



**REF:  
APP/Q1445/A/09/2102048/NWF**

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**PROOF OF EVIDENCE  
OF KEVIN GOODWIN BTP MRTPI**

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In respect of

**BRIGHTON MARINA**

On behalf of

**BRIGHTON AND HOVE COUNCIL**

CgMs Ref: KG/11130

OCTOBER 2009



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## **1.0 QUALIFICATIONS AND EXPERIENCE**

- 1.1 My name is Kevin Goodwin; I am Head of Planning of CgMs Limited, Planning Consultants who have offices in the City of London, Birmingham, Cheltenham and Newark. The firm acts for and is retained by leading companies throughout the country, for housebuilders, government departments and local authorities.
- 1.2 I have a Bachelor of Town Planning Degree and I am a Member of the Royal Town Planning Institute. I have 36 years' experience both in the private and public sector of which over fourteen years were spent working for three planning authorities.
- 1.3 I have acted for many clients with respect to applications and appeals for different types of development throughout the country including within the Brighton and Hove City Council area. I have spoken at conferences and I have contributed articles to the professional and technical press.
- 1.4 I am familiar with the appeal site, the wider Brighton and Hove area and with the application proposals and relevant planning policy.
- 1.5 Following the refusal of the application and the lodging of the appeal CgMs were appointed to act as planning consultants in respect of this appeal on 21st July 2009.

### **Scope of Evidence**

- 1.6 My Proof of Evidence relates to an appeal scheme submitted by the appellants – planning application reference BH2007/03454.
- 1.7 The Council have confirmed that they will not contest reason for refusal number 6 concerning flooding subject to appropriate wording within the S106 in respect of the maintenance of current sea defences and upgrades to sea wall defences. This is no longer anticipated to be an issue in respect of evidence to be presented and contested at Inquiry. Evidence will focus on the remaining reasons for refusal.

1.8 I will be presenting planning evidence covering national, regional and local planning policies, land use, housing need, development scale and compliance with planning standards and the scope of the S106 contributions. Mr Roake will give evidence as to the impact of the proposal in relation to architectural and urban design matters. Mr Allen will give evidence in relation to the impact of the development on the landscape. Mr Froneman will deal with the impact of the proposal on views into and out of the adjacent conservation area.

### **Scope of Issues**

1.9 I have noted the four main matters that the Inspector identified at the Pre-Inquiry meeting on 18th September 2009. I have had regard to these and to the Council's reasons for refusal. I have identified the following seven issues that I consider are relevant to the consideration and determination of this appeal: -

1. *Whether the design, siting, layout and height of the proposed development, including the public realm, would be acceptable;*
2. *Whether the siting, layout and height of the proposed development would have an acceptable impact on the Kemp Town Conservation Area;*
3. *Whether the siting, layout and height of the proposed development would have an acceptable impact on the Sussex Downs AONB and the Cliff;*
4. *Whether the proposed development would provide good quality accommodation in terms of the size and disposition of residential units and their relation to surrounding features;*
5. *Whether the proposed development would make adequate provision for educational needs arising from the development;*

6. *Whether the proposed development would make adequate provision for the outdoor amenity and recreational space needs arising from the development.*

1.10 Having identified the main issues in respect of the appeal scheme, I turn to deal with them in detail later in my evidence.

## **2.0 THE APPEAL PROPOSALS AND RELEVANT PLANNING HISTORY**

- 2.1 The planning history of the development of the Marina and associated buildings is set out in Appendix 3 of the officer's committee report and also within the Statement of Common Ground (SoCG).
- 2.2 Prior to the appeal application the most recent and relevant proposals were in respect of development on Spending Beach and West Quay (BH2006/01124) to provide for residential accommodation comprising 853 flats in 11 buildings ranging from 6 to 40 storeys above the structural deck including: associated plant accommodation; high level viewing gallery; Class A, D1, D2 and B1 uses and associated plant; lifeboat station including relocation of floating lifeboat house and installation of communication aerials; three-storey covered car parking providing up to 491 parking spaces, 32 motorcycle spaces and 876 bicycle parking spaces; 5 visitor disabled parking spaces along proposed promenade; alterations to vehicular, pedestrian and cycle access arrangements and creation of new routes for access and servicing to include pedestrian/cycle/vehicular access along western breakwater with associated engineering works; alterations to pontoons and creation of replacement moorings and installation of navigation piles; construction of openable foot and cycle bridge between West Quay and eastern breakwater and associated works; construction of foot and cycle bridge between Madeira Drive and western breakwater and associated works; new areas of hard and soft landscaping and public realm, including children's playground and formal and informal areas of amenity space; solar panels at roof level and wind and tidal turbines; engineering and structural works and alterations to Marina and adjoining land associated with above. This was a revision to an earlier application refused in November 2005.
- 2.3 I refer to this application in my proof as the 'Brunswick Scheme'.
- 2.4 That application was approved in July 2006. The City Council confirmed that a material start has been made on this scheme in their letter of 8th September 2008 (Appendix A).

- 2.5 The appeal application was reported to committee on 12th December 2008 with a recommendation to approve the application subject to the prior completion of a S106 planning obligation. This would have dealt with a number of matters.
- 2.6 After extensive discussion at the committee meeting on 12th December 2008 the Council agreed to refuse the application 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, 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.
  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 & 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 mix and unit 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.
- 2.7 Following the submission of the appeal the appellants' agents wrote to the Council in letters of 29th June and 15th July inviting them to reconsider their position in respect of reasons for refusal 4, 5 and 6.
- 2.8 In light of these letters and in order to clarify the Council's position a further report was prepared. This was reported to committee on 2nd September 2009 where the Council agreed to modify the refusal reasons as follows:
- 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 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, HO4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan and policies CC1, CC6, CC8, C2, C3, and BE1 of the South East Plan, PPS1 and PPG15. (In that report Policy H04 erroneously appears adjacent to policies in the Structure Plan but is a policy of the saved local plan)*
  - 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.*

2.9 Finally in respect of reason for refusal 6 relating to flood risk it was agreed to withdraw this reason subject to appropriate wording within the S106 in respect of the maintenance of current sea defences and upgrades to sea wall defences.

2.10 It is therefore these reasons that the Council is defending and which the evidence of the Council's witnesses addresses.

### **3.0 THE APPEAL SITE AND SURROUNDING AREA**

- 3.1 A description of the appeal site and the surrounding area is set out in Section 2.0 of the Statement of Common Ground.
- 3.2 The appeal site has its main access Marine Drive via a pair of substantial access/egress ramps that run between the current ASDA site and the multi-storey car park to the south. Pedestrian access is by means of a series of walkways from Madeira Drive. Access is dominated by the motor vehicle.
- 3.3 The western end of the Marina is extensively developed with low rise buildings and hard surfaces with no real areas of landscaping or soft open spaces. The appeal site's relationship with the Cliff face and the walkway at the base, as well as its relationship to the top of the Cliff and the townscape and landscape beyond, are important in setting parameters for development of the appeal site.
- 3.4 Development on the appeal site affords the opportunity to renew the urban fabric, improve circulation, provide for a mixed tenure housing led scheme with areas of open space and leisure facilities.
- 3.5 The constraints and opportunities for development are further set out in a number of documents produced by the City Council relating to the Marina.

## **4.0 PLANNING POLICY ANALYSIS**

- 4.1 Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant development plan comprises the South East Plan and the Brighton and Hove Local Plan 2005. The South East Plan has superseded policies within the Structure Plan referred to in the original refusal reasons of December 2008.
- 4.2 Other material considerations include national and regional planning guidance and supplementary planning guidance. Those of particular relevance to this appeal area set out in Section 5.0 of the Statement of Common Ground.
- 4.3 Whilst the development plans and policies are listed in the SoCG I feel that it is useful to expand upon some of these in order to set the policy context for the Marina area of the City as it is covered by a number of adopted and emerging documents.

### Policy Context

- 4.4 The adopted local plan of 2005 only contains two specific designations that relate to the appeal site. The first is the inclusion of land relating to the current ASDA store and The Octagon as Prime Retail Frontage within the District Centre of Brighton Marina (Policy SR5) and premises at the Waterfront as outside the Prime Retail Frontage. The second is Policy SU7 relating to 'Development within the coastal zone' that covers the whole of the Marina, together with land to the west and east outside of the Marina. This policy requires compliance with other development plan policies and development that takes account of layout, design and materials and respects its location and views.
- 4.5 To supplement the development plan the Council has adopted SPG20 that is produced in two volumes; an Urban Design Analysis and a Development Brief. It was consulted upon and adopted in January 2003.
- 4.6 The area covered by the SPG extends beyond the appeal site in so far as it includes land to the west at Black Rock. A SWOT analysis is undertaken in

- Volume 1:Section 11. Section 12 looks at the prospects and Section 13 the Vision.
- 4.7 Volume 2 states at page 14 "Now that it has been adopted by the City Council as Supplementary Planning Guidance it will provide the context for the consideration of applications for planning permission".
- 4.8 In terms of density (page 54) it states "[the Marina]....should (generally) be developed to a high density. However density levels should be a product of the design process and not a determinant of it....."
- 4.9 In terms of land use (page 56) it states "a substantial proportion of new homes should be affordable housing that meet local needs...."
- 4.10 In January 2004 the Council adopted its SPG on Tall Buildings (SPGBH 15). This was the subject of consultation and approval by the Council. Paragraph 1.4 defines for the purpose of the design guidance what is a tall building. It states that "tall buildings are defined as buildings of 18m, or taller (approximately 6 storeys), above existing ground level". This definition is expanded in section 5 by reference to 'mid-rise' and 'very tall'. The former refers to buildings of 6-8 storeys and the latter to buildings over 15 storeys in height.
- 4.11 Section 8 of the SPG sets out 'Areas Identified as Suitable for Significantly Taller Buildings' following a detailed urban analysis of the Brighton and Hove area. The identified areas are either 'nodes' or corridors'. Paragraph 8.2.2 identifies the Marina as a node and it is further addressed in paragraphs 8.3.1.and 8.3.2. Importantly paragraph 8.3.1 states that the Marina "has **potential** as a node for tall buildings" (my emphasis). It does not state that the appeal site can accommodate a tall building.
- 4.12 In March 2008 the Council adopted Planning Advice Note PAN04 - Brighton Marina Masterplan. It was the subject of consultation between November 2007 and March 2008 and approved by the Council in March 2008. It is intended to form the basis of SPD, although not itself part of the LDF. In addition to the

Marina it also covers the Black Rock and Gasholder sites to the west and north west respectively.

- 4.13 Section 12 deals with 'Capacity, Density and Open Space'. Table 1 sets out the forms of social infrastructure provision needed in the City arising from work done on behalf of the City Council in 2006. In addition to the need to ensure that adequate provision is made to meet these needs through new development "there are certain challenges faced at the marina that must be addressed within forthcoming proposals, including emergency access arrangement, the provision of open space and the visual impact of development on the character and appearance of the Marina" (page 19)
- 4.14 In terms of density, whilst higher density development is encouraged to achieve certain benefits, and the Marina is identified as a location that may be suitable for tall buildings, paragraph 12.2 makes it clear that "it should not be presumed that all development proposals will be of higher density". One of the factors that developers of higher density schemes should be able to demonstrate is that there are "high standards of local amenity in close proximity to the development, including healthcare, local retail, post office and telecoms, banking, education at the pre-school stage and beyond, play areas, parks and open space, public transport, access to commercial centres, sports facilities and leisure and entertainment centres".
- 4.15 The Marina is considered to be currently deficient in open space provision (PAN 04, section 12.3). It is a requirement that developments aim to provide on-site open space within their schemes in line with Policy HO6 and SPG9. Particular attention should be paid to "the quality of the open spaces and recreational areas coming forward as part of the development" and linkages to existing spaces and facilities in the vicinity of the Marina.
- 4.16 In terms of residential use, whilst paragraph 13.3 recognises the appropriateness of the location for higher density development, this is subject to adequate open space provision and social infrastructure being in place to support the new resident population.

- 4.17 In terms of height constraints, in addition to the terms of the Brighton Marina Act, the PAN states "The LPA considers that new development in close proximity to the Black Rock cliffs must generally conform to or be lower than the existing cliff height, to ensure that strategic views of the sea and cliff and the setting of Kemptown Conservation Area are preserved".
- 4.18 Whilst the PAN in section 15 identifies a number of locations at the marina where 'higher density development' will be considered there is no specific reference to any of these being candidates for tall buildings. SPG15 identifies the Marina as having the potential as a node for tall buildings but neither document specifically identifies the appeal site as being suitable for tall buildings.
- 4.19 In terms of education, the PAN advises that "Financial contributions will be expected to meet the demand for primary and secondary school places at nearby schools, particularly targeted at those schools that are closest to the Marina and/or currently over-subscribed".
- 4.20 In terms of leisure and recreation, "the LPA would like to see any off-site contributions being used to support existing leisure and sports provision which is currently outside of the Masterplan area e.g. Manor Road Gym, Yellowwave, etc but likely to be used by local residents of the Marina".
- 4.21 The latest published version of the LDF Core Strategy is the Core Strategy Amendments document of June 2006. The document was the subject of public consultation until 10th August 2009. The Core Strategy may be agreed for submission by the Council during the course of the inquiry.
- 4.22 Policy DA2 deals with Brighton Marina, Gas Works and Black Rock Area. The emerging policy includes as part of the strategy for the development area a requirement that the cliff height is not breached.
- 4.23 One of the priorities in the strategy for this area is ensuring a mix of housing that reflects housing needs within the City and is accompanied by an appropriate level of open space provision.

- 4.24 Under section B of the emerging policy, provision will be made for an additional 1,650 homes by 2026 and a primary school or increase in the number of school places within or in the vicinity of the Marina. Within the Inner Harbour, provision is to be made for up to 650 residential units with a housing composition that provides for a mix of dwelling type, tenure and size to cater for a range of housing requirements. The extent of the Inner harbour is shown on the plan at Appendix B
- 4.25 Finally the City Council in June 2008 issued and consulted upon a Draft Issues and Options Study for a Brighton Marina SPD. The document has however not progressed beyond this stage awaiting adoption of the Core Strategy expected in 2011.

## **5.0 PLANNING ISSUES**

5.1 I have indicated at paragraph 1.9 above the issues that I consider are relevant to the consideration and determination of this appeal. As noted above the Council have agreed not to contest reason for refusal 6 subject to appropriate wording within the S106 in respect of the maintenance of current sea defences and upgrades to sea wall defences.

5.2 The appellants have submitted a draft unilateral obligation to the Council that is also currently before the Environment Agency in respect of this issue, for their comments. The updated position will be reported to the Inquiry.

### Design, Siting, Layout and Height

5.3 Reason for refusal one raises issues in respect of the impact of the appeal proposal on key aspects of the surrounding area. The specific details of these impacts are dealt with by other witnesses but I set out the policy context below.

5.4 The concerns relate to the unacceptability of the proposal in terms of its design, siting and layout in relation to the appeal site's setting and to the dominance of the proposal by reason of a number of impacts in relation to the adjacent conservation area, the adjacent AONB, the future National Park and the Cliff. These are all features that are protected either statutorily in legislation and/or through national, regional and/or local planning policy. The need to have regard to the height of development in relation to the Cliff is also addressed in PAN04 and emerging policy DA2.

5.5 In determining the appeal application it is not only necessary to consider the impact of the proposal on the immediate context in terms of existing development in the Marina itself but also how the proposal will affect these features that lie outside the appeal site and from where the appeal proposal is visible.

5.6 In terms of national planning guidance, PPS1 paragraph 5 seeks to ensure "high quality development through good and inclusive design". In paragraph 13(iv) it



states "Design which fails to take the opportunities available for improving the character and quality of an area should not be accepted". Paragraphs 33- 39 deal in more detail with design.

- 5.7 PPG15 deals with the historic environment and provides for an assessment of the impact of development that, whilst outside a conservation area, may have an impact on the views in to and out of it - in this case Kemp Town Conservation Area
- 5.8 In terms of the RSS, the Cross Cutting policies seek to achieve sustainable development and sustainable communities through respecting and where appropriate enhancing the character and local distinctiveness of settlements and using innovative design to create a high quality built environment.
- 5.9 The Countryside policies provide the regional framework for the proposed South Downs National Park and the AONB.
- 5.10 Finally Policy BE1 provides the regional policy for managing urban renaissance in order to identify opportunities associated with new development to help provide significant improvements to the built environment.
- 5.11 In terms of local plan policy there are four Quality of Development (QD) policies that are directly relevant to the Council's decision. These policies seek a high standard of design and to ensure that new buildings make a positive contribution to the visual quality of the environment. Proposals need to take into account the local characteristics including topography, backdrops and natural landmarks. Whilst there is a need to make efficient and effective use of a site, the intensity of development must be appropriate to its locality. There is a need to avoid 'town cramming'.
- 5.12 Policy QD4 in particular requires that development preserves and enhances strategic views. These include: views to the sea; across the seafront; to and from the Downs; and into and out of conservation areas, all matters where the appeal proposal is considered to have an adverse impact.

- 5.13 Policy HO4 seeks to make full and effective use of land. However it requires that where higher densities are to be contemplated then adequacy of the standard of design and architecture, dwelling mix and a respect for the capacity of the local area to accommodate additional dwellings must be demonstrated.
- 5.14 The local plan historic environment (HE) policies seek to ensure that new development does not have an adverse impact on the setting of listed buildings, conservation areas and historic parks and gardens.
- 5.15 Finally Policy NC8 is the local policy context to ensure that development does not affect the setting of the Sussex Downs AONB.

#### Quality of Housing

- 5.16 Reason for refusal two raises the issue as to whether the proposed development would provide good quality residential accommodation in terms of the size and disposition of the residential units in relation to surrounding features.
- 5.17 PPS3 advises at paragraph 9 that one of the strategic housing policy objectives of the PPS is to "To achieve a wide choice of high quality homes, both affordable and market housing, to address the requirements of the community".
- 5.18 PPS3 also provides support for the view that successful intensification should ensure that accommodation is not low quality and has appropriate space. In this respect paragraph 49 states:

"Careful attention to design is particularly important where the chosen local strategy involves intensification of the existing urban fabric. More intensive development is not always appropriate. However, when well designed and built in the right location, it can enhance the character and quality of an area. Successful intensification need not mean high rise development or low quality accommodation with inappropriate space".

- 5.19 Policy HO3 of the local plan seeks to ensure that new residential proposals provide a mix of dwelling types and sizes. The supporting text to the policy, whilst not saved, cross references to other parts of the Plan and the need for quality in development and a design-led approach with an emphasis on creating a high-quality living environment. In my view this includes not only the external environment but also the internal environment as contributors to high-quality design.
- 5.20 Depending upon the living habits of a resident, internal space can be occupied for significant periods of time and may provide the only space in inclement weather. In particular in one bedroom accommodation adequacy of space in my view is important as there is no additional room to utilise for internal space uses.
- 5.21 The Council's Housing Department has produced a generic 'Affordable Housing Brief' that it provides to developers proposing affordable housing in the City. I consider this document, whilst not produced by the Planning Department, to be a material planning consideration. Both the Council and the appellants have had regard to the version of this brief that relates to the Marina - Inner Harbour in their respective approaches to the appeal site.
- 5.22 The version current at the time of the December 2008 determination of the appeal application and having previously been provided to the appellants in 2006 is attached at Appendix C and is specifically entitled 'Section 106 - Affordable Housing Requirements - Brighton Marina - Inner Harbour'. Whilst from its title it appears as a site specific brief, I have been advised by the Housing Development Manager that it is a re-titled version of a generic brief and contains no differences. The City Council have now prepared, in March 2009, an updated generic version of the Brief and this is attached at Appendix D.
- 5.23 As indicated above the appellants were aware of this document and it is referred to at Appendix A of the appellants' amended Housing Statement submitted with the appeal application. They were therefore aware at an early stage in the application process of the Council's requirements in respect of flat sizes, affordable housing quantum and tenure mix.

5.24 The flat sizes in the version issued to the appellants are:

1 Bedroom Flats	51m <sup>2</sup>
2 Bedroom Flats	66m <sup>2</sup> (71m <sup>2</sup> with wheelchair)
3 bedroom flats	76m <sup>2</sup>

5.25 In respect of flat sizes, the current 2009 version differs from the former version in that it differentiates between the number of people in a 2 bed flat (2b/3p and 2b/4p) and the space requirement for 3 bed flats is now higher at 86m<sup>2</sup>. Whilst the document indicates that the internal space standards are based on the November EP space standards the revised 3bed/5p figure is in fact more closely related to the Housing Corporation Design and Quality Standards. The document also updates planning policy references.

5.26 The areas in the Housing Brief are mainly based upon the size requirements of what is now English Partnerships (EP) Quality Standards (November 2007), an extract of which I attach at Appendix E. The EP document advises that "new housing in England provides some of the poorest internal space standards in Europe and the smallest average room sizes. The size of a home is one of the key factors in defining who can live there and how they can use the property. Housing size often determines how comfortable you feel within a space and how much privacy is achieved within it. Good design and creative use of space can provide high-quality and appropriate densities".

5.27 It also advises that "to achieve homes of a good standard that are flexible and adaptable and fit for purpose, all homes must be built to the (above) minimum internal space standards. As these standards are the minimum acceptable, we would expect to see a range of homes in all development with average sizes well in excess of the minimum". This latter comment is relevant in seeking to achieve good quality space as the document seeks not just to meet the minimum standards but exceed them so that the 'average' size is well in excess of the minimum.

- 5.28 The standards that EP suggest relate to all tenure types and not just to affordable housing.
- 5.29 As further evidence of wider concern as to the size of accommodation being provided, in London the Mayor has issued draft planning guidance on larger flat sizes. When adopted these will seek space standards based upon a spatial analysis of furniture requirements from Housing Quality Indicators Version 4 (former Housing Corporation), April 2007 and Lifetime Homes Criteria. The suggested standards flow from research undertaken for the Mayor in 2006, part of the brief of which states *"There has been growing concern that the internal space of new dwellings may be getting smaller. There is evidence that less family size housing is being provided. There is however concern that internal space within both family and non-family homes may also be reducing. This has implications for both accessibility and for sustainability and for quality of life including health."* Again these emerging standards are intended to relate to all housing tenures.
- 5.30 Further evidence that space standards are under scrutiny at this time is that CABE has recently published the results of research into space standards in new homes that contains a number of recommendations for all sectors involved in the provision of new housing. One of these is that there should be a recognition that adequate space in the home has an effect on health, diversity and community cohesion and that insufficient space provision in the local housing stock will impact on local services.
- 5.31 It is my view therefore that the Council has a sound basis for seeking in particular affordable housing that meets and exceeds these minimum standards.
- 5.32 The former Housing Corporation's Housing Quality Indicators (HQI) sets out unit type by floorspace. The Design and Quality standards indicate that to be funded by grant each individual unit must satisfy the internal environment core standards. In this respect the HQI seeks for 2 bed space (1 bed) units a minimum of 45m<sup>2</sup> within a range 45m<sup>2</sup>-50m<sup>2</sup>. Whilst these relate directly to grant funding they are consistent with the wider desire expressed by EP, the Mayor of London and in PPS3 to achieve high quality design with appropriately sized accommodation.

5.33 In the appeal scheme the majority of the one bedroom affordable units fail to meet the Housing Department's brief in terms of flat size, a fact accepted and recognised in the appellants' amended Housing Statement of September 2008. Although they do meet the minimum HQI figure of 45m<sup>2</sup> within the 45m<sup>2</sup>-50m<sup>2</sup> range, the majority do so by only 1m<sup>2</sup>. In this respect many of the units are 5m<sup>2</sup> smaller at 46m<sup>2</sup> rather than the 51m<sup>2</sup> sought by the Council. As a general indication in terms of seeking to visualise the difference in floorspace, a significant piece of domestic furniture such as a king size double bed would occupy 3.9m<sup>2</sup>. The 5m<sup>2</sup> difference would therefore be greater in area than this. Also for reference purposes the London Mayor's draft standards seek 50m<sup>2</sup> for a one bedroom unit.

5.34 Whilst the appellants Housing Statement advises that all the 2 bedroom units meet the BHCC standards there are in fact several of the two bedroom units that did not meet these standards at the time of determination. The original response from the Council's Housing Department was that there were eight 2 bedroom units that were 'undersize' These all located within the Cliff Building as follows:

On level 2, eleven of the one beds and one of the two beds are undersized (both social rented and shared ownership)

On level 3, twenty seven of the one beds and four of the two beds are undersized (both social rented and shared ownership)

On level 4, thirty nine of the one beds are undersized (both social rented and shared ownership)

On level 5, forty of the one beds are undersized (both social rented and shared ownership)

On level 6, forty one of the one beds are undersized (both social rented and shared ownership)

On level 7, thirty four of the one beds and three of the two beds are undersized (both social rented and shared ownership)

On level 8, twelve of the one beds are undersized (shared ownership only)

5.35 In preparing my evidence I have looked at the matter afresh and identified that there are in fact 17 undersize 2 bedroom units. So in addition to the above the following flats should be added:

On level 5, five of the two beds are undersized (social rented)

On level 6, four of the two beds are undersized (social rented)

- 5.36 Under the brief at the time of determination there were therefore in total 221 'undersize' affordable flats in the appeal scheme due to the additional units now identified, out of the 520 affordable flats proposed, equating to 43% of the affordable units being under the minimum sought by the Council. The flats would also fail to achieve an average well in excess of the minimum size as required by EP Quality Standards document. All of these flats are located within the Cliff Building, and consequently the issues explained by Mr Roake are also relevant to these units.
- 5.37 These standards have been increased in the latest Housing Brief (March 2009) by the inclusion of separate floorspace standards for 2b/3p and 2b/4p units. This now means when assessed against these standards that 188 of the 2b/4p units would fail when tested.
- 5.38 Under the standards in the new generic brief then there are now a total of 409 flats that are 'undersize' out of the 520 affordable flats proposed. This equates to 79% of the affordable flats. Again all are located within the Cliff Building.
- 5.39 The appellants' case is that the flats meet the former Housing Corporation Housing Quality Indicators (HQI) size to qualify for grant and that that is adequate. It is correct to say that they exceed the minimum end of the range in the HQI at 45m<sup>2</sup> and some exceed the upper end of that range. However the lower end of the range is also a minimum unit size and the Council's aspirations through its QD policies are for a high quality scheme that provides spacious living partially compensating for the significant lack of on site open space at the Marina. To exceed the HQI range the units would have to exceed the upper end of the range by at least 1% (51m<sup>2</sup>) and they would then be eligible, subject to meeting a range of other criteria, to attracting a higher grant weighting.
- 5.40 The appellants have clearly recognised that providing units that meet the Council's standards is beneficial as they provided the majority of the large units (a total of 299), at the time of determination, to the standard required at the time. These are all 2 and 3 bedroom units. The Council therefore consider that

if the appellants could provide 57% of the affordable units to the then current standards then it should be possible to provide 100% to these standards as part of a high quality spacious scheme. The appellants' only justification for making such provision is a financial one, rather than a physical or functional one.

- 5.41 I am therefore of the view that the proposal, particularly when coupled with other constraints facing accommodation for residents in the Cliff Building, provides for a poor standard of living contrary to Policies QD1, QD3 and PPS3.
- 5.42 In addition to the internal space standards there is a cumulative impact in relation to the quality and quantum of the outdoor space and the relationship of some of the units to the adjacent natural and physical features. Mr Allen deals with the quality of the outdoor space, All the units within the Cliff Building that face towards the marina access ramps are social rented units and have a single aspect to the south onto and over the ramps. They are located only 10m off the face of the access ramps with some of the units at the western end directly facing the ramp up stands.
- 5.43 Within the body of the Cliff Building development there are single aspect units - both social rented and shared ownership - that face each other across a 25m wide courtyard on an east/west alignment. The Design and Access Statement at page 84 presents figures in relation to shading across the site and those areas that do not receive any sun as at 21st March. This information is drawn from Chapter 15 of the ES that considers the position in respect of sunlight to all the internal courtyards and opens space to the north of the Cliff Building. This shows that flats in the south-west corner of the courtyards will not receive any sunlight and in respect of the easternmost courtyards themselves some 30% would not meet the preferred 25% in the BRE guidelines.
- 5.44 Whilst, as indicated above, these areas do not receive any sunlight an impression could be formed that the rest of the courtyard in each case is bathed in sunlight both on 21st March and later in the year. This, however, is not the case.



- 5.45 At Appendix 15.3 of the ES there are a series of six shading plot diagrams for the whole appeal scheme. These are taken at 8am, 12pm and 4pm on 21st March and 21st June. In respect of the courtyards within the Cliff Building these show the whole courtyards in shade at 8am on 21st March. By 12pm the sun has moved round and sunlight now reaches some parts of the western side of the courtyards but with large areas still in shade. By 4pm all of the courtyards are in total shade again.
- 5.46 From this analysis I can conclude that the flats at the lowest level in these courtyards will only receive some sunlight at a time between 12pm and 4pm on 21st March and it is likely to be for a very limited time.
- 5.47 The position is improved at 21st June with sunlight on the central area of the courtyards at 12pm although the whole courtyards are in shade at 8am and 4pm. Once again the flats on the lowest levels of the eastern side of the courtyards are in shade at 8am, 12pm and 4pm so the only time they will receive any sunlight is for a limited time between 12pm and 4pm.
- 5.48 The courtyards will be placed in shade for large parts of the day and that will affect in particular the shared ownership units at level 3 that are primarily 2b/4p units and also the social rented and shared ownership units at level 4.
- 5.49 In terms of the outlook for north flats in the Cliff Building the reports author accepts that some of these will have low levels of sunlight. He then states: "but will benefit from interesting views towards the sunlit cliff face and the open area between it". I do not believe that a view of a cliff is a substitute for acceptable levels of sunlight.
- 5.50 I also mention here by reference to the same shading plots from Appendix 15.2 that the flats that look out over the cascading street are also shown to be in shade for significant periods of the day at both 21st March and 21st June. So not only do the units that look out into this space suffer from shading but the principal walkway through the development also does so.

- 5.51 Some of the flats that were considered 'undersize' in December 2008 also suffer from being within those areas of the courtyards that will be in permanent shade or prolonged periods of shade. Others that are 'undersize' face onto the access ramps are constrained in terms of outlook and noise. Accordingly there is a cumulative consideration with the majority of the affected units being located throughout the levels of the Cliff Building and towards the western end of the building.
- 5.52 Overall this will result in poor quality accommodation, with poor internal space standards, poor outlook, shading, all resulting in unsatisfactory living conditions contrary to adopted policies of the development plan.
- 5.53 I express further concerns as to the impact of those matters when considered in conjunction with the tenure of the development in the next section of my evidence.

#### Housing Need

- 5.54 Reason for refusal three raises two issues in respect of housing need; firstly in respect of the proportion by tenure of affordable housing and secondly in relation to the type of accommodation being provided.
- 5.55 Policy HO2 deals with affordable housing from 'windfall' sites. The appeal site is not listed as an allocated site under Policy HO1 and therefore would be counted as a windfall site. The Policy seeks to negotiate affordable housing on sites that would produce 10 or more dwellings at a level of 40%. The policy then sets out five criteria which regard will be had to in assessing the level and type of provision.
- 5.56 The criteria relate to: (i) local need; (ii) accessibility to local services and facilities and public transport; (iii) the particular costs associated with the development; (iv) the extent to which the provision of affordable housing may prejudice the realisation of other planning objectives; (v) and the need to achieve a successful housing development. The appellants' case relates to

criterion (iii) and the particular costs associated with the development. The Council also takes issue with the mix of dwellings through refusal reason 3.

- 5.57 A Housing Needs Study was undertaken on behalf of the City Council in 2005. The report identified the scale of affordable housing need in the City and recommended (paragraphs 1.16.3 and 11.10.2) that 45% of new units negotiated should be the level sought from the total of all sites negotiated. This was on the basis that 25% of the housing would be offered for rent and 20% as subsidised low cost market housing.
- 5.58 The emerging Core Strategy through Policy CP11 seeks to negotiate with developers to secure up to 40% affordable housing. Again it sets out a number of criteria against which the type and proportion of affordable housing will be assessed. It also indicates that across the city, the required tenure split for affordable housing in terms of total delivery will be 55% social rented affordable housing and 45% intermediate forms of affordable housing. This proposes to maintain the greater emphasis on providing for social rented accommodation.
- 5.59 The first issue in this case relates to the proportion of affordable housing tenure in terms of social rented and intermediate housing. The same housing brief referred to above in terms of unit sizes requires a mix of affordable housing at the Marina on the basis of 60% being social rental units and 40% being for shared ownership. This split between social rented and shared ownership is itself a deviation from the normal approach taken by the Council across the whole of the City. A revision to the generic version of this brief in March 2009 advises that the Council will now accept proposals with 55:45 in favour of social rented units across the City. This is consistent with the direction of travel of the emerging policy within the Core Strategy.
- 5.60 The appellants initially proposed as part of their planning application an affordable housing mix of 50:50 (social rented/shared ownership) itself at variance with the findings of the HNS and the Housing Brief. In September 2008 the appellants amended their submission to one more in favour of shared ownership with a mix of 35:65. This is not in accordance with the affordable housing brief for the site, the Housing Needs Survey, the generic brief for the

City or the emerging core strategy policy. No housing justification for this deviation has been put forward.

- 5.61 Policy HO2 has as one of its criteria "the particular costs associated with the development of the site". In this respect the appellants made submissions to the Council on the costs of bringing forward the development. These were considered by the District Valuer in his draft report dated 27th October 2008 and finalised on 13th January 2009.
- 5.62 From this report there is a figure put into the spreadsheet under the heading of 'Land' and entitled 'Cash Payment'. This figure is also referred to in Section 15 c) of the report where it states that a land cost of £20,280,113 has been adopted together with reprovion costs for the existing uses. In total these amounts result in a figure of over £42m.
- 5.63 The original figures appear to have been produced at or close to the top of the market in terms of land values, at the latest at the beginning of February 2008 and may date from earlier. Since then land values have fallen as have sales values and build costs.
- 5.64 I find evidence of these matters in information from the VOA (Valuation Office Agency) and the BCIS (Building Cost Information Service) figures. The Valuation Office Agency publish a bi-annual report on the property market (Appendix F). For the Brighton area of the South East this shows that in July 2008 sites for 'flats and maisonettes' had an illustrative value of £5.25m/ha and for January 2008 a figure of £5.0m. On this basis whilst these are illustrative figures we would expect the appellants to be able to negotiate a reduction in the 'cash amount' to be paid for the site, particularly in a climate of falling land costs since their own valuation date of February 2008.
- 5.65 The other aspect that forms a significant figure in the 'land costs' is the reprovion costs for the existing floorspace at in excess of £17m. Information from BCIS shows that average tender prices decreased from an indexation value of 247 in the middle of 2008 to a value of 229 in the first quarter of 2009. This

would be an 7% reduction in average tender prices. Over this same time period the value of sales of flats has also reduced.

- 5.66 The combination of these figures is likely to result in the appellants being able to expend not only a reduced sum on land but also to secure reprovion costs at a reduced level, though there is, of course, also the reduced income from private flat sales to take into account.
- 5.67 In this context I note here the assumptions made at section 15 b) of the DV's report. Here details are provided as to the value of the affordable housing offer from the RSL that would have secured a 50:50 split between social rented and shared ownership. This is given at £106m when compared to the offer of just over £110m to secure a 35:65 mix.
- 5.68 I set out below the potential implications of the current economic climate on the scheme using the published figures referred to above. The first column uses figures taken directly from the DV's original report that are found in the Table that follows Section 15 of his report. The figures in that Table are in turn derived from the appraisal at Appendix 5 of the same report.
- 5.69 The second column makes adjustments to these to reflect the change in market conditions between July 2008 and January 2009.
- 5.70 I have chosen these two dates after discussion with the District Valuer's office and having regard to published material to represent a snap shot in time at what was possibly a point shortly after the top of the market and a more recent low point of the last eighteen months in terms of market conditions in respect of land values, flat values and build costs. The second column also utilises an affordable value of £106m rather than £110m for the affordable element. These is also derived from the DV's report and assumes that these values are underpinned by grant.

Item	Costs	
	July 2008	January 2009
<b>Gross Development value</b>		
Private Residential	£292,143,415	£257,086,205
Affordable residential	£110,470,000	£106,000,000
<b>Total</b>	£402,613,415	£363,086,205
Land Costs	£42,539,113	£40,316,977
Profit	£46,258,981	£29,568,474
<b>Overall %GDV</b>	<b>11.49</b>	<b>8.14</b>
<b>Overall % Costs</b>	<b>12.98</b>	<b>8.87</b>

5.71 Whilst the estimated profit in January 2009 is less than previously estimated the appeal scheme is to be phased and by the time the appeal scheme is being built I would expect the economic climate to have improved to at least the position in July 2008 and possibly better. It is my view therefore that there is potential in the appeal scheme such that the originally proposed a 50:50 mix in accordance with the then housing brief is achievable. The revised generic brief and the emerging Core Strategy seek a 55:45mix. At least the former if not the latter mix should be possible based upon the information in the DV's report referred to above.

5.72 I am therefore of the view that the appeal scheme should be contributing more with an increased level of a social rental units than it currently proposes. This would enable a more mixed and balanced community to be created at the Marina, particularly in the context of the absence of any social housing in the existing community and the lower level accepted in 2006 on the Brunswick scheme.

5.73 The appellants seek to argue that the mix considered acceptable in the Brunswick scheme forms a precedent for their site. The Brunswick application was approved in 2006 and provides for 40% affordable housing. In terms of

tenure mix it provided for approximately a third for rent for affordable rent and two-thirds as 'Homebuy' (affordable home ownership). The affordable units are to be dispersed throughout the scheme, and the Council will have the final say regarding the mix and location of the units through the section 106 agreement. The Brunswick site and the current appeal site represent the only major opportunities for new housing and other uses at the Marina under emerging Policy DA2. Therefore there will be no other opportunity to secure a balanced and mixed community here if the opportunity is not taken to do so through the appeal site.

- 5.74 The appeal site must therefore deliver an appropriate mix of social rented and intermediate housing which it does not do with the mix biased heavily towards the intermediate sector.
- 5.75 At the pre-inquiry meeting on 18th September 2009 the Inspector asked the appellants for updated information as to the viability of the appeal scheme in the light of the current economic conditions. I have asked for this material in advance of the exchange of evidence but have been advised by the appellants' agents that this will not be available until after exchange. It may therefore be necessary for the City Council to make further submissions on this matter when the appellants' material is available.
- 5.76 The second issue is the type of accommodation being provided. It is accepted that a range of accommodation is being provided from two studio units through to three bedroom units. However the proportion of larger three bedroom units is small at 11% of the affordable units and 7% overall. It would perpetuate a problem in the City in that the existing stock is mainly one and two bedroom units and the majority of new stock is also one and two bedroom units.
- 5.77 The site's 2006 housing brief sought in respect of affordable housing 40% 1 bed flats, 50% 2bed flats and 10% 3 bed flats. The appellants propose 40% 1 bed flats, 49% 2 bed flats and 11% 3 bed flats. Throughout the City the emerging policy in the Core Strategy now identifies a preferred mix of 30% one bedroom units; 45% two bedroom units and 25% 3+ bedroom units reflecting the results of the SHMA. This seeks to address the lack of larger family units being brought forward in the City. The level of development being proposed in the appeal

scheme provides a significant opportunity to secure a greater amount of family accommodation. To meet the aspirations of the Core Strategy a further 239 three bed flats would be required.

- 5.78 Whilst in relation to affordable housing the proportions sought were broadly met at the time of submission, additional material through the results of the Strategic Housing Market Assessment (SHMA)(April 2008) has shown the extent of the need for larger units in developments.
- 5.79 The SHMA indicates that amongst those households identified as in the highest priority need (Bands A and B of the Housing Register), 41% need a 2 bedroom or larger property, often because they are young families with children. The SHMA also identifies that although the greatest need (numerically) is for smaller (one/two bedroom) properties there are also significant pressures on larger homes and a short term priority for a number of three/four bedroom properties. The need for family sized affordable housing will be a specific consideration when assessing the overall amount and type of affordable housing that is required to be provided by suitable development proposals.
- 5.80 I have addressed my concerns in respect of the quality of the proposal accommodation earlier in my evidence. In the paragraphs above I have addressed my concerns in respect of the proposed tenure mix.
- 5.81 The appeal proposal places all the affordable housing in the Cliff Building rather than throughout all the buildings that form the appeal application. It is this building, given its size and relationship with surrounding structures, that is the most constrained. All the private units in that block are located towards the eastern end of the building where they benefit from improved relationships with surrounding features whereas all the social rented accommodation is proposed primarily facing the access ramps.
- 5.82 Affordable housing is provided within the Cliff Building. It is suggested within the appellants' Housing Statement that a 'tenure blind' approach to the design and disposition of the units is a more acceptable approach than distributing units throughout the development. They also states that 'no blocks are exclusively



market sales' but this is a reference to blocks within the Cliff Building rather than the main buildings within the appeal scheme.

5.83 I do not agree with the approach adopted by the appellant when the result is that the social housing is provided to a poor quality of accommodation with the constraints that I refer to elsewhere in my evidence. The appellants Housing Statement also suggests that "Many social rented and Homebuy apartments have some of the best views within the development....". It is not clear here whether they are referring solely to within the Cliff Building or within the whole appeal scheme but when I look at the position of the affordable units this is not a view I share.

5.84 The appellants have been keen to refer to the Brunswick development as noted above. However in that development the affordable housing is to be dispersed throughout the development and the Council will have some control over their location. Therefore 'pepperpotting' the affordable housing throughout the development at the Marina appears not to be an issue relating to the Marina per se.

5.85 The Councils Housing Department agrees that the affordable housing should be tenure blind. However it also seeks that it is fully integrated with the market housing across the site in small clusters distributed evenly throughout the development.

#### Summary

5.86 The appeal scheme provides for a level of affordable housing that is not acceptable in terms of meeting the housing needs of the City. The appellants have not justified in housing terms why the proposals should provide a tenure mix that is at variance with that sought.

5.87 In terms of the mix of unit sizes, inadequate provision is made in respect of the need to provide for larger units to match the needs of the City. Provision of all the housing units within the Cliff Building would not result in a balanced and

mixed community, particularly given the lack of affordable housing in the accommodation existing in the rest of the Marina.

- 5.88 The appeal scheme fails to meet the requirements of PAN04 to provide "a good mix of housing"; " a mix of unit sizes ranging from 1, 2, 3 and 4 bed plus properties" in major developments; and the achievement of a "more genuinely mixed community".

#### Outdoor Amenity Space

- 5.89 Reason for refusal four raises the issue as to the adequacy of the design and provision of outdoor and recreational space.
- 5.90 Mr Allen deals with the qualitative aspect of outdoor amenity and recreational space proposed and in the local area.
- 5.91 Policy HO6 of the local plan requires that new residential development makes suitable provision for the requirements generated by the development in terms of outdoor recreation space. The starting point of the policy is that provision should be made on the relevant site. In this case the starting point means the Marina site itself.
- 5.92 Only where it is not practicable or appropriate for all or part of the space to be provided on site then a contribution to provision on a suitable alternative site may be acceptable. Such provision will be secured through conditions or a planning obligation.
- 5.93 The Council's draft SPG9 – "A guide for Residential Developers on the Provision of Outdoor Recreation Space" - provides further guidance on the level of outdoor space needed. This enables the level of occupancy of the proposed development to be calculated.
- 5.94 The draft SPG was the subject of consultation in 2000 and amended following consultation in 2002 and 2005. The initial amendment coincided with the

publication of PPG17 in July 2002 that required councils to undertake their own audit of open space in order to establish local requirements.

- 5.95 That local audit has now been undertaken - Open Space and Recreation Study - and forms one of the evidence based documents for the LDF. It was published in March 2009. This document identifies parts of the Marina as lying beyond a 720m - 15min walk from children's and young peoples' outdoor space. This distance however takes no account of physical barriers or topography. Both of those factors are relevant to development at the Marina and where new provision is made.
- 5.96 As indicated at paragraph 6.87 of the SoCG, the proposed development will generate 2804 persons based upon the current housing mix. There is agreement that under Policy HO6 and the methodology in draft SPG9, the total area sought would equate to 6.7ha of land. This represents 56% of the area within the red line application site. The City Council accept that seeking to make full provision on site would constrain the ability of the developer to bring forward appropriate development.
- 5.97 The appellants consider that "it is not practical or possible to provide the full amount on-site" (ES Vol 1 paragraph 10.195). Whilst I accept this is in principle, I still consider that more provision should be made on site than currently proposed.
- 5.98 The appeal proposal is to provide only for some elements of outdoor recreational space on site. These are set out in Table 7 in the Statement of Common Ground and the areas total 5,164m<sup>2</sup>. This represents 8% of the total amount sought. Only by including the additional areas relating to surface improvements to the pedestrian ramp and along the Cliff Park could the levels rise to 10%. Accordingly there is a substantial shortfall in on site provision and I comment further on this in the context of the calculation of off-site contributions. It would then be appropriate to consider making this shortfall up through off site enhancements.

- 5.99 Where there is an on-site shortfall, Appendix 1 of the draft SPG provides a calculation based upon April 2005 figures as to the level of financial contribution that should be made. This is £1,871,596 plus a maintenance sum of £467,899 (Appendix G).
- 5.100 The appellants have offered a total contribution of £1,045,000, divided between physical works and the provision of a sports coordinator.
- 5.101 In their ES, paragraph 10.195, they state: "taking into account the new recreation provision proposed on the application site, the range of existing facilities nearby, and the proposed contributions/works in kind which will enhance recreational provision in East Brighton, the net impact of the scheme on recreation provision is assessed as negligible overall".
- 5.102 The appellants also cite in their ES the existing recreational facilities at or close to the Marina, these being the David Lloyd Health and Fitness Centre at the Marina, East Brighton Park, the boating facilities at the Marina and cafes/restaurants. Only the Park provides for free access to open space and limited recreational facilities; membership is required for the Heath and Fitness Centre, not everyone has access to a boat, and the cafes/restaurants provide for a different type of leisure to open space and recreation.
- 5.103 The Council considers that this is an optimistic view on the position in that the facilities referred to are not likely to be accessible to future resident of the appeal scheme or be adequate for those residents. Greater provision should be made to mitigate the lack of provision on-site or at least within the Marina in accordance with recognised standards before consideration is given to off site contributions.
- 5.104 The Council's spreadsheet provides a direct comparison between the areas required under each outdoor recreational category and that to be provided on site by the appellants. All areas show deficiency in provision when compared to the standards.

- 5.105 The appellants have not disputed that the methodology that the Council employs to assess the level of contribution is an appropriate one. Therefore having regard to the Council's draft SPG9, the appellants were asked for a financial contribution to the improvement of off site recreational facilities to include a sum for maintenance.
- 5.106 Following discussion with the appellants they initially offered a sum of £845,000 to implement various off site measures. This figure included £100,000 for an on site sports co-ordinator. Following comments from the Council's officers as to the offer and the scope of the facilities to be improved, on 28th November 2008 the appellants increased the sum offered to £1,045,000. This revised sum is intended to be divided into two, with £200,000 to fund a sports coordinator and the residual £845,000 to fund the off-site works.
- 5.107 The appellants' proposed contribution would fail to provide for the required level of children's equipped playspace let alone for other areas of playspace and sports facilities.
- 5.108 The proposed works that the appellants would see benefitting from the contribution are set out on page 140-141 of the officer's report to committee. None of these works are on the marina itself, although prior to determination of the appeal application the appellants did include provision for trolley facilities for the storage and transport of surfing/marine equipment.
- 5.109 Whilst these off site works will be of some benefit to new residents in the Marina and to the wider community in East Brighton they do not represent directly accessible new facilities for those residents. New residents will need to leave the Marina to utilise them.
- 5.110 Provision is made in part for play and youth facilities within the Marina but not significantly for the new adult population, that on the basis of any calculation as to the population of the new development, will exceed 1000 people. In my view they do not represent effective mitigation of the absence of more substantial on-site provision.

5.111 PAN04 (page 20) states:

"If developers are unable to realise the full on-site provision of open space required under policy HO6, then the LPA will actively seek contributions towards recreational activities associated with the sea and beach e.g. showers, sports facilities, sports coordinators, storage facilities, boardwalks etc".

5.112 The PAN continues "the provision of accessible natural green spaces is also a priority for the marina and wider Masterplan area". In this respect the existing marina is devoid of any meaningful open space. Other than the contribution to the sports coordinator and the small storage facility none of the proposed contributions would meet the aspirations for the Marina as set out in PAN04.

5.113 I discuss in Appendix H each of the sites put forward to receive funding from the off-site contribution offered by the appellants. I set out below in the table a summary of the offer for each site, although these contributions total less than both the sum sought by the Council and that offered by the appellants.

<b>Location</b>	
Madeira Drive	£100,000
Manor Road Gym	£25,000
City College	£180,000
East Brighton Park	£220,000
Rottingdean Terraces	£60,000
Rottingdean Beach	£60,000

5.114 I consider that the level of provision made on the site and the level of off-site contribution offered by the appellants is inadequate to meet the needs of future residents.

### Summary

- 5.115 I consider that the City Council is justified in seeking a greater provision of open space and recreational facilities on the appeal site given the nature of access to locations beyond the Marina. In particular children's playspace is poorly located for users other than in the Cliff Building. Where it is not provided on site then adequate alternative provision needs to be made off site. The proposal fails to do so.
- 5.116 The proposal therefore fails to comply specifically with Policy HO6 of the saved local plan, draft SPG9 and PAN04

### Educational Facilities

- 5.117 Reason for refusal five raises the issue of the adequacy of the contribution to meeting the educational needs of residents of the proposed development.
- 5.118 Policy HO21 deals with the provision of community facilities in residential and mixed use schemes. Where it can be demonstrated that it is not practical to integrate community facilities into a development a financial contribution will be sought towards the construction of these facilities.
- 5.119 Finally only in exceptional circumstances, where land cannot be made available, will a contribution towards the provision of community facilities be sought on an alternative site, readily accessible to the future residents of the proposed development.
- 5.120 Policy QD28 then deals with Planning Obligations and these include:
- "a. the provision of community facilities "including educational...facilities".
- 5.121 The appeal proposal makes no provision for any educational facility as part of the scheme. Therefore a contribution is sought to improve existing schools in the area.

- 5.122 The Council has produced a spreadsheet (Appendix I) and guidance note that they use to calculate the extent of the financial contribution that would be required to mitigate the impact of the residents in new residential developments in respect of education. This is based upon work previously undertaken for a future SPD on Planning Obligations. It allows for figures to be input into the spreadsheet reflecting the mix for a particular scheme. It therefore sets out the number of 1bed, 2bed and 3bed units within a scheme; these unit numbers are then multiplied by the cost of providing child spaces in schools to reach the contribution sought.
- 5.123 The spreadsheet takes into account child yield from market and affordable housing.
- 5.124 The costs are established for all levels of education from nursery through to sixth form but the City Council only seeks a contribution for primary and secondary school age children. The contribution sought in respect of the appeal scheme was based upon the mix and number of units in the original submission with a total of 1294 units in September 2008. The appeal scheme however amended that mix and total unit numbers, which slightly affects the contribution that should be sought.
- 5.125 The contribution sought was also based upon 2006/07 costs of providing school places. This was based upon the DfES cost multiplier of £11,616 for primary school aged children and £17,749 for secondary school aged children. The latest figures from DfES as at the 4th quarter of 2008 are £13,360 and £20,131, just over a 13% cost increase.
- 5.126 As indicated above the contribution sought by the Council last year was £1,549,389. Running the spreadsheet again based on the actual appeal scheme mix gives a slightly increased figure that needs to be sought of £1,583,080. If I were to add the 13% increase in costs this would increase the figure further to some £1.788m.
- 5.127 The appellants discuss the position on education in Chapter 10 of their submitted Environmental Statement and Appendix 10.2. Here they consider the



figures on child yield derived from using the Council methodology and those that they have used based upon data from the 2001 census. Table 10.11 reflects the child yield as derived from the Council methodology and Table 10.12 as derived from the appellants' methodology.

- 5.128 Having reviewed this data I sought to reproduce the data that the appellants had provided and I was unable to do so utilising the same Super Output areas from the 2001 census. I derived different child numbers from those set out in the ES. Having raised this with the appellants they reconsidered those matters and have provided a replacement Appendix 10.2 (Appendix J). This now shows that utilising the appellants' method' 99 children were resident in the Marina in 2001 rather than the 89 previously stated by the appellants.
- 5.129 The appellants consider that the Council's methodology will lead to a figure that is likely to be an over estimate of the child yield. At paragraph 10.158 of the ES they put forward four factors (not including reference here to the Brunswick scheme, although they do cite it as a precedent elsewhere). These factors are the presence of second homes; proportion of flats without gardens; high rise living; and the high proportion that may attend non-state schools. None of these matters are ones that could be controlled by condition for the lifetime of the development, nevertheless I consider each of them in turn below. They do not have regard to the potential of the point that in addition to the absence of any affordable housing currently at the Marina, even medium sized units there may be occupied by childless adults that would serve to artificially depress the child population at present.
- 5.130 Utilising the ES approach the appellants' revised figures indicate that the scheme would generate 169 children from nursery through to sixth form age. This compares markedly with the Council's estimates for the development at 348 children, more than double the appellants' figure. In terms of those of primary and secondary school age, the years for which a contribution is sought, the relevant figures are 89 (appellants') and 243 (council's) respectively.
- 5.131 The appellants' methodology in the ES Appendix 10.2 partly acknowledges that due to the differences in tenure mix between the accommodation currently at the Marina and that proposed, the child yield will be higher than the Census

suggests. This is due particularly to the higher number of children associated with affordable housing, a tenure not currently present at the Marina. They suggest that if the Council's separate estimate of children arising from the affordable element of the scheme alone (106 children) is reduced by 50% (53 children) to reflect existing residents in the City being re-housed and the Council's policy of not housing families with children in units above 5th floor, then the likely number of children the scheme as a whole would yield would be 142 of primary and secondary school age.

5.132 It is worth noting here that the reference by the appellants to the Council not housing families above the 5th floor is misleading. Firstly the affordable housing is to be provided by an RSL rather than the Council. Secondly the appeal scheme includes 3b/5p accommodation in the social rented sector above the fifth floor in the Cliff Building. Given that this accommodation is specifically intended for family occupation the appellants' suggestion is at odds with what they are providing and its proposed occupation.

5.133 At paragraph 20 of the appellants' revised Appendix 10.2 it states "the two estimates should be regarded as the ends of the range. The actual number of children of primary/secondary school age which will result from this proposed development should fall within this range, but based on the various factors set out above, appears more likely to be towards the lower end of the range". This is not something that I accept as I do not believe that the appellants' assumptions would produce this result.

5.134 The appeal scheme contains a total of 1,301 new dwellings and with the exception of the two studio units and some of the one bedroom units, could be expected to contain children that will require access to primary and secondary education. The appellants suggest that the average household size based upon Census data within the existing Marina at 2001 is 1.5 persons per dwelling. They then make adjustments for a lesser proportion of family units in the appeal scheme to arrive at an average of 1.4 persons per unit and apply this to the number of units proposed to arrive at a total residential population of 1,820.

5.135 This figure is that which they then use to derive a child yield for the proposed development. This population figure is however at variance with the population

for the appeal scheme that is derived using the methodology in draft SPG9 and agreed, within the SoCG, at 2,804 people. Application of the proportion of children within the existing Marina at 2001 (9.3%) to this population figure would result in a new figure of 261 children or 136 children of primary and secondary school age. This compares with the 89 children in the appellants' revised Appendix 10.2.

5.136 Taking this potential number of children and adding to it the Council's estimation of the 106 children likely to arise from the affordable housing content of the appeal proposal (revised Appendix 10.2 paragraphs 18 and 19) would result in a revised children yield figure of 242, almost identical to the figure that the City Council has put forward of 243 children. Without accepting the appellants' view that the 'affordable top-up' of 106 children should be reduced by 50%, on the appellants' contention, the revised lower figure would now at least be 189 children, 47 more than they suggest.

5.137 The appellants' justification as to why the child yield would be lower than the Council suggest is based on a number of factors that I consider below.

#### Second Homes

5.138 The appellants' suggest that given the level of second homes revealed by the 2001 census at the Marina, this is likely to be replicated in the appeal scheme. I have seen no evidence that the appellants have submitted that would suggest that the new housing would also have a high proportion of second homes within it. It would not be possible to condition this aspect and in any event, this would in principle run contrary to the intention of providing for new homes to meet the housing needs of Brighton.

5.139 The well published and recent collapse of the housing market and the buy to let market illustrates in a significant way how different the housing market is today and is likely to be in the immediate future compared to when the existing housing at the Marina was built, purchased and occupied. This will also affect the potential for the second homes market in the appeal scheme.

5.140 The appeal proposal will also provide for a significant level of affordable housing that is not represented in the current tenure composition of the Marina. This would need to be taken into consideration in assessing whether account should be taken of the current composition of the Marina and its applicability to the proposed composition.

Lack of Gardens

5.141 The appellants' second point relates to the proportion of units that do not have direct access to gardens. This runs contrary to the appellants' argument elsewhere that they are providing flats with good access to private and semi-private amenity space, together with new facilities for children of all ages on site, to an acceptable level.

5.142 However the appellants argue that there will be at least 99 children in the appeal scheme and the City Council suggest more. The absence of direct access to gardens will not significantly affect the level of children in the scheme. Children of different age groups will have different needs in terms of access outdoor space and so older children may be less dependent upon direct access to gardens, but will still need access to education.

High Rise Living

5.143 The appellants suggest that the child yield will be lower given the tall nature of the buildings. Again they do not put forward any specific evidence to support this, particularly on the affordable element of the scheme. There are 3b/5p and 2b/4p social rented flats on all levels of the Cliff Building and it is inconceivable that these will not contain families to maximise occupation of the units. Whilst not affordable housing' the appeal proposal also provides for family sized accommodation in both the Sea Wall (Penthouse level) and Marina Point (6th floor and above) buildings.

Attendance at Non-State Schools

- 5.144 The appellants argue that children from the proposed development may attend non-state schools and therefore no provision would need to be made for these children as part of the educational contribution. Again they put forward no evidence to support this contention.
- 5.145 The City Council's child yield calculation already takes this factor into account as it compares births and GP's registrations with those numbers actually seeking school places.
- 5.146 Finally, as noted in the committee report, the appellants rely on what has previously been permitted in terms of a contribution in connection with the 2006 Brunswick scheme. Here a figure of £300,000 was negotiated in 2006 having regard to a lower number of units and a previous figure negotiated on an earlier scheme. The appeal scheme is the one before the inspector not the Brunswick scheme and each scheme should be considered on its own merits.
- 5.147 The appellants' child yield figures are based upon data from the 2001 census for the Marina area. How they arrived at the child yield figures is set out in Appendix 10.2 of the ES. This information is now 8 years old and relates to a distinct area with particular characteristics. I consider that these characteristics are unlikely to be reproduced in the appeal scheme, particularly given the level of affordable housing in the scheme.
- 5.148 It is therefore more appropriate to consider the City Council's figures for the wider City area where there is a more diverse mix of households that is likely to be reflected in the appeal scheme.
- 5.149 The appellants have suggested that their figures should be regarded as a minimum for child yield and the City Council's as a maximum figure, and that it would be appropriate to seek some middle ground. However whilst they indicated a willingness to do this during the compilation of the SoCG, they subsequently declined to do so in an email of 25th August 2009.

5.150 On application the Council provides to developers a guidance note and spreadsheet that enables applicants to calculate the contribution needed for education contributions. This takes into account child yield from different unit sizes; the cost of providing child places; whether the units are affordable and the number of units.

5.151 The appellants have put forward a child yield figure that they consider relevant and appropriate. However they do not appear to then use this figure in any way to justify the contribution put forward for education. This is also the case with the additional sum offered by the appellants in November 2008 in what seems to have been an attempt to remove any education objection to the consideration and determination of the appeal application.

#### Primary Schools

5.152 The nearest primary schools to the appeal site are:

- St Marks CE Primary (Community School) - Manor Road (670m)
- St John The Baptist RC (Voluntary School) - Whitehawk Hill (1.09km)
- Whitehawk Primary School (Community School) - Whitehawk Road (1,22km)

5.153 I have now obtained the most up to date data for these three schools from the City's education department. This shows that within these three schools there are 258 places available as at the end of August 2009. Most of these are in Whitehawk Primary School where there are 228 places available, although this is the furthest of the three schools from the appeal site. There is more limited capacity in reception and year one, compared to later years. In respect of the other two primary schools neither have capacity in reception and year one with St John the Baptist only having three places across the whole school.

- 5.154 Beyond these three schools is Queens Park School that has only limited capacity with only 8 places in the later year groups. There is no capacity in year groups reception to year two.
- 5.155 Information provided by the Council's education department as part of a report to the Cabinet Member Meeting on 5th October is that the City is currently experiencing rising primary school rolls. Between September 1999 and August 2008 the number of schoolchildren in primary schools had grown by about 25%. On this basis they are predicting that there will be a shortfall in reception places from September 2011. It is therefore expected that by the time that households with children move into the appeal scheme the position will have changed from that which existed at the end of August 2009.
- 5.156 To partially address this issue the Council resolved at its July 2009 Cabinet Member Meeting to permanently expand two primary schools. However to meet projected demand a minimum of 135 additional primary school places will be needed by 2011. This may include for an additional primary school in the City.
- 5.157 The costs of this additional provision range from £2.5-£3m for the expansion options to £7m plus site acquisition costs for the new school option. Some funding has been sought from Government but that offered is insufficient to meet these costs.
- 5.158 The appeal scheme is intended to be constructed over a number of years so school place projections are relevant to when children will be in occupation and therefore need to start school.

#### Secondary Schools

- 5.159 In the main secondary schools are more distributed towards the centre and the western part of the City Council area.
- 5.160 The appeal site is located within the catchment area for the Longhill High School, but close to the catchment boundary for Dorothy Stringer/Varndean schools

- 5.161 The figures for January 2009 for Longhill Secondary School (approx 2.6km) showed a capacity of 4 pupils. However the latest figures as at the end of August 2009 show that the school has 1230 pupils across the five year groups and is over capacity. For the current year 7 the year is over capacity by 15 children. Therefore if places were not available at this closest school, pupils from the appeal site would have to travel through the City to reach alternatives.
- 5.162 Cardinal Newman (approx 4.4km) is the next nearest secondary school but is a Roman Catholic school.. There is not a comprehensive set of data for the current year but as at January 2009 the school was over capacity by 271 pupils.
- 5.163 The next closest non denominational school is Dorothy Stringer (4.6km) that has a net capacity of 1558 pupils but with 1664 pupils on roll this current year. For Varndean school (approx 4.5km) the net capacity is 1301 pupils with 1346 pupils on roll this September.

#### Contribution

- 5.164 As noted above the Council has a formula that it uses to ascertain the level of contribution that should be sought. The revised contribution that I refer to above sought is £1,583,080.
- 5.165 The appellants initially offered a contribution of £394,000. However this appears to not be based on any particular methodology despite the appellants having come up with their own child yield figures for the appeal scheme. They appear not to have sought to apply their child yield figure to the costs used by the Council and derived from DfES for the provision of child spaces at primary and secondary school age.
- 5.166 On the 28th November 2008 the appellants increased their offer to £594,000. This was shortly before the committee report on the application was finalised. The appellants advised that the increase was to secure agreement to the Child Yield calculation and the subsequent Education Contribution. Again it does not appear to have been based on any particular methodology.



5.167 This compares to the contribution sought by the Head of Capital Strategy and Development Planning leaving a substantial difference. I consider that the appellants' proposed contribution fails to meet the education needs that will arise from scheme.

#### Summary

5.168 I have considered in detail the methodology used by the appellants and that used by the Council to arrive at a child yield for the appeal scheme. I consider that, having regard to the expected child yield of the appeal scheme using the Council methodology, there is a significant shortfall in the contribution offered. Further if I consider the population of the appeal scheme using the agreed method for working out the population (albeit for open space calculations) and adjust the appellants' figures accordingly there should be very little difference in the actual yields between the two parties.

5.169 The Council's contribution is then based upon the actual costs of providing child spaces in school from a recognised source. The appellants' figure appears arbitrary. The contribution that they have offered does not enable adequate provision to be made off site to meet the needs of children likely to be living in the development.

5.170 I therefore conclude that the proposal fails the requirements of Policy HO21.

#### Balance

5.171 The Inspector will need to consider whether the Council's requirements in respect of affordable housing and S106 contributions should be set aside or reduced in the light of the need for regeneration of the Marina. In respect of affordable housing Policy H02 includes at criterion iv the "extent to which the provision of affordable housing would prejudice the realisation of other planning benefits".

5.172 Whilst it is recognised through the emerging Core Strategy that the Marina has the potential for additional housing this is not at any cost. It is important to

strike the right balance when weighing up all the issues. However in the case of the appeal scheme it fails on too many counts such that there should be no breach in planning policy allowed just so regeneration may be achieved.

## **6.0 CONCLUSIONS**

- 6.1 The appeal proposals form a significant redevelopment scheme for parcels of land at the western end of the Marina. A full description of development is found in the Statement of Common Ground.
- 6.2 The Council has refused the application for five reasons. It has conditionally withdrawn a sixth reason subject to satisfactory wording of the S106 obligation.
- 6.3 The appeal proposal would be unacceptable in terms of its design, sitting and layout in relation to its setting, as well as having an adverse and dominant impact on the settings of the Kemp Town Conservation Area, the Sussex Downs AONB and the Cliff. I refer to the policy references that are relevant to consideration of these issues that are addressed in detail by others.
- 6.4 Accommodation within the Cliff Building fails to meet the Council's housing space standards as provided by the appellants, although they have achieved those standards on some of the units. These standards were provided to the appellants at an early stage.
- 6.5 There is a significant proportion of units within this building that are 'undersize' and the number is actually greater than reported to committee in December 2008. Whilst the space standards sought by the Council apply specifically to the affordable housing units, the standards published by EP apply to all tenures. If these standards are applied throughout the scheme then an even greater number of units are to be considered 'undersize'.
- 6.6 Additionally I have demonstrated that units in this building have poor quality accommodation, in particular in relation to aspect and shading. Some units suffer from both issues, including those which are undersize and for some of the units facing north in some cases all three issues.
- 6.7 In respect of housing need, I have demonstrated that the proposal fails to meet housing need in the City through the mix of affordable housing proposed and in the size and disposition of the units proposed.

- 6.8 In respect of outdoor amenity and recreational space, I have demonstrated that inadequate provision is made onsite to meet the needs of future residents. In addition the proposed off-site contribution is inadequate to make acceptable provision for improved and additional facilities. The appellants' proposed contribution is apparently not based upon any form of methodology and is inadequate.
- 6.9 In respect of educational facilities, I have demonstrated that the council's methodology is sound in respect of child yields and its method of calculation; in contrast the appellants' method of calculating child yield relies upon historic data and a series of assumptions that I have question as to their reliability. In any event they do not use their child yield figures to formulate the contribution offered. The appellants' proposed contribution is apparently not based upon any methodology and is inadequate.
- 6.10 The appeal should be dismissed and planning permission refused

## **7.0 DECLARATION OF TRUTH**

- 7.1 I confirm that the evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.



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