the development, based on unsubstantiated theory that users will use other means of transport. KTS will add its analysis to the impact of poor traffic management and parking facilities. Reference the Mouchel Traffic Assessment Report

16. Residential Density

The measurement of density compared to the Kemp Town Estate will be made. Figures based on X Leisure's land ownership and not lands optioned by Explore Living misrepresent the high density of this proposal as contained in their Design and Access Statement

17. Piecemeal Development

The proposed development is a piecemeal development with varying architectural designs within a very restricted site with unknown future development plans for the balance of land within the area of the site under the control of the Appellant. This piecemeal process is very similar to the very same criticism levelled against the current site. This is contrary to the Core Strategy and Core Strategy amendment.

18. District Valuer's Report

A financial and economic assessment of the project will be offered, based on the District Valuer's report and resourced material. It is intended to demonstrate the financial viability of the proposed development is heavily reliant on a high market value of the private flat sales and sale of the "affordable" housing. The reliance on such sales and associated business footfall, in order to recoup the cost of replacing the supermarket and burger company stores, highlights the excessive risk associated with this development proposal without any (known) assumptions of increased business revenues and guarantee of the complete project delivery.

KTS aligns itself with the decision of BHCC LPA to reject the application for reason provided by BHCC and as prescribed above along with the following Statement.

STATEMENT OF SIGNIFICANCE.

A. The Kemp Town Estate.

Conceived by Thomas Read Kemp, the son of the Lewes MP and landowner, the Estate is a grand scale development, predominantly Regency in period from 1823, built as a square open to the sea by the use of a wide crescent flanked by fine terraces. With Georgian origins by architects Wilds and Busby, it is characterised by 106 4/5 storey town houses, embellished by porches with fluted Doric Columns and cast iron balustrading to balconies. Typically, all houses are rendered in plaster, some with exposed yellow brick, to create a harmonious contiguous whole.

It is acknowledged the Estate is of national importance, having been inspired by John Nash's Regents Park Terraces and Thomas Cubitt's Belgravia. Hence, Brighton became known as London by the sea and attracted over a period of time aristocratic and middle class Londoners.

Due to unbridled conversions of the houses in the 60's, efforts were implemented to conserve the remaining properties, which resulted in the formation of the Conservation Area. Only a few single townhouse remain, notably Fife House at the corner of Lewes Crescent and Chichester Terrace. There are over 700 individual residences now registered within the Estate.

The Kemp Town Conservation Area

The Estate is set in around a Grade 11 listed garden owned by the “key holders” property owners, as registered by the management company for the gardens, known as the Enclosures. The private gardens are enclosed by railings and maintained at the cost of the residents by a full time gardener and volunteer residents.

The gardens have an access tunnel to the lower slopes, which overlook the sea, originally developed by Thomas Cubitt and formed part of the gardens, but at a later stage where conveyed to Brighton Council, who now maintain them under terms to the KT Estate Enclosures company.

The Kemp Town Society contends the Estate is of outstanding significant to the nation and holds universal values, illustrative of a high point in Architectural form and requiring unwavering protection locally and nationally.

KTS will highlight its protection needs are to be respected proportionate to this level of significance of the site. It will draw out this significance from the stated national and the local planning authority guidelines, whether within or impacting on a conservation area. KTS holds that the proposed new development has failed to adequately respect the significance and dominant nature of the KTCA and built form of the Estate

B. The Brighton Seafront is unique in the world

The scale of the seafront is considered the largest in the UK and by its length, extending for over 5 miles end to end in Europe. Nowhere is there such an expanse of Esplanade consisting of the same built form. The Kemp Town Conservation Area is a significant part of this expansive seafront, as it, uniquely, incorporates the beach area.

The uniform cohesiveness of the built terraces, interlaced by newer architectural forms and materials, whether residential or commercial, gives Brighton a unique and overriding architectural character on an unparalleled scale for a seaside town. The dominant scale buildings along the seafront in white or off-white colouring, matching in built form the white chalk cliffs which edge the eastern end of Georgian Brighton, give powerful inspirational visual and aesthetic qualities.

Efforts are presently underway to cause the seafront and sea-facing properties to be designated a World Heritage Site. This underscores the historic qualities of the built form. Adjacent to the East are the Cliffs, which are now set to be approved as forming part of the South Downs National Park, a national natural historic treasure.

The Marina sits between these two highly regarded settings.

As a result, the methodology for evaluating its impact on the wider landscape should be valued as a whole rather than as a collection of parts, where the whole has a higher value than the sum of its parts.

KTS requests the Planning Inspector gives specific additional consideration to the evaluation of this Statement of Significance.

Summary of materials on which Kemp Town Society's Case will reference.

- 1. Letter to BHCC Dec 2007**
- 2. Presentation to the Brighton Planning Sub Committee Dec 12th, 2008**
- 3. LDF (Core Strategy) and KTS' related correspondence**
- 4. LDF (Core Strategy –amendments) and KTS' related correspondence**
- 5. Kemp Town Conservation Area Study 1992**
- 6. Planning (Listed Buildings and Conservation Areas) Act 1990 Part 11, Section 69.**
- 7. THE SECRETARY OF STATE CONSULTATION PAPER (JUNE 2008)**
- 8. SPGBH15, SPGBH20, BHCC PAN 04**
- 9. CABE and English Heritage Guidance on Tall Buildings**
- 10. BHCC Conservation Strategy – Nov 2004**
- 11. Communities and Local Government Historic PPS 15. (Planning for the Historic Environment - Consultation)**
- 12. Brighton and Hove Local Plan QD2, HE3, HE6**
- 13. East Sussex and Brighton and Hove Structure Plan S1**
- 14. BHCC Adopted local plan saved policies – Chapter 8 – “Managing change within an Historic Environment”**
- 15. Transport Assessment Report**
- 16. District Valuers Report**
- 17. BHCC Reasons for Rejection of Planning Application BH2007/03454**
- 18. Marina Google Map Images**
- 19. BHCC Brighton Marina Scoping Report June 2008**
- 20. KTS Presentation to BHCC Dec 12th 2008**

- 21. Copy of letter from John Gummer MP to the Estate Gazette**
- 22. KTS reply to Gazette letter above**
- 23. South Down National Park Map**
- 24. The South East Plan and RDA Housing Strategy.**
- 25. Photographs of views into and out of the development not included in the visual impact study**
- 26. Letters from English Heritage to the Council and the Society in relation to this application and the Brunswick Development adjacent to the development site**

KTS reserves the right to amend or add to this list with the submission of their Proof of Evidence.