

**Reference: Appeal by
Explore Living (No.1) Ltd & X-Leisure (Brighton I)
& X-Leisure (Brighton II) Ltd**

**Brighton and Hove City Council Ref: No. BH 2007/03454
Planning Inspectorate Ref: APP/Q1445/A/09/2102048/NWF**

Proof of Evidence

by

Robert Powell

BA Dip Arch M Arch RIBA MRTPI MSIP FRGS

On behalf of

Marine Gate Action Group and

Marine Gate Holdings Management Board

supporting the decision by

**Brighton and Hove City Council Planning Committee
to refuse planning permission for:**

Demolition of Asda superstore to create 3 -10 storey building with enlarged store (3112 sqm increase) and 2,025 sqm of other Class A1-A5 (retail/restaurant/drinking) uses on ground floor with 779 residential units above and community hall and new pedestrian/cyclist bridge link from cliff to roof of building and associated engineering works. Demolition of petrol filling station to create 28 storey building with 182 sqm of Class A uses at ground floor and 148 residential units above. Demolition of McDonalds restaurant to create 5 - 16 storey building with enlarged drive-thru restaurant (285 sqm increase) and 131sqm of other Class A uses and 222 residential units above. Demolition of estates office to create 3-4 storey building of 35 residential units. Demolition of western end of multi-storey car park to create 6-11 storey building adjacent to western breakwater of 117 residential units with stair access from breakwater to Park Square. Demolition of part of the eastern end of multi-storey car park to create single storey petrol filling station, pedestrian footbridge and new lift and stair access. Total: 1301 residential units. Associated car parking spaces (805 residential, 666 commercial), cycle parking (1907 residential, 314 in public realm), servicing, plant, refuse, CHP unit, public and private amenity space, hard & soft landscaping and outdoor recreation areas. Change of use of two A1 retail units (524 sqm) within Octagon to medical use (Class D1). Alterations to vehicular, pedestrian and cyclist access and circulation, including new roundabout and transport interchange behind Waterfront.

My name is Robert Powell and I represent the Marine Gate Action Group and the Management Board of Marine Gate Holdings (I reside at R5 Marine Gate). Marine Gate is home to 140 leaseholders of apartments most of whom overlook the Marina. We are thus one of the largest 'stakeholders' in the Marina development. More than 100 Leaseholders have signed a petition that will be presented at the enquiry.

I hold a Dip. Arch. from the University of Durham (1966) and a M. Arch. from the National University of Singapore (1990). I am a Member of the Royal Institute of British Architects (1968), a Member of the Royal Town Planning Institute (1978) and a Member of the Singapore Institute of Planners (1985).

I was Associate Professor of Architecture and Urban Design at the National University of Singapore (1984-2001) I have also worked in the Planning Department of a local authority in the UK (2004-2007) and I was for ten years a part-time Planning Inspector with the Ministry Of National Development in Singapore. I am the author of 28 books on architecture and urban design and a contributing critic to Architects Review (UK), Architectural Record (USA), Monument (Australia) and Singapore Architect.

I am currently Project Director and Head of Eco-Masterplanning with a London-based International architectural practice (2007-2009). I lead a team involved in the design of four high-rise towers in Abu Dhabi, a residential development for 16,000 people in Qatar, four universities in Libya and residential developments in UK.

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1 Preamble

1.2 The description of Brighton Marina as 'District Centre' is conceptually flawed. It is not perceived as a 'district' and exhibits none of the characteristics of centrality i.e. 'a location at or near the middle of something'. Indeed it is peripheral to the city and would be more accurately described in planning terminology as an 'edge' or 'fringe' location.

1.3 The use of the term 'District Centre' emerged in the lead up to the BHCC Adopted Local Plan in 2004 and the misnomer is perpetuated in SPG 15 and SPG 20 and even PAN 04.

1.4 In the Local Plan under Policy SR5 the Marina is grouped with three other areas described as District Centres namely:
Boundary Road/ Station Road in Portslade
St James Street and
Lewes Road

1.5 Inscribe a circle around these three areas (say 800 metres radius which is a reasonable walking distance) and all are at the centre of and form the logical focus of discernable urban areas. They have a wide variety of commercial activity including banks, post office(s) newsagents, butchers, estate agents, chemists, religious buildings, education buildings, doctor's surgeries etc. There is retail affinity. Radiating from these 'centres' are residential streets and all three are well served by public transport. There are schools, recreation grounds and diverse employment opportunities.

1.6 Boundary Road (See Map 1) is a major shopping street and is served by Portslade rail station and numerous bus routes.

1.7 Lewes Road (See Map 2) is similarly the centre of an established district. London Road rail station, primary schools and University faculties.

1.8 St James Street (See Map 3) is a destination of choice within a stones throw of major sea front attractions and at the heart of a significant number of dwellings. It has schools and is a permeable centre as are the other two.

1.9 Brighton Marina (See Map 4) has none of these characteristics – inscribe a circle of the same radius around the Marina and it is immediately evident that half its catchment area (a 180 degree arc) lies in the English Channel, a full quadrant lies within the designated South Downs National Park AONB and much of the remainder contains the nationally important Kemp Town Conservation Area, the East Cliff Conservation Area and the Grade II listed French Apartments together with Kemp Town Enclosures (Listed on English Heritage's Register of Parks and Gardens of Special Historic Interest in England).

1.9 The Marina Village is first and foremost a retail and leisure attraction at the edge of the city. It is manifestly different to the other three so-called District Centres. The Marina, despite its designation, is not and will never be a District Centre. It is a misnomer.

1.10 In designating the Marina Village a District Centre the Local Planning Authority put in motion a chain of events and consequences that they could not have anticipated. It is precisely because the Marina acquired this designation that we are now involved in this Appeal hearing.

1.11 In applying the designating of a District Centre to the Marina the Planning Authority did not deem it necessary to refer to the 1968 Brighton Marina Act that set important restrictions on what could and could not be built in relation to the cliff height. Other Rule 6 witnesses will pursue this in greater detail but I simply note here the assurances given to the people of Brighton by the Local Authority at the time (See Hansard extracts attached).

Hansard transcripts of the 1967 parliamentary debates on the Brighton Marina

*Act 1968. (See Hansard, debate in the House of Lords 20 July 1967 and debate in the House of Commons 26th June 1967) make it quite clear that the intention of the Brighton Marina Act 1968 was to allow the construction of a Marina and not a housing estate. To enable the act to pass through the House of Commons and the House of Lords assurances were given by members in both House. Members repeated an assurance (from the Corporation (now BHCC), **never to be broken**, that “the cliff heights was the limit to the height of the buildings”. (Extracts from the debate are attached)*

2 Brighton and Hove City Council Adopted Local Plan 2004

2.1 Leaving aside these semantics it is to the Adopted Local Plan 2004 that I first turn for evidence that Explore Livings Application Reference No. BH 2007/03454 is misconceived and that the Planning Committee rightly rejected it. The relevant Policies are (Note - I have paraphrased in some cases):

SU7 Development within the coastal zone

Planning permission for development will only be granted within the coastal zone, which is otherwise in accordance with the other policies of the development plan, where it:

a. takes account of the particular conditions experienced within this area, for example, in the layout, design, landscaping and materials proposed;

...

c. respects or enhances the appearance and character of the seafront environment;

d. does not adversely affect existing sea views; and

e. does not reduce public access to the coast.

Where appropriate, planning conditions will be imposed and / or a planning obligation sought in order to secure the necessary requirements.

QD1 Design - quality of development and design statements

All proposals for new buildings must demonstrate a high standard of design and make a positive contribution to the visual quality of the environment ...

The following design aspects will be taken into account in all developments:

a. scale and height of development ...

QD2 Design - key principles for neighbourhoods

All new developments should be designed to emphasise and enhance the positive qualities of the local neighbourhood, by taking into account the local characteristics, including:

a. height, scale, bulk and design of existing buildings;

b. topography and impact on skyline;

c. natural and developed background or framework against which the development will be set;

d. natural and built landmarks;

- e. layout of streets and spaces;
- f. linkages with surrounding areas, especially access to local amenities
- e.g. shops, community facilities, open spaces;
- g. patterns of movement (permeability) within the neighbourhood ... and
- h. natural landscaping.

QD3 Design - efficient and effective use of sites

New development will be required to make efficient and effective use of a site...

When applying this policy, in order to avoid town cramming, the planning authority will seek to secure the retention of existing and the provision of new open space, trees, grassed areas, nature conservation features and recreational facilities within the urban area.

... Special attention will be paid to the design and quality of spaces between buildings.

QD4 Design - strategic impact

In order to preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings, all new development should display a high quality of design. Development that has a detrimental impact on any of these factors and impairs a view, even briefly, due to its appearance, by wholly obscuring it or being out of context with it, will not be permitted.

The following features and buildings are considered to be of strategic importance:

- a. views of the sea from a distance and from within the built up area;
- b. views along the seafront and coastline;
- c. views across, to and from the Downs;
- d. views across valleys;
- e. views into and from within conservation areas;
- f. the setting of listed buildings and locally well known landmark buildings of townscape merit;
- g. vistas along avenues, boulevards and steeply rising streets; and
- h. initial views of Brighton & Hove from access points by all modes of transport.

NC8 Setting of the Sussex Downs Area of Outstanding Natural Beauty.

Development within the setting of the AONB will not be permitted if it would be unduly prominent in, or detract from views into, or out of the AONB (particularly from roads, rights of way or other public places), or would otherwise threaten public enjoyment of the AONB ...

The natural beauty of the AONB landscape can be significantly harmed by inappropriate development within the AONB's setting. The setting can be extensive by virtue of the impact on views from the AONB. This is particularly

important in respect to the Downs where part of the beauty lies in the extensive views obtained 'from the top', which includes views of areas beyond the boundary. Particular care is needed to ensure there is no sharp contrast between the land within the AONB and that outside because there is no clear visible boundary to the AONB in Brighton & Hove since the land outside the built up area, is primarily downland. The beauty of the smoothly rounded hills of the Downs is often accentuated at different times of the year and day by virtue of the effects of light and shade. Care needs to be taken to ensure that development and lighting schemes within the setting of the AONB are sympathetic to the particular beauty of the Sussex Downs.

HE3 Development affecting the setting of a listed building

Development will not be permitted where it would have an adverse impact on the setting of a listed building, through factors such as its siting, height, bulk, scale, materials, layout, design or use.

HE6 Development within or affecting the setting of conservation areas

Proposals within or affecting the setting of a conservation area should preserve or enhance the character or appearance of the area and should show:

a. A consistently high standard of design and detailing reflecting the scale and character or appearance of the area, including the layout of the streets, development patterns, building lines and building forms.

... Proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted.

HE11 Historic parks and gardens

Planning permission will not be granted for proposals that would harm the historic structure, character, principal components or setting of an area included in the 'Register of Parks and Gardens of Special Historic Interest in England' compiled by English Heritage. Kemp Town Enclosures is included in this Register.

Height, scale, bulk, relation to topography, materials and layout are recurring themes in the above policies. I will argue that X-plore Living's planning application manifestly fails to meet the above policies and falls short of the aspirations of this historic city.

3 SPG 20

3.1 The application by Explore Living relies in part upon SPG20. I will assess to what extent the proposals conform to the SPG.

3.2 SPG 20 was commissioned by Parkridge Developments and produced by

Holmes Antill Chartered Town Planners with contributions by Michael Hopkins and Partners (Architects), CZWG Architects, Derek Lovejoy & Partners Landscape Architects and Lawrence Walker Highway Consultants.

3.3 SPG 20 was adopted by BHCC in January 2003 although anecdotal evidence suggests that the SPG did not go through a rigorous process of public participation.

3.4 SPG 20 is not a balanced Planning Document. The Consultants clearly know who is footing the bill for their services when in paragraph 1 of Volume 2 they label the Marina, 'a flawed waterfront' and a page later a 'dispirited and drab development'. SPG 20 concluded that the Marina was 'seriously deficient environmentally, visually and functionally'. All of this naturally led to the recommendation that the panacea was redevelopment at a high density. Given the fact they were working for a developer with a vested interest the Consultant's conclusions are not surprising.

3.5 The vision of SPG 20 is "to enhance the Marina environmentally, visually, functionally and commercially and to transform it into an exhilarating, sustainable location of international quality and renown". The Marine Gate Action Group and the Management Board of Marine Gate Holdings subscribe to this vision.

3.6 But a glaring omission in SPG20 is that it fails to highlight the *raison d'être* of the Marina as a place for boats and the sailing fraternity. The primary purpose of a Marina is provision of a safe anchorage. SPG 20 fails to acknowledge that the focus of the Marina is the boats. It has a yachting and leisure culture. The Marina provides a unique setting of medium rise housing built around water bodies. The architecture is not world class but the response to context is good. There is permeability, views in and out of the housing, connectivity and in most parts of the Marina there is a sense of 'being at the waterfront'. It is a protective environment and the buildings that have grown up since 1968 adopt a posture and an orientation that 'protects' rather than opening out to the ocean waves and coastal winds. As a Marina it functions well.

3.7 Throughout SPG20 the sailing function is dealt with in a peripheral manner although the construction of the Brighton Marina required an Act of Parliament in 1968 that stipulated restrictions on the height of buildings. At no point does SPG20 refer to the Marina Act or the restrictions on height.

3.8 The authors of SPG 20, commissioned by and working on behalf of Parkridge, evidently perceived the leisure functions of the Marina as subsidiary to its potential for commercial and residential development.

3.9 But the Marina is not the miserable place that the consultants perceived. Perhaps they did not devote sufficient time to the positive aspects. (See attached pictures that depict a colourful, lively, vibrant and attractive location that has in

some areas a distinct genius loci or “sense of place”)

3.10 Notwithstanding the commercial forces driving its production and its inadequacies SPG 20 contains numerous illustrations of the built section envisaged by the consultants. The most telling section is that on Page 43 of SPG 20 that illustrates a development starting just below the height of the cliffs and descending progressively. Sections A and B on Page 42 of Volume 2 show the same relationship with 5-6 storey buildings overlooking the marina. The intentions of SPG 20 are most clearly outlined in Section B, Page 41 where low-rise buildings are adjacent to the cliff.

4 SPG 15

4.1 The applicant also relies on SPG 15 which was prepared following a Tall Buildings Study by urban design consultants Gillespies on behalf of BHCC. The Council adopted it on 29th January 2004. I will examine the extent to which the applicant’s proposals conform to the SPG.

4.2 SPG 15 fails to mention the Brighton Marina Act 1968 that restricts the height of buildings to ‘below the cliff top’.

4.3 In SPG 15 the definition of a tall building is “any new building of six storeys or taller (approximately 18 metres). SPG 15 does not mandate a very tall building strategy and in framing the SPG Gillespies did not postulate towers of 10, 17 or 28 storeys. Readers of the document would assume more modest heights.

4.4 PPG15 identifies the Marina as suitable node for tall buildings (paragraph 8.3.2 Page 15), but the authors were clearly aware of the difficulty of designing tall buildings to the south of Marine Gate and noted “The Marina is a node with particular sensitivities of building due to the relative proximity to Kemp Town and the housing on the adjacent hillside... **Tall buildings in this node (the Marina) will need to have regard to their visual impact on the residential areas to the north of the cliffs and their overall composition when viewed along the coast’.**

5 PAN 04 (Brighton Marina Planning Advice Note 04)

5.1 PAN 04 was approved by the Environment Committee on 20th March 2008 in recognition of the fact that SPG20 is rapidly becoming outdated due to changes in planning policy and new issues arising.

5.2 PAN 04 cannot be given full statutory weight in the planning process but until the emerging LDF replaces SPG 20 this is a relevant document. I will therefore address the areas of non-compliance with PAN 04.

5.3 In Section 15, PAN 04 identifies key views that BHCC wish to protect or enhance that connect the marina to its wider setting. These include important views of the seafront, waterfront, cliffs and Downs.

5.4 With regard to Public Realm and desired Amenity Space, PAN 04 refers to Natural England's Accessible Green Space Standards and to Policy PRE 1 in the emerging Local Development Framework. The Council is in the process of preparing a Green Infrastructure Network and considers the marina to be part of the wider greenspace network.

5.6 PAN04 refers to open space provision as required by Policy H06 noting that, "The starting point is to maximise open space recreational space within the Marina. PAN 04 draws upon national guidance in PPS1 and in Figure 19 refers to the generation of public squares and play areas at key points along movement corridors.

5.7 Chapter 17 establishes a number of targets for achieving sustainable development and for implementing large scale zero or low-carbon energy technologies.

6 Brighton and Hove Local Development Framework Development Plan Document Core Strategies – proposed amendments – June 2009.

The intention is to amend a number of core strategies in the Local Development Framework. The amended strategies relate to the application and should be accorded considerable weight.

6.1 DA2 – Brighton Marina, Gas Works and Black Rock

BHCC propose to amend DA2 – Brighton Marina, Gas Works and Black Rock – the number of dwellings would be reduced from 2000 to 1650. There would be 650 units on the Inner Harbour and 150 on the gasworks site, in addition to 600 dwellings approved for the Outer Harbour (Brunswick) Development. 650 units on the Inner harbour site is half of the number planned in the current application/ appeal by Explore Living (1301). This is intended to reduce the pressure on transport, car parking provision, schools and other infrastructure provision while permitting regeneration of the western end of the Marina.

It is also proposed to restrict the height of development so that no buildings will be higher than the cliff tops, in effect returning to the provisions in the 1968 Brighton Marina Act.

These two proposals are indicative of a considerable shift in BHCC policy and as such must be accorded weight in the appeal process.

6.2 SA4 Urban Fringe

New Core Policy will give greater emphasis to protection of strategic views into and out of the city. This is especially so in relation to:

1 Coastal views along the cliff.

2 Views into and out of the Kemp Town and East Cliff Conservation Areas.

3 Views from and to the South Downs National Park AONB.

4 Views of the city from the sea approaches to the Marina against a backdrop of the Downs.

No.3 is given more weight as the boundary of the South Downs National Park will be extended down Roedean Bottom to the mean low water mark to the east of the Marina in April 2010.

6.3 CP11 Housing Delivery

A revised Housing Delivery matrix dealing with housing supply for the period 2011-2025 is proposed that would remove some of the dwellings previously located in the marina.

6.4 CP16/17 Planning for Sustainable Economic Development

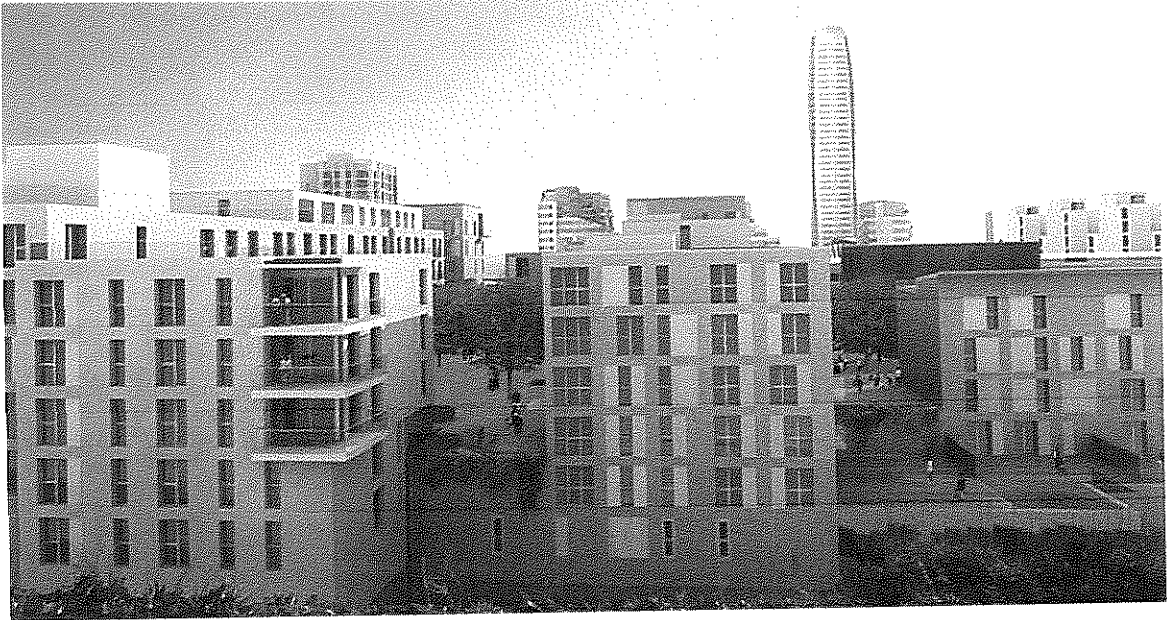
The proposed amendments to the Core Strategies strengthen the provisions for sustainable development.

7 Reason for Refusal 1

I will now examine the reasons for refusal.

“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 ...

7.1 1301 residential units is a massive overdevelopment of this special coastal site. When added to the existing 863 dwellings built by Barrett, the 853 approved for the Brunswick Development and the dwellings proposed by Brighton International Arena there would be a total of 3,121 apartments and (assuming an occupancy rate of 1.5 pp/du) a resident population of 4,681 people with the proportionate demand for car parking spaces and amenity space. Far from reducing the number of dwellings in response to community cries of dismay, Explore Living have pressed ahead and INCREASED the number of dwellings in their development. This would destroy the identity of the Marina as a place primarily for boats and leisure and its maritime image will be diluted to create a high-rise high-density residential suburb.



View of the proposed development from the cliff top to the north of the proposed development with the earlier approved Brunswick towers in the background. The permeability achieved as a result of the redesign and resubmission of the Brunswick scheme would effectively be lost if the Explore Living's application were to succeed.

The very qualities that attract visitors to the Marina Village will be lost.

7.2 Marina Point

Marina Point is an unremarkable 28-story tower that would dominate the existing residential property in the Marina. It is the same height as Sussex Heights on Brighton sea front (look right as you exit the Brighton Centre). It would tower over the cliff top and cast a shadow over the public realm. There will be loss of daylight to premises in the Octagon and Neptune Court. It may not be out of place in an inner London suburb but it is inappropriate in a highly visible location in front of the cliffs.

7.2.1 The 28-storey block is driven by the developer's desire to maximise floor area with only one fire escape stair and two elevators. Marina Point is in fact the 'Achilles heel' of the development for contrary to the views expressed in The Townscape and Visual Impact analysis it is not 'an object of beauty'. It is an 'average' even 'ordinary' tower. It is a simple rectangle extruded vertically with some inexplicable corner features.

7.2.2 It is not a tower that will win accolades for elegant design and it cannot be

argued that it is a 'sustainable' form of construction for there are no discernable 'green' features. It is not as elegant as the Wilkinson Eyre's design for the 40-storey tower in the Outer harbour which responded far better to the context and the seaward views. Marina Point is in comparison a 'poor relation' that does nothing to lift the spirits. Compared with cutting-edge towers in cities around the world it borders on the mundane.

7.2.3 The CABE panel consisting of Louise Hutton, Alan Leibowitz, Tom Lonsdale, Taryn Nixon, Martin Richman, Roger Stephenson, Alan Chatham and Jim Eyre (Architect of the approved Brunswick Development) were unenthusiastic about the tower, in effect awarding it a 'could do better' mark rather than excellent mark. The panel note that the 28-storey tower is 'overly dominant' from certain viewpoints.

7.2.4 Other consultees have been equally unenthusiastic:

English Heritage note, 'The Marina Point design has some remaining adverse impact on the setting of the Kemp Town's set piece terraces.'

Conservation Advisory Group (CAG) recorded that " the tower is an inelegant building and not of sufficient quality ... the tower would significantly harm the setting of the Kemp Town and East Cliff Conservation Areas."

South Downs Joint Committee "The committee considered that the proposed revised elevations to the tower did not overcome its concerns about the form and bulk of the buildings. The Joint Committee does not wish to see a plethora of tall buildings at the Marina or along the sea front because of the cumulative effect on the Sussex Downs AONB (South Downs National Park)."

The Brighton Society "The density of the scheme is unacceptably high considering the limited access."

Roedean Residents Association "Gross overdevelopment ... building design, particularly the 28-storey tower is unattractive".

7.2.5 Conclusion: The tower is not comparable with the best in the world. It is not sufficiently elegant for its prominent location on Brighton sea front. The architect has not been given sufficient freedom to sculpture the form or to respond to the climatic constraints. It is a 'no-frills' design, very cost-conscious, indeed I am concerned whether it can meet fire regulations in respect of means of escape. The claim that there is a roof top public viewing deck seems somewhat fanciful since there are only two lifts to serve residents.

7.3 The Cliff Building.

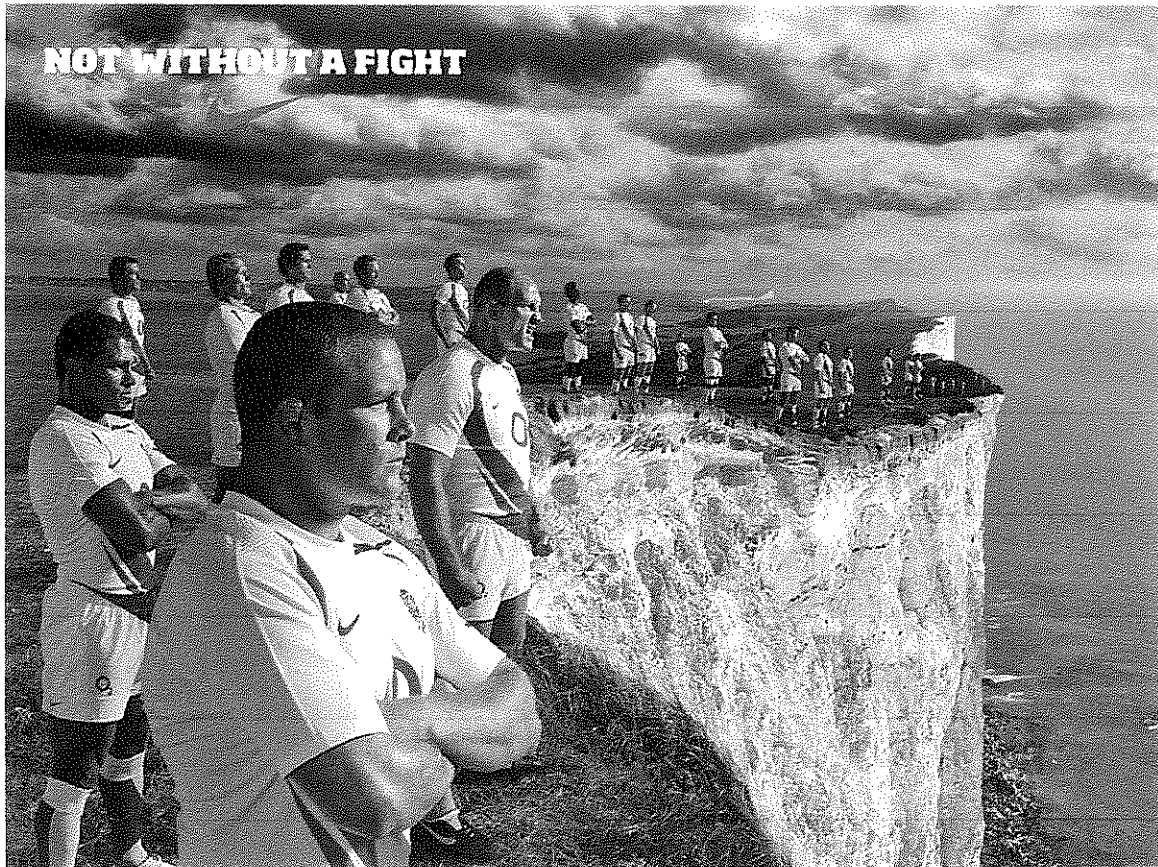
7.3.1 The Cliff Building (An ASDA Store with seven storeys of residential

development over) projects above the top of the cliffs. This block contains all the affordable housing and is solely about quantity and not about quality of life. It is in close proximity to the undercliff path. This is precisely the sort of development that the 1968 Marina Act was intended to prevent.

7.3.2 The Cliff Building destroys the continuity of cherished views from Lewes Crescent and Marine Drive along the south coast cliffs from Brighton to Newhaven (See pictures attached). Furthermore it will destroy the visual connection between the cliff top and the ocean (See pictures attached). Looking along the sea front from the west the long distant views of the South Downs National Park AONB, the Listed Roedean School, the Listed St Dunstan's RAF EX-Serviceman's Home, Rottingdean Windmill, Telscombe Tye and the historic white cliffs that extend east from the Black Rock – the de facto border with Europe - are all obscured by the cliff building. These are the very cliffs that inspired Vera Lynn's famous war time song... they are the cliffs that generations of Englishmen have defended from invasion. (See pictures attached).



The white cliffs of Southern England have emotive powers – witness the war time songs.



They are the cliffs that inspired our national rugby team in the 2007 World Cup

7.3.3 The Cliff Building will be a 'superblock' – an extraordinary 235 metres in length. The result is that a 'canyon', 10-storeys (30 metres) high is created along the undercliff. This area will be dark and inhospitable. The major design failure of this block is that it lacks permeability forming a massive physical and visual barrier to connections from the undercliff path to the core of the marina. Panoramic views of the cliffs from within the Marina will be totally obliterated (See pictures attached).

7.3.4 The perspectives produced by Explore Living show an Eco-Learn space that will not survive in the microclimate that exists on the undercliff and a Cliff Park that is high on hyperbole but low on actual content. It is questionable whether the landscape consultants have actually spent time in this location for there is little evidence that trees such as *acer campestre* and *corylus avellana* (maple and hazel) will survive in the microclimate at the base of the cliffs? The luxuriant planting that appears on the application perspectives is the product of the artist's imagination. They will not survive.

7.3.5 The Cliff buildings is a vast super block that has been dumped on the site. It is entirely the product of development economics and absolutely nothing to do with beauty or the quality of life. The architect has been obliged to provide a

larger store for ASDA and all the affordable housing has been pushed into this location. The introduction to the famous undercliff path would not be more dismal. Consider that the Cliff Building is north facing – it will create an inhospitable space. Sunlight will rarely penetrate into this gloomy canyon with a 10 storey high buildings towering on one side and the cliff face on the other. Numerous apartment receive zero sunlight (See plan). The east elevation is almost entirely devoted to an energy centre, with mundane elevations facing the main access into the Marina. The windows of the ASDA supermarket dominate the south elevation at ground level – they will not activate the public realm – like all supermarkets they have no display. The applicants own perspectives depict a view to the north across Harbour Square that could be any downtown location anywhere – the architecture and nothing resonates with the Marina location. It is hugely disappointing as a result of cramming.

7.3.6 The Cliff Building has fundamental problems chiefly arising from its excessive height, length and width. At different points it is 3.1m, 5.5m, 2.9m above the cliff height in contravention of the Brighton Marina Act 1968. The developer is attempting to get too much accommodation on the site. The footprint is too large. The Floor Area Ratio too high. The result is a bulky and intrusive building.

7.3.7 Flues from boilers – both gas fired and biomass fired will project three metres above the roof of the cliff building and fumes will be carried by southwest winds towards cliff-top housing. These fumes could affect the health of apartment owners in Marine Gate some of whom are within 100 metres of the development, The Energy Centre and chiller plant will also create noise pollution and buildings projecting above the cliff will cause light and noise pollution.

7.3.8 Access to the Cliff Building is highly problematic. ASDA's articulated delivery vehicles would enter from the east side service road. This road also has to accommodate deliveries by large vehicles servicing GEORGE, the clothing subsidiary. In addition ASDA have up to eight 'home delivery' vehicles operating from this entrance (see pictures). Add to this the fact that all vehicles accessing the ASDA car park are directed to the east side service road. Finally all the private vehicles of residents on the upper floors of the Cliff Buildings enter from this same service road and it will be apparent there will be massive congestions and tail back at the junction.

7.3.9 Viewed from the sea approaches to the harbour the Cliff Building and the Sea Wall Building are immensely intrusive on the skyline (See pictures). The two blocks would obscure the rolling hills of the South Downs National Park AONB.

7.3.9 BHCC officers and other consultees are united in their criticism:

Wildlife Advisory Group “ the SSI raised beach is the most valued geological feature in Brighton and Hove ... the application for tall buildings by their bulk location and height make no reference to their environmentally sensitive surroundings.”

BHCC Conservation and Design Officer “The height and density of the proposed residential development on the Cliff and Marina Point sites exceeds what might normally be considered appropriate for these sites having regard to their impact on the setting of Kemp Town and East Cliff Conservation areas and on views along the coast and sea front ...”

Natural England “ the development is too near the cliffs.”

Regency Society “ this a gross overdevelopment of the site ... the impact of the development would be far more obtrusive (than photo montages) suggest... “

Brighton Urban Wildlife Group “ The SSI chalk cliffs ... created over millions of years would be dwarfed by tower blocks.”

Brighton Marina Residents Association “Excessive height of buildings would lead to a loss of strategic views from Palace Pier eastwards and panoramic views from the cliff top would be lost”

The Kingscliffe Society “Heights and design would result in an inappropriate visual outcome.”

7.4 The Sea Wall Building

7.4.1 The Sea Wall building is compressed into a narrow site parallel with the western breakwater. To accommodate the building two structural bays of the existing multi-storey car park are to be demolished. The new building will back up against the gable wall of the David Lloyd Centre in an un-neighbourly manner cutting off daylight to the fitness centre lounge and views from David Lloyd's lounge towards the Black Rock Beach and Palace Pier.

7.4.2 Most apartments in the Sea Wall building are single aspect with a view only to the west. Many are entered via long corridors on the eastern side of the linear block, which is unsatisfactory. The resident's car park is accessed via a lengthy cul-de-sac to the south of the Casino and David Lloyds that will also be shared with the Brunswick development. (Note: The approved access to the Brunswick car park will have to be redesigned as it assumed a road would remain to the west of David Lloyd's building). Access to the Sea Wall building by emergency services is poor.

7.4.3 Once again the design is driven by the applicant's requirements to have the

maximum number of dwellings and the result is cramming of an excessive number into a confined space.



The Sea Wall Building forms a 'wall' of development that is up to 11 storeys high and cuts off views of the horizon and masts in the outer harbour.

7.4.4 The most serious criticism of the Sea Wall building is that by virtue of its height and bulk it has a very poor relationship with the Kemp Town Conservation Area. The 11-storey blocks dominate views from the lower part of Lewes Crescent and Arundel Terrace, blocking off the view of the masts in the harbour from Marine Drive when approaching from the west. In distant views from the Palace Pier and Madeira Drive it forms a solid, impenetrable 'wall' and obscures the rolling hills of the South Downs National Park.

7.4.5 The designers appear to have spent very little time on site observing the power of the ocean when a southwesterly wind blows up the Channel. Waves sweep along the western breakwater and overtop the structure by 15 metres. Those apartments to the west of the David Lloyd building will be severely battered during storms. This site is unsuitable for 'significant development'. The southern part of this area is inaccessible for many days in the year due to adverse weather conditions. The area to the west of the David Lloyd building is frequently impassable to pedestrians, with mountainous seas pounding the western breakwater. There is a huge element of risk in development in this location – idyllic in summer, but inaccessible and inhospitable in mid winter.

7.4.6 The Sea Wall Building will also cut off views from the seaward approaches to Brighton Marina. The building will obscure views of the South Downs National Park AONB

7.4.7 The Sea Wall Building should be rejected in its present form. The height should take references from Lewes Crescent and Sussex Square and be lowered to a maximum of six storeys.

7.4.8 Other consultees agree:

CABE "The Sea Wall building ... presents a blank back wall' to Park Square.

Kemp Town Society " Aesthetically the mass of proposed development would be a disaster and out of keeping with the dominant architectural style of Kemp Town."

Save Brighton "The appearance and height of the new buildings is inappropriate ... it would damage views of Brighton seafront and conservation areas."

North Laine Community Association " Impact on the skyline close to the Regency Terraces is unacceptable."

Regency Society "The new buildings would deprive residents of Kemp Town of views of the water and boats in the Marina."

7.5 The Quayside Building

7.5.1 The proposed Quayside Building is located on the current site of McDonalds and the adjacent car park. It is designed as a 5 to 16-storey perimeter tower block encircling a four-story car park.

7.5.2 As elsewhere in the development many of the apartments are single aspect with internalised bathrooms and kitchens without daylight and requiring mechanical ventilation. Access is in many cases by long internalised corridors – in some cases the internal corridors extend 50 metres without natural daylight. They will have to be artificially illuminated 24 hours per day. There is little evidence that the built form and details are sustainable.

7.5.3 The Quayside Building represents excessive development on a restricted site with a bulky form that is too tall. Contrary to the claim that this building creates a 'link' between Marina Point and the previously approved Brunswick Towers the Quayside Building simply blocks many of the gaps that were created by Brunswick following the refusal of their initial application. The block is distinctly lacking in elegance, the result of cramming far too much accommodation on the site.

7.5.4 The Quayside building should be reduced in height to six storeys to permit views of the harbour through the gaps in the approved Brunswick development.

7.5.5 Other consultees, including CABA, are unanimous in their criticism of this block:

The Commission for Architecture and the Built Environment (CABA) are “Unconvinced by the Quayside Building which fails adequately to relate to its context ... the 17–storey building on the McDonald’s site ‘reads as a single building from a distance’ ... it requires a fundamental rethink to produce a more self-assured block which sits comfortably in its context ... there should be better integration with the Brunswick development”.

7.6 The Townscape and Visual Impact Analysis.

7.6.1 The townscape and Visual Analysis that is intended to support the appellants submission is in fact a serious indictment of the whole development. Other Rule 6 witnesses will point out the deceptive appearance resulting from inappropriate use of wide-angle lens’. I am more concerned with the platitudes embodied in the accompanying text.

7.6.2 By the selective use of highly biased self-congratulatory text this document sought to convince the Planning Authority that the Explore Living/X-Leisure development would be relatively benign. The document refers on numerous occasions to what the author considered to be ‘high quality design’ that will be ‘beneficial’. Closer examination of the photographs reveals a tendency to gloss over the negative aspects of the development. What the text does not explain is that:

7.6.3 View C4 shows that the development totally obscures the cliff face when looking east from the Palace Pier.

7.6.4 View C6 indicates that the development obscures the distant cliffs, blocks the horizon and is extremely bulky. It also clearly indicates that the development dominates Lewes Crescent and Arundel Terraces in distant views.

7.6.5 View C9 and C10 indicates the development would obscure the view of the Palace Pier when approaching Brighton along the cliff top path from the designated South Downs National Park.

7.6.6 View D20 confirms that the 28-storey Marina Point tower is a ponderous imposition when viewed from the South Downs National Park AONB.

7.6.7 View T25 shows that the cumulative effect of the development is an

unsatisfactory silhouette with tall buildings obscuring the horizon and Marina Point is particularly unsatisfactory.

7.6.8 View T30 and T30A from the corner of 7 Arundel Terrace reveals that the development is a major imposition on the Kemp Town Conservation Area. The bulky buildings obscure the view of the masts of boats in the outer harbour thereby severing the visual connection between the town and the marina. The genius loci (sense of place) is lost and replaced by bulky residential blocks. The rooftops of the Cliff buildings are intrusive.

7.6.9 View T31 misrepresents the effect on the residents of Marine Gate. The notion that the view of the 28-storey tower and the rear elevation of the Cliff Block are 'beneficial' is plainly absurd. The horizon is obscured and the cumulative effect of the Explore Living and Brunswick developments is an intrusive assemblage of dislocated elements that contribute nothing to the visual harmony of the area. The Marina Point tower has a stunted appearance as it rears above the cliff –there is no elegance in the silhouette.

7.6.10 View T41 shows the cumulative view from Marina Gate. The panorama indicates a horizon dominated by flat roofs. The roofscape is dull, unimaginative, and congested. The 'spirit of place' of the Marina has disappeared ... for ever.

7.6.11 View M32 obscures the horizon and the view of the harbour. It represents a monstrous overdevelopment. Coupled with the approved Brunswick development there is a total exclusion of views of the harbour and the English Channel for walkers on the cliff top. The Explore Living development succeeds in blocking the gaps that were created in the Brunswick Development after its initial refusal. The image of a 'marina' is totally obliterated. No longer will walkers be able to observe yacht races on Sunday mornings, fireworks at the end of the Brighton Festival or the harbour lights in the evening. The new image is of a suburban housing estate that might be in an inner-London borough!

7.6.12 View M33 indicates that a 'canyon' will be created to the north of the Explore Living development – The artist's inclusion of a dozen people does not reveal the truth that it will be an inhospitable, cold and windy defile that may occasionally catch the last rays of the afternoon sun. The affordable housing looks north towards the cliff with very little sunlight and no views of the waterfront.

7.6.13 View M35 shows that long views from within the Marina towards the cliffs will be almost non-existent. The relationship to the cliffs is lost. There is no permeability. The architecture is bland and the presence of so many pedestrians obscures the fact that this would be one of the busiest traffic junctions.

7.6.14 View C39 demonstrates that the views as one walks along Marine Drive are totally erased. The visual connection to the harbour, the masts of yachts and

the whole 'spirit of place' is eradicated. The connection to the horizon, to the South Downs National Park, the listed Roedean School, the listed St Dunstan's RAF home, to Rottingdean Windmill and the monument on Telscombe Tye are all lost along with the views of ferries departing Newhaven for Dieppe.

7. 6 15 View C40 is perhaps the most severe indictment of the development, the full deleterious effect of over-development become obvious – the Cliff Building rises above the cliff and the scale is overpowering. The proposed development will cut off views of the Channel towards Telscombe Tye and Newhaven.

7.7 Conclusion

Explore Livings application has been thus been shown to fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan and to fall far short of the quality of design required for such an important site on the edge of the city.

Tellingly, nowhere in SPG 20 is there any suggestion that buildings of the bulk, height and overwhelming dominance of Explore Living proposals was ever intended. It is evident that Explore Living's plans for the Marina contradict SPG 20 in spirit and in form. Explore Living have ignored the intentions of SPG 20 in respect of the height of the development and 'crammed' excessive development onto the site.

8 Reason for refusal 2

The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan.

The two relevant policies are:

8.1 HO3 Dwelling type and size

The planning authority will seek to ensure that proposals for new residential development and residential conversions (including changes of use) incorporate a mix of dwelling types and sizes that reflects and responds to Brighton & Hove's housing needs.

Exceptions will only apply when a scheme is designed to meet the needs of people with special needs, or a mix of dwellings would be inappropriate due to the location of the site or limitations of the site itself. To complement this policy up to date assessments of Brighton & Hove's Housing Needs will be published.

8.2 HO4 Dwelling densities

To make full and effective use of the land available (in accordance with Policy QD3), residential development will be permitted at higher densities than those typically found in the locality where it can be adequately demonstrated that the proposal:

- a. exhibits high standards of design and architecture;
- b. includes a mix of dwelling types and sizes which reflect local needs;
- c. is well served by public transport, walking and cycling routes, local services and community facilities; and
- d. respects the capacity of the local area to accommodate additional dwellings.

8.3 The design of many dwellings in the development is inadequate and smaller than BHCC recommended minimum sizes. There are numerous north-facing apartments with limited views and many dwellings have internal bathrooms and kitchens without natural daylight. Some living rooms and dining rooms do not have an adequate view of the sky. There are too many one and two bed apartments. The mix of housing sizes falls below the requirements in terms of provision of larger family units.

8.4 The 'deep plan' form of the Cliff Building means that many 'affordable apartments' look north, to the cliff face and have a restricted view with bathrooms and kitchens that have no daylight and require mechanical ventilation. Many living and dining rooms have limited views of the sky. It is difficult to see how these can be rated highly in terms of sustainability. Indeed locating all the affordable housing in this block goes against good planning practice, which favours integration of social housing with market housing. The development groups together all families who are most in need including key workers on low incomes, unemployed workers and families on benefits. Inevitably 'ghettoisation' will occur where those on low incomes or income support are seen to be stigmatised.



Seven storeys of housing above an enlarged ASDA will protrude above the cliffs. It is here in the shadow of the 235-metre long north elevation that children's play areas are proposed.

8.5 Sustainability

8.5.1 Explore Living claim that 81% of energy in the development at the Marina comes from 'sustainable and renewable sources'.

8.5.2 This is untrue? The development does not use solar power because they allege "there are not sufficient flat surfaces", they do not use wind power because "there is no suitable site for wind turbines" and they do not use tidal or wave power because they claim that "the tides are unpredictable".

8.5.3 The developer intends to use biomass. 750-1000 tonnes of fuel is required per year. Explore Living do not state precisely where the biomass is to be obtained but their consultant Halcrow Yolles report states that it will come from "the large wooded area of the surrounding Sussex countryside". We need to know precisely where this quantity of biomass will be sourced in Sussex.

8.5.4 Alternatively, we are informed the biomass will be supplied by a Crawley firm, Utilicom, from their Southampton Depot. In this case biomass will be transported 60 miles by road! Hardly the most sustainable practice. And what is

the source of the woodchip from Southampton? Could it be imported from Europe or the USA via Southampton docks? What is the Carbon Cost of shipping the biomass from its source?

8.5.5 We are also informed by Halcrow Yolles that the majority of the electrical power (73%) will be supplied by a Combined Heat and Power system (CHP) using gas. But gas is not a renewable resource.

8.5.6 The claims by Explore Living that 81% of energy comes from 'sustainable and renewable sources' is unfounded and the development does not comply with Local and Government policies.

8.5.7 We need to know the source of biomass in Sussex? What is the source of biomass from Southampton? Are we denuding our native forests or forests elsewhere? We need to know and it is not fully explained in the application - indeed the supplier asks for recommendations from BHCC.

8.5.8 Explore Living (EL) claim Eco Homes rating of Very Good (63%) but there are a number of dubious claims for credits in the eco homes assessment.

EL claim that the development is near a post office. Not true.

EL claim the development is near a Bank. Not true

EL claim the development is near a primary school. Not true.

EL claim that 81% of energy is from sustainable or renewable sources. Not true

8.5.9 How can the development achieve an Eco Homes "Very Good" rating when.

- Many kitchens do not have any daylight.
- Daylight criteria are not met in many living rooms and dining rooms.
- There is no view of the sky from many rooms.
- There is a zero score out of a possible 16 for materials

8.5.10 The concerns of Marine Gate Action Group are shared by several other consultees and by BHCC officers:

Brighton Marina Residents Association "5% of flats are 5sqm below BHCC minimum standards, 18% of 2-bed flats are undersized, 20% of flats in the cliff Building do not receive sunlight.'

The BHCC Housing Strategy Team "There are three areas of concern regarding affordable housing:

- A significant number (212 out of 520 i.e. 41%) of the new and affordable homes fall below our (BHCC) minimum unit size requirements required to achieve homes of a good standard, flexible and adaptable and fit for purpose (based on English Partnerships' Quality Standards)
- The uneven distribution of the affordable homes within the Cliff Site.

- The tenures split 35% rented, 65% shared ownership is a long way from the 50/50 split previously negotiated and informed by up-to-date assessments of local housing needs.”

“The current proposal marks a departure from Policy HO3”

“Some private sector housing have “double bedrooms that are too small to be classed as a double room”.

PAN 04 “proposed housing will need to comply with the Council’s access policy HO13 in the Local Plan, including Lifetime Homes Standards.”

BHCC Sustainability Officer “This a far from exemplary scheme in terms of sustainability...the carbon footprint could be significantly reduced... some of the benchmarks used are questionable – they may skew calculations and produce unreliable results (p82)... despite a site with optimal sun and wind resources, no renewable technologies are proposed to capture these...wind and photovoltaics are dismissed too easily.”

8.5.11 The appeal should be rejected as the proposed development fails to satisfy a number of BHCC Local Plan policies including:

Policy HO3 in that the design of many dwellings is inadequate and smaller than BHCC recommended minimum sizes. The mix of housing sizes falls below the requirements in terms of provision of larger family units.

Policy HO4 in that the density of dwellings is excessive in the marina context.

and BHCC policies on sustainable development.

9 Reason for refusal 3 - Outdoor Recreation Space

I turn now to the important matter of provision of outdoor space:

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

The relevant policy is:

9.1 HO6 Provision of outdoor recreation space in housing schemes.

New residential development will not be permitted unless the requirement for outdoor recreation space, generated by the development, is suitably provided in accordance with:

- a. the standard of 2.4 hectares per 1,000 population (or part thereof),
or
- b. any subsequent standard adopted by the council following a local assessment of needs and audits of open space and sports and recreational facilities. This provision must be split appropriately between children's equipped play space, casual / informal play space and adult / youth outdoor sports facilities. Where it is not practicable or appropriate for all or part of the outdoor recreation space requirements to be provided on site, contributions to their provision on a suitable alternative site, may be acceptable. The provision of outdoor recreation space and its long term maintenance will be secured by the use of conditions or by legal agreement, as appropriate. The provision of outdoor recreation space will be in addition to incidental amenity and landscaped areas.

9.2 The provision of outdoor recreation space is totally inadequate. The Cliff Park (3,500 sq m), a NEAP (1,100 sq m) and a LEAP (430sq m) are located on the north side of a 250 metre long, 10-storey high super block. They will be dark, isolated and dangerous places.

9.3 A climbing wall (.075 sq m) is sited under the entrance ramp. It is leftover space rather than planned space. It is dark, without sunlight and inhospitable. The urban sports and five-a-side court (1,850 sq m) are similarly gloomy, dark places. Another LEAP located behind Pizza Hut (400sq m) is a cold windswept place for much of the year.

9.4 Some of the public amenity space appears to be sedum roof yet it is not possible to walk on a sedum roof.

9.5 The conclusion is that the outdoor recreation space is simply what is left over after the massive residential and retail quantum has been located on the site. None of the outdoor recreation areas are accessible, sunlit, safe areas for children. It is difficult to imagine parents or children being thrilled by the provisions.

9.6 Marine Gate Action Group do not consider it acceptable for the developer to fund improved lighting in Madeira Drive, new football pitches for Manor Road Gym, refurbishment of Wilson Avenue and East Brighton Park facilities, terraced gardens in Rottingdean and sports facilities for youth in Rottingdean. This will not solve the problem of a deficiency of public open recreational space in the Marina. We consider this to be a 'red herring'. The public and private recreation space is inadequate and less than required under Local Plan policies.

Turning to the Public Space provision

9.7 Park Square

Park Square is essentially the same as the existing space. It is the same configuration, the same buildings surround the square and they contain the same activities, The Cineplex, David Lloyds, the Casino, and the Bowling Alley all house 'internalised' activities that do not activate the edges of the space or contribute any life to the public realm. MacDonalds is in exactly the same place as it is now. The applicant claims that this will be a 'new' entertainment space – it is difficult to see how this will be achieved. The addition of an interactive fountain and a few trees is unlikely to be the catalyst for a major revival of this area. A children's playground to the west of Pizza Hut is in the most inhospitable part of the square. *Pinus Nigra* (European Black Pine) is unlikely to survive in this exposed and salty windswept area.

The design appears to exclude evening parking in front of the Casino. It appears to exclude traffic dropping off elderly persons and families in front of the cinema, the casino, the bowling alley and David Lloyd's gym in inclement weather. It is conceivable that the casino and the gym will be forced out of business if parking is inadequate.

9.8 Palm Drive

Whatever qualities Palm Drive has at present – and there are some reasonable small restaurants - are likely to be eroded when it becomes, in effect, a large bus terminus with the deterioration in environmental quality that inevitably surrounds a large bus terminus. An array of standard bus shelters will doubtless appear (not shown on the application). No layover space is provided in the development and buses will simply layover in Palm Drive. The outdoor seating outside Zingarella, Ristorante Napoli, Café Zio, Gourmet Fish And Chip and the Harvester Pub that currently provide street life will struggle to retain their attraction in an area polluted by fumes. Access for existing Marina residents and boat owners will be almost impossible when 4 to 6 bus services arrive simultaneously. There is no location for a taxi stand.

9.9 Harbour Square

Harbour Square is an attempt to resolve the entrance to the marina and introduce the concept of 'shared space' but the bus turning circles look decidedly difficult. Access to ASDA car park and service area is proposed through the same access spur whereas previously there were separate access arrangements. Access to the car park for residents above ASDA is from the same spur. There is potential for major congestion and tail back up the entrance ramp. No account appears to have been made for the ASDA home delivery service. It is likely that access to the RNLI lifeboat station will be impeded.

The entrance and exit from the existing multi-storey car park threatens to be chaotic. Currently there are three entrances and two exits whereas the applicant's proposal has only one entrance at level 9 and one exit onto the exit

ramp at level 3. Imagine a scenario where on an inclement evening in winter you wish to drop off an elderly relative at the Seattle Hotel – having done this one must then EXIT the Marina and then return to the upper level of the multi-storey car park before walking across the footbridge to rejoin the relative. Imagine other scenarios where one might wish to do the weekly shopping in ASDA after going to the cinema. What is currently a simple operation will require careful planning to avoid multiple trips into and out of the Marina.

9.10 Village Square

The existing Village Square will be upgraded with facilities for Petanque (225 sq m), Pilates (285 sq m) and Chess (129 sq m).

9.11 Several consultees support the views of Marine Gate Action Group and the Management Board of Marine Gate namely:

Brighton Marina Residents Association “Not acceptable that outdoor recreation space be provided off site.”

North Laine Community Association “Insufficient amenity (recreation) space therefore concept of a Marina would be lost.”

Sussex Police “ Concerned there is a shortage of facilities for older teenagers...”

Brighton and Hove Economic Partnership “It is disappointing that the applicant has not been able to provide for requisite percentage of open space in accordance with SPG9 ... we feel that some of the open space that is provided on site lacks imagination”

Brighton Urban Wildlife Group “The proposal provides minimum amenity space...”

Sport England “ Concern that the Multi Use Games Area is located underneath the access road whereas Sport England guidance on ‘Active Design’ advocates that sports facilities are located in an attractive location which generates awareness of its existence.”

GIA “ One area at the northern end of the Sea Wall site has been identified as unsuitable for long term sitting and pedestrian walking”

BHCC Housing Strategy Team “We fully support the comments of the Policy Team on serious shortfalls of outdoor recreation space... We have major concerns about the safety of children crossing the main road on Marine Drive.

BHCC Urban Designer “This is an application that is deficient in ... recreational space within the development itself.”

BHCC Development Manager Sports and Leisure “ The proposal would only meet 7% of the demand for on-site recreational space ... the requirements of HO6 cannot be met on site.”

9.12 The appeal should be refused as the proposed development fails to satisfy BHCC Local Plan Policies HO5 and HO6 and PAN 04. The development fails to incorporate sufficient public outdoor recreation space. Much of the allocated space is crammed beneath access ramps or in inhospitable windy and hazardous locations. The outdoor recreation space for children is poorly located in dark, windy, inaccessible places. Children will be at risk. The development does nothing to address the current negative image of public space

The development also fails to comply with SPG9 in that the provision of outdoor open space does not meet the requirements of the Guide for Residential Developers on the Provision of Recreational Space (Draft 2002).

10 Reason for Refusal 4 - Educational Facilities

The fourth reason for refusal that I will address is provision of a Primary School

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.

10.1 The relevant policy is:

HO21 Provision of community facilities in residential and mixed use schemes

Proposals for (or which include) residential uses will be expected to demonstrate that a suitable range of community facilities will be provided to meet the realistic, assessed needs of residents, consistent with the scale and nature of the development proposed. Accordingly, as part of such developments, the local planning authority will seek, by means of a legal agreement, the provision of community facilities as an integral part of the development scheme. Where it can be demonstrated that it is not practicable to integrate community uses into the development scheme, the planning authority will seek, by means of a legal agreement, land for community uses within the development site and, where appropriate, a financial contribution towards the construction of these facilities. In exceptional circumstances, where land cannot be made available, the planning authority will seek an appropriate contribution towards the provision of

community facilities on an alternative site, readily accessible to the future residents of the proposed development.

10.2 All nursery schools nearest to the Marina are oversubscribed and the nearest secondary schools i.e. Longhill High School and Cardinal Newman Catholic School are also oversubscribed. Cardinal Newman is also a selective school based on faith. The only undersubscribed primary school is Whitehawk Primary School which achieved a Grade 3 (Satisfactory) in a 2008 Ofsted inspection. Pressure on secondary schools has not been helped by the closure of East Brighton College of the Media Arts (COMART) in 2008.

10.3 The applicant acknowledges the fact that the high density development of housing will generate a minimum of 71 school children in addition to the 64 in the approved Brunswick project. BHCC believe that the figure of 71 is based on erroneous assumptions and their own calculations suggest as many as 241 pupils will be generated by the Explore Living development alone.

10.4 Even using the developer's figures the Inner and Outer Harbour developments would add up to 141 (71 +64) youngsters of which approximately 60% are of primary school age yet there are no primary school places within walking distance. Making 'a significant financial contribution' will not solve the problem - that would only be overcome by providing a new primary school.

10.5 There are no community halls or churches in the Marina – the nearest community facility is 1.5 km from the application site.

10.6 BHCC support Marine Gate Action Group concerns on the lack of education facilities.

BHCC “ it is recognized that it is not ideal for pupils to have to travel some distance to school”.

PAN 04 “the demand for education from pre-school through to secondary school will need to be met by developers proposing residential schemes ... options for meeting expansion in the population of the Marina are currently being explored... including the potential provision of a small scale primary school within the Marina.”

10.6 The proposed development fails to meet the requirements of BHCC Local Plan Policy HO21 ... in that there are inadequate community facilities – there are no places of worship, banks, post office, a doctors surgery to Primary Health Care Trust space standards or a Primary School. The Appeal should be rejected

11 Amenity

11.1 Reason for refusal 5

I have decided to address the question of Amenity as it affects Marine Gate. The reason for refusal is:

The proposed development would cause material nuisance and loss of amenity to residents living opposite and within the Marina. In addition, by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan.

11.2 QD27 Protection of amenity

Planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and / or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

When determining planning applications the planning authority will endeavour to protect the amenity of an area, its users, residents and occupiers, including a development's future users, residents and occupiers. Residents and occupiers can be seriously affected by changes in overlooking, privacy, daylight, sunlight, disturbance and outlook. Disturbance includes factors such as speed, volume and type of traffic, noise, artificial lighting, smell and other pollution, erosion and flooding. The policies in this Plan dealing with these factors will be applied rigorously where new development, including alterations and extensions, unduly affects an area and its users, occupiers and residents.

11.3 Marine Gate Actions Group's contention is that the 28-storey Marina Point will dominate the existing residential property in the Marina, tower over the cliff top and casts a shadow over the public realm. There will be loss of daylight to premises in the Octagon and Neptune Court. Marine Gate, the 140-apartment block of housing to the north, built in 1939, will find its garden overlooked and a consequent loss of amenity. Marine Gate will suffer from light pollution from the Cliff Building and Marina Point.

11.3 Marine Gate residents will be adversely affected by increased traffic in Marina Way and traffic making a left turn to join the A259. Increased noise and pollution will occur. There will also be increased vibrations from traffic waiting at a red light in the tunnel close to the southeast corner of Marine gate

11.4 Marine Gate Action Group concerns about loss of amenity are shared by:

British Naturism “ loss of amenity” ... the famous Brighton naturist (nudist) beach will be overlooked.

Save Brighton “Nearby residents would suffer overshadowing, overlooking and loss of privacy”

Brighton Urban Wildlife Group “The various species of sea birds need the cliff and the beach – the impact of tall buildings would have an immense effect on the micro-climate... nothing in the plan addresses bio-diversity”

11.5 The Appeal should be refused as the proposed development fails to satisfy Policy QD27 in that Marine Gate and existing housing within the Marina will suffer loss of amenity through overlooking, increased traffic noise, light pollution and increased vibrations from the road tunnel. Other Rule 6 Witnesses will address this issue and specifically the location of the bus terminus in Palm Drive and loss of parking spaces.

12 Conclusion

12.1 Parkridge Developments sold its leasehold interest in the Marina to Pierre-Yves Gerbeau’s X-Leisure Group for £65m in August 2004. (See attached Argus article dated) August 8th 2004). The new owner, the former vice-president of Disneyland Paris, reportedly said “ The most important thing is to make it a really fantastic leisure and retail destination”.

Marine Gate Action Group agree with that statement but we are less than enamoured by the proposals submitted by his company. If this appeal is allowed to succeed the Marina as a destination will be ruined. The masterplan produced for his company indicates even more housing will follow built on the sites of the Health Club, Casino and Bowling Alley

12.2 Brighton and Hove Economic Partnership (a Rule 6 witness supporting the development) is a prime example of stressing short term economic expediency measures that have little or no consideration for the quality of the built environment. Similarly the intervention of SEEDA as a third party (29th September 2009) sites the current credit crunch as reason to ignore the damaging environmental impact of the proposals.

We agree that employment issues are not to taken lightly and Marine Gate Action Group is not against development per se. But we cannot stand aside when the

landscape below the cliffs is threatened with a development that will alter our lives and those of our neighbours, and not for the better.

12.3 BHCC are proposing a change in a Development Plan Document relating to the Marina. The emerging amended Core Strategy paper would see a reduction of dwellings on the Inner Harbour site from 1,301 to 650 and the reinstatement of the cliff height as the major determinant of the height of future development. This is a clear statement of intent by BHCC and as such, even it was not in place at the time of Explore Living's application it should be accorded considerable weight by the Planning Inspectorate.

Explore Living's application if permitted on appeal would clearly frustrate BHCC aspirations for a medium rise development below the height of the cliffs. If permitted the development would effectively create a high-rise housing estate.

12.4 I am writing these final paragraphs on 4th October at 10.00 am. As I glance from my window over the harbour entrance two dozen yachts are about to commence their regular Sunday morning race. I can see ships on the horizon and a full 120 degree arc of the English Channel. There is a flea market on the upper level of the car park. If this appeal is allowed this incredible view will be lost to all who walk along the cliff top... forever.

Robert Powell
For Marine Gate Action Group
and
The Management Board of Marine Gate

Planning and Legal Documents referred to and upon which the Marine Gate Action Group case will rely:

Brighton and Hove City Council
Local Development Framework
Development Plan Document
Core Strategy – proposed amendments paper – June 2009.

Brighton and Hove City Council
Planning Advice Note PAN 04
Brighton Marina Masterplan – March 2008

Brighton and Hove City Council
Supplementary Planning Guidance SPG 15 January 2004

Brighton and Hove City Council
Supplementary Planning Guidance SPG 20 Vol 1 and 2 . January 2003

Brighton Marina Act 1968

Brighton and Hove City Council Local Plan

East Sussex and Brighton and Hove Structure Plan (1991-2010 Saved Policies)

Planning Policy Guidance Notes PPG 20 Coastal Planning.

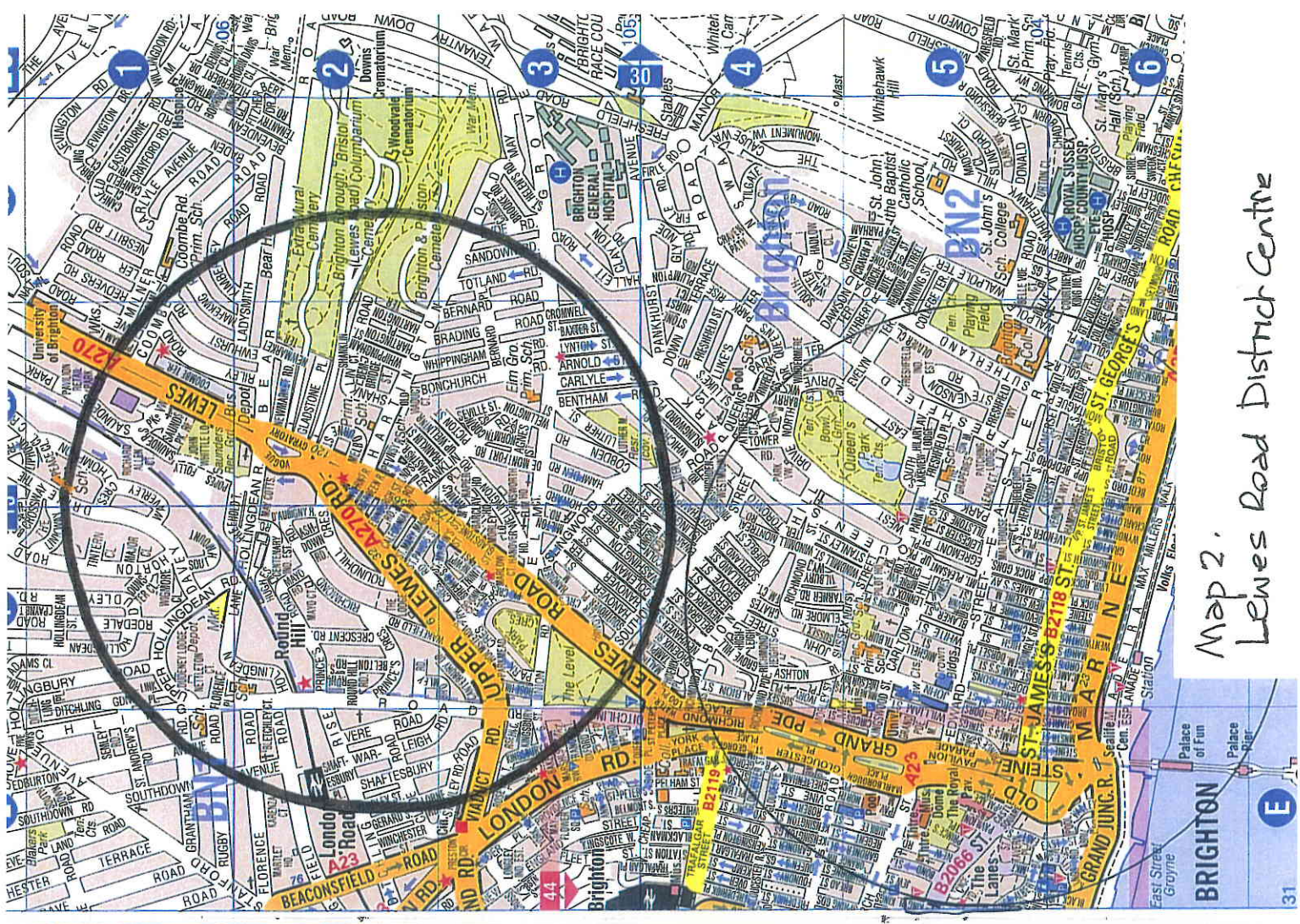
Planning Policy Statement PPS 1: Delivering Sustainable Development

The Townscape and Visual Analysis Report that forms part of the application
BH 2007/03454

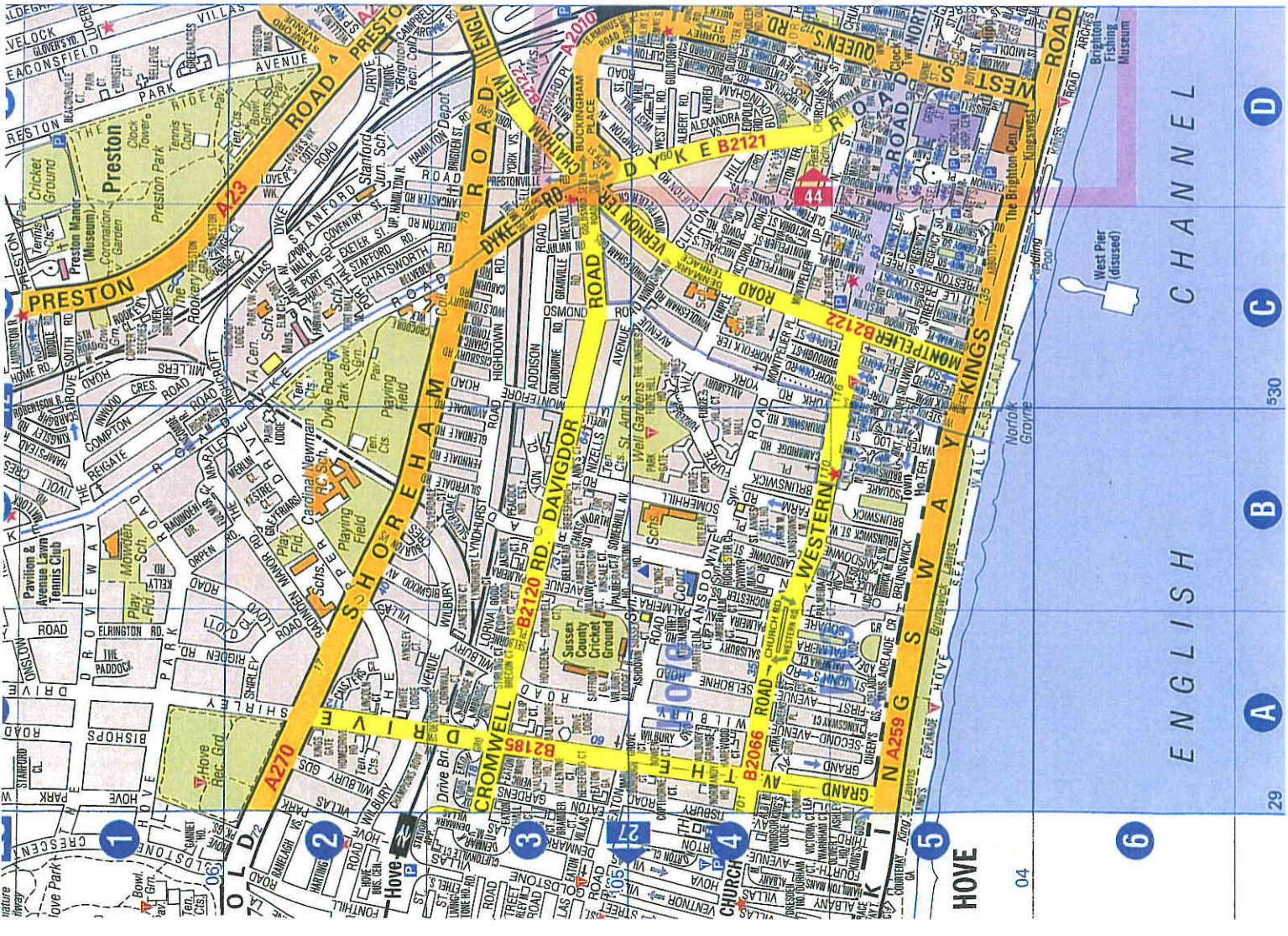
Photographs of the site taken by the author.

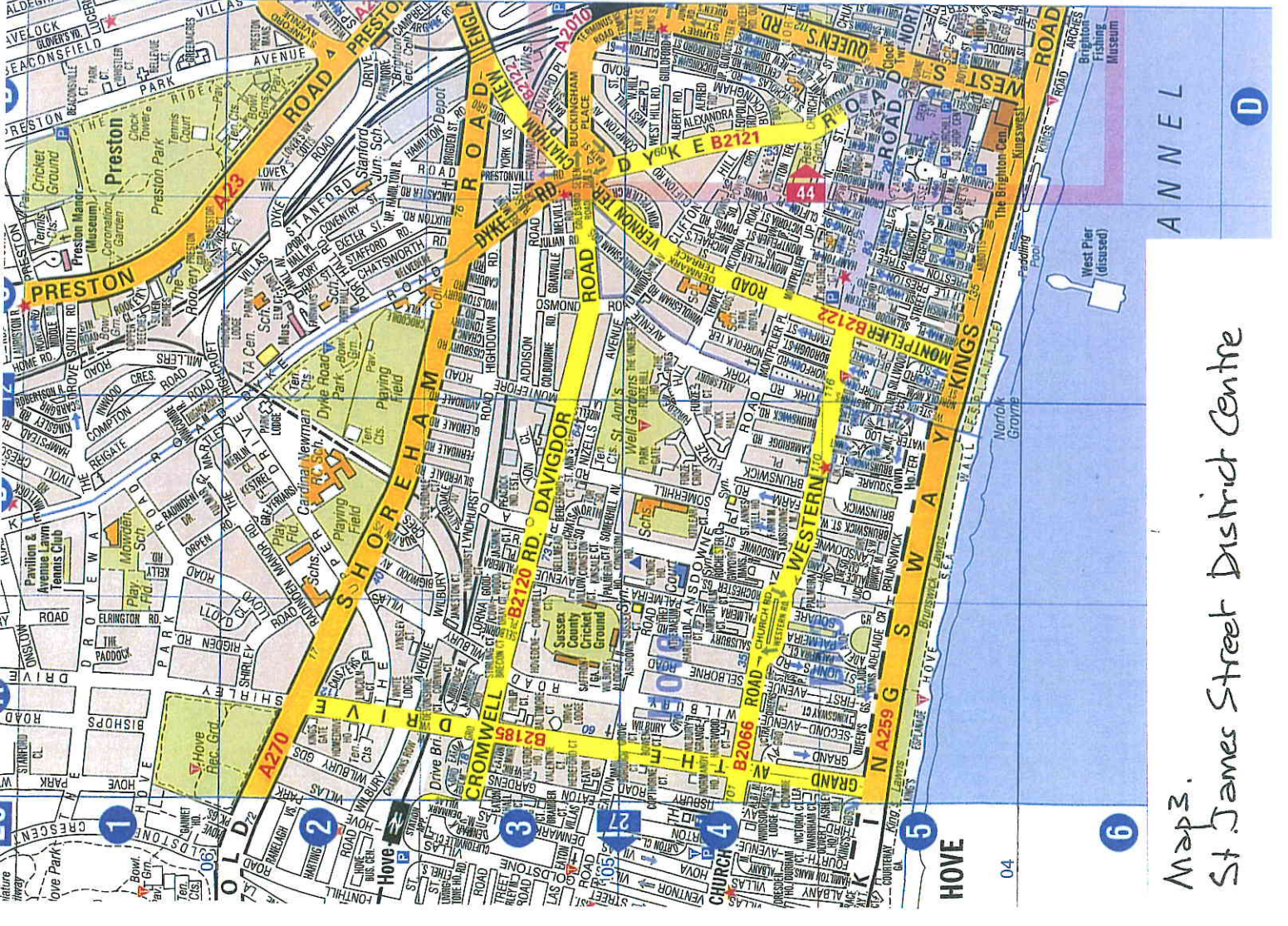
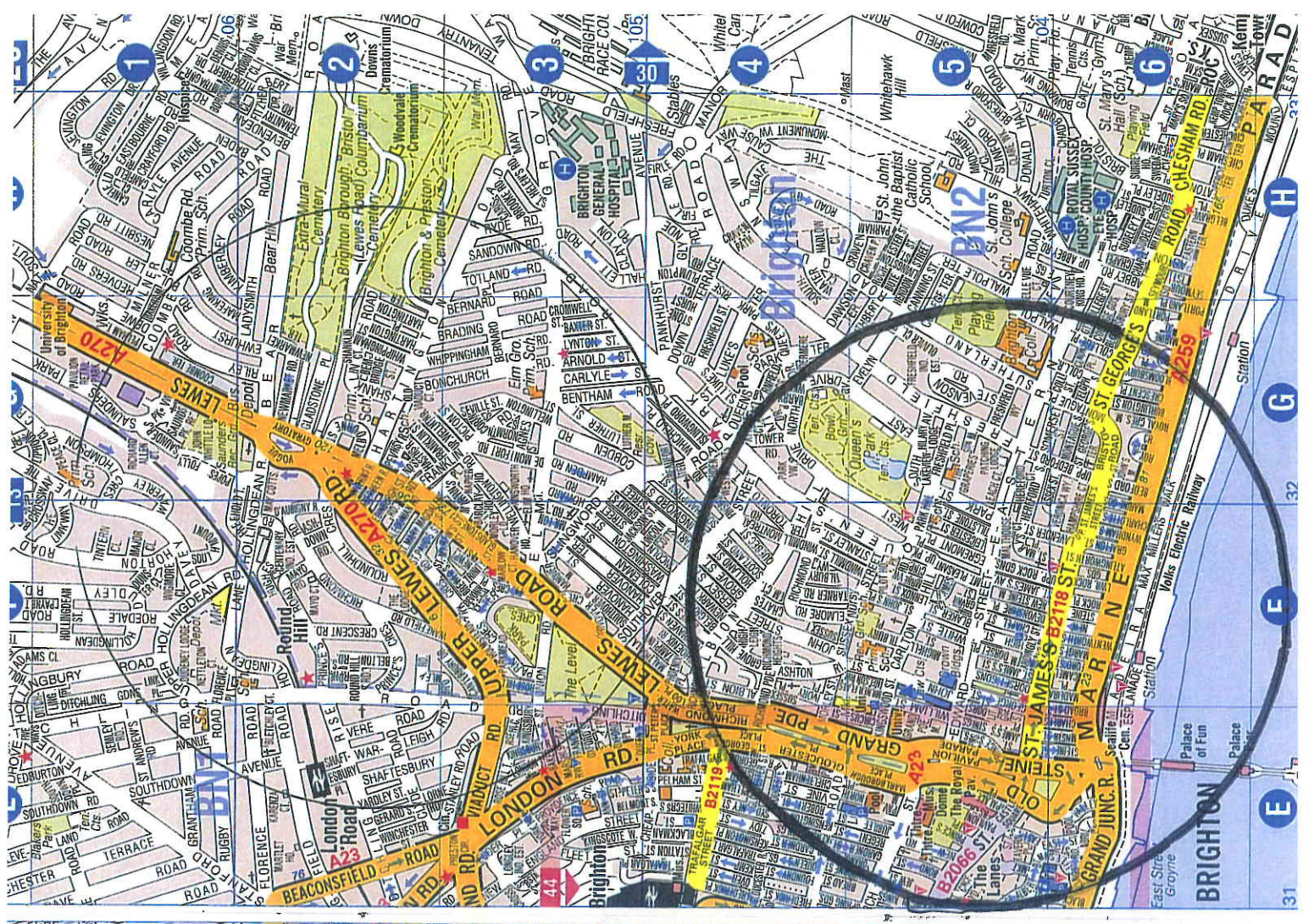


Map 1
Boundary Road/Station Road
Hove, Brighton, East Sussex

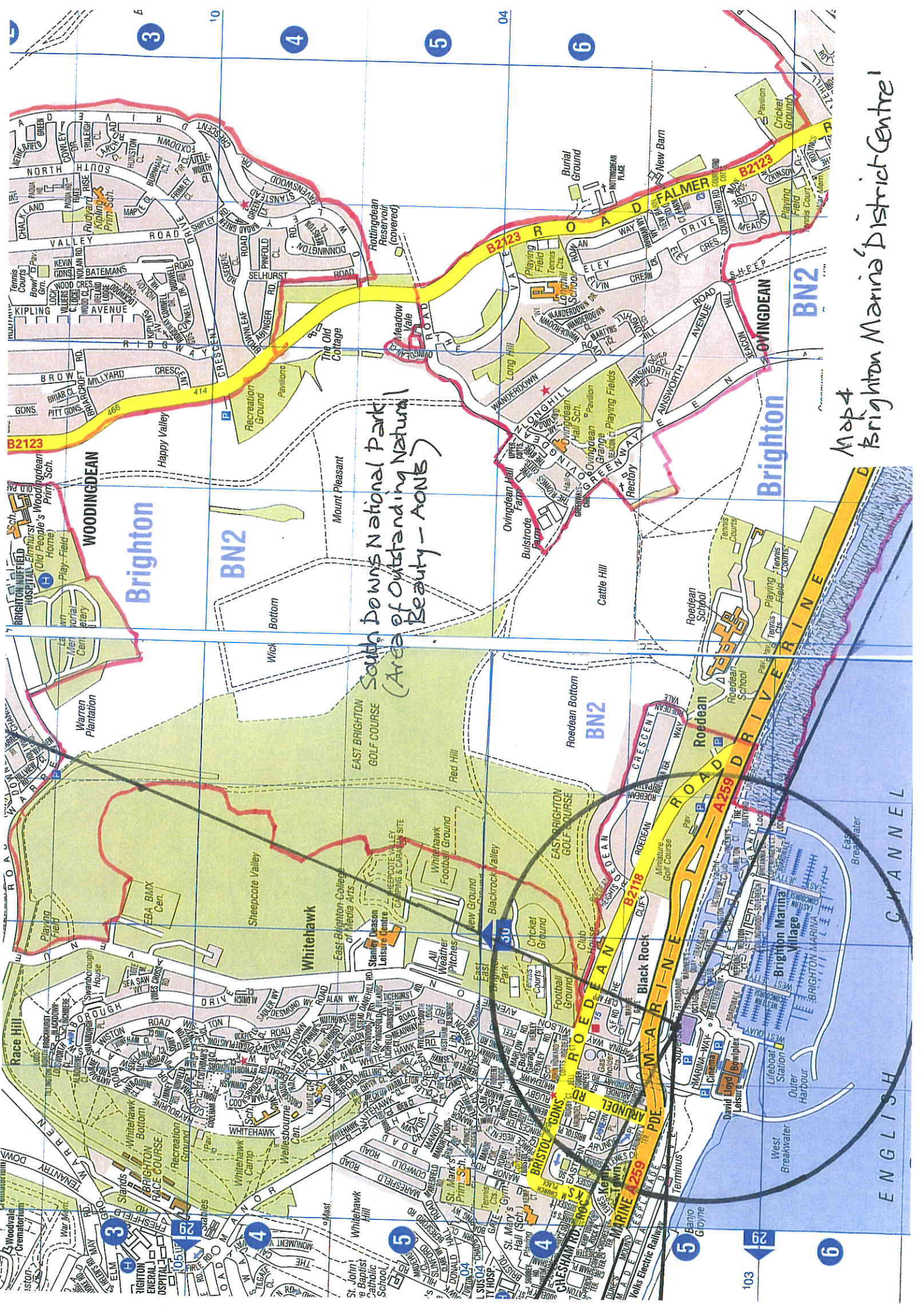


Map 2.
Lewes Road District Centre





Map 3.
St James Street District Centre



South Downs National Park
(Area of Outstanding Natural
Beauty - AONB)

Map 4
Brighton Marina District Centre



Brighton Marina
'The Spirit of Place'



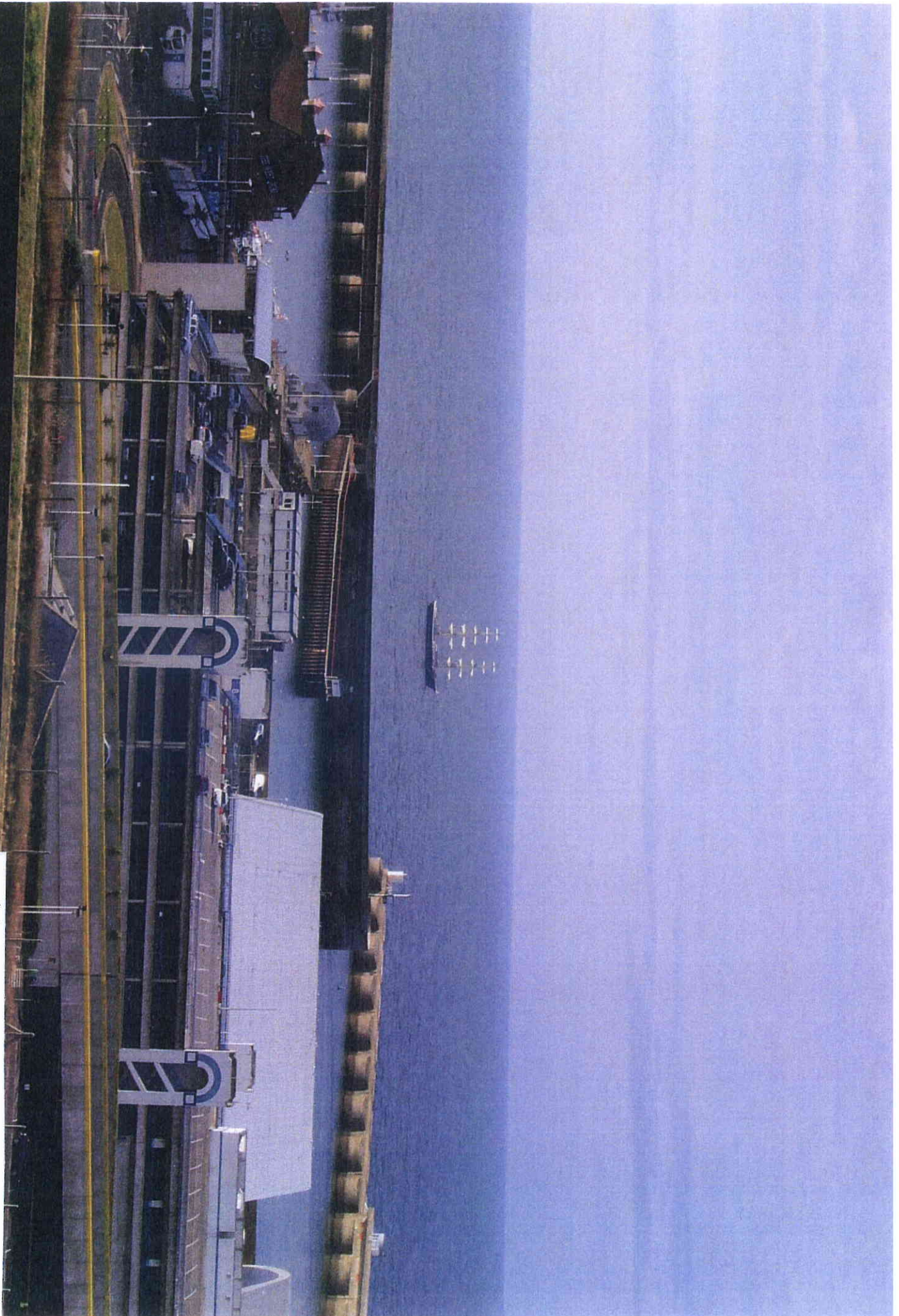
Brighton Marina
The boardwalk in summer
is a distinct identity!



Brighton Marina
Palm Drive - a cafe culture that
could be obliterated by Bus shelters

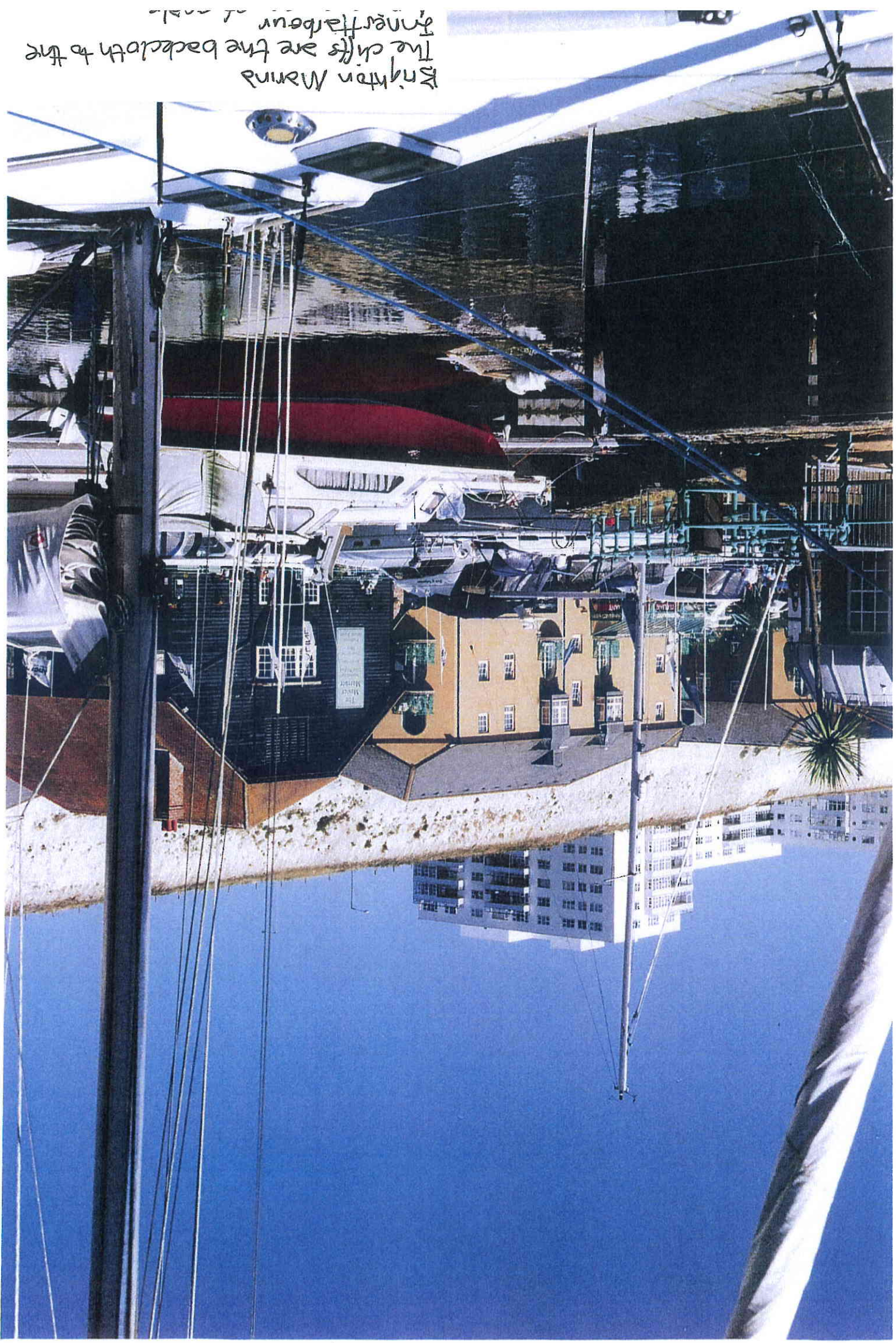


Brighton Marina
A Fireworks display seen from Marine
Gate at the cliff top

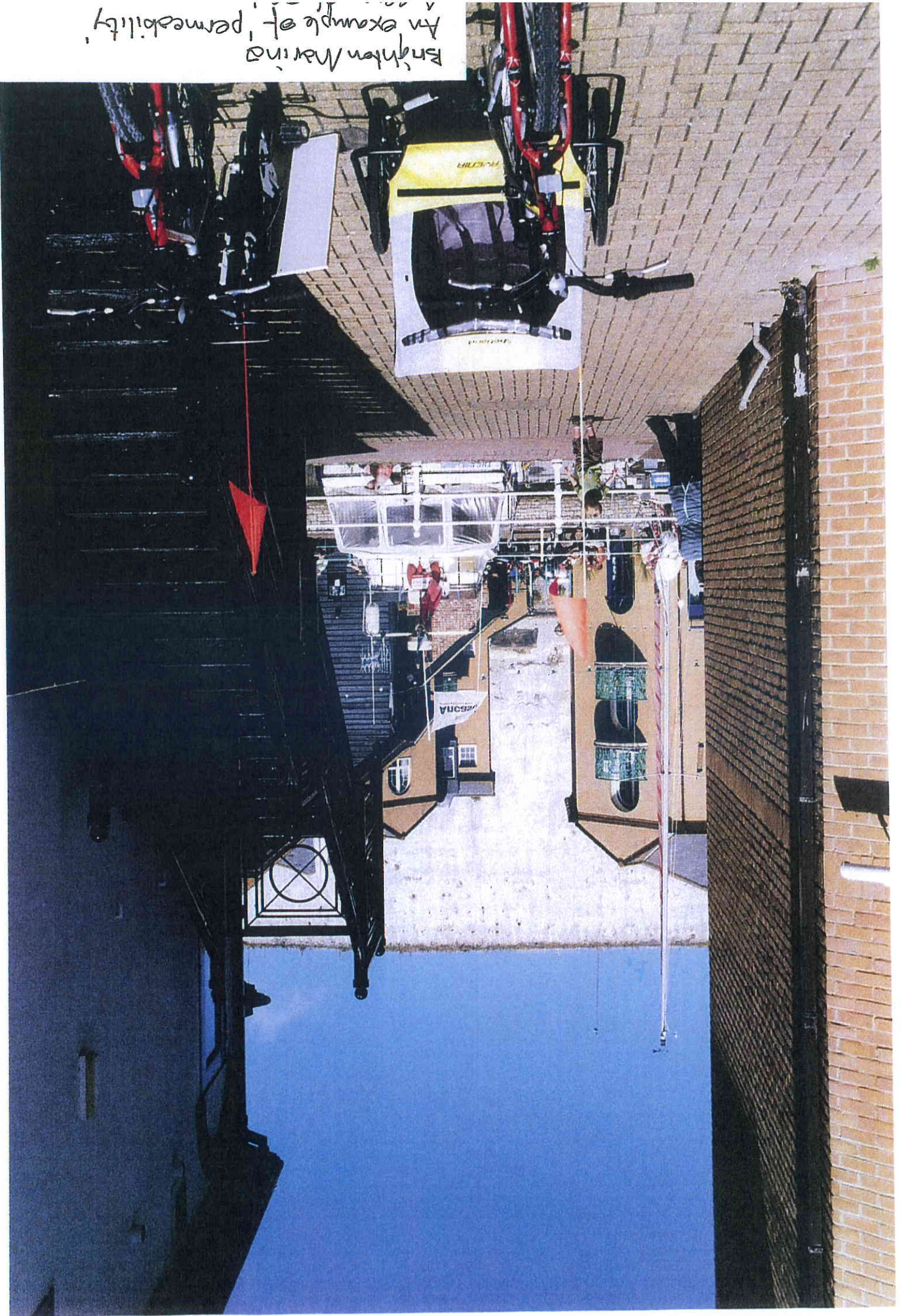


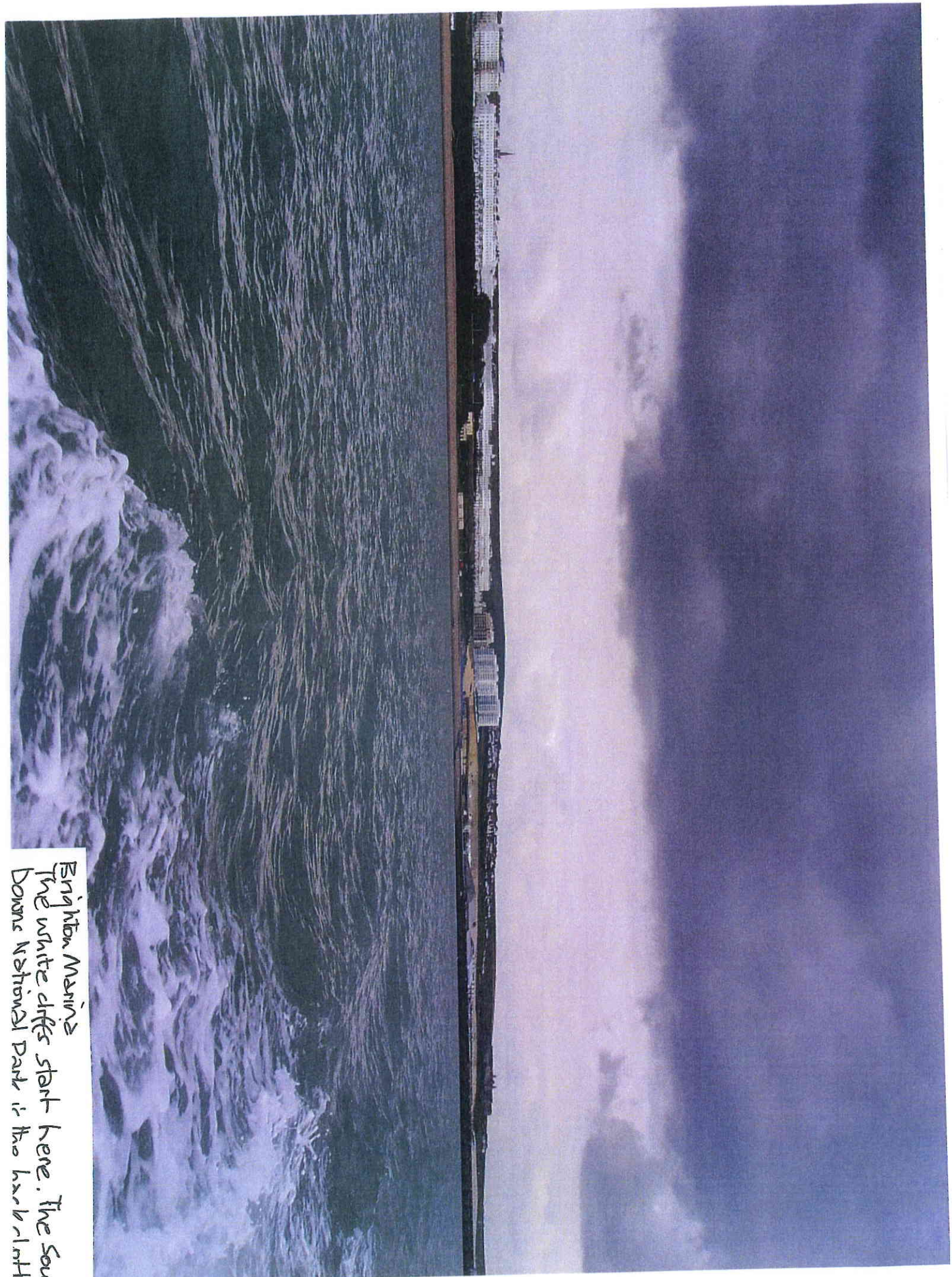
Brighton Marina
The harbour seen from
Marine Gate

Brighton Marina
The cliffs are the backdrop to the
Inner Harbour at night



An example of 'permeability'





Brighton Marina's
The white cliffs start here. The South
Downs National Park is the background.



The South Downs National Park sweeps down to the English Channel
View from Red Hill towards Marine Gate

X-LEISURE CLAIM THE MARINA IS THE PLACE TO 'ESCAPE THE RAT RACE'
BUT FOR HOW MUCH LONGER IF THEIR APPLICATION IS ALLOWED. AND THEIR
DEVELOPMENT WILL BLOCK VIEWS OF THE CLIFFS

advertisement feature - Brighton Marina

Making waves

ONE of the reasons Brighton Marina is such a fascinating place to visit is its variety.

From millionaires' summer playthings to salt-stained crafts returning from a rough and lengthy voyage, boats of all manner moor here.

Residents in the area range from young professionals who work in the city and families who love the space to retirees with time to spare and owners of second homes.

With so much diversity, and all the coming and going, there really is a cosmopolitan feel here.

Of course everyone comes for different reasons but that is because the marina has so much to offer.

Kirsty Harris, of X-Leisure which owns the marina, said: "If you need to escape the rat race for an afternoon then what better place.

"Parking is free, and whatever it is that tempts your tastebuds the marina will have something to fulfil them.

"People do come for many

reasons. Some for the boating. Some for the food. And some for the cinema and other entertainments.

"But one of the most surprising things is that most people in Brighton have never been on a boat.

"Although there are boats setting sail from the harbour every 15 minutes on day trips, fishing expeditions and champagne parties, many people prefer to stay onland.

"But when they're so much on offer when the boat is docked it seems a silly prospect."

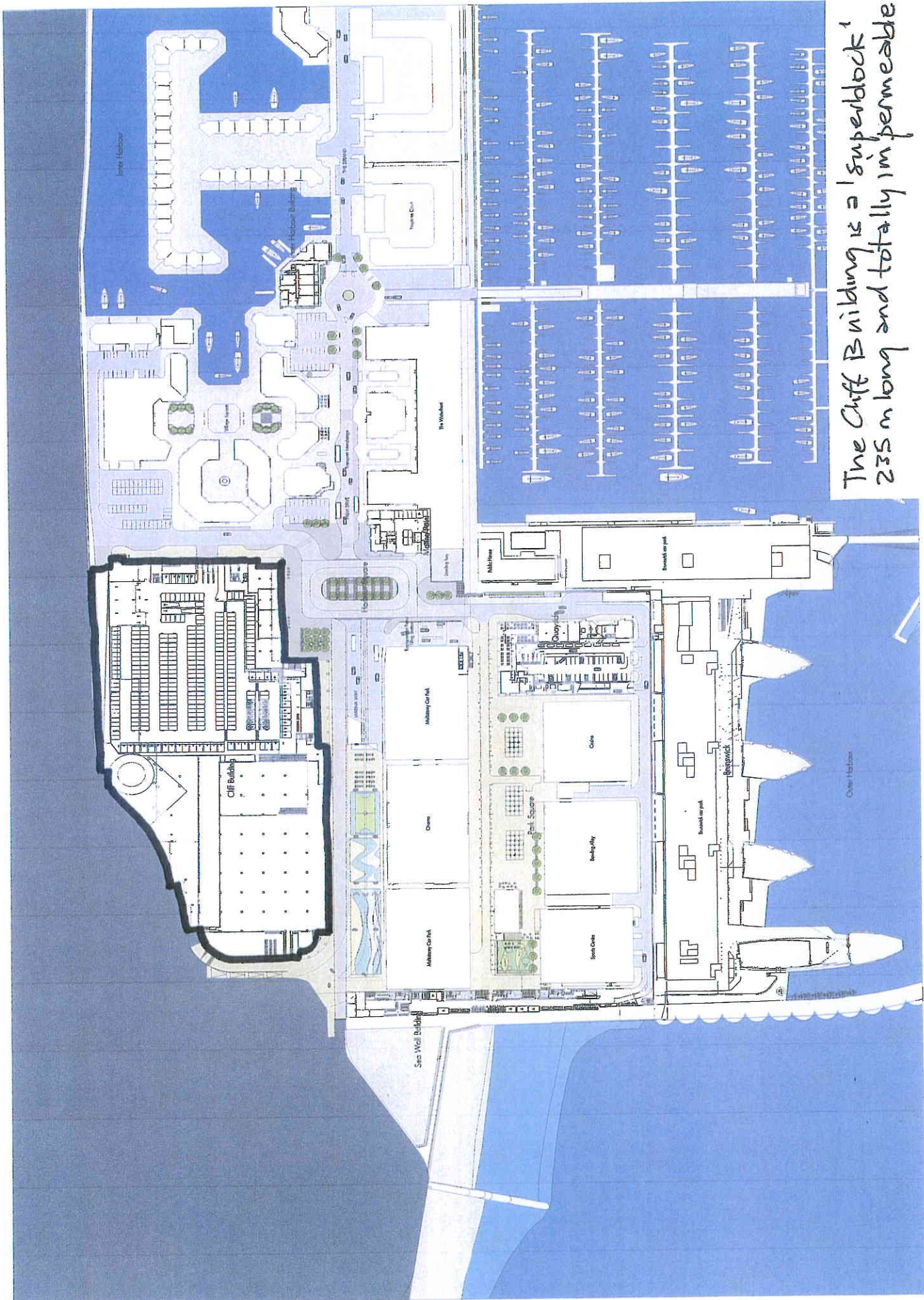
Not everyone goes to the marina for entertainment. If you are looking for somewhere different to do business then the Hotel Seattle, with its array of classy conference facilities, might be the right choice.

The marina has events on all year round so keep your eyes peeled. Up next are the Seafood Festival and European Gay Cup Regatta which take place on the weekend of September 6 and September 7.



The Brighton Marina
"The place to escape the rat race"
Quote from X-Leisure.





The Cliff Building is a 'superblock'
235 m long and totally 1m permeable.

Notwithstanding to whomsoever, the Architect warrants that the drawings are his work and that he is not responsible for any errors or omissions in the drawings. The Architect shall be liable for any errors or omissions in the drawings which are caused by his negligence or the negligence of his staff or any other person employed by him. The Architect shall not be liable for any errors or omissions in the drawings which are caused by the negligence of any other person.

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3.1 m AOD LEVEL PLAN
PLANNING APPLICATION
XB005_AM_SW_00_A_07_100

68 Southwick Street
London SE1 8JQ
Tel: 020 7733 1100
Fax: 020 7733 0100
info@landdistribution.co.uk

Land
Distribution
Group

01/01/05

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The architects perspectives indicate a bland urban space that could be "Anywhere." It has nothing to do with the Marina.

US	11/15/24	PLANNING ISSUE	AM	
PA	11/05/27	PLANNING ISSUE	AM	
PR	07/16/27	PLANNING ISSUE	AM	

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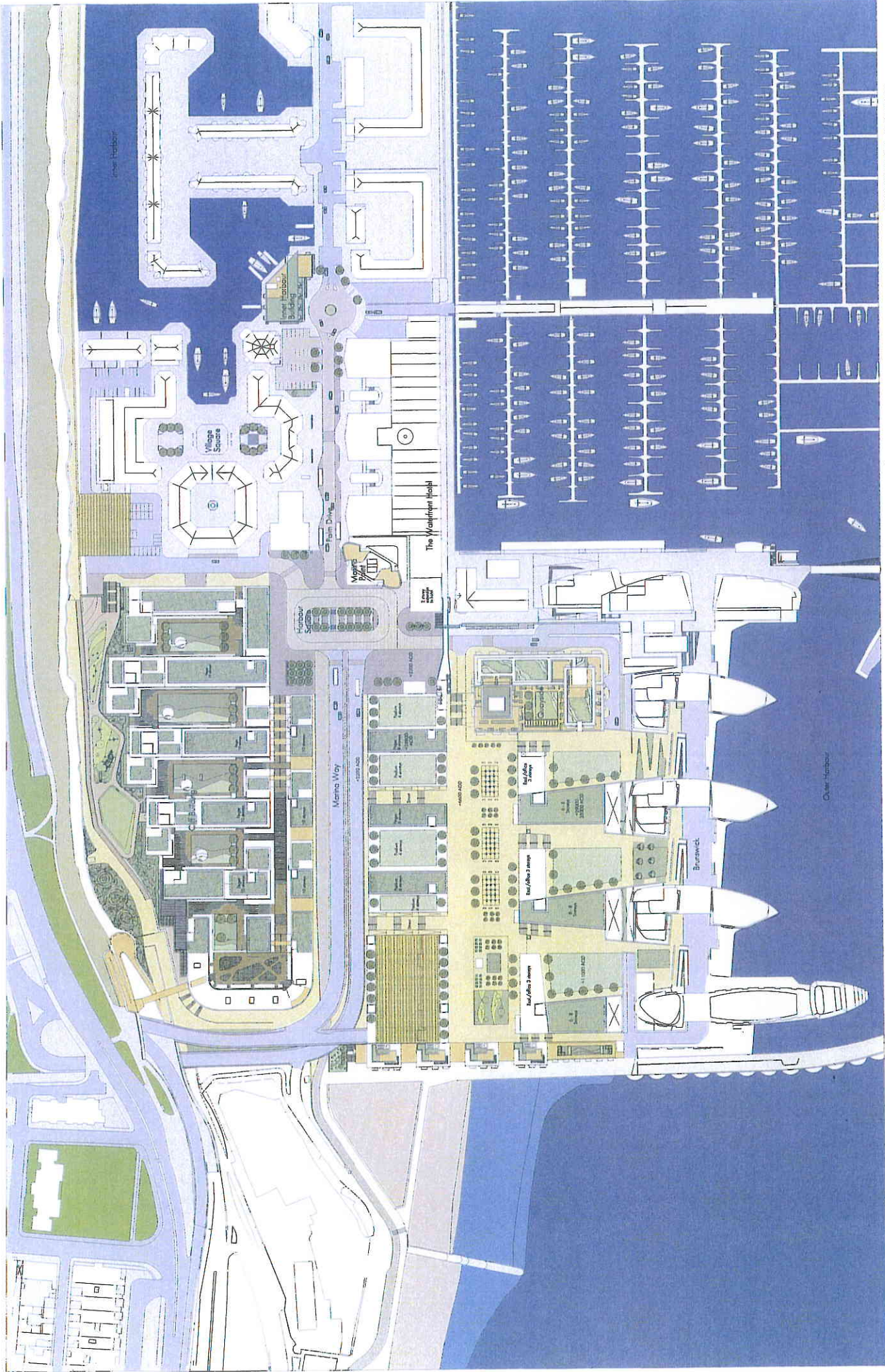
The development blocks views of the White Cliffs, the listed Roedean School, the Listed St Dunstons, Bottingdean Windmill and the AONB.

C39 Proposed and consented view from Marine Parade at central axis of Lewes Crescent



The development presents a mundane
roofscape to Marine Gate.
(Note - the building in the foreground does
not exist)

Proposed and consented view from level 1 balcony of
Marine Gate



BRIGHTON MARINA - MASTER PLAN

ROOF LEVEL PLAN
FUTURE MASTERPLAN

X8005_AM_SW_00_A_07_135

DATE: 18.06.08 SCALE: 1:1000 (A1) 1:2000 (A3)

Allen and Morrison
85 Southwark Street
London SE1 8JQ
020 7921 0101
info@allenandmorrison.co.uk
AAMA PCB NO: 466

Masterplan showing
Future expansion

REFER TO LANDSCAPE ARCHITECT'S DRAWINGS FOR FURTHER DETAILS

NO	DATE	REVISION	BY	CHK
P1	17.06.08	EMPT INFORMATION ISSUE		
P2	25.06.08	PLANNING SUBSTITUTION ISSUE		

The masterplan is a preliminary high-level illustration and should not be used for construction. It is not a contract document. It is intended to provide a visual representation of the proposed development and to illustrate the overall concept and layout. It is not intended to be used for planning or other regulatory purposes. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose.



APPENDIX 1

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Brighton Marina Bill

26 JUNE 1967

Brighton Marina Bill

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[MR. CHAPMAN.]

and that it will be in effect the Minister, in the normal manner, who will settle these matters in the event of disagreement between the local people, the company and the Corporation. I do not want it taken out of the hands of the Minister by anything in Clause 57. If my hon. Friend can assure me that is not the case, I shall be very happy.

Mr. MacColl: The position is not quite so simple and I cannot give a one-word answer.

The letter of 29th September, 1966, on behalf of my right hon. Friend gave outline planning permission, subject to various conditions, for the development of the land the subject of the application to include a yacht harbour, marina, club, restaurant, public houses, and so on. Clause 5 authorises construction of the harbour works and access roads and this carries with it planning permission for this specific development and to that extent duplicates the decision letter.

But by virtue of class 12 of Schedule 1 of the Town and Country Planning (General Development) Order, 1963, the detail of the development, design, external appearance, siting within the limits of deviation and means of access, will need planning permission. Clause 40 empowers the company to carry out other developments—club premises, restaurants, hotels and so on—and the proviso of subsection (1) of that Clause ensures that the Bill does not confer planning permission for those purposes, and therefore for those purposes the company would have to go back to the decision letter.

In Clauses 6 and 7 a number of minor works are mentioned which might not come within the development and therefore might not require planning permission. They are not the sort of things about which my right hon. Friend would feel that he was particularly good at arbitrating. My right hon. Friend is a resourceful man and always willing to be helpful, but his knowledge of caissons, cofferdams, slipways, culverts and syphons is not that of an expert arbitrator and, therefore, with becoming modesty, my right hon. Friend has asked me to say that he would rather not have responsibility for those things.

Mr. Chapman: Does that mean substantially that this a Clause which, as drafted,

will not interfere with the ordinary town and country planning legislation provisions applied to the major part of this development and that if there is objection to any of the detailed features of the large-scale development, there will be the normal opportunities for people to make their views felt and for the Minister to call in matters for decision in the usual way?

Mr. MacColl: When receiving guidance and then asked a question, one goes back to the beginning and reads it all again. Broadly speaking, what my hon. Friend has said is correct. On the main matters of development, things of the sort which would normally arise in planning, the decision letter would be binding, but any dispute about interpreting the decision letter would be dealt with under town and country planning legislation.

Mr. Chapman: I am much obliged. My hon. Friend has explained the matter to my satisfaction and I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Clause 58.—(RESTRICTION ON EXERCISE OF CERTAIN POWERS AND TRANSMISSION OF POWERS TO CORPORATION.)

Mr. Chapman: I beg to move, in page 41, line 7, to leave out from the beginning to the third 'the'.

I know that the right hon. and learned Member for Chertsey (Sir L. Heald) is very good at explaining to me how usual these things are, but I wonder whether he can explain how this provision got into the Bill at all. It is covered by Clause 54(1), which he was so anxious to preserve and which effectively governs the following four Clauses, for it says:

"For the protection of the corporation the following four sections of this Act shall . . . apply . . ."

Clause 58 is therefore governed by Clause 54, but in Clause 58 there is a repetition of the words

"Save with the prior consent of the corporation, the Company shall not construct or erect . . ."

For reasons which I do not understand, we here have a double-banked power of the Corporation to waive the provisions of Clause 58.

However, that is not the real purpose of the Amendment. It is an important

The 1968 Marina Act.
Assurances given by Parliament

Amendment about which we should have some explanation. The Amendment would mean that the Corporation could not in any circumstances give permission for any of the buildings of the proposed marina to be higher than the height of the cliffs. As the subsection is drafted, the Corporation could give consent for the buildings to be higher than the cliffs.

As the Bill stands, the corporation could change its mind and agree to buildings higher than the cliffs. If my hon. and learned Friend the Member for Aberdeen, North (Mr. Hector Hughes) feels strongly about any of the minor parts of this Bill he ought to feel strongly about this one, because one of the things promised to objectors to the proposals all the way through was that never would any buildings be allowed to be higher than the height of the cliffs. There are many occasions when this has been firmly promised.

Take first of all the Minister's findings in giving planning permission for the project. Paragraph 13(2) of the Minister's planning permission is quite clear:

"No building shall be of a height greater than the level of that part of the cliff-top which is immediately north of the site of the building."

The Minister made the position absolutely clear. He was not the only person to do so. Paragraph 154 of the hearings before the Inspector appointed by the Minister, dealing with the promoters' case, says:

"In the first place none of its buildings would exceed the height of the adjoining cliffs, while most if not all of this development would be hidden by the latter from any residential developments or public thoroughfare immediately behind the site."

The promoters offered this scheme on the understanding that there would not be any buildings higher than the cliffs. Then we have paragraph 206, which is the case for the corporation in supporting the promoters. This says:

"Even though the height of new buildings would be kept below the height of the cliff face . . ."

In other words, this was an assumption made by the Corporation in good faith that it was thoroughly agreed that no buildings would be higher than the cliffs.

The promoters gave their pledge, the corporation supported them on the basis of that pledge. The Minister gave permission for the whole project on the

understanding, and the clear condition that no buildings would be higher than the cliff. I would have thought that this was one of the things which would reassure people living locally, and those who want to protect the amenities of the area from the impact of this project on the whole scene. This was an assurance cardinal to the scheme.

Yet here we have in this Clause as drafted the power of the Corporation to waive this requirement. I object most strongly to this. It was one of the things which persuaded people that this scheme could be allowed, because it was clear that there was an assurance, never to be broken, that the cliff height was the limit for the height of the buildings. I do not understand why the Corporation is retaining the power to waive this requirement. I do not know why it is necessary and I very much hope that the House will agree to delete it.

This is a perfectly reasonable request to make, based on all the understandings that have been arrived at all the way through this Bill with regard to this problem. For this reason we should, very firmly and clearly remove from the Bill the power of the Corporation to waive this requirement.

Mr. Martin Madden (Hove): I am not a Brighton Member, but I am acting in an honorary capacity for Brighton because I have taken an interest in the Bill and I wish to see it succeed. I want to tell the hon. Gentleman the Member for Birmingham, Northfield (Mr. Chapman) that this Clause does not have any diabolical intention behind it, although the point that he raises is important. The purpose of the words which he seeks to strike out are to enable the erection of structures like lamp-posts, guard rails, maybe harbour lights, or something of this sort during 125 years—the period with which the Bill is concerned. It would be wrong to take out of the hands of the Corporation the power to decide matters of that sort. The Corporation has no interest in allowing permanent buildings to be built to a height greater than the cliff top. But it must safeguard its position to be able to allow the erection of necessary ancillaries in the scheme for the good of the scheme.

8.45 p.m.

I therefore hope that the hon. Member for Northfield will give some

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Brighton Marina Bill

26 JUNE 1967

Brighton Marina Bill

200

[MR. MADDAN.]
 credence to the good intentions of the Brighton Corporation to undertake its duties as the local authority in the way stated, and that he will allow the flexibility which the initial words in the Clause give.

Mr. MacColl: There may be some point in the argument about whether the structure is development within the planning Acts.

In general, I have a good deal of sympathy with what my hon. Friend the Member for Birmingham, Northfield (Mr. Chapman) said. The condition in the planning permission was quite categorical in limiting the height of the buildings to be erected. The Minister would not be parlous in the matter. If there were a proposal to do something of this sort, he could always call it in for planning decision directly by himself, even if there were a likelihood of the planning authority agreeing to it, or if it got beyond that stage he would have power under the Town and Country Planning Act to make a discontinuance order. There would, therefore, be some reserves left. However, this is a matter which could be looked at in another place.

Sir L. Heald: The hon. Member for Birmingham, Northfield (Mr. Chapman) was kind enough to suggest that I might be able to help him. If his Amendment were adopted, there would be a positive statutory prohibition against anything of this kind, no matter what anybody did. It would mean that no lamp posts or navigation beacons or anything of that kind could be put up, and anybody who put up such things would be infringing the Act. The Amendment is quite futile.

Mr. Chapman: The right hon. and learned Gentleman may think it futile, but the Clause flies in the face of every assurance given to people who opposed the Bill, which was that nothing would be built above the height of the cliff. The right hon. and learned Gentleman may smile, but that was the assurance given locally. The whole justification for the scheme was that the height of the cliffs would mask the development below and that none of the development would protrude above the cliffs so that it spoiled the view of the cliffs and impinged on the development which already existed.

I was much encouraged to hear my hon. Friend the Joint Parliamentary Secretary say that this is a reasonable proposition. I am grateful to him for pointing out that this is the sort of thing which can be considered in another place. I will do my best to ensure that it is considered in another place with a view to deleting this power of the Corporation to waive the requirements.

I was also glad to hear my hon. Friend state categorically that the Minister's view, as set out in the original permission, was that there should be a limit on the height of buildings. In view of the silence of Brighton Members, I was encouraged by what the hon. Member for Hove (Mr. Maddan) said, namely, that the Corporation is willing to give an assurance that there will not be any buildings above a certain height erected. However, as it has been said that this matter can be amended in the House of Lords, I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. Chapman: I beg to move, in page 41, line 30, after 'Act', to insert: 'unless the Company shall first have offered to sell undertakings to the Corporation on terms to be agreed or to be settled according to the provisions of the Compulsory Purchase Act 1965, and'.

The Amendment raises a matter of public policy. It concerns what happens to the undertaking if at any time the promoting company decides to sell it.

The Bill sets out the powers of the company. By Clause 52, it will have power to sell the undertaking to another private enterprise company. I have no objection to its wishing to sell the enterprise. The House decided on Second Reading that it should go ahead on the basis mainly of private enterprise development. I have misgivings about that, but they have been partly relieved by the ability of the Corporation to nominate directors, and I also understand from the town clerk that the company is willing to share the profits of the undertaking with the local authority. To some extent, therefore, I am satisfied that the Bill as finally drafted contains a mixture of public and private enterprise. Although it is on a smaller scale than originally I would have admitted, it certainly goes part of the way to meet my point of view.

Land at Brighton Marina comprising Outer Harbour, West Quay and adjoining land

OPINION

1 A planning application has been submitted to Brighton and Hove (the Council) for the development of land at Brighton Marina.

2 Section 40 of the Act grants a power to develop certain works and lands, within a defined geographical area.

3 Section 59 of the Act provides:-

"The Company shall not construct or erect, to the south of the cliff face any work, building or structure to a greater height than the height, at the time of such construction or erection, of that part of the cliff face which lies immediately to the north thereof".

4 Section 55 of the Act provides:-

"For the protection of the corporation the next four sections of this Act shall unless otherwise agreed in writing between the Company and the corporation apply and have effect.

The opinion of
Clive Newberry QC.

Section 59 of the Act is therefore subject to section 55.

5 The corporation is defined in section 4 of the Act as:-

"the mayor, alderman and burgesses of the borough"

and the borough means the Borough of Brighton.

6 It follows that, unless disapplied by an agreement in writing pursuant to section 55, there is a height limitation on development imposed by the Act. So far as I am aware no such agreement has been made.

7 The height limitation contained in the Act is clearly a material planning consideration to be taken into account by the Planning Applications Sub-Committee in determining the planning application. It clearly represents (at minimum) the considered view of Parliament and the Council at the time of the Act.

8 Even if a planning permission were to be given for development outwith the Act in my view it could not be implemented so as to breach the Act unless the height restriction were to be disapplied in accordance with the mechanism in the Act. This, ~~however~~ is not a matter for the Planning Applications Sub-Committee.

9 Further, it does not follow that the Council would then be obligated to disapply the height restriction in the Act. That would be a matter for the full Council's determination at a later date, were it to be necessary for such a decision to be made.

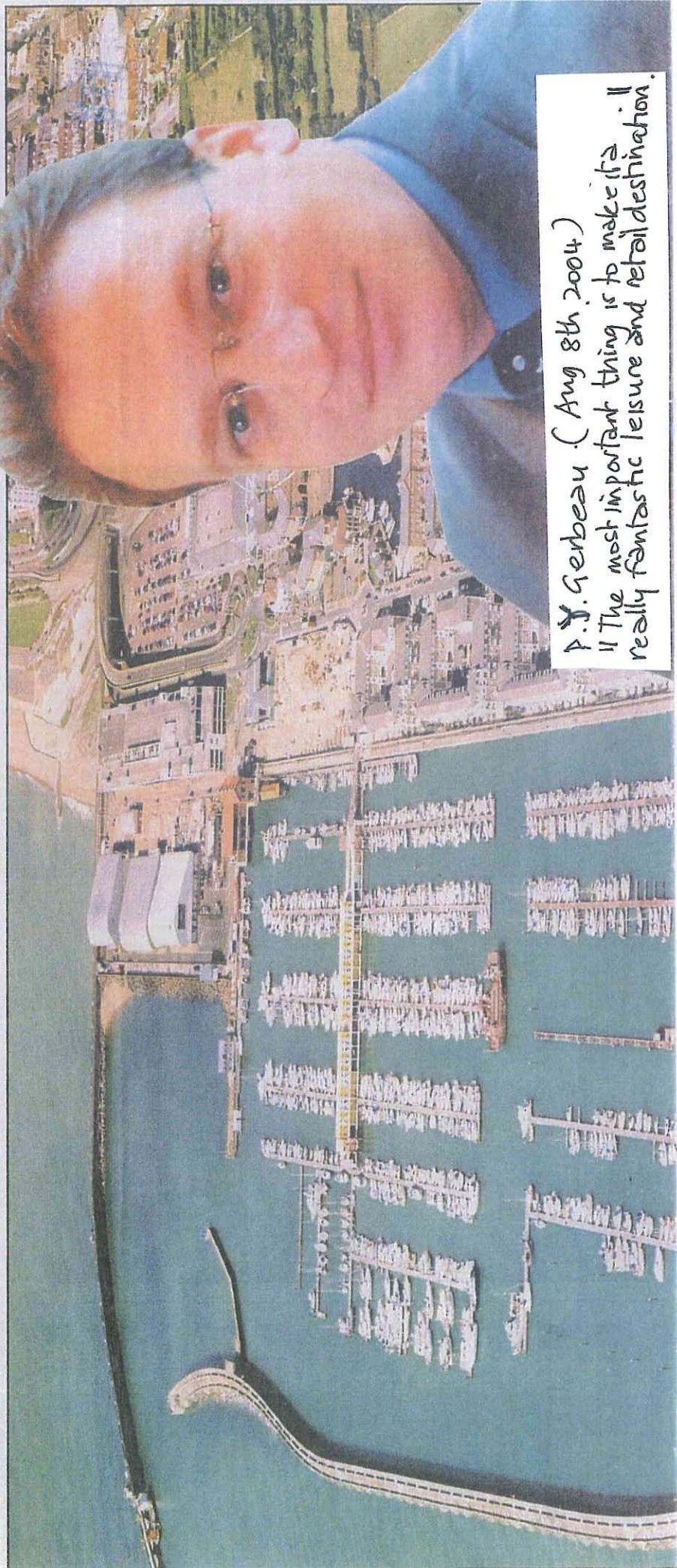
CLIVE NEWBERRY Q.C.

The Argus

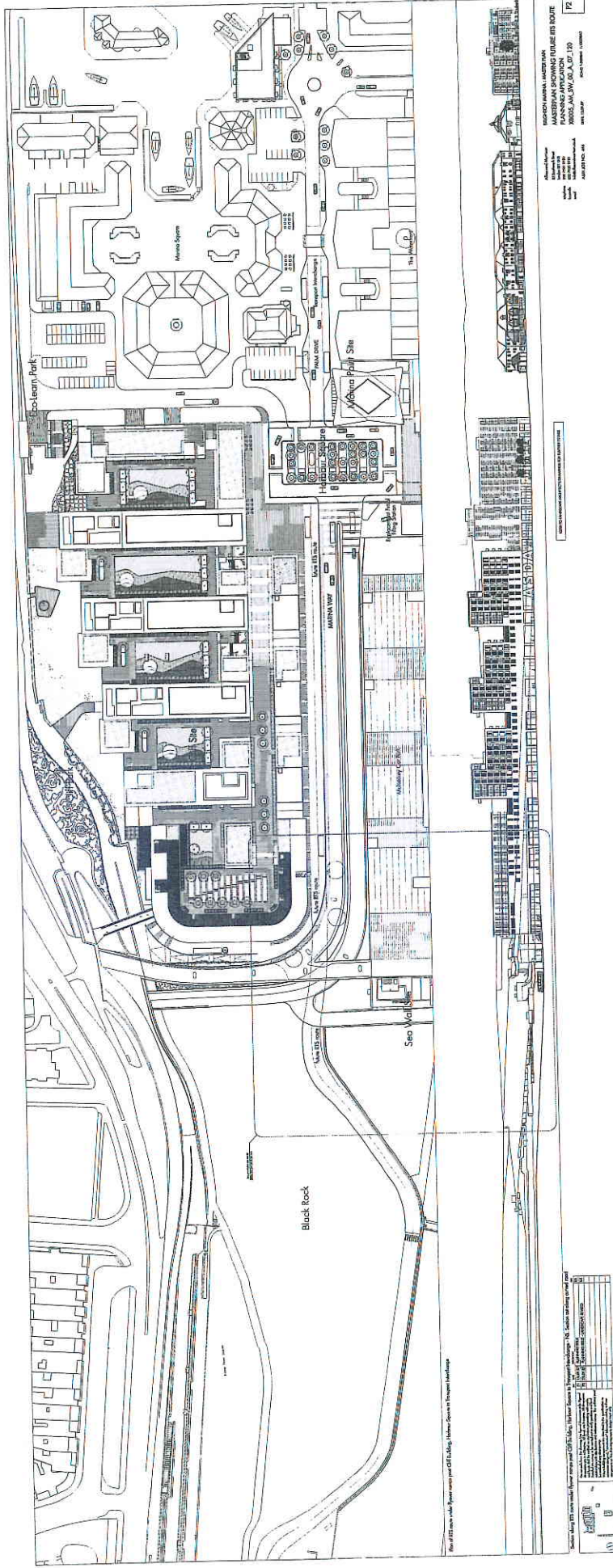
35p Saturday, August 7 - Sunday, August 8, 2004

Entertainer
Paul Nicholas
inside Weekend

French entrepreneur buys stake in property development



P. Y. Gerbeau (Aug 8th 2004)
|| The most important thing is to make it a really fantastic leisure and retail destination.



The Cliff Building obscures the view of the white cliffs



BRIGHTON MARINA - MASTER PLAN
 ROOF LEVEL PLAN
 FUTURE MASTERPLAN
 X8005_AM_SW_00_A_07_135
 DATE: 19.06.08
 SCALE: 1:1000 @A1 1:2000 @A3

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 020 7923 0101
 info@allenandmorrison.co.uk
 AAMA JOB NO: 466

Masterplan showing Future expansion

REFER TO LANDSCAPE ARCHITECT'S DRAWINGS FOR FURTHER DETAILS

NO.	DATE	DESCRIPTION
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10	19.06.08	ISSUE FOR TENDER

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