



Department for Levelling Up,
Housing & Communities

Rachel Crick
Avison Young
65 Gresham Street
London
EC2V 7NQ

Our ref: APP/Q1445/W/20/3259653
Your ref:

11 November 2021

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY THE OUTER HARBOUR DEVELOPMENT COMPANY
PARTNERSHIP LLP
LAND AT BRIGHTON MARINA COMPRISING THE OUTER HARBOUR, WESTERN
BREAKWATER, AND ADJOINING LAND, BRIGHTON, BN2 5UF
APPLICATION REF: BH2019/00964**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc (Hons) BArch IHBC, who held a public local inquiry between 23 March 2021 and 19 April 2021 into your client's appeal against the failure of Brighton and Hove City Council to determine your client's application for planning permission for a hybrid planning application for the phased residential-led mixed-use development of Brighton Marina Outer Harbour. Full Planning Permission is sought for Phase Two of the development and comprises: 480 residential units (Use Class C3) in 3 buildings ranging from 9–28 storeys; 761 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); works to existing cofferdam; undercroft car and cycle parking; servicing; landscaping; public realm works; and infrastructure (harbour wall) works. Outline Planning Permission (all matters reserved apart from access) is sought for Phase Three of the development and comprises: up to 520 residential units (Use Class C3) in 6 buildings ranging from 8–19 storeys; up to 800 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); construction of engineered basement structure to create a raised podium deck over Spender Beach; installation of Navigation Piles; undercroft car and cycle parking; servicing; landscaping; and public realm works, in accordance with application ref: BH2019/00964, dated 28 March 2019.
2. On 1 December 2020, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed, and planning permission refused for the development proposed.

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4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 and the updated environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.10, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. Since the Inspector concluded the public local inquiry the Secretary of State is aware that on 13 May 2021 the Council submitted the Draft Brighton & Hove City Plan Part 2 to the Secretary of State for Examination in Public and on 17 June 2021 the Council adopted the Supplementary Planning Document (SPD) 17: Urban Design Framework (UDF). Furthermore, on 20 July 2021 the revised National Planning Policy Framework ('the Framework') was published.
7. On 10 August 2021, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised National Planning Policy Framework, the submission of the Draft Brighton & Hove City Plan Part 2, and the adoption of SPD 17 UDF. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 31 August 2021 and again on 6 September 2021 following receipt of additional representations. A further representation received in response to this circulation was then circulated for reference on 24 September 2021. These documents and the resulting representations have all been taken into account by the Secretary of State in reaching this decision.
8. The Secretary of State is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the saved policies of the Brighton & Hove Local Plan of 2005, and the Brighton & Hove City Plan Part 1 of 2016 (BHCP1) with the associated 2020 Policies Map. The Secretary of State considers that relevant development plan policies include, but are not confined exclusively to, those set out at IR5.2-5.14.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Supplementary Planning Guidance Note: Brighton Marina, Planning Advice Note 04: Brighton Marina Masterplan, Supplementary Planning Guidance Note 15: Tall Buildings, SPD 17: UDF and the Draft Supplementary Planning Guidance Note 9: A Guide for Residential Developers on the Provision of Outdoor Recreation Space and the Ancillary Update Document.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
13. The Secretary of State notes that the location of the site means there is another consenting regime falling within the jurisdiction of the Marine Management Organisation as detailed at IR1.12 and agrees with the Inspector that this matter does not bear on determination of the application at issue. He further notes that S.59(1) of the Brighton Marina Act 1968 places a restriction on the ability to 'construct or erect any work, building or structure' above the height of the cliffs, as detailed at IR1.12, and agrees with the Inspector that the Act operates entirely separately from the planning system.

Emerging plan

14. The emerging plan comprises the Draft Brighton & Hove City Plan Part 2 (BHCPP2) which was submitted to the Secretary of State for examination in May 2021.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
16. The Secretary of State has given consideration to the Proposed Submission Draft of the Brighton & Hove City Plan Part 2 policies that are of most relevance to this case as set out in the Statement of Common Ground e.g. Core Document CD301. These include DM1 – Housing Quality, Choice and Mix, DM18 – High Quality Design and Places, DM19 – Maximising Development Potential, DM20 – Protection of Amenity, DM22 – Landscape Design and Trees, DM29 – The Setting of Heritage Assets, DM37 Green Infrastructure and Nature Conservation, and DM39 – Development on the Sea Front. Due to the development plans progress since the inquiry, limited weight can now be afforded to the emerging policies.

Main issues

17. The Secretary of State agrees that the main issues are those set out by the Inspector at IR11.2. He notes the Inspector's comment that the various diagrams and visualisations can be taken as strong indications of how the development, as a whole, would appear, and has proceeded on that basis (IR11.4).

Character and Appearance

The Context

18. The Secretary of State agrees with the Inspector's assessment at IR11.5-11.12 of the existing site context, and agrees that there is a great opportunity to secure enhancement (IR11.13).

Design

19. The Secretary of State has carefully considered the Inspector's assessment at IR11.14-11.22. For the reasons given he agrees with the Inspector that the various spaces want for discipline and overall there are not enough 'events' or 'signposts' to make for a properly legible route across the site (IR11.17). Furthermore, he agrees with the Inspector that in terms of the regularity of the façade treatments, and the homogenous mass that would be created, together with the failure to provide a proper landmark or bookend, the scheme lacks the exuberance and ambition that the best of Brighton's seaside buildings exhibit. He also agrees that it would not, therefore, be a positive contributor to its context and in many respects, it would fail to take the great opportunity the appeal site presents (IR11.22).
20. The Appellant and the Council have put forward representations on the implications of the adoption of the SPD 17 UDF, the submission for examination of BHCPP2, and the publication of the revised Framework. The Appellant in their representation of 24 August 2021 considers that the proposed development fully accords with the provisions of paragraphs 8, 131 and 134 of the revised Framework, and that the submission of BHCPP2 for examination, and the adoption of the UDF as an SPD does not alter their case as put to the inquiry.
21. The Council, in its representation of 24 August 2021, considers that the updated NPPF and the renewed emphasis it places on good design and beauty, and the need to reflect local design guidance and policy, including that set out in the newly-adopted UDF adds greater weight to their case that this scheme is not acceptable. The Council considers that the proposal conflicts with several sections of the UDF, namely: Section A, parts 1.1, 2.2 and 3.2 in respect of sunlight, outlook or protection from harsh weather conditions; Section A, part 1.4 and Section B including part 5.1 in respect of views and landmarks and tall buildings; and Section D part 13 in respect of several of the considerations relating to tall buildings applications.
22. The Secretary of State agrees with the Council that the updated NPPF gives even stronger weight to the need to follow local design guidance. For the reasons given in this letter, he agrees with the Council's assessment of the areas of conflict with the UDF. He has taken into account the Appellant's representations on the matter. However, given the significance of the areas of conflict, and the resultant degree of harm, particularly in respect of heritage, harm to the setting of the National Park and living conditions, he considers that overall there is conflict with the newly adopted UDF, this being a material consideration in its own right. In the light of this conclusion, he considers that overall the proposal fails to reflect local design policies, as required by paragraph 134 of the Framework. He further considers that it fails to reflect the elements of paragraph 130 relating to layout, the requirement to be sympathetic to local character and history, establishing a strong sense of place and providing a high standard of amenity.
23. The Secretary of State has further considered whether the proposal reflects government guidance on design. In the light of his conclusions above, and for the same reasons, he considers that the proposal is not in accordance with the aspects of the National Design Guide dealing with context, layout, form, appearance, external appearance and public spaces. He has taken into account the appellant's statement in their representation of 24

August that the provisions set out in paragraph 134 of the revised Framework are covered within Mr Aspland's POE, which sets out how the landscape design proposals meet the relevant objectives of the National Design Guide. However, as above, because of significance of the areas of conflict, and the resultant degree of harm, overall he considers there is conflict with the National Design Guide. He therefore agrees with the conclusion in the Council's representation of 24 August that the proposal does not reflect government guidance on design.

24. Overall, the Secretary of State considers that the shortcomings in terms of the failure to accord with the provisions of the revised Framework carry significant weight against the proposal.

The Setting of Heritage Assets

25. The Secretary of State has carefully considered the Inspector's analysis at IR11.23-11.34, and has also taken into account the Council's Proof of Evidence in respect of heritage (Core Document C2) which considers all affected assets.
26. In respect of those heritage assets set out in IR11.24-11.26, the Secretary of State agrees, for the reasons given at IR11.27, that these heritage assets derive part of their significance from their relationships with the sea, and that the development proposed would not change those relationships with the sea, or reduce the ability to appreciate those relationships, whether they are formal or not (IR11.27).
27. For the reasons given at IR11.28-11.31 the Secretary of State also agrees that the proposal at issue would undoubtedly be a major intervention that would have a significant status this being in respect of those designated heritage assets nearer the appeal site, that is Lewes Crescent (Grade I), Chichester Terrace (Grade I), Arundel Terrace (Grade I), and Sussex Square (Grade I), the Kemp Town Enclosures (Grade II Registered Park and Garden), and the Kemp Town Conservation Area, and the linked Esplanade Cottages (Grade II), Old Reading Rooms (Grade II), and Temple (Grade II), and the Madeira Terrace, Madeira Lift and Shelter Hall buildings (Grade II*) and the East Cliff Conservation Area. He also agrees with the Inspector in that the proposed development would have a very strong visual presence in some views of, and/or from, these important buildings and spaces, with implications for how they are experienced as heritage assets (IR11.28). He further agrees that the proposal would not respond to its context in a positive way, and would not reflect the ambition of these groups of buildings and spaces (IR11.29). He agrees that the very strong visual presence of a significant, but incongruous, complex, in some views of, and/or from these important buildings and spaces, would be jarring (IR11.29), in particular in respect of Lewes Crescent (IR11.31).
28. Overall the Secretary of State agrees with the Inspector that the proposal would have an adverse impact on the setting, and thereby the significance of these designated heritage assets (IR11.30). He further agrees with the Inspector about the impact on the setting and significance of the many other designated heritage assets the Council have referred to (IR11.34). This is set out in in the Council's Proof of Evidence in respect of heritage (CD2 5.62-5.70 and concluded at 5.70). In reaching his conclusions he has also taken into account, as the Inspector has done at IR11.29 and IR11.35, that the appeal site is earmarked for development, and that something substantial is likely to appear there at some point, and for that matter, on the Black Rock site.
29. Overall, for the reasons set out by the Inspector, and taking into account Core Document CD2, the Secretary of State agrees with the Inspector that the harm caused would be at

the lower end of 'less than substantial, and that this harmful impact on setting attracts considerable importance and weight (IR11.32-11.33). He further agrees that the proposal would fail to accord with policy CP15 of the Brighton & Hove City Plan Part 1 (IR11.72).

30. The Secretary of State is mindful that the Inspector agrees with Council's conclusion, that taking these assets collectively this places the harm caused overall at the lower end of 'less than substantial' (IR11.33 and also CD2 7.3). The Secretary of State has carefully considered the Inspector's findings alongside the supporting evidence and considers the assessment sufficient to agree with the Inspector at IR11.79, and that overall the proposal would cause less than substantial harm.

The National Park

31. For the reasons given at IR11.35-11.39, the Secretary of States agrees with the Inspector that the presence of the proposal, or more of the proposal than the extant scheme, would not necessarily harm the setting or the purposes of the National Park, or fall contrary to BHCP1 Policy CP12 (IR11.38). However, he further agrees that in views from within the National Park that are closer to the development, one would get more of a sense of the design shortcomings, and the incongruous presence of the proposal would have a harmful impact on the setting of the National Park in these views (IR11.39). He agrees with the Inspector that this would be in conflict with Policy CP12 of BHCP1 (IR11.72).

Conclusion on Character and Appearance

32. Overall the Secretary of State agrees with the Inspector that the arrangement and visual manifestation of the proposal would not respond properly to its context and that this would lead to harm to the setting, and thereby the significance of a range of designated heritage assets, and that of the National Park. It would therefore fail to make the best of the opportunity offered up by the appeal site (IR11.40). The Secretary of State affords the resulting harms to the various designated heritage assets and to the National Park great weight.
33. For the reasons given at IR11.41-11.42, the Secretary of State agrees with the Inspector that a conclusion on design has to be taken in the round (IR11.42).

Living Conditions

34. For the reasons given at IR11.43-11.60, the Secretary of State agrees with the Inspector's conclusions at IR11.59-11.60, that when considered alongside the facilities at East Brighton Park, the proposal makes sufficient provision for children's play space without the need for suggested condition 46. He has taken into account that for the overwhelming majority of residents, private outdoor space would be limited to that provide by Juliet balconies, and agrees that the usefulness of the communal spaces for residents would be limited because of the significant population they would need to serve, and the amount of sunlight they would receive. He further agrees that while that would be compensated for, to a degree, by the amount of public open space provided, but again, there would be pressure on those spaces from residents, and from visitors (IR11.59). The Secretary of State further agrees with the Inspector that some of the residential units would not receive sufficient daylight and/or sunlight to meet BRE Guidelines (IR11.59). Overall he agrees that the scheme would fail to provide acceptable living conditions for its residents (IR11.74), and considers that this carries significant

weight against the scheme. He further agrees that overall that there would be a failure to accord with BHCP1 Policies CP12 and CP13 on design and the public realm (IR11.72).

Benefits

35. The Secretary of State notes that the council could only show a supply of deliverable housing sites of 4.7 years and now that the BHCP1 has passed its fifth anniversary, that figure has become 4.3 years and that the situation is likely to worsen as the city is subject to an additional 35% housing requirement from June 2021 (IR11.62). For the reasons given at IR11.61-11.63, he agrees with the Inspector that the provision of 1000 units over the course of Phases 2 and 3, at an increased density over and above the 658 units that would be provided in Phases 2 and 3 of the extant scheme would be a benefit of very significant weight (IR11.63).
36. The Secretary of State also notes that the proposal would provide affordable housing and that this is to be subject to further viability assessment, delivered to the requirements of a legal agreement (see also paragraph 45 below). Overall, the Secretary of State considers the supply of housing, including the affordable provision, should, taken together, carry very significant weight.
37. In the light of his overall conclusions on design and the failure of the scheme to provide acceptable living conditions for its residents (paragraphs 40-41 below), the Secretary of State does not consider that the scheme is an appropriate pointer for development on adjacent sites, and has not counted this as a benefit of the scheme (IR11.65).
38. For the reasons given at IR11.66, the Secretary of State agrees with the Inspector that the scheme would deliver complementary, non-residential uses to serve residents and visitors, including marine related leisure, recreation, and employment opportunities. He further agrees that the vitality and viability of Brighton Marina as a whole would be improved, and that the potential for improved pedestrian and cycle access to the marina from the beach and Madeira Terrace would be facilitated which would make the marina a more attractive destination. He also agrees that the construction process would generate significant economic activity and present opportunities for local labour and businesses (IR11.67). He apportions moderate weight to those economic benefits and to the energy-efficiency of the housing and improved access.

Other matters

39. The Secretary of State has considered the Inspector's analysis at IR11.70 in relation to the potential for the silting up of the marina as a consequence of development. For the reasons given, he agrees that the potential impacts of the construction process could ably be covered by conditions.

Conclusions

40. For the reasons given at IR11.71-11.85, the Secretary of State agrees with the Inspector that the scheme would be in compliance with BHCP1 Policies CP1 on housing delivery and Policy CP20 that deals with affordable housing, and that some of the requirements of BHCP1 Policy DA2 that allocates the site would also be met (IR11.71). He further agrees with the Inspector that the scheme has shortcomings in terms of design, the effect it would have on the setting and thereby the significance of designated heritage assets, the setting of the National Park, and in the living conditions it would provide for future residents, and in particular, the lack of private outside space that would be provided

(IR11.72). He further agrees therefore that, on that basis, there would be failure to accord with BHCP1 Policies CP12 and CP13 on design, the public realm, and the setting of the National Park, CP15 in relation to heritage assets, and CP16 on open space (IR11.72). Furthermore, he agrees that the overall requirements of BHCP1 Policy DA2 would not be met and neither would those in the supporting document – SPGBH20 [Supplementary Planning Guidance Note: Brighton Marina], PAN04 [Planning Advice Note 04: Brighton Marina Masterplan] and SPGBH15 [Supplementary Planning Guidance Note 15: Tall Buildings] (IR11.72), concludes the same in respect of SPD17 UDF.

41. Like the Inspector, the Secretary of State considers that the negative aspects of the scheme in terms of its design, its impact on designated heritage assets, and the National Park, and its failure to provide acceptable living conditions for its residents outweigh the positive elements (IR11.74).
42. For the reasons given at IR11.75-11.76, and the conflicts with the development plan identified at IR11.72, overall the Secretary of State agrees that the proposal fails to accord with the development plan read as a whole (IR11.76).
43. For the reasons given at IR11.79-11.83, the Secretary of State agrees with the Inspector's conclusion at IR11.82 that the public benefits of the proposals are not sufficient to outweigh the harm that would be caused to the significance of the designated heritage assets. He therefore considers that the heritage test as set out at paragraph 202 of the Framework is not favourable to the proposal.

Planning conditions

44. The Secretary of State has given consideration to the Inspector's analysis at IR9.1-9.26, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework, however he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

45. Having had regard to the Inspector's analysis at IR10.1-10.16, the planning obligation dated 19 April 2021, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given at IR10.6-10.16 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission. In the light of his overall conclusions in this case, the Secretary of State does not consider that the matters raised at IR11.68-11.69 need to be addressed further.

Planning balance and overall conclusion

46. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with a number of development plan policies; in particular Policies CP12, CP13, CP15, CP16, and DA2 of the BHCP1, and is not in accordance with the development plan overall. He has gone on to consider whether there are material

considerations which indicate that the proposal should be determined other than in accordance with the development plan.

47. As the local authority is unable to demonstrate a five-year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
48. Weighing against the proposal is the less than substantial harm to a number of designated heritage assets. Collectively this harm is apportioned great weight. Great weight is also apportioned to the harm to the setting of the South Downs National Park in views closer to the development. Furthermore, the Secretary of State attributes significant weight to the unacceptable living conditions for future residents and significant weight to the failure to accord with Framework policies on design.
49. Weighing in favour of the proposal is the delivery of up to 1000 new dwellings, including affordable housing, which taken together the Secretary of State accords very significant weight. He considers the economic benefits, including those arising from the construction process, attract moderate weight. The associated pedestrian and cycle improvements are afforded limited weight. The delivery of homes that are energy efficient is afforded limited weight.
50. In the light of this conclusion, the Secretary of State considers that the balancing exercise under paragraph 202 of the Framework is not favourable to the proposal and that there are protective policies which provide a clear reason for refusing the development proposed. The presumption in favour of sustainable development is therefore disapplied.
51. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
52. The Secretary of State therefore concludes that the appeal be dismissed, and planning permission refused for the proposed development.

Formal decision

53. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a hybrid planning application for the phased residential-led mixed-use development of Brighton Marina Outer Harbour. Full Planning Permission is sought for Phase Two of the development and comprises: 480 residential units (Use Class C3) in 3 buildings ranging from 9 –28 storeys; 761 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); works to existing cofferdam; undercroft car and cycle parking; servicing; landscaping; public realm works; and infrastructure (harbour wall) works. Outline Planning Permission (all matters reserved apart from access) is sought for Phase Three of the development and comprises: up to 520 residential units (Use Class C3) in 6 buildings ranging from 8 –19 storeys; up to 800 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); construction of engineered basement structure to create a raised podium deck over Spending Beach; installation of Navigation Piles; undercroft car and cycle parking; servicing; landscaping; and public realm works , in accordance with application ref BH2019/00964, dated 28 March 2019.

Right to challenge the decision

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
55. A copy of this letter has been sent to Brighton & Hove City Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

MA Hale

Mike Hale

This decision was made by the Minister of State for Housing on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

Representations received in response to the Secretary of State's letter of 10 August 2021

Party	Date
R Crick (on behalf of the Appellant)	24 August 2021
Brighton & Hove City Council (Local Planning Authority)	24 August 2021
Brighton & Hove City Council (Local Planning Authority)	13 September 2021



Report to the Secretary of State for Housing, Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Date 24th June 2021

The Town and Country Planning Act 1990

Appeal by

The Outer Harbour Development Company Partnership LLP

against the failure of Brighton & Hove City Council

**to give notice within the prescribed period on an application for planning
permission**

Inquiry opened on 23 March 2021

Land at Brighton Marina comprising the Outer Harbour, Western Breakwater, and Adjoining Land,
Brighton BN2 5UF

File Ref: APP/Q1445/W/20/3259653

Appeal Ref: APP/Q1445/W/20/3259653

Land at Brighton Marina, comprising the Outer Harbour, Western Breakwater, and Adjoining Land, Brighton BN2 5UF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by the Outer Harbour Development Partnership LLP against Brighton & Hove City Council
- The application Ref.BH2019/00964 is dated 28 March 2019.
- The development proposed is described as a hybrid planning application for the phased residential-led mixed-use development of Brighton Marina Outer Harbour. Full Planning Permission is sought for Phase Two of the development and comprises: 480 residential units (Use Class C3) in 3 buildings ranging from 9 – 28 storeys; 761 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); works to existing cofferdam; undercroft car and cycle parking; servicing; landscaping; public realm works; and infrastructure (harbour wall) works. Outline Planning Permission (all matters reserved apart from access) is sought for Phase Three of the development and comprises: up to 520 residential units (Use Class C3) in 6 buildings ranging from 8 – 19 storeys; up to 800 sqm of flexible commercial floor space (Use Class A1-A4, B1, C3 Ancillary, D1/D2); construction of engineered basement structure to create a raised podium deck over Spending Beach; installation of Navigation Piles; undercroft car and cycle parking; servicing; landscaping; and public realm works.

Summary of Recommendation: That the appeal be dismissed, and planning permission refused for the development proposed.

1. Procedural Matters

- 1.1 Owing to the ongoing pandemic, the Inquiry took place on a virtual basis. It opened on 23 March 2021 and closed on 19 April 2021 after a total of eight sitting days. I am grateful to all parties for the flexibility shown throughout and would wish to record my particular thanks to Aisosa Charles, my Case Officer at PINS, for her assistance with the running of the event.
- 1.2 I carried out a visit to the site itself, its surroundings, and the most important viewpoints, in the company of representatives of the Council and the appellant on 23 April 2021. This took place in accordance with an itinerary agreed in advance of the visit¹ and was assisted by A4 versions of some of the visuals in the evidence of the appellant². During the visit, I also examined three models of the scheme at the offices of the appellant. Normally, one would avoid taking in evidence of that sort at a site visit, but I took the view that examining the model in the company of the parties, raised no real issue. Had the Inquiry been held in the normal way, the models would almost certainly have been available for perusal at the venue. I am content that no parties' interests were prejudiced in this regard.
- 1.3 I arrived in Brighton the day before the site visit and took the opportunity to walk along the seafront in both directions that evening, unaccompanied, taking in the appeal site in its wider context. I also revisited several of the important viewpoints alone after the accompanied part of the site visit had been completed, in order to reflect further.

¹ ID6

² ID7

- 1.4 As set out in the header above, and the Statement of Common Ground³, the application at issue was hybrid in nature. Full planning permission is sought for the proposals on the western part of the site, and outline planning permission (with all matters reserved save for access) is sought for the proposals on the eastern part of the site. I deal with this in more detail below.
- 1.5 The original appeal was lodged against the Council's failure to give notice of its decision within the prescribed period. In their Statement of Case⁴, the Council advanced five putative reasons for refusal which are repeated in the SoCG. The first was concerned with the design of the proposal and its impact on the wider area, and the setting of heritage assets while the second related to the provision of affordable housing. The third and fourth putative reasons for refusal made reference to what were seen as inadequate living conditions for prospective residents in terms of daylight, sunlight and overshadowing, and the provision of private amenity space, and children's play-space. The fifth highlighted issues with access for cyclists and cycle parking facilities.
- 1.6 Discussions continued in the lead up to the Inquiry which resulted in the Council withdrawing the fifth putative reason for refusal subject to the imposition of appropriate conditions. This matter is dealt with in the Supplementary Statement of Common Ground⁵.
- 1.7 The appeal was recovered for determination by the Secretary of State on 1 December 2020. The reason given was because the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.8 With all that in mind, I defined the main considerations at the opening of the Inquiry as (1) the effect of the proposals on the character and appearance of the area (including questions about design, any effect on the setting of heritage assets, and any effect on the setting of the South Downs National Park); (2) whether the proposal makes acceptable provision for affordable housing; and (3) whether the proposal would provide acceptable living conditions for prospective residents with particular regard to amenity/play space, daylight/sunlight, overshadowing, privacy and outlook.
- 1.9 It was agreed that the issues around daylight/sunlight and overshadowing, and affordable housing, were better suited a 'round table' session involving the relevant experts rather than the more traditional presentation of evidence. These matters were dealt with on that basis⁶ but the rest of the Inquiry proceeded to deal with the Council's case first, followed by the appellant, with interested persons in-between.
- 1.10 The proposal constitutes EIA development and the application was accompanied by an Environmental Statement prepared pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

³ CD301 – referred to hereafter as SoCG

⁴ CD300

⁵ CD336 – referred to hereafter as SoCG2

⁶ ID4 sets out the agreed Agenda for the discussion on Daylight/Sunlight and Overshadowing

(as amended) and the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017⁷. Some updated material and an addendum were subsequently provided⁸. Some issues have been raised about the ES⁹, that I deal with below, but it suffices to say here that read alongside the updated material and the addendum, the ES meets fully the requirements of the relevant Regulations.

- 1.11 The location of the site means there is another consenting regime to consider too. The site extends into the sea beyond the mean highwater line and therefore parts fall within the jurisdiction of the Marine Management Organisation. The appellant is seeking approval for a Marine Licence from them to allow for the permanent retention of part of the existing cofferdam; a system of marine piles to support the development platform above; the installation of navigation piles; and associated works. This matter does not bear on determination of the appeal.
- 1.12 S.59(1) of the Brighton Marina Act 1968¹⁰ places a restriction on the ability to 'construct or erect any work, building or structure' above the height of the cliffs. However, this restriction does not apply if 'otherwise agreed in writing between the Company and the corporation¹¹'. The Act operates entirely separately from the planning system and as such, any approvals sought under s.59(1) are to be considered by the Council (corporately) independently of the application at issue.
- 1.13 It is intended that the Council would determine whether any such approval should be granted at a meeting of Full Council were the appeal to succeed, and planning permission was granted for the proposal. This reflects the process that was followed in relation to the extant permission¹². The parties agree in the SoCG¹³ that the operation of the Brighton Marina Act 1968 is not a material consideration that weighs on whether planning permission should be granted for the proposal and I agree.
- 1.14 The Written Ministerial Statement on Local Housing Need of 16 December 2020 provides for a 35% uplift in Brighton and Hove from 16 June 2021. The parties were clearly aware of this and it was dealt with in evidence. On that basis, I saw no good reason to revert to the parties to ask for their views on the matter after the Inquiry closed. If the Secretary of State takes a different view, comments should be sought from the Council and the appellant before a decision is issued.

2. The Site and Surroundings

- 2.1 As set out in the SoCG¹⁴, the site covers some 3.54ha. It is made up of the western breakwater and part of the operational outer harbour of Brighton Marina. The breakwater is a man-made sea defence made up of a series of

⁷ CD16-CD19 – referred to hereafter as ES

⁸ CD205-CD207

⁹ ID6

¹⁰ CD247

¹¹ The corporation being Brighton and Hove City Council

¹² CD248

¹³ CD301 paragraph 4.5

¹⁴ CD301

caissons which functions as the western edge of the marina. The top of the breakwater is accessible to pedestrians and emergency and maintenance vehicles.

- 2.2 Brighton Marina was constructed in the 1970s on land reclaimed from the sea under the auspices of the Brighton Marina Act 1968. The marina is made up of a western and southern breakwater which encloses an extensive area of sheltered navigable water, providing 1454 berths for the mooring of vessels.
- 2.3 There is also an extensive 'land-side' area which is home to residential, retail, leisure, and other uses. This 'land-side' area has developed incrementally since the 1970s and reflects the gradual change in the character and uses of the marina since its original construction from principally marine-based port activities, to more of a mixture of uses today.
- 2.4 The marina is located at the east end of the built-up area of Brighton, around 2.2 km away from the city centre. It is physically separated from the main part of the city owing to its location on reclaimed land at the base of a cliff, within an engineered structure. Vehicular access to the marina is through a series of ramps and underpasses from the A259 which runs west-east along the top of the cliff. Pedestrian and cycle access are by segregated paths from Madeira Drive, which runs east-west along Brighton Beach, at the foot of the cliff.
- 2.5 To the north of the appeal site is the land-side part of Brighton Marina which comprises a sea defence wall, known as the southern wave wall, with warehouse style buildings, in leisure use, and associated roads, car parks and other infrastructure, beyond. To the west is Brighton Beach and the sea and to the south is the enclosed water of the Outer Harbour including the navigable entrance to, or exit from, the marina, with the sea beyond. To the east is a recently completed mixed-use development with A3 uses at ground floor level, and 195 residential units above, in two buildings (known as 'Sirius' and 'Orion') of up to 8 storeys in height, adjacent to the West Quay. These were constructed as Phase 1 of a larger scheme that is referred to below.
- 2.6 There are two nearby development sites to note too. To the north-west of the appeal site, on Madeira Drive, fronting the beach, is the Black Rock site. The Gas Works site lies to the north of the Marina and the A259.

3. Planning History

- 3.1 This is set out in detail in the SoCG¹⁵ but there are some matters that need to be highlighted because they provide a context for the proposals at issue. As far back as 2004, there was a proposal¹⁶ for a predominantly residential development of the site for 988 flats in 11 buildings ranging from 5 to 40 storeys, with associated Class A, D1, D2, and B1 uses, amongst other things. The Council refused planning permission because of concerns about the impact of the scheme on the character and appearance of the area, including the impact on the Kemp Town Conservation Area, and the Sussex Down AONB¹⁷; its perceived failure to include sufficient public and private amenity space and

¹⁵ CD301 Section 3

¹⁶ Ref.BH/2004/03673/FP

¹⁷ As it then was – it is now the South Downs National Park

outdoor recreation space; and the lack of sufficient car parking spaces. An appeal was lodged, but subsequently withdrawn.

- 3.2 In 2006, another residential-led scheme, with 853 flats in 11 buildings ranging from 6 to 40 storeys, with associated Class A, D1, D2, and B1 uses, a lifeboat station, parking, alterations to the access and the creation of new routes for access and servicing, including bridges, was granted planning permission by the Council¹⁸.
- 3.3 There have been numerous amendments to that scheme since under s.96a, and changes to the Agreement under s.106¹⁹. Phase 1 of the scheme, the blocks known as 'Sirius' and 'Orion', has been built out and is occupied with Class A3 uses at ground floor level and residential above. Given that this grant of planning permission has been implemented, it is capable of completion, and represents an agreed fallback position for the appellant.
- 3.4 The approved scheme is the work of the architects Wilkinson Eyre and, put very simply, is made up of a series of 10 lower blocks that stand alongside a striking 40 storey tower. I deal with the architectural approach, and the differences from the scheme at issue, below. Here, I need only refer to the material included in the documentation relating to the approved proposal²⁰.
- 3.5 I need also to draw attention to redevelopment proposals on the site of the Asda Superstore to the north of the appeal site that were considered by the Secretary of State in 2010²¹ after the Council refused planning permission²². That scheme, designed by the architects Allies & Morrison, involved the demolition of the existing supermarket and elements of the multi-storey car park to provide an enlarged retail store and 779 residential units, amongst other things. The Inspector recommended that the scheme be permitted if difficulties around the Obligation under s.106 could be resolved. However, this proved impossible and the appeal was dismissed by the Secretary of State.

4. The Proposals

- 4.1 The development proposed is made up of a series of nine buildings, with associated public realm, set above a development platform to be constructed over the existing cofferdam and Spending Beach, extending from the Western breakwater to West Quay.
- 4.2 The nine buildings (referred to as Blocks 1 to 9) range in height from 8 storeys to 28 storeys above the platform and are intended to contain up to 1,000 homes, including some affordable housing. They would also house up to 1,561 square metres of flexible commercial space in Use Classes A1-4, B1, D1-D2, and C3. Associated car and cycle parking along with servicing would take place at levels below the platform.
- 4.3 There would also be 1.14 ha of public open space, including a square and a promenade, and improvements made to pedestrian and cycling connectivity.

¹⁸ Ref.BH/2006/01124

¹⁹ CD244 provides a useful overview

²⁰ CD245-CD246, CD314-CD316 and CD339-CD340

²¹ CD339 is the Inspector's Report (APP/Q1445/A/09/2102048)

²² Ref.BH/2007/03454

- 4.4 As set out above, the application is presented in hybrid form with full planning permission sought for the western part of the site (Phase 2) that is Blocks 1-3 and outline permission, with all matters reserved save for access, sought for the eastern part of the site (Phase 3) that is Blocks 4-9.
- 4.5 The application documents, including all updates, are very helpfully set out in the SoCG²³.

5. Planning Policy

- 5.1 The development plan for the area includes the saved policies of the Brighton and Hove Local Plan of 2005²⁴, and the Brighton and Hove City Plan Part 1 of 2016²⁵ with the associated 2020 Policies Map²⁶. The Council has a City Plan Part 2²⁷ in preparation. The Proposed Submission Draft was consulted upon in September/October 2020. This document is at too early a stage on the path to eventual adoption to merit any significant weight. Helpfully, the main parties have listed all the relevant policies from all three documents in the SoCG²⁸.
- 5.2 However, there are some of particular relevance that require closer analysis. BHCP1 Policy CP1²⁹ addresses housing delivery. Part A deals with the scale of provision and says that the Council will make provision for at least 13,200 new homes to be built over the plan period (2010-2030) equating to an annual average rate of provision of 660 dwellings. This will be achieved, according to the policy, by amongst other things: focusing new development in accessible areas of the city and those with the most capacity to accommodate new homes; promoting the efficient use and development of land/sites across the city, including higher densities in appropriate locations; and ensuring that all new housing development contributes to the creation and/or maintenance of mixed and sustainable communities. Part B of the policy sets out the distribution of new housing and makes reference to a contribution of 1,940 new homes from the Policy DA2 area.
- 5.3 BHCP1 Policy DA2³⁰ refers specifically to the Brighton Marina, Gas Works, and Black Rock Area. Broadly, the strategy for the area is to make it a sustainable mixed-use area of the city, through the generation of a high-quality marina environment. This is to be achieved through supporting proposals that: secure a high quality of building design that takes account of the cliff height issues in and around the marina, townscape and public realm, while recognising the potential for higher density mixed development in line with the aim to optimise the development of brownfield sites; improve connectivity and legibility between the marina, Black Rock, and the Gas Works site; enhance the transport infrastructure at the Marina, and promote more sustainable forms of transport and maximise opportunities to reduce car ownership; encourage opportunities for the sustainable production of heat and power; protect and

²³ CD301 Pages 8-14

²⁴ CD252

²⁵ CD253 – referred to hereafter as BHCP1

²⁶ CD255

²⁷ CD254

²⁸ CD301 Pages 15-18

²⁹ CD253 Page 131

³⁰ CD253 Page 40

enhance the ecological environment at the Marina, including improved linkages to green spaces and the existing Green Network; secure a more balanced mix of retail, including support for independent retailers, and non-retail uses such as leisure, tourism and commercial; deliver a substantial amount of additional residential units including affordable housing, over the plan period; and deliver the amounts of development set out in Part B of the policy.

- 5.4 The policy then goes on to set out a series of local priorities through which the aims of the strategy will be achieved. These include: the Council working in partnership with landowners to ensure that regeneration of the Marina is comprehensive and conforms with an updated masterplan (Supplementary Planning Document) for the Marina, to avoid further piecemeal development in the future; encouraging the development of housing, retail, and employment floorspace and community facilities to increase opportunities for, and to meet the needs of, local communities; securing improved legibility, permeability and connectivity for pedestrians within and to the Marina and the surrounding areas through high-quality building design, townscape, and public realm; ensuring an appropriate mix of housing reflecting housing needs within the city and which is accompanied by open space provision; maximising opportunities to ensure the efficient, effective, and sustainable use of previously-developed land so that any increase in density will positively enhance the Marina environment; enhancing the social infrastructure to support any expansion in the residential population through the provision of, or contributions towards, community, education, and health services or facilities; and ensuring development proposals accord with the relevant Shoreline Management Plan and incorporate a site specific Flood Risk Assessment.
- 5.5 Part B of the policy sets out the scale of additional development to be provided by 2030. This includes, amongst other things, 1,938 residential units (a figure that includes the 853 units already approved in the extant permission), 1,000 units allocated for the inner harbour, and 85 units allocated on the Gas Works site); 5,000 square metres (met) of retail floor-space (Use Classes A1-A5); 2,000 square metres of employment floor-space (Use Classes B1a and B1c); and 10,500 square metres of leisure and recreation floor-space³¹.
- 5.6 In terms of more detailed aspects, BHCP1 Policy CP12³² covers urban design. The policy recognises that some areas, including Brighton Marina, have the potential to accommodate taller buildings (defined as those 18 metres or more in height), thereby raising density levels. The policy expects all new development to: raise the standard of architecture and design in the city; establish a strong sense of place by respecting the diverse character and urban grain of the city's identified neighbourhoods; achieve excellence in sustainable building design and construction; conserve or enhance the city's built and archaeological heritage and their settings; have regard to impact on the purposes of the National Park, where within its setting; protect or enhance strategic views into, out of, and within, the city; be inclusive, adaptable, and accessible; ensure that the design of the external spaces is an integral element of the overall design approach, in a manner which provides a legible distinction

³¹ I have represented the various Use Classes as they appear in the BHCP1

³² CD253 Page

between public and private realm; and incorporate design features which deter crime or disorder and the fear of crime.

- 5.7 In a similar vein, BHCP1 Policy CP13³³ requires new development schemes to contribute to the improvement of the quality, legibility, and accessibility of the city's public realm. Such improvements are intended to produce attractive and adaptable streets and public spaces that enrich people's quality of life and provide for the needs of all users by, amongst other things: positively contributing to the network of public streets and spaces in the city; enhancing the local distinctiveness of the city's neighbourhoods; conserving or enhancing the setting of the city's built heritage; reducing the adverse impact of vehicular traffic and car parking; utilising high-quality, robust, and sustainable materials for all elements of the street-scene; incorporating street trees and biodiversity wherever possible; encouraging active living and healthier lifestyles; helping to create safe and inclusive public spaces; incorporating public art; and reducing the clutter of street furniture and signage.
- 5.8 BHCP1 Policy CP15³⁴ is directed towards heritage. Of particular relevance, it says that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings. Moreover, the built heritage of the city should guide new development in historic areas and heritage settings.
- 5.9 Housing density is the subject of BHCP1 Policy CP14³⁵. In general terms, the density of residential development should be appropriate to its context. However, density can be higher where the proposal: would be of a high standard of design and would help to maintain or create a coherent townscape; would respect, reinforce, or repair the character of the neighbourhood and contribute positively to its sense of place; would include a mix of dwelling types, tenures, and sizes that reflect identified local needs; is well served by local services and community facilities; and provides for outdoor recreation space appropriate to the demand it would generate and contributes to the 'green network' where an identified gap exists.
- 5.10 Within development areas like those in BHCP1 Policy DA2, the density of new residential development will be expected to achieve a minimum of 100 dwellings per hectare, provided that all of the criteria referred to above can be satisfactorily met.
- 5.11 As far as open space is concerned, BHCP1 Policy CP16³⁶ sets out that new development will be required to contribute to the provision of, and improve the quality, variety and accessibility of public open space to meet the needs it generates in accordance with a series of criteria and local standards. In terms of the criteria, amongst other things, developments are expected to optimise the provision of safe on-site open space but where it is not practicable for all or part of the open space requirements to be met on site, an appropriate alternative agreed provision and/or contributions towards off-site provision will be required. Moreover, developments, especially those in areas with open

³³ CD253 Page 192

³⁴ CD253 Page 197

³⁵ CD253 Page 194

³⁶ CD253 Page 199

space deficiencies, will be expected to help improve sustainable means of access to open space and facilitate appropriate links to the city's open space framework (which includes existing open spaces, the Nature Improvement Area, and beaches). The provision of open space is intended to be in addition to incidental amenity and landscaped areas.

- 5.12 In terms of Open Space Standards, the policy requires, amongst other things 0.92 ha of parks and gardens per 1,000 population, and 0.055 ha per 1,000 population of equipped play for children and young people.
- 5.13 BHCP1 Policy CP11³⁷ seeks to manage and reduce flood risk. In areas where risk is identified, applications must be accompanied by a site-specific flood risk assessment identifying how flood risk will be mitigated and minimised.
- 5.14 Affordable housing is addressed in BHCP1 Policy CP20³⁸, which requires 40% on-site affordable housing (using the national definition) on sites where 15 or more dwellings are proposed. It goes on to say that this target will be applied more flexibly where the Council considers this to be justified. Consideration will be given to: local need; the accessibility of the site; the costs of the development, and in particular the financial viability of developing the site (using an approved viability model); the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives; and the need to achieve a successful housing development.
- 5.15 Aside from the development plan, there are a number of Council, and other, documents that are important material considerations³⁹. Most important, is the Supplementary Planning Guidance Note: Brighton Marina⁴⁰, which provides what it terms a 'Masterplan for Enhancement'. Volume 1 provides an urban design analysis, while Volume 2 is a development brief. The document dates from 2003. Alongside that sits Planning Advice Note 04: Brighton Marina Masterplan⁴¹. This dates from 2008 and is intended as a supplement to SPGBH20 to inform the development control process in relation to the Marina area. Supplementary Planning Guidance Note 15: Tall Buildings⁴² which dates from 2004 provides a checklist of planning and design issues that the Council will require applicants proposing tall buildings to address.
- 5.16 The Council's draft Urban Design Framework Supplementary Planning Document⁴³, referred to in BHCP1 Policy CP12 reasserts the principles set out in SPGBH15 in relation to tall buildings, and PAN04 in relation to the Marina.
- 5.17 Also, Draft Supplementary Planning Guidance Note 9: A Guide for Residential Developers on the Provision of Outdoor Recreation Space⁴⁴ provides operational guidance to residential developers. It is undated but clearly of some vintage given that it was framed to inform Policy HO5 (Provision of Private Amenity Space in Residential Development) of the 2001 Deposit Draft

³⁷ CD253 Page 184

³⁸ CD253 Page 219

³⁹ These are listed on Page 15 of the SoCG (CD301)

⁴⁰ CD256 – referred to hereafter as SPGBH20

⁴¹ CD257 – referred to hereafter as PAN04

⁴² CD260 – referred to hereafter as SPGBH15

⁴³ CD273 – referred to hereafter as UDFSPD

⁴⁴ CD258 – referred to hereafter as SPGBH9

of the Brighton and Hove Local Plan that was eventually adopted in 2005. Since then, the Council has published an Ancillary Update Document to SPGBH9⁴⁵ which provides an up-to-date calculator for open space contributions.

- 5.18 In terms of national policy, the principal material consideration is of course the National Planning Policy Framework⁴⁶.
- 5.19 Of most importance are the sections on delivering a sufficient supply of homes (5); building a strong competitive economy (6); making effective use of land (11); achieving well-designed places (12); meeting the challenge of climate change, flooding, and coastal change (14) and conserving and enhancing the historic environment (16). This is supplemented by advice in the National Planning Practice Guidance⁴⁷.

6 The Case for the Council

- 6.1 This is set out in opening and closing statements and in evidence⁴⁸. What follows is the case presented in closing, but it is imperative that the Council's evidence is read in full, in order to gain a proper appreciation of their position.

Introduction

- 6.2 As identified by the Inspector, the main considerations are: (i) the impact of the proposal on character and appearance (including design, heritage and South Down National Park); (ii) whether the proposal would provide acceptable living conditions for prospective residents; and (iii) affordable housing. There is the planning balance to consider too.

Character and Appearance – Design and Townscape

Policy Context

- 6.3 It is important at the outset of consideration of this matter to appreciate that (unlike in many cases) there are a number of site-specific policy documents, including in the development plan, and supplementary planning documents, which set out exactly what development should and should not happen on the appeal site.
- 6.4 BHCP1 Policy DA2⁴⁹ includes the site within its development area boundary and sets out a strategy to generate a high-quality marina environment, which protects and enhances marine character. The policy recognises the potential for higher density development which secures a high quality of building design that takes account of the cliff height issues in and around the Marina, and a high-quality townscape and public realm. Policy DA2 allocates 1,938 residential units across the development area, which includes the 853 residential units already granted planning permission on the outer harbour site (658 units of which are on the appeal site).

⁴⁵ CD259

⁴⁶ CD249 – referred to hereafter as the Framework

⁴⁷ CD250 – referred to hereafter as PPG

⁴⁸ ID3, ID12, and C1-C6

⁴⁹ CD 253

- 6.5 BHCP1 Policy CP12 identifies the Brighton Marina as an area with potential for taller development. This policy refers to the Urban Design Framework (currently emerging) and sets out strategic design criteria, including that new development should raise the standard of architecture and design in the city, establish a strong sense of place, conserve or enhance the city's built heritage and settings, have regard to the impact on the purposes of the National Park, protect or enhance strategic views within the city, and ensure that the design of external spaces is an integral element of the overall design approach, which provides a legible distinction between private and public realm.
- 6.6 In addition, the decision-maker has the benefit of a number of helpful supporting policy documents, all of which have been through consultation and adopted by the Council, which are highly relevant material considerations in determining what development is appropriate on this site and in this context. As set out in paragraph 130 of the Framework, regard should be had to any such local design standards, style guides in plans or supplementary planning documents in determining whether planning permission should be refused on the grounds of poor design. Indeed, as was rightly pointed out⁵⁰, the importance of local design guidance is reflected further in the direction of travel of Government policy⁵¹.
- 6.7 SPGBH20⁵² on the Brighton Marina includes two lengthy volumes containing an urban design analysis of the site and a development brief. In particular, Section 5 of Volume 2 sets out guidance on development form, including that the interrelationship between built form and the sea should be maximised⁵³; that the public realm should ensure that the Marina becomes a destination⁵⁴; and that whilst development should be of a higher density this must be a product of the design process not the determinant of it⁵⁵.
- 6.8 PAN04⁵⁶, the Brighton Marina masterplan, sets out guidance on a number of relevant matters, including that density on the site should be the product of a robust and tested design process⁵⁷; legible routes into the Marina should be created, with recognisable routes which help people find their way around⁵⁸; public realm within the Seafront Character Area (which includes the appeal site) should be outward looking rather than enclosed by buildings⁵⁹; the layout and form of development should visually reconnect with the sea⁶⁰; the building design will need to ensure visual permeability through the development out to sea⁶¹; developers must demonstrate an understanding of the Marina context

⁵⁰ Through Mr McQuade

⁵¹ For example, the emerging National Planning Policy Framework and National Model Design Code

⁵² CD256

⁵³ CD256 Page 37

⁵⁴ CD256 Page 47

⁵⁵ CD256 Page 54

⁵⁶ CD257

⁵⁷ CD257 Page 19

⁵⁸ CD257 Page 24

⁵⁹ CD257 Page 25 - see the distinction between Seafront Character Area and Urban Character Area

⁶⁰ CD257 Page 27

⁶¹ CD257 Page 28

by ensuring visual permeability through the development out to the sea⁶²; and development on the Spending Beach (which the appeal site includes) should ensure visual permeability from the cliff top through the development out to sea with potential for a landmark building on the southern part of the site⁶³.

- 6.9 SPGBH15 on Tall Buildings⁶⁴ sets out guidance for the assessment of tall building proposals, which are defined as 18m or taller (approximately 6 storeys). This includes detailed design considerations, including as to the massing strategy and whether the massing creates an appropriate form (stating that in general, bulky, dominant massing should be avoided)⁶⁵; and the matters relevant to the form of a 'landmark' building⁶⁶. In addition, it is set out that development on the Marina has particular sensitivities due to the proximity to Kemp Town and adjacent hillsides, and that tall building proposals here will need to have regard to visual impact to the north of the cliffs and the overall composition when viewed along the coast.
- 6.10 Finally, there is the emerging UDFSPD⁶⁷, which has now been through consultation. This sets out guidelines for tall buildings⁶⁸ (which are materially the same as those in SPGBH15) and continues to define tall buildings as 6 storeys or more (with buildings over 15 storeys as 'very tall buildings')⁶⁹. The emerging UDFSPD also sets out design considerations for development at the Marina⁷⁰. It states that the visual impact considerations and priorities for the site are those set out in PAN04, and that building heights and visual impact will be determined by the visual impact to the north, Kemp Town, and the overall composition when viewed along the coast.
- 6.11 The appellant's approach to the design guidance for the Marina contained in this raft of supporting documents is not sound. First, it was confirmed that even though PAN04, SPGBH20 and SPGBH15 had been considered, no additional or particular importance was placed on the design preferences within these documents when it came to designing what was considered to be the right scheme for the site⁷¹. This approach does not show that proper and due regard has been paid to these highly material considerations.
- 6.12 The view was expressed that no weight or very little weight should be given to these documents, and that they should not be used by a decision-maker when determining whether the appeal scheme is appropriate for the site⁷². This approach was not reasonable. It is clear that the substance of the guidance within PAN04, SPGBH20 and SPGBH15 is entirely consistent with BHCP1 Policy DA2 and the Framework, and that the design approach within them, setting out how to optimise high density development at the Marina, remains highly

⁶² CD257 Page 28

⁶³ CD257 Page 34

⁶⁴ CD260

⁶⁵ CD260 Page 10

⁶⁶ CD260 Page 10

⁶⁷ CD273

⁶⁸ CD273 Page 91 onwards

⁶⁹ CD273 Page 41

⁷⁰ CD273 Page 43

⁷¹ Mr Squire in x-e

⁷² Mr Alston

relevant today. Indeed, the guidance in SPGBH15 is being carried into the emerging UDFSPD, and the emerging UDFSPD continues to refer to the design guidance in PAN04.

- 6.13 In effect, the appellant is arguing⁷³ that no weight, or very little weight, should be attributed to these documents purely on the basis of their age and the fact that they predate BHCP1 Policy DA2. This fails to have proper regard for the fact that the substance of these documents remains entirely consistent with current policy.
- 6.14 Indeed, the appellant's approach to these design documents was typified in their opening which described the Council's design concerns on matters such as visual permeability as '*very subjective points*'⁷⁴. Such an approach fails to appreciate the importance of the design choices within the guidance documents, in accordance with paragraph 130 of the Framework. The fact that the appellant disagrees with the Council's design guidance does not mean it can be dismissed out of hand as merely subjective.

Density, Massing and Inadequate Space Between Buildings

- 6.15 As set out above, policy sets exacting standards for high quality design for tall buildings, and this particularly applies to development on the appeal site, given it will be one of the most prominent, if not the most prominent, development in the whole of Brighton. The proposed development falls short against these exacting statements in development plan policy, and it fails to reflect the design guidance in the supporting documents. In particular, due to the density, massing and inadequate spaces between buildings, the proposed development would represent an unacceptable quality of building design, which would fail to positively enhance the Marina environment, and cause unacceptable townscape harm.
- 6.16 Of course, the optimisation of residential units on a site is to be desired. However, optimisation is achieving a quantum of units which does not cause unacceptable harm. Further, high density in a proposed scheme must be the product of a robust design process. Unfortunately, with the appeal scheme, the evidence indicates that the requirements for maximum high density have been the driver and determinant of the design, not the other way around.
- 6.17 One of the more telling moments of the Inquiry was the response of the appellant to questions on the topic of density⁷⁵. It was stated that the view was '*always*' that more homes should go on site than approved in the Wilkinson Eyre scheme, and that '*infinity*' homes should be fitted on the site. It was further explained that this was made very clear to the design team in internal meetings throughout the application process.
- 6.18 This pressure to maximise residential units on the site is clear once one examines the how the design evolved through the Design Review Panel meetings⁷⁶. Even when the design team had to move away from the initial idea

⁷³ Through Mr Alston

⁷⁴ ID2 Paragraph 19

⁷⁵ Mr Alston in x-e

⁷⁶ As was explored in the x-e of Mr Squire

of repeated courtyard blocks close together, the further designs continued to be wedged to delivering 1,000 units on site, no matter the changes to the siting and form of the proposed buildings. This led to the continual increase in height of the four northern blocks (Blocks 4, 5, 7 and 8) and the late move to increase the heights of Blocks 1 and 2.

- 6.19 The latter change is most striking. From instruction in April 2018, until before the presentation to the third Design Review Panel meeting in late January 2019, the various design ideas for the development had always maintained Block 3 as a landmark southern tower of 28 storeys, with neighbouring Blocks 1 and 2 lower rise at 11 storeys, not competing therefore, with the landmark status of Block 3⁷⁷. All the medium and long-range views, including from along the coast and from Lewes Crescent, were analysed with this in mind. This relationship between Blocks 1, 2 and 3 was much more similar to the approach in the Wilkinson Eyre scheme, which itself was the product of a three-year design process⁷⁸.
- 6.20 However, at the presentation to the third Design Review Panel meeting in January 2019, Blocks 1 and 2 were suddenly significantly increased in height. No satisfactory design justification for this late change in massing strategy was offered⁷⁹. It can be easily inferred why this change occurred. Due to the need to narrow the northern blocks⁸⁰, somewhere needed to be found to put the missing residential units, and that is what led to Blocks 1 and 2 increasing in height. It is no coincidence that the number of residential units stayed at this figure of 1,000. It is clear that no real or robust consideration was ever given to the possibility of reducing the number of units in the proposed scheme.
- 6.21 There has been a substantial increase in density compared to the extant Wilkinson Eyre scheme, with now four 'very tall' buildings on site⁸¹, a more than 50% increase in residential units, a 20% increase in net residential area and in built footprint area⁸², and an increase in over 100 dwellings per hectare⁸³. Of course, it is the effects of this increase in density and massing which is important. It was explained⁸⁴ that the appeal scheme presents a significantly more compact and denser cumulative massing, and a general increase in height across the whole site and that this type of development may be appropriate for an inner city site, but it is not appropriate for the Marina.
- 6.22 The Council's evidence⁸⁵ was that the heights of the northern blocks (particularly Blocks 5 and 7 at 19 and 17 storeys) detract from the prominence of Block 3 as a landmark building; and further that the increase in height of

⁷⁷ See first Design Review Panel presentation dated October 2018 at CD 220, Pages 7, 9 and 10, the second Design Review Panel presentation dated November 2018 at CD 221, Page 2, 3 and the series of wirelines from Page 58 onwards.

⁷⁸ See the Design Statement for the Wilkinson Eyre scheme at CD 353, Page 32

⁷⁹ By Mr Squire

⁸⁰ To be cuboid shaped, rather than wedge shaped.

⁸¹ Defined as over 15 storeys in the emerging UDFSPD.

⁸² As set out in paragraph 12 of ID3 (the Council's Opening Statement)

⁸³ 465dph for the appeal scheme compared to 354dph in the Wilkinson Eyre scheme (Mr McQuade e-in-c)

⁸⁴ By Mr McQuade

⁸⁵ Through Mr McQuade

Blocks 1 and 2, and the tight spacing between them, generates poor definition of the tower and further impairs its landmark presence. This is contrary to the requirements for a landmark building on the site in supporting documents and creates exactly the type of bulky, dominant massing which is warned against in PAN04 and SPGBH15. It was also explained⁸⁶ that the very tall northern blocks have failed to have regard to the cliff height issues, and jar with this unique topography, a matter highlighted in BHCP1 Policy DA2⁸⁷.

- 6.23 The appellant's lack of concern⁸⁸ for the other tall buildings proposed on the site (other than the 28 storey tower) and the refusal to accept the harmful impact caused by these other tall buildings, is perhaps a consequence of the approach to tall buildings generally. It was telling that the position taken was that the approach in the Council's guidance to treating buildings of more than 6 storeys as tall buildings was '*absurd*', and that a tall building was one of more than 20 storeys high⁸⁹.
- 6.24 The Council⁹⁰ further explained that the density and cumulative massing in the proposed scheme presents a hard and impermeable block in key views from the north and the west⁹¹. The west-facing courtyard block inhibits views through the development⁹², the overlapping built form closes any visual connection through to the proposed promenade⁹³, and the cumulative massing severely impairs views through the development out to sea from the cliff tops⁹⁴. Visual permeability through the development out to sea is critical for development here, given the Marina context (as set out in PAN04). This was appreciated by Wilkinson Eyre and CABE in designing the Wilkinson Eyre scheme, where generous gaps between the buildings were introduced to ensure the visual connection with the sea, rather than a harmful continuous wall of development⁹⁵. Notably, at this time, one of the appellant's witnesses⁹⁶, fully supported the increase in visual permeability in the Wilkinson Eyre scheme. He reached a judgment that the proposal before the Inquiry was an improvement to that scheme.
- 6.25 By contrast, the appeal scheme utterly fails to achieve visual permeability, and rather presents as a homogenous, impermeable form. This is no surprise once one understands that the appeal scheme was never designed to achieve visual permeability in the first place (again demonstrative of the lack of real regard paid to PAN04). It was said that '*big gaps through to the sea*' were not

⁸⁶ By Mr McQuade

⁸⁷ See Viewpoints 17 and 35 in A12 - in contrast to the Wilkinson Eyre scheme where every block (other than the landmark tower) was 13 storeys or lower, and more respectful of cliff heights

⁸⁸ Expressed through Mr Squire

⁸⁹ Mr Squire in x-e

⁹⁰ Through Mr McQuade

⁹¹ The supporting documents require analysis of visual impact in views from the north and along the coast, and the view from the north on the cliff-top is identified as a key local view in the Urban Characterisation Study.

⁹² A12 Viewpoints 26 and 28

⁹³ A12 Viewpoint 39

⁹⁴ A12 Viewpoint 35

⁹⁵ See Design Statement for the Wilkinson Eyre scheme - CD 353 Page 33

⁹⁶ Mr Coleman

favoured and designing the scheme in this way was never considered⁹⁷. Further the design concept, with buildings surrounding/enclosing spaces, towards which all the design options were directed⁹⁸ is one that '*inevitably*' reduces visual permeability⁹⁹. While such an approach may be appropriate at the Chelsea Barracks¹⁰⁰, it is wholly inappropriate for development at the Brighton Marina.

- 6.26 The Council¹⁰¹ finally stated that the harm to character caused by the appeal scheme is exacerbated by the form of the buildings. The hard edges of the cuboidal blocks present an unforgiving visual character, in contrast to the beautiful and slender curves of the Wilkinson Eyre scheme. These are just the type of '*aggressive*' form of towers the appellant's witness¹⁰² warned against when supporting the Wilkinson Eyre scheme¹⁰³. It is clear that the economic construction of buildings resulting in these hard-edged blocks, with focus on materials rather than shape-making, was fixed as part of the brief from the very start for the appeal scheme¹⁰⁴.
- 6.27 The Appellant's attempts to characterise the concerns expressed by the Council¹⁰⁵ as only coming to the fore at a late stage are false. The Design Review Panel repeatedly expressed similar serious concerns.
- 6.28 At the second meeting, the Design Review Panel expressed concerns that the increase in height of the northern blocks would make the scheme appear bulkier in long distance views and decrease the legibility of the main tower as a singular object; that multiple blocks would merge into one another and create a monolith in views; that a positive aspect of the Wilkinson Eyre proposal was the differentiation of the landmark tower from surrounding relatively low-rise blocks; that more space should be created around the landmark tower to improve long-distance views; and that Block 2 should be further stepped back to create more visual separation from the landmark tower¹⁰⁶.
- 6.29 At the third meeting, the Design Review Panel stated that they were not comfortable with the approach to create '*a family of towers*' and that further work was required; the concept of the landmark tower has been gradually eroded as the scheme had developed; particular concern was expressed about the raising in height of Block 2 next to the main tower; that the scheme could be viewed as a composite, increasing the monolithic effect; and that the Block 1 courtyard block was a relic from previous schemes and further design development should take place¹⁰⁷.

⁹⁷ Mr Squire in x-e

⁹⁸ A6 Paragraph 4.2.3.

⁹⁹ As confirmed by Mr Coleman - A11 Paragraph 3.4.53.

¹⁰⁰ A6 Paragraph 4.1.3.

¹⁰¹ Through Mr McQuade

¹⁰² Mr Coleman

¹⁰³ See the Townscape Assessment for the Wilkinson Eyre scheme at CD 315 Paragraph 4.8 Page 11

¹⁰⁴ A6 Paragraph 1.5.1.5

¹⁰⁵ Through Mr McQuade

¹⁰⁶ CD 221

¹⁰⁷ CD 222

- 6.30 The appellant failed to address these serious concerns expressed by the Design Review Panel, and indeed in some instances did the complete opposite (for example, in between the second and third meetings, instead of creating more space around the main tower and attempting to reduce bulkiness, the design team instead raised the heights of Blocks 1, 2 and all the northern blocks [4, 6, 7 and 8] even higher). Following the third Design Review Panel meeting, it was confirmed¹⁰⁸ that no further change in the massing, height or form of the scheme would be forthcoming, and instead the planning application was made.
- 6.31 Overall, by virtue of the density, massing and inadequate spaces between buildings, the scheme causes unacceptable harm to the surrounding townscape. It fails to secure a high quality of building design appropriate for the Marina context and fails to raise the standard of design in the city and establish a strong sense of place appropriate for this context. This is all contrary to BHCP1 Policies DA2 and CP12. It also fails to reflect the design guidance in SPGBH20, PAN04, and SPGBH15 and the approach set out in paragraph 130 of the Framework. The appeal should be dismissed on the basis of its poor design.

Layout, Legibility and Public Realm

- 6.32 The public spaces and legibility of the routes into the development are critical in drawing people to the Marina. As the Design Review Panel stated, the challenge of attracting a sufficient amount of people to this relatively isolated location should not be underestimated and a significant draw will be required to attract people from longer distances¹⁰⁹. Legible routes into the Marina should be created, with recognisable routes which help people find their way around (PAN04) and the public realm should be high quality (BHCP1 Policy DA2) and ensure that the Marina becomes a destination (SPGBH20). It is important that the question for a decision-maker is not only whether the legibility and connections to the Marina offered by the scheme is an improvement over the existing site as it is, but also whether what is provided is high quality. These objectives are not met by the proposed scheme.
- 6.33 The Council¹¹⁰ explained that the appeal scheme presents an illegible western approach, which comprises a very narrow and ill-defined route past Block 1, followed by a narrow gap between Blocks 1 and 2. This fails to generate a destination and fails to signal the gateway to the Marina. It was explained that this convoluted route and the spaces around the buildings are residual, appearing as a result of the massing of buildings rather than generating it.
- 6.34 The Design Review Panel similarly expressed concerns about the lack of scale and lack of status this route has, and recommended that a more generous space between the blocks would be preferable, to help draw people in. However, the appellant¹¹¹ confirmed that following this recommendation by the Design Review Panel there was never any discussion amongst the Design Team as to the possibility of reducing the building sizes in order to widen the

¹⁰⁸ Mr Squire in x-e

¹⁰⁹ CD 220 and CD 222

¹¹⁰ Through Mr McQuade

¹¹¹ Through Mr Aspland

gaps and create more space. The proposed western approach was supported¹¹² on the basis that it needed '*a bit of mystery and finding*'. However, that is not a positive aspect, and it does not achieve the objective of creating recognisable routes which people can find their way around or attract people to the Marina.

- 6.35 Further, the public realm is also lacking. The right balance of public realm fails to be sufficiently outward-looking in order to take advantage of views of the sea as required by PAN04. The Council¹¹³ explained that the far larger scale of the inward-looking Exotic Gardens presents as the primary east-west route, with the Promenade appearing thin and ungenerous by comparison. This is inevitably another product of the design concept where buildings enclose spaces, and a further demonstration of the failure to respond to the context of the Marina location and positively embrace the coastal setting.
- 6.36 The proposed Sunset Square also fails to achieve its purpose of acting as a focal space of the development, attracting people to the Marina. According to the appellant¹¹⁴, Sunset Square will need to be shut on about '*30 occasions a year*' which raises significant problems with its functionality. The Council¹¹⁵ also explained that its visual and physical separation from the route into the site also harms legibility. In addition, throughout the evolution of the design, Sunset Square was reduced further in size, and again the Design Review Panel expressed serious concerns as to its ability to attract people to the Marina¹¹⁶.
- 6.37 The Council also gave evidence¹¹⁷ on the lack of definition between public and private realm. It was explained how the even-handed treatment of open space between buildings fails to generate a legible strategy to define between public and semi-private residential spaces, with a lack of visual separation and scope for privacy for residents, particularly for the communal garden in Block 1.
- 6.38 Overall, all this represents an unacceptable quality of layout and public realm, which fails to generate a high-quality marina environment, contrary to development plan policies and the supporting documents.

Character and Appearance – Heritage

- 6.39 The appeal site has a number of particular sensitivities due to its proximity to multiple heritage assets. There is common ground that the site falls within the setting of Lewes Crescent (Grade I); Madeira Terrace and Lift and Shelter Hall (Grade II*); the Temple, Esplanade Cottages, Old Reading Room and Tunnel (Grade II), Kemptown Enclosures (Grade II Registered Park and Gardens) and the Kemptown Conservation Area. There is also common ground that the open seascape contributes to the significance of each of these assets, and it is agreed that the proposed scheme reduces this openness. What remains in dispute is the extent to which this experience of openness is reduced, and

¹¹² By Mr Coleman e-in-c

¹¹³ Through Mr McQuade

¹¹⁴ Mr Aspland x-e

¹¹⁵ Through Mr McQuade

¹¹⁶ CD 222

¹¹⁷ Through Mr McQuade

whether that results in less than substantial harm to the significance of the designated heritage assets concerned.

- 6.40 The Council¹¹⁸ identified that less than substantial harm would be caused to the significance of each of these assets, contrary to the aims of BHCP1 Policy CP15 which sets out to conserve and enhance heritage assets. This judgment is consistent with that of Historic England who also advised that less than substantial harm would be caused to the Kemptown Conservation Area, the nearby listed buildings, and the registered park and gardens¹¹⁹. This finding was not originally appreciated by the appellant but subsequent attempts by the appellant¹²⁰ to suggest that Historic England's conclusion was 'weak' and that Historic England did not really mean to conclude that way was thoroughly unconvincing.
- 6.41 The proposed development would have a poor relationship with Lewes Crescent, particularly shown by Viewpoint 33¹²¹ and the kinetic walkthrough¹²². The Council explained¹²³ that the density and massing of the appeal scheme would create a dense urban form that coalesces with Lewes Crescent, which adversely impacts on the appreciation of this asset and the clear definition of its silhouette. The dense urban form of the proposal would have an overbearing impact, resulting in a loss of visible sky, blurring definition.
- 6.42 The particular sensitivity of the relationship between Lewes Crescent and development on the Marina was paid great attention during the development of the Wilkinson Eyre scheme. There was a strong emphasis on the necessity for the design to ensure visual distinction between the development and Lewes Crescent and to minimise any perceived effect of the development coalescing with the end of the Crescent, when looking out to sea¹²⁴. To achieve this, the nearest proposed building was curved to give the appearance of peeling away from the land, and a different aesthetic was introduced to this block. In addition, there was a spacious arrangement between the other blocks.
- 6.43 Given the approach taken in the Wilkinson Eyre scheme, it is difficult to understand why the appellant now contends¹²⁵ that there would never be any risk of visual coalescence between the Crescent and a development on the appeal site, and that '*there is very little the design needs to do*' in this respect. This is perhaps another example of conclusions becoming '*a little more bold these days*', compared to his view at the time of the Wilkinson Eyre scheme¹²⁶.
- 6.44 At any rate, the perceived effect of coalescence has clearly not been considered a major issue in the development of the appeal scheme, and this is reflected in the design, as shown by Block 1 always remaining as a courtyard block throughout the design process (despite the Design Review Panel

¹¹⁸ Through Mrs Johnston

¹¹⁹ CD 255.

¹²⁰ Through Mr Coleman

¹²¹ A12

¹²² A9

¹²³ Through Mrs Johnston

¹²⁴ See the Wilkinson Eyre Design Statement at CD 353 Pages 32 and 35.

¹²⁵ Through Mr Coleman

¹²⁶ Mr Coleman in x-e

describing it as a 'relic' and encouraging testing with a different form of building); the late introduction of the significant increase in the heights of Blocks 1 and 2, increasing the dense urban form, and very little evidence of robust testing of the relationship with Lewes Crescent; and the walkthrough¹²⁷ only being prepared for the purposes of evidence for the appeal. The impact of the proposed development on the significance of Lewes Crescent has certainly not been minimised.

- 6.45 The same can be said of the impact of the development on the significance of the other heritage assets. The Council explained that the dense and bulky development, with a lack of visual permeability through it, viewed as a backdrop to these heritage assets, has a negative impact on one's ability to appreciate these assets¹²⁸. This causes less than substantial harm to their significance. Further, there has been no material attempt to minimise this harm. This is contrary to the approach contented for by Historic England, both in its consultation response¹²⁹ and in Step 4 of the Good Practice Advice Note 3 on the setting of heritage assets¹³⁰. Notably Step 4 is not considered as a separate stage of the analysis by the appellant in its heritage assessment.
- 6.46 The Council¹³¹ strongly disagrees with the appellant's position that the appeal scheme results in an enhancement to the setting of these heritage assets. In any event, the appellant¹³² confirmed that his judgment that there is an enhancement to setting, is dependent on the appeal scheme being found to be of a high quality and coherent design, which is clearly not the case on the basis of the Council's evidence.
- 6.47 The Council has fairly judged that the less than substantial harm caused here, when considered alone, would be outweighed by the public benefits of the appeal scheme (in line with paragraph 196 of the Framework). However, the heritage harm must still be considered in the overall planning balance, with great weight given to the conservation of these assets, with the more important the asset the greater the weight given (in line with paragraph 193 of the Framework).

Character and Appearance – the South Downs National Park

- 6.48 The proposed development would be considerably more visible than the extant scheme from various public viewpoints within the National Park. It is clear that the development would be visible both in conjunction with other parts of the city, and also where it will be the only urban intrusion on the skyline. In both instances the development would not pay proper regard to the impact on National Park and would cause harm, contrary to BHCP1 Policy CP12.
- 6.49 On this issue, the appellant relies heavily on the fact that policy documents require a landmark building on the site. However, as explained by the

¹²⁷ A9

¹²⁸ Mrs Johnston

¹²⁹ CD 225

¹³⁰ CD 281 but see also paragraph 190 of the Framework

¹³¹ Through Mrs Johnston

¹³² Through Mr Coleman

Council¹³³, the height of all the very tall towers in the appeal scheme significantly increases the visual impact of the development over the ridge line, over and above only the southern tower¹³⁴.

- 6.50 This increased bulk and massing of the proposed development fails to 'minimise the visibility of new development from the Park', contrary to the aims and management guidance in the SDNP: View Characterisation and Analysis¹³⁵. There is clearly material harm caused to the purposes of the National Park, which results in yet further harm in overall character and appearance terms.

Living Conditions

- 6.51 The living conditions of future occupiers of the proposed scheme would be unacceptable, the effects being largely a consequence of the maximisation of housing on the site rather than optimising site capacity.

Internal Daylight and Sunlight

- 6.52 In terms of methodology, the Council¹³⁶ has always maintained that the reflectances used by the appellant, and in particular the wall reflectance, are too high, which results in an underestimate in the calculation of rooms that would be affected by poor daylight. At application stage, a wall reflectance of 0.85 was used and, perhaps in an implicit acceptance of this, at appeal stage the appellant¹³⁷ introduced calculations for a 0.81 reflectance. The Council maintain that 0.81 is still too high and would not be achievable in practice; however, it was explained¹³⁸ that even this modest reduction in wall reflectance showed a significant increase in the number of rooms failing to meet the minimum standards.
- 6.53 Overall, even on the basis of a 0.81 reflectance across the whole development: 103 living/kitchen/dining rooms would not meet the basic minimum for a kitchen (2% ADF¹³⁹); 49 of these living/kitchen/ dining rooms would not meet the basic minimum for a living room (1.5% ADF); and 139 bedrooms would not meet the basic minimum for a bedroom (1% ADF).
- 6.54 It is important to understand that these standards are very basic minimums; they are not difficult to achieve. As was explained, compromises may be necessary in order to achieve high density development on a very obstructed inner city site; however that situation plainly does not exist here for the Marina site, which should be an ideal site for a new development in terms of daylight. Indeed, this is perfectly demonstrated by the Wilkinson Eyre scheme which had no living rooms with ADFs below 1.5% and only one bedroom with an ADF below 1%. The appellant fairly acknowledged that the approach to design demonstrated by Wilkinson Eyre was 'undoubtedly' better for internal

¹³³ Through Mr McQuade

¹³⁴ For example, see Viewpoint 15 at CD18 Page 131

¹³⁵ CD287 page 25

¹³⁶ Through Dr Littlefair

¹³⁷ Through Mr Absolon

¹³⁸ By Dr Littlefair

¹³⁹ Average Daylight Factor

daylight¹⁴⁰. The failings in relation to daylight in the appeal scheme have undoubtedly been caused by the design.

- 6.55 In particular, the Council identified the problem area of poor daylight in Phase 2, both in the Block 1 courtyard block; and also in the areas around Block 2, which has been shoe-horned in between Blocks 1 and 3, with separation distances of only 12 and 8 metres, which would heavily obstruct available daylight. The Council highlights a number of flats in Blocks 1, 2 and 3 which contain rooms falling well below the basic minimum guidelines, where the harm caused would be even more serious¹⁴¹. There are also areas of poor sunlight provision, especially in Block 1, where only 67 of the 223 living rooms have been shown to meet the BS sunlight recommendations.
- 6.56 The daylight and sunlight impacts on future occupiers should not be underestimated, and the impact this has on living conditions will be unacceptable. Importantly the need for flexibility in delivering more housing does not lower this bar of still requiring acceptable living conditions¹⁴².
- 6.57 The appellant places great weight on the issue of personal choice, and that no one is being forced to live in these flats. This is not a good argument. Firstly, this applies with even less force in relation to the affordable housing units proposed in Block 1, and where there is a market housing need generally, and therefore less scope for choice, as in Brighton. Secondly, at any rate, the fact that there may be people willing to live in substandard accommodation clearly cannot be used as an excuse to build housing with poor living conditions – this is not the aim of the planning system.

Outlook and Privacy

- 6.58 Again, this links to the problem areas around Block 2, and the narrow distances of 12m and 8m from Blocks 1 and 3. It was shown¹⁴³ that the proximity of these flats was such that occupiers would get a clear view of residents in the units opposite. These problems would be exacerbated by the need to use the unusually clear glass, which has been proposed by the appellant in order to improve the low levels of daylight.
- 6.59 These very limited separation distances fall significantly below the 18 metres which the appellant accepted was the usual acceptable overlooking distance for contemporary housing developments¹⁴⁴ and fall well below the '*minimum*' necessary distances the design team applied to the relationship with Phase 3¹⁴⁵. The appellant also accepts that there was a need to '*compensate*' for these narrow distances; implicitly accepting them as a negative¹⁴⁶. Attempts¹⁴⁷ to characterise these very narrow distances as a positive aspect of the scheme, by comparison with medieval cities, was unconvincing and appeared as post-rationalisation.

¹⁴⁰ Mr Absolon in the round table

¹⁴¹ C3 Pages 17–19 and C5 Pages 6–10

¹⁴² Paragraph 123(c) of the Framework

¹⁴³ By Dr Littlefair and Mr Griffiths

¹⁴⁴ A6 Paragraph 8.3.3

¹⁴⁵ CD15 DAS Paragraph 8.14.3

¹⁴⁶ A6 Paragraph 8.3.5

¹⁴⁷ By Mr Squire in oral evidence

- 6.60 The material harm caused to future residents in relation to issues of privacy and overlooking further results in unacceptable living conditions, which are again a direct consequence of the overdevelopment of the site.

Private Amenity and Communal Amenity Space

- 6.61 Policy HO5 of the Brighton Local Plan provides that private useable amenity space will be required where appropriate to the scale and character of the development. PAN04 also requires private amenity space for all residents¹⁴⁸. Policy HO5 includes within such private amenity space, front and back gardens and balconies. The ground floor flats in the proposed development would have access to private gardens, however the overwhelming number of residents would only be able to rely on the enhanced Juliet balconies for their private amenity.
- 6.62 As explained¹⁴⁹, the enhanced Juliet balconies would not be materially useable. The assertion by the appellant that these spaces, which are in reality little more than ledges, could be used for eating and drinking, working and relaxation¹⁵⁰ is not credible.
- 6.63 No satisfactory justification has been put forward for why only Juliet balconies (inherently of limited useability) have been proposed in the development. At application stage, the appellant made reference to wind conditions, however no substantive evidence on this was put forward at the Inquiry, other than the 'circumstantial' evidence referred to¹⁵¹, which clearly is not enough to rely on. Reference was also made¹⁵² to the desire to avoid balconies so as to keep the design of the buildings 'simple'. Again, that does not serve to justify the departure from policy.
- 6.64 The scale and character of a development on the appeal site requires far more substantive balconies to serve the private amenity needs of future residents. The appropriate response is demonstrated by the Wilkinson Eyre scheme, where every residential unit was served by a substantive balcony or private terrace. Again, the desire for a 'simple' building without substantive balconies was another matter the appellant remained wedded to throughout the design process, not even exploring the option of winter gardens as suggested by the Design Review Panel.
- 6.65 The appellant relies on the communal amenity space to serve as private amenity space for residents. Clearly these are far from private areas, due to the need to share with the hundreds of other residents that would be living at the proposed development. It was accepted¹⁵³ that in considering whether such communal amenity spaces were appropriate for residents' needs, regard must be had to the number of residents required to use the space. The sheer number of residents required to use these communal spaces, exacerbated by

¹⁴⁸ CD257 Page 21

¹⁴⁹ By Mr Griffiths

¹⁵⁰ Page 6 of the Avison Young Note on Private Amenity Space etc at A16 Appendix D and also A14

¹⁵¹ By Mr Squire

¹⁵² By Mr Squire

¹⁵³ By Mr Squire and Mr Alston

the fact that these residents (other than those on the ground floors) would not have a materially useable balcony, would place undue pressure on these spaces, and they would not appropriately serve residents private amenity needs. The reliance¹⁵⁴ on communal spaces in Georgian developments is not a fair comparable with the appeal scheme, given the significant difference in scale.

- 6.66 Moreover, it is common ground that the three proposed communal gardens (in Block 1, and in between Blocks 4 and 5, and 7 and 8) fail to meet the BRE guidelines of two hours of sun on March 21. The Council¹⁵⁵ explained that the appellant's reliance on measurements for April/August and May/July are not in accordance with the BRE guidelines. These dates have been chosen for a specific reason¹⁵⁶ and that it would be unreasonable to expect residents to have poorly sunlit spaces for eight or ten months of the year. This applies especially to children, whose play-spaces within the communal gardens and the Exotic Gardens would also be poorly sunlit. It is worth emphasising again that the BRE guidelines for outdoor sunlight set a low standard; it is not difficult to meet these standards and again the failure to do so is another consequence of the overdevelopment of the site in order to achieve maximum housing at the cost of living standards.

Children's Play-Space

- 6.67 BHCP1 Policy CP16 sets the standards for requirements of children's equipped play-space. The need to meet these standards for children's play-space in particular is critical given the importance of the needs of children. Notably, the policy standards have already taken account of the offer of the city's beach, and therefore proximity to the seafront is not a justification for falling below standards.
- 6.68 The agreed requirement by reference to BHCP1 Policy CP16 for the proposed development is 1,134 square metres. The development as proposed (prior to the imposition of a condition) delivered a significant shortfall against this requirement, amounting to only 9% of the requirement in Phase 2, and 66% in Phase 3. All the required equipped play-space cannot legitimately fit on site due to the constraints this would place on the amenity needs of other residents. Again, this is symptomatic of the overdevelopment of the site. The new agreed condition¹⁵⁷ is the maximum amount of children's play-space that could satisfactorily fit within the constraints of the development, but this still represents a materially harmful shortfall against the requirements of policy.
- 6.69 The appellant now relies on the provision of existing children's play-space in order to achieve policy compliance and acceptable standards. The Council's position is that these alternative play-spaces do not fall within the accessibility standard of '*15 minute walk time (750m)*' for children.
- 6.70 At any rate, this only represents a quantitative assessment. In qualitative terms the provision of children's play-space is also deficient, given that the

¹⁵⁴ By Mr Squire

¹⁵⁵ Through Dr Littlefair

¹⁵⁶ Midway between the summer and winter solstice.

¹⁵⁷ ID14 Condition 46

location of such equipped areas would be poorly sunlit. Moreover, it is likely that much of the equipped play-space would need to be located within the public realm, which is not suitable for younger ages, who need to play without fear of conflict with strangers.

Conclusion on Living Conditions

- 6.71 Overall, all these factors taken together would lead to materially unacceptable living conditions for future residents across the whole proposed development, would result in material harm and conflict with development plan policies. In addition, it is rightly relevant to also make a judgment on Phase 2 alone, given that Phase 2 relies on residential amenity provision in Phase 3, and it is possible that Phase 2 may be delivered in isolation.
- 6.72 Considered in isolation, Phase 2 is particularly lacking in the standards of living conditions for future residents. Within Phase 2, 153 rooms¹⁵⁸ would fail to meet the minimum standards for internal daylight; a number of flats would suffer from poor outlook and privacy due to being located in the problem areas between Blocks 1 and 2, and 2 and 3; the single communal amenity space (which would be subject to overwhelming pressure from the hundreds of residents due to the lack of useable private balconies) would offer an extremely limited space for residents; this single communal amenity space would be poorly sunlit; and given the limited space there would be a deficiency in equipped children's play-space. This highlights the unacceptability of living conditions yet further.

Affordable Housing

- 6.73 The two remaining issues on affordable housing were addressed in the round table session. On the issue of the s.106 surplus, it was explained¹⁵⁹ why it is wholly reasonable and justified that a financial contribution to the Council to fund additional affordable housing, equal to 48% of the surplus, should be triggered if Phase 3 does not come forward and paid as a commuted sum, without further viability testing.
- 6.74 The appellant's reliance on the viability of Phase 2 is not a basis for refusing to impose such a clause. The sum was originally set aside for the payment of the s.106 costs within the original and assessed Financial Viability Assessment. It is a known cost, and one that the appellant would have been willing and able to make if the payments had been secured through the s.106 agreement. In addition, the appellant has already confirmed that despite the viability position of Phase 2, Phase 2 will be taken forward¹⁶⁰ and it is not a reasonable position to say that 48% of the surplus would change this. The clause preferred by the Council is necessary to make the development acceptable in planning terms.
- 6.75 In relation to the issue of staircasing, the Council¹⁶¹ explained that in order for the shared ownership affordable housing product to remain affordable for future households, it is essential that provision is secured for the receipts from

¹⁵⁸ 76 living/kitchen/diners and 77 bedrooms.

¹⁵⁹ By Mr Griffiths

¹⁶⁰ A4 Paragraph 8.5

¹⁶¹ Through Mr Griffiths

staircasing events to be recycled towards alternative affordable housing provision in the city. If these are not recycled, then this element of discount would be lost. Policy support for this requirement is found in Appendix 1 to BHCP1 on the definition of 'affordable housing' which requires that 'Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision'. There is nothing in this policy requirement that is inconsistent with the Framework. Again, the Council's preferred clause is necessary to make the development acceptable in planning terms.

The Planning Balance

- 6.76 The proposed scheme is not in accordance with the development plan considered as a whole. Further, the significant harmful impacts of the proposal scheme more than significantly and demonstrably outweigh the benefits.
- 6.77 A significant material consideration in this planning balance is the approved Wilkinson Eyre scheme. The appellant has confirmed they would likely revert to building it out, if permission is refused for the appeal scheme¹⁶². The Wilkinson Eyre scheme is then a fallback. Despite trying to row back on this in relation to Phase 3 of the Wilkinson Eyre scheme in oral evidence¹⁶³, it was still confirmed that both Phases 2 and 3 passed the threshold of there being a real likelihood of being built out, and are thus to be considered as fallbacks.
- 6.78 It is entirely necessary to consider the benefits of the appeal scheme against the benefits that would likely be delivered in any event by the Wilkinson Eyre scheme (if this appeal is dismissed). All agree that the Wilkinson Eyre scheme is a terrific scheme. It is a scheme fully in accordance with the aims of BHCP1 Policy DA2 (indeed delivery of the Wilkinson Eyre scheme is what is envisaged by Policy DA2) and would bring forward many similar economic and social benefits, including 200 more affordable homes than is proposed in the appeal scheme. This would all be without the unacceptable harm to character and appearance, and the unacceptable living conditions that would result from the appeal scheme.
- 6.79 On this basis, the appeal should be refused. There is no escaping the fact that if permission is granted for the appeal scheme, it would lead to the creation of a development which would forevermore harm the character and appearance of Brighton and create unacceptable living conditions. Alternatively, if permission is refused, either the appellant will build out the Wilkinson Eyre scheme or will come forward with another scheme which is appropriate for this site context. Either way, no harm will flow from dismissal of the appeal, and many of the same benefits (which the appeal scheme promises) would arise in any event.

7 The Case for the Appellant

- 7.1 This is set out in full in opening and closing statements to the Inquiry and in evidence¹⁶⁴. What follows is the case as presented in closing, but it is

¹⁶² A16 Paragraph 3.11

¹⁶³ From Mr Alston

¹⁶⁴ ID2, ID13 and A1-A17

imperative that the evidence presented by the appellant is considered fully and carefully, in order to gain a proper appreciation of the case presented.

Summary of the Key Points

- 7.2 Brighton Marina is an allocated site for residential-led mixed-use development, on a site partly to be created over the Spending Beach and cofferdam. The aim of the appeal scheme is to optimise the site for housing, and at the same time create a unique and beautiful place; one which at the same time elevates the character and quality of the overall Marina, and connects it firmly to the city itself.
- 7.3 The Council considers the scheme overdevelops the site. It argues that the massing lacks relief and permeability, that it is illegible in townscape terms, harmful in heritage terms, and would fall short of acceptable residential amenity standards. It also (despite claiming the opposite) has shifted the grounds of its objection since its Statement of Case¹⁶⁵ to argue that the extant scheme by architects Wilkinson Eyre (the Extant Scheme¹⁶⁶) is preferable.
- 7.4 The Council is being opportunistic in that last respect; the appeal is not a beauty parade. The approach was really to disguise the weakness of the Council's urban design and heritage points. They were highly subjective, over-prescriptive, and failed reasonably to appraise the scheme. Similarly, the case against its level of residential amenity is very brittle and insufficiently sensitive to the bigger picture here. There is an over-reliance on daylight/sunlight standards in respect of a very few units, a failure to recognise the high-quality proposed on-site amenity space and the proximity of wonderful play opportunities for children; in general, the Council focuses on what are a set of relatively minor issues of exactly the kind one usually finds in high-density urban re-development projects like this.
- 7.5 It is regrettable, because as a result the Council fails to stand back and recognise the fundamentals. The scheme would be a splendid landmark for the eastern edge of Brighton, marking the Marina and reflecting the bold town planning of the rest of the city. It would also be a spectacular place to live. These are all matters which sound positively in national planning policy.
- 7.6 ***The Scheme***
- 7.7 The site is 3.54ha in area, and the scheme¹⁶⁷ comprises a set of new buildings and associated public and private realm to be constructed on a new platform over the existing cofferdam and Spending Beach at the Brighton Marina's Outer Harbour. They would extend from the Western Breakwater to West Quay, and include: (1) nine buildings, ranging from 8 to 28 storeys in height; (2) up to 1000 homes, including affordable housing; (3) up to 1561 square metres of flexible commercial space (Use Classes A1-A4, B1, D1 and D2); (4) associated car and cycle parking; (5) 1.14ha of publicly accessible new open space, including a waterfront promenade, and 0.37ha of improved existing

¹⁶⁵ CD300

¹⁶⁶ There are illustrations in CD314-CD316, CD334 and CD339

¹⁶⁷ A16 Appendix B is a useful overall plan of the site

public amenity space; and (6) greatly improved pedestrian and cycle connectivity through to the Marina and to the eastern side of the city.

- 7.8 The scheme is in hybrid form¹⁶⁸. Phase 2, the western part, is the subject of a full application (Blocks 1-3), and outline permission with all matters save access reserved is sought for the eastern part, Phase 3 (Blocks 4-9). The outline section is pretty well-defined nevertheless. It is the subject of a suite of parameter plans, a development schedule¹⁶⁹ and a Design Principles Document¹⁷⁰ which are to be tied in to the scheme by way of condition.
- 7.9 There are no outstanding procedural issues going to the definition of the scheme itself. There are a couple of variant points relating to the affordable housing obligation that are dealt with below.

The Main Considerations

- 7.10 These are: (1) the effect of the scheme on the character and appearance of the area, including design, and the setting of heritage assets and the South Downs National Park; (2) affordable housing; and (3) living conditions in terms of private amenity space, children's play-space, daylight and sunlight, and privacy/outlook.

Character and Appearance

Context

- 7.11 The physical context for the scheme is challenging but provides a wonderful opportunity for enhancement.
- 7.12 All agree that the marina needs enhancement, that its townscape is very mixed in quality and its connectivity by foot and bicycle dismal¹⁷¹. It is a bit of a disaster¹⁷² in townscape terms at the moment. The site itself barely exists at all – the Spending Beach and land enclosed within the cofferdam, and the breakwater. The opportunity is clear.
- 7.13 It is not just the appeal site which is to be developed. The site(s) to its north, which have had schemes drawn up for them in the past¹⁷³, are also expected to come forward for high-density development. Seeing the appeal site in that context is also important¹⁷⁴. There is nothing objectionable about the scheme in terms of the principle of development which is squarely in line with the adopted plan¹⁷⁵.

¹⁶⁸ CD15 is the DAS and the schedule of plans and documents to be approved is at CD299 Appendix E

¹⁶⁹ CD5

¹⁷⁰ CD7

¹⁷¹ Mr McQuade confirmed by reference to C1 paragraph 5.5 that the site lacks an identifiable sense of place, does not respect local building forms, has no landmark feature and no skyline interest, as well as suffering from 'severance' (see CD 277 Page 28) from the city

¹⁷² Mr Coleman's description

¹⁷³ CD333 (the Allies & Morrison scheme) is one

¹⁷⁴ A16 Paragraph 6.8 gives the site-specific marina policies, particularly Policy DA2: *Brighton Marina, Gas Works and Black Rock Area*.

¹⁷⁵ In the Built Up Area, BHCP1 Policy CP1; with the Policy DA2 development area. There is an emerging plan too but it is too early to give it any weight - see A16 Paragraph 6.12

- 7.14 The wider context is Brighton's main seafront and the southerly-facing centre of the city, much of it intervisible with the Marina from various views – for instance from the pier, the sea, or from kinetic views along Madeira Drive. It is not a site which can be hermetically sealed from this wider context – indeed, to seek to derive a scheme which sought to do so would run counter to one of the main design outcomes desired by the Council, namely that the site creates a landmark.
- 7.15 At closer quarters, the appeal site is different from the inner harbour and locked marina – it is a far more open and marine, rather than marina, context in which to build a residential scheme.
- 7.16 The approach of the architect¹⁷⁶ to the scheme takes this wide and rugged context into account in various ways. The view is that the appeal site can provide the coastal, seaside attractions of public realm and sea-views for the residents, whilst also comprising a proper functional piece of the city.

Principles for Designing on the Site

- 7.17 It is a singular site, but many (if not most) sites have something unique about them. The principles of good design apply in every case; they are summed up in paragraph 127 of the Framework¹⁷⁷. Schemes are likely to be good design if they: (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; (e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 7.18 The scheme must be considered in the light of those policy goals. However, the Council also puts a heavy emphasis on the terms of some (rather out of date) design guidance for the site¹⁷⁸. It observes correctly that the Framework¹⁷⁹ says that *regard should be had* to the contents of such documents, but the substance of the design points is what matters, and the validity of the design choices which are then made.

¹⁷⁶ Mr Squire

¹⁷⁷ CD249

¹⁷⁸ PAN04 (CD256), SPGBH20 (CD257), and SPGBH15 (CD260)

¹⁷⁹ CD249 Paragraph 130: Planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.

- 7.19 The following should also be borne in mind when considering the guidance in Brighton. First, SPGBH20¹⁸⁰ dates from 2003 and was drafted to support policies emerging in the 2001 second deposit draft Local Plan, which was not adopted. Instead, it was superseded by the 2005 Local Plan, the design policies in which were in turn superseded by the BHCP1. SPGBH20's contents should therefore be treated with caution, given that it does not (and never did) satisfy the definition of SPG in the Framework¹⁸¹. Second, PAN04¹⁸² is also 13 years old and pre-dates both the Framework and BHCP1. It is a non-statutory policy document. It is also related to policies which are either superseded or were never adopted; it is mentioned in BHCP1¹⁸³ but only to signal that it is out of date and to be replaced. Third, SPGBH15 – Tall Buildings¹⁸⁴ is dated 2004; it was to support the 2001 draft deposit version of the Brighton and Hove Plan. No weight can really be given to it; the general principles about good design are engaged here; the tall buildings are sanctioned by up to date development plan policy and there is no principal issue between the main parties in terms of the height of the scheme¹⁸⁵.
- 7.20 The Draft Urban Design Framework SPD¹⁸⁶ is intended as a replacement, but has not yet been adopted. Other purely descriptive design and townscape documentation is also relevant – for instance the Urban Characterisation Study from 2009¹⁸⁷ – but needs to be used with care and not treated as prescriptive of any future development proposals.

Function Well Now and Into the Future

- 7.21 The first touchstone of good design in the Framework's paragraph 127 is whether the Scheme would function well now and in the future. It would – there are no serious criticisms of this aspect of the proposals¹⁸⁸. The Scheme would link the city and beach to the Marina for pedestrians and cyclists, and it would successfully house over 2000 people, with active ground floor uses on the main thoroughfare – Sunset Square, the street between Block 1 and 2, and the Promenade.
- 7.22 It has been designed as a townscape set of streets, so it would function in off-season as well as high season for residents and visitors. It would also continue to function – indeed it has been designed specifically to function – with the likely high-density re-development to the north, because it has proper connections through to that area at ground floor, with controlled management of the levels change and full DDA compliance. These meaningful street openings running will be returned to below.

¹⁸⁰ CD256.

¹⁸¹ See fuller commentary at A16 Paragraphs 6.19-6.23

¹⁸² CD257

¹⁸³ CD253 Paragraph 3.13 relating to Policy DA2

¹⁸⁴ CD260

¹⁸⁵ In particular, the allocation in Policy DA2 supports tall buildings here and therefore there is no issue analogous to those referred to by the Secretary of State in his letter to the Mayor of London on tall buildings, 10 December 2020 (A16 Appendix G)

¹⁸⁶ CD273

¹⁸⁷ CD277

¹⁸⁸ To the extent that the residential amenity points are a kind of functional assessment of the scheme, those are dealt with under the third main issue

Adding to the Overall Quality of the Area

- 7.23 Again, the Scheme would clearly enhance the area through a re-development of high-quality buildings and a variety of public and private spaces. The standard of architecture and landscaping would be on a different level to that which led to the quality of the existing Marina, and would thereby present a wholly new face to the city and the western side of the marina, enhancing the overall area.

Good Architecture and Layout

- 7.24 As to the *architecture*, there is no detailed criticism of the design of the Phase 2 buildings or indeed the illustrative appearance parameters shown for Phase 3¹⁸⁹. The Council reserves its criticism for layout and massing rather than matters of detail, but in a sense rather too little attention has been paid to the architecture itself.
- 7.25 It has been described¹⁹⁰ how the buildings are elevated and articulated, drawing on a marine materiality to tie into the context and to give a subtle further variation of appearance to the buildings. The buildings are elevated in stages with different patterns of convex and concave, and finely-graded material finishes, to echo the erosion of chalk cliffs along the coast¹⁹¹. The idea is clearly perceptible in the scheme, rather than simply remaining notional.
- 7.26 In particular, there is a rich texture to the different treatments of the three buildings in Phase 2 – with the additional height and ‘crown’ of Block 3 marking it out as the landmark tower, a forthright and prominent ‘head of the family’¹⁹². The delivery of this quality is ensured through the conditions controlled by the Council.
- 7.27 There was a suggestion at one point that the scheme’s architecture was unduly influenced by the Regency or Georgian architecture of the city’s prominent seafront developments, but the connections are all positive: it was acknowledged¹⁹³ that the Scheme would not be pastiche – it would be relatively formal and urban; the architecture of the buildings would have a similar depth of detailing and a hierarchy, but it would be very different in many ways. It would have different proportions and a much more restrained contemporary appearance.
- 7.28 At times in the Council’s case, there were references to concepts such as ‘orthogonal’, ‘rectilinear’ and ‘cuboidal’ – usually with a pejorative implication. It seems clear however that the concern is with the overall scale and massing rather than the fact that most of the buildings (certainly in Phase 2¹⁹⁴) are characterised by right angles rather than wavy shapes intended to evoke the

¹⁸⁹ Included here is Mr Mellor’s superficial and (one sincerely hopes) tongue-in-cheek criticisms of the design in his presentation – a stack of crates (ID5)

¹⁹⁰ By Mr Squire

¹⁹¹ CD338 Page 121

¹⁹² Shown in all the images in A12 Appendix 2

¹⁹³ By Mrs Johnston

¹⁹⁴ Phase 3 has at its heart a set piece curve – the overall feel of the scheme on the ground will not be rectilinear anyway – see the way the shape of the crescent is tied in by the parameter plans

sea. Of course, there is nothing wrong per se with the well-mannered relatively uniform shapes of the architect's scheme. It is highly articulated, and the roofs are all properly addressed with good quality fully expressed top floors and plant enclosures (especially the tower, Block 3). Scale and massing are dealt with further below.

- 7.29 It is perhaps worth noting that the Council's evidence¹⁹⁵ appeared to contain a further point of purely architectural criticism, namely that the Scheme was not a recognisably 'marina' typology – he drew unfavourable contrasts both with the Wilkinson Eyre scheme with its wavy tower and prow-like buildings pushing out to sea, and to a marina in Sweden. There is nothing very much in these points in terms of right and wrong. It is not necessary for buildings on the site to be designed so as to make overt references to the sea or ships¹⁹⁶; indeed a respectable point of view is that to do so would be a little trite – the appellant's view¹⁹⁷ is that the chalky, cliff-like towers of the scheme at issue are well suited to the location, as is an urban set of buildings and spaces, echoing bold city expansions of the past. These are all respectable views.
- 7.30 Turning to *massing* and *layout*, we come to the central contention raised by the Council – that the scheme is too densely spaced in physical terms – in particular Phase 2. There are three discernible aspects to the criticism as far as the built layout is concerned: (a) that the overall scale is over-whelming, 'solid wall' or 'monolithic'; (b) that there are too few gaps between the building and therefore the scheme is not visually permeable; and (c) that the layout means that the tower is insufficiently distinct to serve a landmark function.
- 7.31 A balanced judgement of the scheme's massing is needed, including how it would appear to the moving viewer in the whole set of views. In near views (from many locations within the scheme, for example the promenade) the buildings are clearly separate, identifiable and articulated within the layout – this would be very easy to see from within the scheme. They would be large buildings, certainly, but they would not be overwhelming as they are set in pretty much every view within a huge space – from all views to the west, the sea stretches away; from the promenade, the outer harbour and sea beyond are the dominant feature; from the north or north west, the buildings would still be clearly articulated by their different designs¹⁹⁸, the actual gaps between them¹⁹⁹ and the play of shadow and light.

¹⁹⁵ Provided by Mr McQuade (C1) - please note the way that the accurate history of the planning application shows the effect of Mr McQuade's particular approach on the progress of the application: see A16 Paragraphs 4.13-4.16. It is not true to say that the points raised by Mr McQuade were all reflective of the DRP views on the scheme – the key concerns now relied on about massing, homogeneity etc were his points introduced very late indeed in the day

¹⁹⁶ Malmo marina is no doubt contextually appropriate in Sweden but it is a very different place to the exposed Outer Harbour and one must leave the designer room to create their own sense of place specific to the site

¹⁹⁷ Expressed by Mr Coleman – a supporter of the extant Wilkinson Eyre scheme

¹⁹⁸ The general allegation of blockiness, homogeneity and lacking definition is unrealistic – even in long views, see A12 Views 26, 27, 28, 35, 38 and 39 – the gaps are clearly visible

¹⁹⁹ And the variation in the roof line – Mr McQuade's 'flat unbroken ridge lines' is not a fair representation of the overall effect of the scheme

- 7.32 The Council was concerned that the buildings would be insufficiently *permeable* visually, thereby it was said failing to be contextually appropriate or to align with guidance in the various design guides²⁰⁰. The architect²⁰¹ was invited to agree that his approach 'inevitably reduces visual permeability'. The point was made by comparison with the extant scheme, it would appear. The composition of the scheme is at the absolute heart of the objection raised by the Council²⁰², who clearly thinks that the Wilkinson Eyre scheme is the way the site should be developed. But this is not a game of 'same or different', and the Council dealing with an allocated site in the midst of a very severe housing crisis, should have been more rigorous in assessing whether these expressed misgivings came close to an objection on design grounds.
- 7.33 The point properly analysed starts with this question: what is the urban design function of 'visual permeability' in this particular context? Challenged on this, the Council²⁰³ relied on the image of glimpsed views down Brighton streets to the sea to allege that the scheme was 'not appropriately spacious', and when pressed maintained that the objective was the protection of views of the sea because they underpinned the character of the city as a seaside town. That makes sense when protecting views within the tight urban area of the city. But the Marina stands out to sea, a man-made extrusion of the land set – in almost all views – amid a vast seascape. It makes no sense at all to say the vastness of the background seascape makes it *more* important to have gaps through the marina development²⁰⁴, if the objective is to inform an understanding of what kind of place Brighton is. Much, much, more rigour should have been applied by the Council²⁰⁵ before sanctioning an objection of this kind²⁰⁶.
- 7.34 As was noted²⁰⁷ about walkers on the cliff top path – they have had minutes or perhaps hours of direct views out to sea. The interest of Brighton's marine landmarks – the pier, the i360, the Marina itself – is a counterpoint and a relief from the marine panorama. It is not hugely important to punctuate development on the marina with holes, simply to underline the self-evident.
- 7.35 A game of same and different was played by the Council with the dated guidance and the Wilkinson Eyre scheme. That has greater visual permeability from the north (although, as was noted²⁰⁸, not really from the east or west); its gaps appear regularly between the different built elements, but they are otherwise meaningless – they certainly lack the contextual specificity of

²⁰⁰ Although (McQuade x-e) there is nothing that stipulates that any acceptable scheme must be peppered with holes – see CD257 (PAN04) page 19; page 28; and Paragraph 15.10 page 34. They are all directed towards not blotting out views of the sea in the city context and having, as far as the marina is concerned, some sea glimpses in the same way as one gets in the city

²⁰¹ Mr Squire

²⁰² Through Mr McQuade

²⁰³ Through Mr McQuade

²⁰⁴ One of Mr McQuade's propositions in x-e

²⁰⁵ Through Mr Griffiths

²⁰⁶ For instance, it should have been recognised that the pale materiality and the relative regularity had some affinity with the Regency terraces which make up a very important part of the city seafront character – see A12 Appendix 4 Page 38

²⁰⁷ By Mr Coleman

²⁰⁸ By Mr Squire

glimpsed views down streets in the city to the sea. The appeal scheme, on the other hand, has fewer north-south gaps, but they are much more meaningful – the spine and the two access streets are real movement corridors, leading from north to south, and could well set a beneficial pattern for the development to come to the north of the site. When those gaps are seen from the hilltop path, they present a set of glimpsed views through to the sea, defining where the streets are in the scheme. They do not have to be bigger, or indeed more in number, to tell the viewer that the marina sits on the sea, or that Brighton is a seaside town.

- 7.36 The very specific view from directly north on the cliff to which reference is made by the Council in its guidance²⁰⁹, is not from a securely locatable position and cannot be literal – otherwise the fan of that view would preclude most schemes on the site, including the consented Wilkinson Eyre scheme.
- 7.37 As to the way that the scheme is composed, there is no question that it would act as a tremendous landmark for the eastern end of the city and for the marina itself. From out to sea, the tower would be a dominant wayfaring sign. From the main promenade to the west of the marina (including importantly from the pier), the tower is highest and would be set against the unbroken sea to the south. It is also clearly separated from Block 2 – from the pier, from much of the main promenade, and from the east. In closer views the buildings are more layered, but there are a number of reasons why the tower would appear as the 'head of the family'. The entire composition would act as a landmark as well, in the way that clusters of tall buildings now recognisably do – that was the view of Historic England, who called the scheme an imposing landmark²¹⁰, as part of the coastal panorama.
- 7.38 Blocks 1 to 3 step up in height progressively, although there is a marked step between Blocks 2 and 3, leaving the tower dominant in the composition. It was described²¹¹ how the progression evolved through the design process, stemming from the introduction of the crescent and the reordering of the stack blocks behind, to a spiral composition stepping up through Phase 2.
- 7.39 Again, the Council is keen to enter the scheme in a beauty contest with the Wilkinson Eyre scheme, which is taller (or at least its tower element is – it has an attached, much lower, part). Both the appeal scheme and the extant scheme would be landmark structures.

Local Character and History – Heritage

- 7.40 Taking the next Framework criterion for good design, the scheme would be sympathetic to local marina character by improving the overall area and making the Marina a far more integrated, attractive proposition.
- 7.41 As for local history, the scheme is alleged to have a 'less than substantial' harmful effect on the significance of a number of heritage assets²¹². The context here is important again. The site is allocated in BHCP1 Policy DA2 for

²⁰⁹ The SPGBH15 view from the cliffs; this is a local rather than strategic view within the terms of that document

²¹⁰ CD225 Page 4

²¹¹ By Mr Squire

²¹² See CD18, Figure 8.1 I the TLHVIA for the identification and location of the assets

substantial development including a landmark tall building, in a location visible from and within the setting of, these assets, something which ought to be borne clearly in mind when assessing the degree of harm and overall acceptability of the impacts.

- 7.42 As was accepted²¹³, the development plan therefore expects, and indeed encourages the visibility of tall new buildings at the Marina in these views, and the bookmarking of the eastern end of the city in a way that would inevitably affect the openness of the seascape to a limited degree has been accepted²¹⁴. As a corollary, it was accepted²¹⁵ that there was nothing in any policy or guidance in Brighton which required the marina to appear divorced from the city or as a separate entity. Hence, the views of the Council are not based on any such proposition.
- 7.43 In such views, new buildings at the Marina will appear further away and in historic building setting terms, it was confirmed²¹⁶ that, taking all these points together, the correct approach would be for them to complement the heritage assets – defined as being different but not clashing; the appellant²¹⁷ agreed, observing that the aim was to harmonise – to be different but not discordant.
- 7.44 The appellant's view²¹⁸ is that there would be no harm to the significance of any of the assets concerned. That is because first, the only arguable impact is to their settings; and second, because the way in which their settings contribute to their significance would not be affected by the scheme, albeit there would be some visibility of the scheme in the background. There is no flaw in this methodology which, unlike that of the Council focuses on whether visual changes in the setting makes any difference to the understanding and appreciation of the assets themselves, bearing in mind that setting is not, as Historic England stress in guidance²¹⁹, the asset itself.
- 7.45 In terms of Lewes Crescent, the Grade I listed terrace would be largely unaffected by the proposals, except for a short section of Lewes Crescent illustrated in relevant visual and by the moving graphic²²⁰. The Council accepts²²¹ that the scheme would not be confused with the listed building in the short section of setting when one would see both, layered, or adjacent to one another. The effect of distance and difference, it was acknowledged, would mean that the two would not be confused²²². This echoes the views of Historic England²²³, whose view is that although the scheme would be visible and

²¹³ By Mrs Johnston

²¹⁴ See for example BHCP1 Policy CP12 (CD253 Page 188 Paragraph 4.146)

²¹⁵ Again by Mrs Johnston

²¹⁶ By Mrs Johnston

²¹⁷ Through Mr Coleman

²¹⁸ Expressed through Mr Coleman

²¹⁹ CD281

²²⁰ A12 View 33 and stills from the moving graphic at Appendix 7.

²²¹ Mrs Johnston in x-e

²²² It should also be noted that Mrs Johnston confirmed in x-e that she was not alleging that the scheme caused harm because it was *too much like* the heritage assets in the city – that clarification was sought because of passages like C2 Page 18 where she appeared to be saying that

²²³ CD225 Page 4

change the setting, it would have only a limited impact and 'will not prevent them from being understood and appreciated'.

- 7.46 That is particularly important because the function of the *setting* is as the environment within which one experiences the asset and from which it can gain some of its significance. The Council judges that the scheme's juxtaposition with Lewes Crescent in a short stretch of townscape would make the edge of the listed building 'less distinct'²²⁴, but the silhouette of the building would remain very clear. A near-identical juxtaposition with the northerly block on the marina site and Lewes Crescent was found acceptable in the Wilkinson Eyre scheme²²⁵.
- 7.47 The Council also argues²²⁶ that it is the openness of the visible seascape (in part though, the trees in the Kemptown enclosures limit the extent of the view) that is redolent of the Terrace's history as a brave Regency stride into the fields – but that point cannot really constitute an objection to the scheme as the city, the Marina's existing presence, the extant permission²²⁷, and the need for a landmark, have all already changed the context. The erosion of openness that the scheme would cause would not move the dial in terms of how the listed buildings relate to 21st century Brighton, or to the sea.
- 7.48 Overall, it is hard to find the justification for the view – including Historic England's²²⁸ – that even a very limited degree of harm would be caused to what is significant.
- 7.49 The same is doubly true of the cluster of other heritage assets: the enclosures, the Madeira Lift, the Madeira Terrace, the temple, tunnel, esplanade and cottages²²⁹. The allegation is the same in each case – that the remoteness and openness of the sea lends something to their significance that would be harmed. The answer is also the same. As it was put²³⁰, it is faintly preposterous to suggest that the Madeira Lift would be harmed by the scheme appearing in some but hardly all of the kinetic views of the building along the front, given the relatively small size of the lift and the vastness of the seascape against which it is seen.
- 7.50 The same is also true of the other assets – their inherent significance would remain; the setting includes the Marina already. There is no realistic sense in which the scheme, albeit larger and more prominent than what is on the site now, would change the essential components of setting that exist today.

²²⁴ C2 Paragraph 6.20. In x-e, Mrs Johnston accepted that the Scheme would not appear above the terrace, it steps away from the interface with the terrace, and is articulated. She also on reflection appeared to have second thoughts about her use of the expression 'monolithic'

²²⁵ CD334 (the Extant Scheme DAS) Page 24

²²⁶ Through Mrs Johnston

²²⁷ Again, Mrs Johnston in x-e accepted that the much higher Wilkinson Eyre scheme would be more visible in these views and draw the eye more

²²⁸ As Mr Coleman pointed out (CD225 Pages 1-4), there is no reasoning in the letter as to the cause of any harm to significance, and it is a familiar trope in such letters to play safe by alleging a degree of harm simply because of visibility

²²⁹ C2 Paragraphs 6.22-6.24 Pages 26-27.

²³⁰ By Mr Coleman

- 7.51 The Council's overall position was that there would be a relatively low level of harm which would be outweighed by the public benefits of the scheme²³¹. That would be to put the harm at its absolute height. On the Council's case, the limited harm would be outweighed within the terms of paragraph 196, despite giving it significant importance and weight; it would have been justified (within the terms of paragraph 194 of the Framework) by the many benefits the scheme would bring, and (to complete the set of related Framework points²³²) there would be nothing to prevent the engagement of paragraph 11(d) of the Framework.
- 7.52 The evidence in fact shows that there would be a change, rather than harm to, the settings of the various assets and paragraph 196 is not engaged at all. This obviously means that the scheme's harmful impact on the settings has been minimised, and the Council's point²³³ about 'only carrying out the balancing exercise in paragraph 196 once the harm has been minimised' does not arise. The Secretary of State will note that there is no such test in the Framework in any event – paragraph 196 simply asks the decision maker to balance heritage harm, with significant weight attached to it²³⁴, against the public benefits. That is what the Council²³⁵ has done, outweighing the degree of harm identified²³⁶.
- 7.53 There would be no objection to the scheme on heritage grounds, without even having to compare it to the extant scheme by way of fallback. It would be a distinct new addition to the collection of excellent architecture and townscapes in the city.
- 7.54 In terms of the South Downs National Park, the site lies outside its boundaries but would be visible from within it. The context is that there is a heavily developed coastal plain²³⁷ which lends the closest parts of the National Park a particular character – one which is well regarded, rather than seen as a detractor. Brighton can be seen in many views from the fringes of the Park, and the scheme would play its part in those views.
- 7.55 In closer views, for instance from the cliff top footpath as one travels west²³⁸, the scheme would appear behind the existing marina structures with the rest of Brighton behind. It would be a prominent new presence in those views, but given that the National Park has significant urban influences at that point, it could not reasonably be described as harmful – indeed, the question of impact or effect is bound up with the success of the scheme as landmark or 'bookend' to Brighton. Given that it would undoubtedly have that effect, the National Park would not be harmed.

²³¹ Though Mrs Johnston seemed to be unaware of that in x-e (see C4 Paragraph 12.7 Page 42)

²³² An issue clarified by the Inspector with Mr Alston

²³³ Drawn from the wording of the HE response, probably in error – see CD 225 page 4.

²³⁴ And therefore, in a sense, already 'tilted', as the Courts have held.

²³⁵ Through Mr Griffiths in the knowledge of Mrs Johnston's conclusions

²³⁶ That is, a much greater degree of harm – indeed one which was described as 'unacceptable' by Mrs Johnston in x-e by reference to C2 Paragraph 6.26 Page 27

²³⁷ CD 287 Page 25

²³⁸ See for example A12 Appendix 2 View 17

- 7.56 In further views²³⁹, the scheme would either not be seen, or its tallest element would be glimpsed. This is the same general effect that the rather taller Wilkinson Eyre tower would have had, and would not cause harm, even if one focuses on a very limited set of views where, at the moment, urban Brighton is not visible. These are part of a set of kinetic views and would, as it were, 'extend' the presence of Brighton into the National Park by a very limited amount. That presence would be in the form of the top of a well-designed building intended to act as a landmark denoting the presence of the main settlement as the National Park meets the sea, and it would not cause harm either conceptually (that is by confusing the legibility or understanding of the National Park) or by means of extensive visual intrusion – it would be a glimpsed sign of the city.
- 7.57 For these reasons, there would be no harm to heritage assets or to the South Downs National Park as a result of the Scheme.

A Strong Sense of Place and an Inviting Place to Live and Work

- 7.58 It is a matter of judgement whether the sense of place created would be strong, but there are some key indicators that it would.
- 7.59 The scheme would, contrary to the views of the Council²⁴⁰, have a clear and legible layout. There would be a sense of arrival as one approached the scheme, focused on the tower, and the linear route from the beach/Black Rock along the breakwater and the frontage of Block 1. The Council was perhaps overly concerned that there was no 'node' at which one arrives into the scheme – the reality is that one would have an unfolding experience with the sea on one side and the gardens of Block 1 on the left, before arriving at key moment in the journey at the corner of Block 1, where the view opens up into the heart of the scheme and the crescent/promenade. From that point one would also see the Sunset Square and have a choice whether to go towards it and the tower, or along the promenade to the rest of the Marina. There is interest and variety in this route, and a valuable interplay between the very wide open (sea/breakwater/sunset square/promenade) and the protected and guarded (lanes between Blocks 1 and 2/Block 1 garden/glimpses to the north into the edges of the Exotic Gardens). To say that there is an urban design objection because of the absence of a 'node' misses the common sense of all that.
- 7.60 Indeed, all these spatial aspects of the scheme have to be viewed sensibly; but many of the criticisms made by the Council²⁴¹ seemed to take place in a parallel universe. For instance, it undermined the Council's case that the effect of the outer harbour and the sea from the assessment of whether the route along the promenade was sufficiently wide or legible to function well was, it seems, excluded. It is the centrepiece public route at the heart of the scheme – at 10 metres, it is wider than many main streets in the city, and it is split into two levels as a result, with a 'fast' upper level adjoining the active ground floor commercial units in the crescent, and the lower spaces in which one could sit or play. The presence of the sea and sky would make that space seem

²³⁹ For example A12 Appendix 2 View 11, or View 16 (Aspland in-c)

²⁴⁰ Expressed through Mr McQuade

²⁴¹ Through Mr McQuade

enormous, a feeling underscored by the dramatic sweep of the crescent buildings and the end stop of the tower. These aspects of the design are all self-evident from the images provided. The Council²⁴² was not prepared to extend the analysis to beyond the guard rail at the edge of the promenade – such an approach would make for a peculiarly joyless experience of a site such as this.

- 7.61 Nor is it a valid criticism of the layout of the scheme or its attractiveness to say that the Exotic Gardens would be (a) more shaded with less sun on the ground, or (b) in places wider than the promenade. They are secondary routes, which visitors could choose to explore, or people linger in when the weather is very hot, and shade is at a premium – there are such days in England. They are also designed for a different purpose, with private amenity space²⁴³ and playable space in mind; they are part of the depth of the site. It is superficial to complain that they are not 'outward facing' enough when one has the set of outward-facing spaces and routes already – these are spaces and routes designed for other purposes.
- 7.62 The spine would be a notable place in its own right – wide, southerly orientated and capable of supporting a range of activities; the architects chose to change its uses and specification when the Design Review Panel commented that Sunset Square might not be the optimum location for events.
- 7.63 Running a restaurant or working in a commercial space on the promenade or around the Sunset Square would involve participation in a vibrant environment which would be likely to prove very popular with visitors and residents; the residential environment would be unique. There is no doubt that the Scheme would meet this aspect of the policy in the Framework.

Optimisation and Community Cohesion

- 7.64 There is a striking difference between the extant scheme and the current proposals which is worth reflecting on when considering the social sustainability aspects of the design; this is not a point-scoring exercise against the Wilkinson Eyre scheme but serves to illustrate one of the strongest aspects of the scheme's design.
- 7.65 The extant scheme has a clear resort-style character, focused on the set-piece buildings. There is a central movement corridor running through its later phases (east-west) which is basically a road; access to the outer harbour 'front' is segmented by the prow-like buildings which chop it up into a series of sections, which, while accessible to the public, lack a degree of overall coherence. By contrast, the public spaces in the current scheme are given great importance. By creating the crescent (with support and prompting from the Design Review Panel, it should not be forgotten) the entire scheme opened onto the public domain, ensuring a more democratised set of spaces open to the public in the same way that the main Brighton promenade is. The route along the breakwater, round Sunset Square and the tower, and along the

²⁴² Mr McQuade

²⁴³ Mr Aspland provided a detailed explanation about the lighting conditions and the planting strategy developed for these areas, and indeed others such as the Derek Jarman-esque planting proposed for the Sunset Square

promenade to the marina, has the potential to be a key communal or public experience in Brighton.

- 7.66 Against the achievement of those goals, the scheme also balances the need for some private and private communal amenity, taking an urban approach to their provision. The extensive Block 1 and Exotic Garden private communal gardens would be visible to the public but separated, in the same way that the Regency garden squares are – they lend themselves to the public domain or experience despite being enclosed and private; but the public domain is an ever-present, prevailing aspect of the scheme, which is fitting for a piece of proper townscape rather than an enclosed 'scheme' or resort. The appellant firmly believes that the community would feel a sense of ownership in the streets and spaces of the scheme, and that it would enrich and underpin the existing local community.

Conclusion on Character and Appearance

- 7.67 The character and appearance of the area would be hugely improved by the scheme, which would make a very powerful new contribution to the townscape of Brighton not just as a forthright contribution to its overall legibility and townscape, but in terms of the enjoyment of the place on the ground for residents and visitors. Its residential density and the overall cumulative attractiveness of the place would make it an 'additive', a positive expansion of the city of Brighton, and an example of good growth.

Housing and Affordable Housing

- 7.68 The affordable housing contribution to be made by the scheme has been agreed and is set out in SoCG2²⁴⁴. The scheme would contribute 10% of the units as shared ownership units in Phase 2; and minimum 15% social or affordable rent units in Phase 3 (with a viability review undertaken prior to the commencement of Phase 3 to determine if additional affordable housing can be provided²⁴⁵).
- 7.69 In the light of that agreement, the Council resolved not to pursue what had been its second reason for refusal²⁴⁶. It is clear from the resolution that the Committee members were not in fact reaching a conditional view, but officers have insisted on maintaining the affordable housing objection simply on the basis of the staircasing and Phase 2 surplus aspects of the Agreement under s.106²⁴⁷ which were debated at the round table session on affordable housing.
- 7.70 The relevant Obligation in the Agreement under s.106 allows permission to be granted on either the Council's basis or that of the appellant. The two outstanding points maintained by the Council have not taken into account the benefits of ensuring affordable housing delivery can be maximised, and the appellant's approach in both cases should be preferred.
- 7.71 First, in terms of so-called staircasing in relation to affordable units provided as part of Phase 2, the Council's position is that receipts to the Registered

²⁴⁴ CD336

²⁴⁵ See A4 and A5 and A16 Pages 19-20

²⁴⁶ CD298 Committee Report and decision (10 February 2021)

²⁴⁷ ID11

Provider from 'staircasing' by owners (that is increasing their share of outright ownership in the unit) must be 'recycled' on schemes within Brighton. The appellant's evidence²⁴⁸ sets out clearly why this is inimical to maximising affordable housing in the scheme – it would reduce the amount paid for the units by the Registered Provider to begin with (because the need to hypothecate staircasing revenue limits its value to them and therefore the value of the unit overall) and therefore reduce the overall amount of affordable housing receipts to be deployed in the scheme as a whole.

- 7.72 It is also an anchor²⁴⁹ on the proper functioning of the shared ownership units and thereby inconsistent with what they are – shared ownership units are not intended to be affordable in perpetuity but are (see the definition of affordable housing in the Framework Annex) a form of low-cost home ownership route. There is no policy basis, either nationally or locally, for the restriction that the Council wishes to impose, which looks like a blurring of the lines between shared ownership and a case where there is public subsidy to be recycled (not the case here). The appellant's version of the obligation in this respect should be preferred.
- 7.73 As for the other point, this arises due to the fact that the advent of CIL made the contribution of £6,552,236, which was to be made, otiose; however, it had been factored in to the viability exercise and now needs to be disentangled. The appellant is more than willing to pay 48% of the surplus (£3,145,073) towards affordable housing in Phase 3, but only on the basis that the overall viability of the scheme is not detrimentally affected. Hence it considers that a viability test is needed prior to payment. This is reasonable because, as has been explained²⁵⁰, it is not until Phase 3 is delivered that the whole scheme becomes viable (there are some very considerable up-front costs in Phase 2 associated with the construction of the site itself). There is no real benefit to the Council in insisting on payment if the viability appraisal would show that it would (at its full level) prevent the delivery of Phase 3, and therefore it is in the overall public interest to subject the payment to a viability test as per the appellant's preferred wording.
- 7.74 The affordable housing would be a benefit of the scheme to which considerable weight should be given. Its overall context is the agreed very significant housing shortfall in Brighton.
- 7.75 The housing requirement in BHCP1 Policy CP1 is a minimum but is not being met: the agreed position is that the Council could only show a 4.7 year housing supply²⁵¹, but that has steeply worsened due to BHCP1 passing its fifth anniversary. That means²⁵², it is agreed, that there is only a 4.3 years housing land supply - that is a shortfall of 779 units.
- 7.76 The position is steadily worsening because Brighton is a city which is subject to the additional 35% housing requirement announced by the Secretary of State from June 2021.

²⁴⁸ A4 Paragraph 8.5

²⁴⁹ As Mr Alston put it

²⁵⁰ A4 Paragraph 8.4 Page 24

²⁵¹ C4 Paragraph 11.2

²⁵² Due to Paragraph 33 of the Framework

- 7.77 All this is against the background of a set of housing requirements that come nowhere near meeting the actual needs of the area – as the Local Plan Inspector identified in 2016, the OAN was in fact 30,120 units, but the requirement in BHCP1 Policy CP1, justified by reference to constraints, is only 13,200²⁵³. In the light of those figures, the Inspector who examined BHCP1 made it clear that the Marina needed to make ‘as significant a contribution as possible’ to the housing needs of the area.
- 7.78 The Council²⁵⁴ acknowledges that very significant weight should be given to the way the 1000 units of the scheme would contribute to meeting those needs, in line with Framework paragraph 59 (the need to significantly boost the supply of housing) and paragraphs 123 and 127 (optimisation).
- 7.79 The Council also accepted²⁵⁵ that significant weight should be attached to the way the scheme would meet housing needs regardless of the existence of the extant consent. That must be right. For a start, schemes must be judged on their own merits. The extant scheme certainly seems likely to be built out insofar as Phase 2 (the tower) is concerned, because it is 100% private²⁵⁶; however, while possible, Phase 3 would, as things stand, be freighted with over 75% affordable housing, and its viability is questionable (even with some flexibility in the drafting of the extant scheme Agreement under s.106²⁵⁷).
- 7.80 The scheme makes much better use of land, as the density analysis shows. Whilst the Council says that the scheme is an additional 342 more units, it says that this is at 1,183 hrph as opposed to the extant scheme’s 1,022 hrph (and therefore not hugely greater). However, as was observed²⁵⁸, this fails to recognise not only that the appeal site is larger than the extant scheme site, but that it would provide the hrph in 28,352 square feet of floorspace, compared to the extant scheme’s 27,930 (that is on only 1.5% more floorspace).
- 7.81 What that means, is that the scheme is achieving a much greater benefit in terms of habitable rooms because the flats are smaller and greater in number than those in the Wilkinson Eyre scheme²⁵⁹. It is a more productive and valuable scheme in terms of the Government’s housing objectives and policies as a result²⁶⁰.
- 7.82 The scheme’s density itself is not the subject of objection by the Council, for good reason. The physical manifestation of the housing provided forms the basis for the Council’s design objection, which has already dealt with. The benefits of the Scheme are considered in the round below.

Amenity

²⁵³ CD 332 Paragraphs 21-37.

²⁵⁴ Through Mr Griffiths

²⁵⁵ Through Mr Griffiths

²⁵⁶ Mr Alston e-in-c and x-e

²⁵⁷ CD340

²⁵⁸ By Mr Alston

²⁵⁹ See the comparison exercise in A16 Table 7.2 page 34

²⁶⁰ Hence why the suggestion that many of the benefits would be achieved by the extant scheme is wrong

- 7.83 This topic also overlaps with the issue of density (in the sense of successfully designing for 1000 units of residential accommodation on the site)²⁶¹ because the Council encourages high density on the site in accordance with criteria in BHCP1 Policy CP14.
- 7.84 Criteria 1 and 2 of that policy (high standard of design and creating a coherent townscape, and creating a sense of place) have already been dealt with; criterion 3 is not in dispute (mix of tenures and sizes); nor are criteria 4 or 5 (sustainable and well served by local services and facilities).
- 7.85 Criterion 6 relates to outdoor recreation space (that is open space). As has been shown²⁶², BHCP1 Policy DA2 refers to Policy CP16 in this respect. That policy contains open space 'standards' which stem from studies carried out in 2008 and 2011; the total requirement for this scheme would amount to 10.48ha, which is three times the size of the site itself, and clearly impractical. BHCP1 Policy CP14 accounts for the potential clash between housing delivery, place making and open space by stipulating that open space requirements may be met in part off-site. That would be the case here²⁶³. The Officers' Report to Committee in respect of the Scheme confirmed²⁶⁴ that future residents would have good access to open space and recreation – not a surprising conclusion given the site's context.
- 7.86 That leaves: (a) private amenity space; (b) children's play space; (c) privacy and overlooking; and (d) internal daylight and sunlight.

Private Amenity Space

- 7.87 The Council's evidence²⁶⁵ is that there is a complete failure to provide any truly private amenity space, and that the communal amenity space is compromised in terms of size and overshadowing.
- 7.88 There is no quantitative standard adopted in Brighton for private amenity space. Schemes are to provide it as 'private' and 'usable' where appropriate to the scale and character of the development. That is an important indication that the type of scheme and its location ought to dictate, to some degree, the kind of private amenity space that is provided.
- 7.89 The Council's position²⁶⁶ is inexplicable, in that there would plainly be ground floor private amenity space associated with a number of units in Phase 2 and in Phase 3. There would also be large areas of shared private amenity space: these are expressly included in the list of private amenity space areas in the supplementary document relied on by the Council²⁶⁷.

²⁶¹ See also the criteria in BHCP1 Policy CP14 - Mr Alston sets out the compliance of the Scheme with those criteria at A16 Paragraphs 7.22-7.33

²⁶² A16 Paragraphs 7.27-7.29.

²⁶³ As set out in A16 Table 7.3

²⁶⁴ CD296 Paragraph 10.75

²⁶⁵ Through Mr Griffiths

²⁶⁶ Mr Griffiths' suggestion that 'there would be no private amenity' space relevant to the policy

²⁶⁷ See A16 Paragraph 8.4 Pages 39-40, and the SPG: 'includes but not limited to gardens, balconies, patios, roof terraces and shared amenity'

- 7.90 In Block 1, residents of all but one of the ground floor units would have direct access to an area of outdoor amenity space to be incorporated within the area of proposed planting. Residents of all units on level 2 and above would have access to at least one 'Juliet' balcony (of the kind enhanced now by the slight amendment to the location of the railing). In Block 2, residents of all ground floor units would have direct access to an area of outdoor amenity space; and those resident in Blocks 2 and 3 would have Juliet balconies as well. Residents of Blocks 1-3 would have access to the 931 square metres of private garden in Block 1.
- 7.91 In Phase 3, all homes would have a Juliet balcony (and perhaps a private balcony, dependent on final design); they would also have access to private communal gardens at ground floor level amounting to 1,200 square metres.
- 7.92 Residents would also have exceptional visual amenity, from the majority of units, as well as in the public domain, which would have 9,352 square metres of new outdoor public amenity space as well as 0.37 ha of improved public amenity space in the form of the improved breakwater areas. Brighton Beach and seafront are a short walk away.
- 7.93 It has been shown²⁶⁸ that that the private amenity spaces would receive a very high level of sun on the ground in the April to August period of the year²⁶⁹; it is acknowledged that this is not the same as the March-September benchmark in the BRE guidance, but the transient shadowing drawings throughout the year, including for March, show that in fact all the areas would receive some sun on the ground²⁷⁰. The wider context provides a range of spaces with access to the sun at different times of the day. One should approach these results bearing in mind the steer given by paragraph 123(c) of the Framework – BRE guidelines are to be approached flexibly, particularly in cases where there is a shortage of housing, allowing for adequate sunlight to be accessed. The amount here would be adequate.
- 7.94 The other debate at the inquiry was over Juliet balconies. There is nothing in policy or guidance here which stipulates that balconies ought to be used or that Juliet balcony arrangements are inappropriate. They offer a pragmatic solution where weather and wind conditions are likely to make fully expressed balconies too challenging. There is no need to conduct a lengthy experiment to prove this – it is obvious. The enclosure of practically every once-open balcony in central Brighton (for example Sussex Heights, and many Regency balconies) is testament to the balance being struck in favour of greater enclosure where the wind is coming from the sea.
- 7.95 Juliet balconies themselves are a sensible way effectively to open up the main living space within the unit to the outside – the relatively small 'outside' (that is beyond the frame of the window/doors) is only part of the effect, given that they are floor to ceiling. Experience²⁷¹ is that they provide a qualitatively different experience from simply opening the window, because of the degree

²⁶⁸ By Mr Absolon

²⁶⁹ 71% at least 2 hours of sun on the ground: A1 Paragraph 4.74 and A2 Appendix V

²⁷⁰ See A1 Paragraphs 4.79 to 4.87 – it is observed that the threshold of March 2 hrs on the ground is only very marginally 'missed'

²⁷¹ Which Mr Alston has and spoke to

to which the outside environment is perceptible. The uses of a balcony (which would on the face of it satisfy the Council in each case) can be undertaken with a Juliet balcony – access to the air, for sitting, eating, and putting clothes in the sunshine. Weight ought to be given to them as part of the overall private amenity space offer on the site.

Play-Space

- 7.96 The Council relies here on the assertion that Phase 2 would be 90% in deficit and Phase 3 would be 34% in deficit against quantitative standards. However, the standards²⁷² are met because there is a large play-space at East Brighton Park well within a 15 minute relatively easy walk.
- 7.97 On site, it is set out²⁷³ that 53 square metres of equipped play would be provided in the private communal gardens of Phase 2, and 101 square metres in the private communal gardens of Phase 3. The combination of these areas and the off-site equipped play is more than enough to meet the needs of families with children, before one even turns to the opportunities for play on Brighton Beach.
- 7.98 Should there be any residual concerns about this issue, the appellant has shown²⁷⁴ how the scheme could provide 544 sqm of equipped or non-equipped playable space in Phase 2, and 590 square metres in Phase 3, which would (in combination with the onsite play-space already included) meet the BHCP1 Policy CP16 quantitative standard. It was confirmed²⁷⁵ that this is capable of being properly delivered through good design if required, for the purposes of considering any conditions. The main point is that it is unnecessary – the offsite and existing on site play-space would be adequate, as one should take a relatively flexible approach here – those with very small children can use the on-site provision or push/pull children to East Brighton for play.

Privacy and Overlooking

- 7.99 The various separation distances have been set out²⁷⁶. Regard should also be had to the relevant plans for Phase 2's ground floor²⁷⁷ and a typical upper floor plan²⁷⁸. This sub-issue really only relates to a handful of units in Phase 2, which would have separation distances of 12 or 8 metres from apartments opposite. There are no policies or guidance stipulations on these distances as much will depend on the exercise of personal choice – none of the flats involved would be affordable units and they would sell at a price point reflective of their slightly constrained outlook; but that is the reality of a very small minority of flats and part of the market would be very happy to strike the balance in that way.

²⁷² BHCP1 Policy CP16 – 0.55ha of equipped young people's play-space per 1000 population within a 15 minute walk (720 m)

²⁷³ A16 Appendix D

²⁷⁴ Agreed Condition 46 ID14

²⁷⁵ By Mr Aspland

²⁷⁶ CD338 Page 90

²⁷⁷ CD94

²⁷⁸ CD109

- 7.100 Between Blocks 1 and 2, the ground floor is set behind landscape and raised. The upper floors have 12 metres between them for a number of flats. Those with 8 metres between them between Blocks 2 and 3 are bedrooms in dual aspect flats – when complete privacy is required, the usual means would be available to achieve it.
- 7.101 The key overall point is the balance in an urban, high density location – the scheme's optimisation of the site comes with a very few units which would be overlooked, and which would not be attractive to part of the market. However, the need is broad and deep, and the market would absorb those units in sales to those for whom the relationship between units was not unacceptable.

Internal Daylight/Sunlight

- 7.102 Unsurprisingly the results for daylight and sunlight are very good, not that one would know it from the relentless focus of the Council²⁷⁹ on the relatively few so-called 'breaches' of the guidance in the BRE publication of 2011²⁸⁰. There are 1,269 rooms in Phase 2, and 1145 of them (90%) are above the BRE threshold for ADF; 92% of bedrooms have an ADF of 1% or more, and 88% of LKDs have an ADF of 2% or more (Block is 100% compliant). In Blocks 1 and 2, between 92% and 93% of LKDs would have ADFs over 1.5%. Block 3 is 100% compliant. In Phase 3, of the 1285 rooms tested, 1198 (93%) met BRE guidelines, with 93% of bedrooms at ADF 1% or more, and 94% of LKDs at 2% or more. These are very strong results.
- 7.103 The pinch points are few. The south façade of Block 1 has studios with ADF values just under 1%, but the NSL test is reasonably good – they have a solid wall that divides the bedroom part from the rest of the room which prevents better daylight distribution. The studios on the south façade of Block 2 at floors G-2 also perform relatively poorly but would have oblique sea views.
- 7.104 Results are presented²⁸¹ which use 1.5% and 2% as guideline ADF values for living room/kitchen/dining room; the BRE does not deal with such an arrangement specifically, but those with a galley style kitchen are increasingly popular and it makes perfect sense to apply the 1.5% living room yardstick to them as the kitchen is, in essence, within the main living area. The results between the two percentage yardsticks are very close anyway and should be approached flexibly.
- 7.105 As for reflectance values, the appellant²⁸² uses reasonable values considering the type of development; this is a matter which is difficult to be too dogmatic about, since the actual reflectance values would reflect personal choice – those who wish the room to seem a little brighter would use lighter paint and other coverings.

Overall

²⁷⁹ Through Mr Littlefair

²⁸⁰ For the full detail see the evidence of Mr Absolon (A1); there is no difference in quantification or assessment between him and Mr Littlefair; the only issues are the methodological ones of 1.5% for LKD ADF assessment and reflectance values

²⁸¹ By Mr Absolon

²⁸² Through Mr Absolon

- 7.106 The Council's overall approach to amenity issues omits important considerations and is simply too inflexible to accord with national policy. The scheme has carefully balanced the needs for these types of space and equipment against the quality of on-site spaces and provision of units and has optimised the site in a way that the Council's approach would not allow – to insist on full or nearly full compliance with guideline standards (even those expressed as 'minima') would not be optimising the site.
- 7.107 A further touchstone proves this. The Council was keen to advance the test for optimisation that it means 'maximising the delivery of housing without causing unacceptable harm': the scheme would plainly do that where private amenity, living conditions and play-space are concerned, even if one were to conclude that there was a degree of 'harm'.

Benefits and the Planning Balance

- 7.108 The Council's evidence²⁸³ attributes significant weight to the way that the scheme would meet part of the housing shortfall. It was also accepted²⁸⁴ that substantial weight should be given cumulatively to a number of other factors²⁸⁵, although in the appellant's view, greater weight should be given individually to a number of them²⁸⁶.
- 7.109 The first involves the regeneration of part of the Brighton Marina and hugely improving the way it works and its appearance, including the townscape and landmarking benefits it would bring to the city as a whole. On top of that there would be 0.9ha of new public realm. There would be active ground floor frontages with Class E use amenity to underpin the commercial performance of the scheme and assist the local economy. There would be attractive, legible pedestrian and cyclist connectivity with the wider city, bringing the marina into sustainable contact with the beach and the city. Energy efficient housing would be provided with heat and power provided in part through on-site sustainable technology (a sea water heat pump). There will also be jobs for local people.
- 7.110 These are all benefits of the scheme that are in line with national policy. The Council²⁸⁷ is right not to seek to discount the weight to be given to them due to the possibility of the extant scheme taking place; in any event, the benefits would be considerably less on all scores if one were to do such a comparison.
- 7.111 The scheme complies with the development plan considered as a whole. It would provide for an optimisation of the site for housing led regeneration in line with key BHCP1 Policy DA2, and comply sufficiently with the other policies relating to design, heritage, the South Downs National Park, affordable housing and residential amenity to comply overall with the development plan.
- 7.112 Even if there is a degree of heritage harm found, it is agreed that it would be outweighed by the scheme benefits and therefore, due to the absence of a five year housing land supply, paragraph 11(d) of the Framework applies.

²⁸³ Through Mr Griffiths

²⁸⁴ Mr Griffiths x-e

²⁸⁵ Not spelled out in the SoCG (CD301), or in C4 Paragraph 9.29 Page 21

²⁸⁶ See A16 Pages 49-50 for a fully detailed account

²⁸⁷ Through Mr Griffiths

- 7.113 The benefits of the scheme would outweigh any relatively limited degree of harm for the purpose of the tilted balance – the position is very far from one where the harms would outweigh the benefits. There is no restriction on delivery of the scheme and the appellant requests that the appeal be allowed, and permission granted without delay to enable the benefits of the scheme to be realised.

8 Third Party Representations

- 8.1 There were many written representations from interested persons at application stage and others were made on the appeal. These can all be found in the electronic material submitted alongside my report and should be considered carefully in order to give a sense of public feelings about the application and subsequent appeal.
- 8.2 At the Inquiry itself, there was one contributor who spoke, and another who communicated electronically. I summarise briefly below but the fuller, written submissions, which I have added as Inquiry Documents, should be considered too.
- 8.3 **Robert Mellor** a local resident and a now-retired Planning Inspector, supports the provision of housing, but criticises the design of the proposal, and the unsatisfactory living conditions it would provide for its residents, drawing an unfavourable comparison with the extant Wilkinson Eyre scheme²⁸⁸.
- 8.4 **Ian Wilson** a local resident, raised issues around the silting up of the Marina, as a result of Phase 1 of the development, the consequent need for dredging, and whether the potential impact on the chalk reef element of the Brighton to Newhaven Cliffs SSSI has been investigated through the ES²⁸⁹.

9 Conditions

- 9.1 Helpfully, the main parties invested significantly in agreeing a list of conditions that should be applied in the event that planning permission is granted for the proposal. This first appeared as an appendix to SoCG2²⁹⁰, but an updated list²⁹¹ was submitted to inform the discussion on conditions that took place during the Inquiry. Further discussions took place in relation to the disputed condition in that revised list²⁹² and an agreed version was subsequently submitted²⁹³.
- 9.2 I have considered these suggested conditions in the light of advice in paragraph 55 of the Framework. This suggests that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided unless there is clear justification. In this latter respect, I have proceeded on the basis that the pre-

²⁸⁸ ID5

²⁸⁹ ID6

²⁹⁰ CD336

²⁹¹ ID10

²⁹² Condition 46

²⁹³ ID14 Condition 46

commencement conditions are accepted as justified by the appellant given their presence on a list that they have been agreed with the Council.

- 9.3 I have made minor adjustments and additions to some of the agreed conditions in the interests of precision. These generally concern the inclusion of suitable implementation clauses, provision for timetabling, and the removal, unless justified, of the phrase 'unless otherwise agreed in writing by the local planning authority'. This latter phrase is imprecise and appears to provide a route to approval outside formal procedures that would need to be consulted upon. I highlight below any other significant changes, and the reasoning behind them. The schedule of conditions in Annex E to this report includes all my adjustments and additions.
- 9.4 In the first instance, to facilitate any subsequent applications for minor material amendments, a condition is required to set out the approved plans and documents²⁹⁴. This list contains the detailed drawings relating to Phase 2, for which a grant of full planning permission is sought, and the parameter plans and the Design Principles Document that relate to Phase 3, for which a grant of outline planning permission is sought. Given the length and complexity of the list, and the need to differentiate between Phases 2 and 3, I have drafted the condition to refer to the list I present in Annex F to this report.
- 9.5 A condition is then necessary to deal with commencement²⁹⁵. Again, given the hybrid nature of the application, this needs to differentiate between Phase 2 for which a grant of full planning permission would be granted, and Phase 3, which would benefit from a grant of outline planning permission.
- 9.6 Any application for the approval of the reserved matters (scale, layout, appearance, and landscaping) relating to Phase 3 needs to be governed by a condition²⁹⁶. That agreed by the parties has to be supplemented by an implementation clause to ensure that the development is carried out in a way that corresponds with any approval of reserved matters.
- 9.7 The phasing of the development is clearly a matter over which the Council needs to have some oversight in order to ensure that development is carried out in a logical and timely manner so as to secure delivery of planned outputs and to minimise adverse effects on local residents and infrastructure. To that end, a condition requiring the submission of a Phasing Plan for approval is a reasonable imposition. However, the condition agreed by the parties²⁹⁷ needs some wording added to ensure that the scheme is implemented in accordance with the approved plan.
- 9.8 The construction of the development would be a major undertaking that has the potential for significant environmental, traffic, and amenity impacts over a long period. To this end, it is imperative that a Construction Environmental Management Plan is agreed with the Council before work starts on each

²⁹⁴ Condition 1

²⁹⁵ Condition 2

²⁹⁶ Condition 3

²⁹⁷ Condition 4

particular phase through a condition²⁹⁸. That which the parties have arrived at deals with all relevant matters, including those raised by Mr Wilson that I have referred to above.

- 9.9 The relationship between the development platform of Phase 2 and the existing breakwater would be a complex one and on top of that, control needs to be exerted over the eventual heights of the various buildings. To that end a condition²⁹⁹ requiring details of external and internal finished floor levels is a necessary imposition.
- 9.10 In the interests of safety within the Marina, a condition³⁰⁰ is needed to secure the erection of a barrier between the outermost line of piles to prevent boats getting under the podium, by accident, or design. Also linked to safety in the Marina, the impact of the final design of the proposal on wave conditions in the Marina (and its relationship to the impact forecast in modelling work) needs to be submitted to the Council for approval³⁰¹.
- 9.11 Given the mix of uses proposed, and to protect the living conditions of residents in and around the development, it is necessary to restrict the opening times of the commercial units³⁰². For similar reasons, a further condition is needed to deal with odour control equipment³⁰³.
- 9.12 External lighting also has the potential to have an injurious impact on the living conditions of residents and the way it is designed is an important consideration. To that end, a condition³⁰⁴ must be imposed to secure details, and implementation in accordance with those details.
- 9.13 To avoid a preponderance of uses in Use Class A4 in the 'flexible use floor-space' element of the proposals, a condition³⁰⁵ is necessary to restrict this type of use to 50% of that floor-space.
- 9.14 The mix of uses, with commercial units at ground floor level and residential units above has the potential to cause issues relating to the transmission of noise. While the Building Regulations would bear on this, I am satisfied that it is a matter that can be controlled by condition³⁰⁶ on the basis that the Council may have good reasons to require a scheme beyond the requirements of the Building Regulations. In a similar vein, conditions³⁰⁷ are necessary to address the potential for noise and/or vibration from plant, and from amplified music.
- 9.15 Detailed design of the proposal is an important consideration and to ensure that what is shown in the approved plans translates into an acceptable development, control needs to be exerted over materials, both in the undercroft, and above the podium level, and of the detailed resolution of

²⁹⁸ Condition 5

²⁹⁹ Condition 6

³⁰⁰ Condition 7

³⁰¹ Condition 8

³⁰² Condition 9

³⁰³ Condition 10

³⁰⁴ Condition 11

³⁰⁵ Condition 12

³⁰⁶ Condition 13

³⁰⁷ Conditions 14 and 15

important design elements³⁰⁸. Further, given the harsh climatic conditions the development is likely to experience, at times, a long-term maintenance and replacement (where necessary) strategy is required to make sure that the quality of the design does not deteriorate in an unacceptable way³⁰⁹.

- 9.16 Given the nature of the residential units proposed, and the arrangement of the facades, the scope for alterations by incoming residents is limited. However, it is clearly important to ensure that the installation of satellite dishes, aerials and the like, cannot be carried out uncontrolled, as permitted development because this could have a seriously detrimental impact on the disciplined design of the buildings³¹⁰.
- 9.17 Similarly, in terms of the spaces around the building, conditions are necessary to cover design details of the external areas, and hard and soft landscaping in particular³¹¹. The detailed design of children's play-spaces also needs to be covered in this way³¹² but the suggested condition needs to include a requirement for a timetable for its installation and completion.
- 9.18 As far as drainage is concerned, a condition is needed to secure details of foul and surface water disposal³¹³ and another to make clear that the latter must be dealt with by employing sustainable drainage measures³¹⁴.
- 9.19 Proper facilities for the storage and collection of refuse and recycling need to be secured by a condition which ensures implementation of those facilities before occupation, and subsequent retention³¹⁵.
- 9.20 In terms of flood protection, a condition is required to ensure that the mitigation measures set out in the Flood Risk Assessment³¹⁶ are carried out, completed prior to occupation, and retained in place³¹⁷.
- 9.21 The location of the site is an exposed one, in terms of wind and waves. To take account of that, conditions are needed to secure details of wind mitigation measures relating to the buildings, and a means by which those measures can be assessed³¹⁸. Moreover, it is plain that there would be times when the podium would need to be closed for safety reasons. The strategy for that has to be covered by a condition³¹⁹. The trigger point for the submission of the details required by this set of conditions refers to the 'topping out' of buildings. That is unusual, but having discussed the matter, I am satisfied that the main

³⁰⁸ Conditions 16 and 17

³⁰⁹ Condition 18

³¹⁰ Condition 19

³¹¹ Conditions 21 and 22

³¹² Condition 20

³¹³ Condition 23

³¹⁴ Condition 24

³¹⁵ Condition 25

³¹⁶ CD22

³¹⁷ Condition 26

³¹⁸ Conditions 27 and 28

³¹⁹ Condition 29

parties have a clear understanding of what that means³²⁰ and it is a reasonable indicator for when the details should best be submitted.

- 9.22 The proposal includes a series of brown roofs. The detailed construction of these features, along with their subsequent maintenance and irrigation has to be controlled by condition³²¹.
- 9.23 A series of conditions are required to address matters around highways and transport. First of all, details of roads and footways, including pedestrian and cycle routes have to be covered³²², alongside car parking³²³, cycle parking³²⁴, and the manner in which refuse is to be collected³²⁵. On top of that, conditions are a reasonable imposition to cover a wayfinding strategy (signage and the like) and an access control strategy³²⁶. To allow residents and businesses to make environmentally conscious travel choices, a condition will secure the Residential Travel Plan, and another is required to obtain a Commercial Travel Plan³²⁷. Finally, a condition is necessary to ensure the scheme provides proper access to the BTN Bike Share Scheme³²⁸.
- 9.24 A further series of conditions is necessary to address environmental standards including the facility to connect to any future district heating scheme, meet water efficiency standards, and attain a suitable BREEAM rating³²⁹.
- 9.25 There was some discussion about modifications to the design of the proposed Juliet balconies to allow for more depth. I deal with the benefits of the suggestion in my conclusions below, but a condition would be necessary in order to secure the change in detailed design of Phase 2³³⁰.
- 9.26 Finally, there was also discussion about a condition stipulating the amount of children's play-space to be provided in Phases 2 and 3³³¹. For the reasons I set out below, I do not regard this suggested condition as a necessary or reasonable imposition.

10 The Obligation

- 10.1 I took delivery of a completed Agreement under s.106, between Brighton and Hove City Council, the Outer Harbour Development Company Partnership LLP, Brighton Marina Company Limited, and Premier Marinas (Brighton) Limited³³², dated 19th April 2021, after the Inquiry closed³³³.

³²⁰ A traditional builder's rite - it is (put simply) the point in time at which the structure of a building is completed

³²¹ Condition 30

³²² Condition 31

³²³ Conditions 32 and 33

³²⁴ Conditions 34 and 35

³²⁵ Condition 36

³²⁶ Conditions 37 and 38

³²⁷ Conditions 39 and 40

³²⁸ Condition 41

³²⁹ Conditions 42, 43 and 44

³³⁰ Condition 45

³³¹ Suggested Condition 46

³³² ID11

³³³ As agreed, it was handed to me at the accompanied site visit

- 10.2 In an echo of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, paragraph 56 of the Framework sets out that planning obligations must only be sought where they meet all of the following tests: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
- 10.3 In the lead up to the Inquiry, the Council helpfully prepared a CIL Compliance Statement³³⁴. This assesses the various obligations contained in the Agreement under s.106 against the requirements of Regulation 122(2) and the Framework.
- 10.4 In terms of the document itself, part 1 deals with interpretation and sets out a range of definitions. Part 2 deals with, amongst other things, the question of validity. It is important to highlight clause 2.7.1 which says that, if the Secretary of State in the decision letter expressly, or by adoption of my report, concludes that any of the individual planning obligations in the Agreement fail to meet the tests of Regulation 122(2) then that obligation (or the relevant part of it) shall not be enforceable, and shall cease to have effect.
- 10.5 Clauses 2.7.2 and 2.7.3 relate specifically to the differences between the parties on affordable housing. As a matter that requires analysis, and the application of planning judgment. I deal with what I believe to be the correct approach in my conclusions below. I confine myself here to outlining the approaches favoured by either side.
- 10.6 Affordable housing is addressed in Schedule 3 of the Agreement. There is no dispute over the principle of provision. That must be correct given the approach of BHCP1 Policy CP20. In that context, the general approach taken in Schedule 3 is acceptable and clearly meets the tests of Regulation 122(2) and the Framework.
- 10.7 There are, however, two areas of difference. The first relates to Schedule 6 and the Phase 2 Viability Review. Clause 2.7.3 reflects the parties' acceptance that if the Secretary of State concludes that a viability review of Phase 2 should not be undertaken to take account of 48% of the s.106 surplus then paragraphs 1.1-1.3 of Schedule 6 shall be deleted from the Agreement, along with the definition and reference to Phase 2 Viability review and paragraph 1.4 (of Schedule 6) shall be effective. However, if a finding is made that a viability Review of Phase 2 should be undertaken to take account of 48% of the s.106 surplus, then paragraph 1.4 (of Schedule 6) should be deleted.
- 10.8 Put simply, the appellant is of the view that a Phase 2 Viability Review should be undertaken, in accordance with paragraphs 1.1 to 1.3 of Schedule 6, and paragraph 1.4 should be removed, while the Council considers that no Phase 2 Viability review is necessary so paragraphs 1.1-1.3 can be removed, amongst other things, and the provisions of paragraph 1.4.
- 10.9 The second relates to 'staircasing' and shared ownership housing. Paragraph 6 of Schedule 3 sets out that in the event that affordable housing units are sold (through any statutory scheme or where the occupier of a Shared Ownership

³³⁴ CD334

Housing Unit staircases to 100% ownership or otherwise) all receipts including staircasing receipts are to be reinvested in the provision of affordable housing within the administrative boundaries of the city, and the Council is to be advised when this occurs, and when monies have been used to provide replacement affordable housing. This is the Council's favoured approach.

- 10.10 The appellant disagrees clause 2.7.2 sets out that if the Secretary of State concludes that this approach does not accord with Regulation 122(2), then paragraph 6, referred to above, shall be replaced by an amended version, set out under 2.7.2.1. This says that in the event that any affordable housing units, other than a shared ownership housing unit, are sold (through any statutory scheme or otherwise) all receipts are to be reinvested in the provision of affordable housing within the administrative boundaries of the city and the Council is to be advised when this occurs, and when monies have been used to provide replacement affordable housing. In other words, 'staircasing' receipts do not have to be reinvested in affordable housing in the city – this is the appellant's favoured approach.
- 10.11 Schedule 2 of the Agreement deals with the Black Rock Connection. In simple terms, the appellant is required to safeguard an area of land and enable and permit construction of the Black Rock Connection which will provide pedestrian and cycle access between the breakwater (and thereby the proposal) and the Black Rock site³³⁵. Given the approach of BHCP1 Policies CP5, CP7, and CP13 to the public realm, and the obvious benefits that will flow from a better connection between the Black Rock site and the breakwater and the proposal, this obligation is very clearly necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 10.12 The Employment and Training Strategy is the subject of Schedule 4. This is a strategy to be approved by the Council demonstrating how local labour will be sourced during the demolition and construction phases of the development. Linked to this is the Local Employment Scheme - a Council scheme that aims to increase the employment and training opportunities for local residents who wish to work in the construction industry, and provides support to local building firms in order to secure contracts on major developments, and the Local Employment Scheme Contribution (referred to in Schedule 1) of £153,410 in relation to Phase 2, and £170,400 in relation to Phase 3. These contributions have been calculated in line with an approved methodology in the Developer Contributions Technical Guidance.
- 10.13 BHCP1 Policy CP2 explains how the Council will positively and proactively encourage sustainable economic growth, and work with partners to secure apprenticeships, training, and job opportunities for local residents through the Local Employment Scheme, and contributions to it from major development schemes, towards training. BHCP1 Policy CP7 deals with Infrastructure and Developer Contributions and refers to securing local employment, training and apprenticeships. Against that policy background, it is clear that the provisions of Schedule 4 and the related contributions in Schedule 1 meet the tests of Regulation 122(2), and the Framework.

³³⁵ In line with Plan 17093-SQP-ZZ-ZZ-DP-A-PL01055 Rev P01 which is part of the Agreement

- 10.14 Schedule 1 also makes reference to the Highway Contribution in the sum of £125,000. This is to be used to mitigate impacts on highway junctions in the vicinity of the site and in particular to upgrade the traffic signal junction at the Black Rock interchange with the MOVA system. Given that this contribution is intended to secure works of mitigation, I am satisfied that it does not fall foul of the tests imposed by Regulation 122(2) and the Framework.
- 10.15 Schedule 5 deals with the strategy for promoting the commercial elements of the proposals. It is obviously important, given the approach of BHCP1 Policy DA2, that proposals on the appeal site are genuinely mixed use. To that end, I am content that oversight of the marketing strategy is a reasonable imposition that meets the tests of Regulation 122(2), and the Framework.
- 10.16 There are a number of other covenants in Schedule 1 relating to providing notice of the commencement of development on Phase 2 and Phase 3, and their occupation, and the timing of the financial contributions set out above. The Council's various covenants are set out in Schedule 7. All of these commitments satisfy the tests of Regulation 122(2) and the Framework.

11 Inspector's Conclusions

- 11.1 In this part of the report, I have used references thus [--] to cross-refer to previous, important paragraphs in the report, and in particular, the relevant part of the main parties' cases.

Introduction

- 11.2 I have referred above to the main considerations I identified on opening the Inquiry and most helpfully, the main parties' cases have been presented in a way that uses them as a framing device. These main considerations remain as: (1) the effect of the proposals on the character and appearance of the area (including questions about design, any effect on the setting of heritage assets, and any effect on the setting of the South Downs National Park); (2) whether the proposal makes acceptable provision for affordable housing; and (3) whether the proposal would provide acceptable living conditions for prospective residents with particular regard to amenity/play space, daylight/sunlight, overshadowing, privacy and outlook. **[6.2, 7.10]**
- 11.3 Having said that, I intend to follow (1) with (3) because there is a connection between the two, and then deal with (2) after addressing the benefits of the scheme. I then carry out the necessary planning balance, and address the development plan, in my final conclusion.
- 11.4 The hybrid nature of the original application presents some challenges in terms of how one is to take account of the outline elements. However, it was clarified that the effect of the Phase 3 Parameter Plans, and the Phase 3 Design Principles Document, referred to in suggested condition 1, provide a relatively strict framing for the Phase 3 buildings. While their detailed design may change through the submission of reserved matters, the heights of Blocks 4 to 9 and their siting would not. In that context, the various diagrams and visualisations can be taken as strong indications of how the development, as a whole, would appear. **[7.8]**

Character and Appearance

The Context

- 11.5 Before one can make a proper assessment of the design of the proposal, a context for that assessment needs to be appreciated. There are several aspects to be examined.
- 11.6 The first is the nature of the site itself (insofar as it exists) and its surroundings. The Spending Beach, cofferdam and breakwater are impressive in the way their engineering responds to the challenge of the sea, but (unavoidably perhaps) are not the most attractive of structures. Alongside that, the various routes, for vehicles and pedestrians, into and out of the marina, have been described, fairly in my view, as 'dismal'. While the buildings to the east of the appeal site, 'Sirius' and 'Orion' have a degree of architectural merit, the buildings to the immediate north of the appeal site are non-descript. The multi-storey car park further north can be similarly described, and the same is true of the supermarket beyond that³³⁶.
- 11.7 Overall, the marina has, at best, a mixed quality, but save for 'Sirius' and 'Orion', the area of and around the appeal site is of very poor quality in environmental terms.

³³⁶ A12 Appendix 4 provides some useful images of the site and its surroundings

- 11.8 It could be argued against that background that almost any intervention that improved connectivity would lift the area³³⁷. However, there are other points to consider. The first is the presence of an extant permission for development of the site. From what I have seen, the Wilkinson Eyre scheme is a very fine response to it. Moreover, there have also been what I consider to be well-considered proposals for the site occupied by the supermarket and part of the multi-storey car park³³⁸.
- 11.9 The appellant is correct to point out that an assessment of the design of the proposal at issue should not take the form of a simple comparison with the Wilkinson Eyre scheme. Having said that, the appellant has made clear that should the scheme at issue be rejected, then the remaining phases of the Wilkinson Eyre scheme, or at the very least the tower (Phase 2), are likely to be built out. That is a significant material consideration though for reasons I return to below, it needs to be approached with some caution.
- 11.10 Of great import in the setting of expectations for the site is the development plan. BHCP1 Policy DA2 seeks to generate what is termed a 'high-quality marina environment' through, amongst other things, a high quality of building design, while recognising the potential for higher density mixed development, and improved connectivity and legibility between the marina and the Black Rock and former Gas Works sites. In a similar vein, BHCP1 Policy CP12 expects new development to raise the standard of architecture and design in the city, amongst other things, and BHCP1 Policy CP13 requires new development schemes to contribute to the improvement of the quality, legibility, and accessibility of the city's public realm, producing attractive and adaptable streets and public spaces.
- 11.11 While they are of some vintage, SPGBH20, PAN04, and SPGBH15 take a similar approach. To my mind, the message they carry about the need for good design is not one that has dimmed with the passing of time. Indeed, the Framework, in paragraph 124, states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is said to be a key aspect of sustainable development.
- 11.12 It must be borne in mind too that the proposed development would not, in time, be seen in isolation. The Black Rock site is intended to be developed and it is likely that the site to the immediate north of the appeal site will be too. Proposals on the supermarket site might well be resurrected.
- 11.13 To summarise, what I take from the foregoing is that notwithstanding the prevailing poor quality of the appeal site itself, and parts of its surroundings, there is a great opportunity here to secure enhancement. The central question bearing that in mind, is whether the proposal at issue is of sufficient quality in terms of its design to properly respond to that opportunity.

Design

³³⁷ Though to be clear that is not the argument the appellant advances

³³⁸ A12 Appendix 6 has some cumulative images

- 11.14 The conceptual approach to what is proposed is different from that taken by Wilkinson Eyre. Simply put, the latter scheme is a series of buildings as objects arranged in residual space, while the proposal at issue here springs from the arrangement of spaces that are bordered by buildings. The distinction is an important one but, in my view, neither is superior to the other and either approach has the potential to work. The central question is whether the conceptual approach behind the proposal under consideration translates into a scheme that responds well enough to the opportunity the site presents.
- 11.15 Given the approach that has been taken, the starting point for an analysis of the scheme appears to me to be the spaces that would be produced. For buildings of the heights proposed, some of the spaces between them would be relatively tight³³⁹. That, I agree, has the potential to create interesting spaces and there are many examples of urban, and historic, places where such an approach has been successful³⁴⁰. However, I would observe that the appeal site is not an urban (or indeed historic) setting. To the south, and the west, leaving aside the presence of the breakwater, the site is open to the sea. It does not have the built-up boundaries, or an existing network of streets and spaces to respond to, that would be found in an urban setting.
- 11.16 On top of that, while I accept that the existing breakwater makes for a challenging approach, even with the link from the Black Rock site and the beach³⁴¹, the route proposed across the site to 'Sirius' and 'Orion' and beyond, appears to me rather disjointed³⁴². In particular, there is little to mark the abrupt turn that would take the pedestrian from the breakwater, between Blocks 1 and 2, and on to the 'promenade'. Moreover, while a pedestrian might choose to take a diversion towards it, Sunset Square, adjacent to Block 3, seems somewhat divorced from the route. While it is reflected in the buildings adjacent (Blocks 6 and 9), the curve of the promenade seems to me rather arbitrary.
- 11.17 Altogether, the various spaces want for discipline and overall, I do not consider that there are enough 'events' or 'signposts' to make for a properly legible route across the site. If spaces were the starting point for the design, then I would expect there to be much more of a pattern, or succession, to them.
- 11.18 There is another difficulty that flows from this approach. Given that the site is very clearly not part of the urban centre or grain of Brighton, I am not altogether convinced that there is much to be gained from providing, as the Council suggests, gaps between buildings giving views of the sea, merely as an echo of that urban pattern. That said, the proximity of the various blocks to each other means that the development would present as a single, homogenous mass in many views³⁴³. The rigid treatment of the facades would underline that and in middle distant or distant views (like those referred to), subtle variations in colour, or the treatment of openings, would not provide any significant relief against that.

³³⁹ For example, 12m between Blocks 1 and 2, and 8m between Blocks 2 and 3 (A7 Page 90)

³⁴⁰ A7 Pages 91-92

³⁴¹ Secured through the Agreement under s.106

³⁴² A7 Page 57 shows the most direct route

³⁴³ A12 Appendix 2 Views 28, 35, 38 and 39 (though one needs to consider that there may in time be a developed foreground in these views – 11.10 refers)

- 11.19 Further, because of this common treatment throughout, and notwithstanding the 'crown', the lack of any significant difference in height between Blocks 2 and 3 (the latter being the tallest block – the tower) would hold the tower (Block 3) back from providing a proper landmark feature, and bookend, as intended.
- 11.20 The regularity of the external treatment of the various blocks raises another issue too. I appreciate that overt references to the seaside context might be seen as somewhat trite. However, the references to chalk cliffs and sea stacks³⁴⁴ and cladding colours being derived from beach pebbles³⁴⁵ seem to me far too subtle to be an effective contextual response. What strikes me more strongly about the treatment of the facades, and indeed the layout, is the similarity to other UK schemes³⁴⁶ by Squire and Partners that are clearly of very high quality but have far more of an urban context. In the use of a similar architectural language, I detect a failure to have proper regard to the seaside context here. I do not suggest that would have to take the form of the shapes and flourishes of the Wilkinson Eyre scheme, but there needs to be something more in the appearance of the buildings that acknowledges the position of the development next to the sea.
- 11.21 In making that point, I draw on my observations of some of Brighton's more successful seaside buildings and spaces. While they are very different in terms of their functions, Brighton Palace Pier, the Regency Terraces, the Banjo Groyne, and Madeira Terrace, all share an exuberant, ambitious quality that responds pleasingly to their position relative to the sea. As an example of a more recent intervention, the i360 is similar in its ambition.
- 11.22 I do not doubt the skill of the architect; there are numerous examples of excellent work that have been pointed to. However, I take the view that the approach taken here is rather too dry and restrained. In terms of the regularity of the façade treatments, and the homogenous mass that would be created, together with the failure to provide a proper landmark or bookend, the scheme lacks the exuberance and ambition that the best of Brighton's seaside buildings exhibit. It would not, therefore, be a positive contributor to its context and in many respects, it would fail to take the great opportunity the appeal site presents. **[6.3-6.38, 7.11-7.39, and 7.58-7.66]**

The Setting of Heritage Assets

- 11.23 These matters are covered in the background evidence, but most helpfully, the Council has identified, and described the significance of, a series of heritage assets in the vicinity of the appeal site and provided an assessment of the contribution that setting makes to their significance³⁴⁷. Having done that, the Council has suggested that the proposal would harm the setting, and thereby the significance, of several.
- 11.24 To the north-east of the appeal site, and set at a higher level (on the cliff top), the terraces that make up Lewes Crescent, Chichester Terrace, Arundel

³⁴⁴ A7 Page 70

³⁴⁵ A7 Page 75

³⁴⁶ A7 Pages 4-10

³⁴⁷ C2 Pages 4-16

Terrace, and Sussex Square are Grade I listed buildings that represent the high point of Regency town planning, providing a demonstration of the bold ambition of those behind it. The enclosed gardens bounded by the terraces (the Kemp Town Enclosures) are a Grade II Registered Park and Garden. All lie within the Kemp Town Conservation Area.

- 11.25 Aligned with the gardens and terraces above, and dealing with the transition from the clifftop towards the lower beach level, are the Esplanade Cottages, the Old Reading Rooms, and the Temple (all Grade II listed buildings). Notwithstanding their more restrained architectural treatment, these buildings are an integral part of the overall composition of Kemp Town, and a testament to the verve of its conception.
- 11.26 Further west lie what the Council describes as Madeira Terrace, the Madeira Lift and the Shelter Hall. Together³⁴⁸, these are listed at Grade II*. This group of assets is made up of a cast iron arcade at beach level, connected by steps at intervals along its length to Marine Parade above, and the Madeira Lift towards the eastern end, which rises to culminate at the Shelter Hall. The group lies within the East Cliff Conservation Area.
- 11.27 As the Council points out, all these heritage assets derive part of their significance from their relationship with the sea whether that is in the form of the terraces that are arranged around a space that 'points' out to sea, in an axial way, the ancillary structures that share that alignment, or buildings like Madeira Terrace, Lift and Shelter Hall that have a less formal but no less strong relationship with the sea. It is fair to say that the development proposed would not change those relationships with the sea, or reduce the ability to appreciate those relationships, whether they are formal or not.
- 11.28 However, the proposal at issue would undoubtedly be a major intervention that would have a significant status. In the case of those designated heritage assets nearer the appeal site, that is Lewes Crescent, Chichester Terrace, Arundel Terrace, and Sussex Square, the Kemp Town Enclosures, and the Kemp Town Conservation Area, and the linked Esplanade Cottages, Old Reading Rooms, and Temple, and the Madeira Terrace, Madeira Lift and Shelter Hall and the East Cliff Conservation Area, it would have a very strong visual presence in some views of, and/or from, these important buildings and spaces, with implications for how they are experienced as heritage assets.
- 11.29 It is correct, of course, to acknowledge that the appeal site is earmarked for development. Something substantial is very likely to appear there at some point, and for that matter, on the Black Rock site. Nevertheless, for the reasons I have set out in addressing the issue of design above, the proposal at issue here would not respond to its context in a positive way; it would not reflect the ambition of these groups of buildings and spaces. The very strong visual presence of a significant, but incongruous, complex, in some views of, and/or from, these important buildings and spaces, would be jarring.
- 11.30 As such, it would have an adverse impact on the setting, and thereby the significance of these designated heritage assets³⁴⁹.

³⁴⁸ The list description refers to Madeira Terrace, Madeira Walk, lift tower and related buildings

³⁴⁹ A12 Appendix 2 Viewpoints 26, 28, 33, 38, and 39

- 11.31 As an illustration, there is one juxtaposition that I find particularly difficult³⁵⁰. I recognise that being in the middle of the road, the viewpoint is not one that a pedestrian would generally be taking in but the 'clash' between the end of Lewes Crescent, and the proposed development, is not to my eye a comfortable one. The merging of the development with the crescent would lead to visual tension and not being able to see the end of the terrace silhouetted against the sea, would jar. It is instructive to compare how the Wilkinson Eyre scheme achieves separation when viewed from the same position³⁵¹.
- 11.32 In terms of the listed buildings affected, this harmful impact on setting attracts considerable importance and weight by dint of the workings of s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Applying paragraph 193 of the Framework, great weight needs to be given to the conservation of all designated heritage assets which includes the listed buildings, the conservation areas, and the Registered Park and Garden.
- 11.33 However, in all cases, I agree with the Council that the harm caused would be at the lower end of 'less than substantial' and as such, paragraph 196 of the Framework says that this harm needs to be weighed against the public benefits of the proposal. I return to this matter below.
- 11.34 I have also considered the impact the proposal might have on the setting and thereby the significance of the many other designated heritage assets the Council have referred to³⁵². Having done so, I have come to the conclusion that the injurious impact the proposal would cause would reduce with distance because the degree of incongruity would be much less apparent. A good illustration is the relationship between the proposal and Brighton Palace Pier, a Grade II* listed building³⁵³. The distant presence of the proposal in views from the pier would change the setting of the pier, but not harmfully so, and would not undermine its significance as a designated heritage asset. **[6.39-6.47, 7.41-7.53]**

The National Park

- 11.35 Like the preceding scheme, it is evident that the proposal would be visible from various places in the South Downs National Park³⁵⁴. It is correct to note that what the development plan intends for the site means that something is going to come forward on the site that will be visible from the National Park. It is not a question of whether something on the site would be visible, rather what would be visible?
- 11.36 Having said that, it is evident that in some views³⁵⁵, it is not just the tallest element of the proposal that would be visible, as in the Wilkinson Eyre Scheme, but other elements too.

³⁵⁰ A12 Appendix 2 View 33

³⁵¹ C2 Page 18

³⁵² C2 Pages 4-10 sets out all those the Council considered

³⁵³ A12 Appendix 2 Viewpoint 25

³⁵⁴ A12 Appendix 2 Views 11, 17, and 35 provide visualisations from some of these

³⁵⁵ CD18 Page 131 Viewpoint 15 for example

- 11.37 It is suggested that this additional visual presence would be harmful to the setting of the National Park, contrary to its purposes. However, from what I saw, one of the pleasing characteristics of the National Park is the sense of the nearby city from within it giving a strong sense of the separation between the landscape, and the urban development not so far away.
- 11.38 In many of the more distant views highlighted³⁵⁶, one would see the development proposed alongside other buildings. Its visual presence would serve to underline that sense of separation. That would be so too, where it would be seen alone, without the presence of other parts of the city. Given that visibility of the city is one of the characteristics of the National Park, I do not consider that the presence of the proposal, or more of the proposal than the extant scheme, would necessarily harm the setting or the purposes of the National Park, or fall contrary to BHCP1 Policy CP12. It is difficult to see how the site could be considered suitable for a 'landmark' or 'bookend' otherwise.
- 11.39 Views from within the National Park that are closer to the development are, however, more of an issue because there, despite the foreground, one would get much more of a sense of the design shortcomings I have highlighted³⁵⁷. The incongruous presence of the proposal would have a harmful impact on the setting of the National Park in these views. **[6.48-6.50, 7.54-7.57]**

Conclusion on Character and Appearance

- 11.40 For the reasons set out, the arrangement and visual manifestation of the proposal would not respond properly to its context. This would lead to harm to the setting, and thereby the significance of a range of designated heritage assets, and that of the National Park. In these terms, I find that it would fail to make the best of the opportunity offered up by the appeal site.
- 11.41 However, the opportunity presented by the appeal site is not limited to the visual manifestations of design. Part of the reason the proposal has been arranged in the way it has is to do with increasing density, and providing more residential units on the site than the extant Wilkinson Eyre scheme, than is envisaged in the development plan.
- 11.42 As such, a conclusion on design has to be taken in the round, and this is a matter I return to below. **[7.67]**

Living Conditions

- 11.43 There are a number of aspects to be considered under this issue, as there are clear differences between the parties on the overall quality of the residences proposed, in terms of the sunlight and daylight they would receive, levels of privacy and outlook, and the adequacy of the private and public external space, including the provision of children's play space.
- 11.44 Save for some (relatively minor) areas of disagreement, that are well covered, the technical analysis of daylight and sunlight reaching the dwellings themselves, and the external spaces, is ably set out in the evidence³⁵⁸.

³⁵⁶ A12 Appendix 2 Views 11 and 17 and CD18 Page 131 Viewpoint 15 for example

³⁵⁷ A12 Appendix 2 View 35

³⁵⁸ C3 and A1-A3

Similarly, the areas of dispute relating to the levels of privacy and outlook, and provision of private and public outside space have been well-rehearsed.

- 11.45 An analysis of the whether the living conditions that would be provided for residents of the scheme would be acceptable, or not, needs to take place against the background of the development plan, obviously, and the supporting documents, but it must also have regard to the Framework. In particular, paragraph 123 is clear that developments should make optimal use of the potential of each site. Part of that means the adoption of a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
- 11.46 Dealing with the daylight and sunlight that would reach individual units, in some cases, units would receive levels that would be inadequate when judged against accepted standards. Having said that, there would be some units, in Blocks 1, 2 and 3 that would be very much lacking in terms of daylight, and in Block 3 in terms of sunlight. These shortfalls would largely be the result of the relatively limited separation distances between the Blocks, a matter I have touched on above. It is clear from the levels achieved by the Wilkinson Eyre proposal that a scheme could be arrived at where these levels of shortfall would not be found. However, it is evident that the appellant has moved away from that approach in order, amongst other things, to make more intensive use of the site. I return to this matter in concluding on this issue below because whether this approach is acceptable, or not, is essentially a matter of judgment. **[6.52-6.57, 7.102-7.105]**
- 11.47 The same is largely true of the issues the Council identifies in terms of privacy and overlooking between the units in Blocks 1, 2 and 3. This concern springs from the relatively limited distance between the three Blocks, exacerbated, to an extent, by the need to use glass that allows more daylight and sunlight to be admitted. Again, the acceptability, or otherwise, of the approach taken, is a matter of judgment, to which I return below. **[6.58-6.60, 7.99-7.101]**
- 11.48 As far as the provision of private external space is concerned, the development plan³⁵⁹ sets no quantitative standards so again, the application of judgment is required as to whether what is proposed is acceptable.
- 11.49 It is correct to observe that some residential units at ground floor level would (in the case of Blocks 1 and 2) and could, subject to their final design (in the case of Blocks 4-9) have their own, relatively small, private gardens³⁶⁰. However, provision for the overwhelming majority of the flats in Blocks 1, 2 and 3 (Phase 2) would be limited to Juliet balconies. The suggestion in the drawings is that Phase 3 (Blocks 4-7) would be treated in the same way.
- 11.50 This approach may well have been motivated by concerns about safety, given the extreme weather conditions that the development would, at times, experience, but all the same, it is a conscious design decision. While there are examples around Brighton of balconies having been infilled³⁶¹, it is not

³⁵⁹ Through Policy HO5 of the Brighton and Hove Local Plan (2005) CD252

³⁶⁰ A7 Page 94

³⁶¹ A7 Page 69

altogether clear that this infill took place as the result of climatic concerns alone. Moreover, I would observe that all units in the Wilkinson Eyre scheme would be provided with a balcony or private terrace.

- 11.51 In terms of the utility of a Juliet balcony, it would give residents of the units in Phase 2 so served something of a connection with the outside, and if the depth of the balcony was extended to 740mm, as has been proposed³⁶², it would allow for people to stand outside, behind the balustrade. Moreover, that depth would allow for some pot plants, and maybe a small table and chairs. That, it seems to me, would be of some benefit to residents of the Phase 2 units, but that benefit would be very limited, given the size of the space(s)³⁶³ that would be provided.
- 11.52 Augmenting the Juliet balconies, communal space accessible only to residents of Blocks 1, 2 and 3, would be provided in the courtyard of Block 1, to the tune of 931 square metres. The intention is that similar communal spaces (with an area of 1,200 square metres) would be provided between Blocks 4 and 5 and Blocks 7 and 8, to serve Phase 3³⁶⁴.
- 11.53 The point must be underlined that these communal spaces would not be wholly private. Further, I tend to agree with the Council that these spaces would have to serve a significant population, and that the utility of these private communal areas might be lessened further by the need to accommodate play areas for children³⁶⁵ - a matter I deal with below. Having said that, one cannot, in my view, consider these communal spaces in isolation.
- 11.54 It is fair to say that the quantitative approach of BHCP1 Policy CP16 to the provision of general open space as constituent part of development proposals, cannot be applied realistically to a development of the sort proposed here³⁶⁶. The proposal makes provision for public open space in the form of Sunset Square, the Promenade, and the Exotic Gardens. One cannot escape the wider context too - Brighton Beach is very close to the site and access to it would be made much easier by the Black Rock connection.
- 11.55 There has been some criticism of the levels of sunlight that would reach some of these spaces at different times of the day and year, which is less than that expected by the BRE Guidelines. This is a result of the arrangement of the various Blocks and the limited space, relatively speaking, between them. However, it seems to me that in the context of our changing climate, and a widening appreciation of the dangers, as well as the benefits, of exposure to sunshine, areas that are shaded should not be regarded as altogether lacking in utility. What is clear from the various studies is that if, on a sunny day, a resident (or indeed a visitor) wished to frequent, or sit out in, a sunny space, they would be able to find one. **[6.61-6.66, 7.87-7.95]**
- 11.56 That leads on to the issues around children's play space. Viewed in isolation, the quantity standard in BHCP1 Policy CP16 would require the provision of a

³⁶² A7 Page 116 to be secured by suggested condition 45

³⁶³ Some units would have more than one Juliet balcony

³⁶⁴ A7 Page 94

³⁶⁵ As proposed in suggested condition 46

³⁶⁶ On the basis that it would require more space than the site could physically accommodate

total of 1,134 square metres. Even with the suggested condition³⁶⁷, there would be a shortfall against that figure. I would observe too that using a greater proportion of communal areas for play space as the suggested condition makes provision for would limit the extent to which those communal areas are available for the use of residents who might prefer to be undisturbed by children's activities.

- 11.57 However, leaving that aside for a moment, the policy allows existing children's play facilities to be taken into account where they are within a walk of 15 minutes duration. The appellant points to the facilities at East Brighton Park in this regard.
- 11.58 I walked the (largely uphill) route from the appeal site to these facilities as part of my site visit and it took a little less than 15 minutes. I would note that it would most likely take longer if one was accompanied by a child or children, but the policy talks of the distance 'a person would normally walk' in that time. As such, it seems to me that the quantitatively and qualitatively excellent facilities at East Brighton Park can reasonably be taken into account. Consequently, I consider that the proposal does not fall foul of the requirements of BHCP1 Policy CP16 in terms of children's play space. **[6.67-6.70, 7.96-7.98]**

Conclusion on Living Conditions

- 11.59 To sum up on this issue, I am content that when considered alongside the facilities at East Brighton Park, the proposal makes sufficient provision for children's play space without the need for suggested condition 46. The other issues are not so clear cut. For those residents without a garden, that is the overwhelming majority, private outside space would be limited to that provided by Juliet balconies. The usefulness of the communal open spaces for residents would be limited because of the significant population they would need to serve, and the amount of sunlight they would receive. That would be compensated for, to a degree, by the amount of public open space provided but again, there would be pressure on those spaces from residents, and from visitors. Some of the residential units would not receive sufficient daylight and/or sunlight to meet BRE Guidelines. **[6.71-6.72, 7.106-7.107]**
- 11.60 However, as with my conclusions on design above, the reason why the scheme has these drawbacks is to a large extent a product of the desire to make best, or better, use of the site. There is therefore a balance to be struck before concluding on whether the living conditions that would be provided for future residents would be acceptable, or not. It is to those benefits that I now turn.

Benefits

- 11.61 The primary benefit of the scheme is in the provision of housing, and affordable housing. The weight to be attached to that benefit needs to be put into a particular context.
- 11.62 The housing requirement of 13,200 set out in BHCP1 Policy CP1 is a minimum. However, as a result of various constraints, this figure was set far short of the

³⁶⁷ Condition 46

actual objectively assessed need of 30,120. It has been agreed that even against this constrained figure, the Council could only show a supply of deliverable housing sites of 4.7 years. Now that the BHCP1 has passed its fifth anniversary, that figure has become 4.3 years, in other words a shortfall of 779 units. That situation is likely to worsen further because Brighton has been identified by the Secretary of State as a city subject to an additional 35% housing requirement from June 2021.

- 11.63 In her report³⁶⁸, the Inspector who examined the BHCP1 made it clear that the marina should make 'as significant a contribution as possible' to the housing needs of the area. Given what has happened since its adoption, that contention carries even more weight. In that context, the provision of 1000 units over the course of Phases 2 and 3, at an increased density over and above the 658 units that would be provided in Phases 2 and 3 of the extant scheme³⁶⁹, would be a benefit of very significant weight.
- 11.64 On top of that, following an agreement on viability, the proposal would provide affordable housing at a rate of 12.6%, comprising 38% shared ownership and 62% social rent units (calculated by unit)³⁷⁰. The appellant has expressed this as 10% of the units as shared ownership units in Phase 2; and a minimum 15% social or affordable rent units in Phase 3. There are some complications around that which I cover below but the provision of affordable housing in this way must also be judged a major benefit of the scheme.
- 11.65 I have some misgivings about aspects of the scheme in terms of its design, its impact on the setting and thereby the significance of designated heritage assets, and the living conditions it would create for its residents. However, it is fair to observe that notwithstanding those concerns, that I refer to again below in dealing with the planning balance, there are some advantages in the design of the proposals too. In setting a standard for height, density, and the space between buildings, the scheme would act as a pointer to higher density development of the site to the immediate north of the appeal site and the site beyond that³⁷¹. All that would magnify the benefit in terms of housing delivery.
- 11.66 On top of that, the scheme would deliver complementary, non-residential uses to serve residents and visitors, including marine related leisure, recreation, and employment opportunities. Together with the increased population the scheme would bring to the area, the vitality and viability of Brighton Marina as a whole would be improved. Allied to that, in making provision for the Black Rock Connection³⁷², the potential for improved pedestrian and cycle access to the marina from the beach and Madeira Terrace would be facilitated which would make the marina a more attractive destination.

³⁶⁸ CD332 dated February 2016 Paragraph 52

³⁶⁹ That is an additional 342 units – this information is derived from paragraph 7.4 of the SoCG (CD301)

³⁷⁰ As set out in paragraph 7.13 of the SoCG (CD301)

³⁷¹ A7 Page 56 gives an idea of how that might dovetail with the proposals

³⁷² Secured through the Agreement under s.106

- 11.67 It is self-evident too that the construction process would generate significant economic activity and present opportunities for local labour and businesses³⁷³. In addition, it is right to record as a benefit too that the housing would be energy efficient, served by a sea water heat pump. **[7.108-7.110]**

Affordable Housing

- 11.68 There are some issues around the affordable housing that I have referred to above in describing the workings of the Agreement under s.106 in this regard. These revolve around the Phase 2 Viability Review and 'staircasing'.
- 11.69 These issues only arise in the situation where the appeal is allowed. As I rehearse below, in doing so the decision-maker would have to place more weight on the benefits of the proposal, and in particular, the delivery of open market and affordable housing, than some of the drawbacks of the scheme. If the decision-maker reaches that position, then it would be counter-productive to place obligations on the appellant that might bring the viability of the scheme into doubt, and thereby jeopardise the delivery of that housing. For that reason, in the event the appeal is allowed, and planning permission is granted, it should be on the basis that the Obligations in the Agreement under s.106 relating to the Phase 2 Viability Review, and 'staircasing', are modified in the appellants' favour. Such an approach would accord with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and paragraph 56 of the Framework. The provisions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. **[6.73-6.75, 7.68-7.73]**

Other Matters

- 11.70 Mr Lewis raised some issues about the potential for the silting up of the marina as a consequence of development, the potential need for dredging, and the possibility of undue impacts on the chalk reef element of the Brighton to Newhaven Cliffs SSSI. Those are potentially serious matters, but it seems to me that the potential impacts of the construction process, including pollution, are ably covered by conditions, and in particular, condition 5 that requires a Construction Environmental Management Plan. Mr Mellor made some important points too, but I have dealt with these in addressing issues around design and living conditions, amongst other things above. **[8.3-8.4]**

Overall Planning Balance and Conclusion

- 11.71 The starting point on the route to a decision must be the development plan. The proposal would deliver a significant amount of energy efficient housing, and affordable housing, in a way that would make excellent use of the site. On that basis, there would be compliance with BHCP1 Policies CP1 on housing delivery, and Policy CP20 that deals with affordable housing. Some of the requirements of BHCP1 Policy DA2 that allocates the site would also be met.

³⁷³ Secured through the Agreement under s.106

- 11.72 However, the scheme has shortcomings in terms of design, the effect it would have on the setting and thereby the significance of designated heritage assets, the setting of the National Park, and in the living conditions it would provide for future residents, and in particular, the lack of private outside space that would be provided. On that basis, there would be a failure to accord with BHCP1 Policies CP12 and CP13 on design, the public realm, and the setting of the National Park, CP15 in relation to heritage assets, and CP16 on open space. The overall requirements of BHCP1 Policy DA2 would not be met and neither would those in the supporting documentation – SPGBH20, PAN04 and SPGBH15.
- 11.73 It is not unusual to find policies in a development plan pulling in different directions. The question of whether the proposal complies with the development plan considered as a whole rests on whether the decision-maker places more weight on the benefits of the scheme, or its drawbacks.
- 11.74 In my view, the negative aspects of the scheme in terms of its design, its impact on designated heritage assets, and the National Park, and its failure to provide acceptable living conditions for its residents outweigh the positive elements in terms of housing and affordable housing delivery, the pointers for adjacent sites, economic factors, and the facilitation of a connection with Madeira Terrace which would make Brighton Marina more of a destination.
- 11.75 In other situations, I might reach that conclusion on the basis that a better designed scheme could bring forward the same or largely the same benefits. However, that is not the case here for two reasons. Designing an alternative scheme would take time and the sorry situation in terms of the supply of housing does not allow for that. Secondly, the appellant has made it clear that in the event planning permission is refused, the extant scheme would be implemented, at least insofar as Phase 2 (the Tower) is concerned, whereas Phase 3, because of the amount of affordable housing it contains, is questionable in terms of viability. Despite being a fine piece of design, the fallback has its drawbacks, in housing delivery terms.
- 11.76 Nevertheless, the development of the appeal site as proposed would bring forward a major, and enduring, landmark. While I do not seek to downplay the importance of housing provision, I believe it is important that what comes forward on the site properly balances the need to provide housing, with a high standard of design, and acceptable living conditions. Only in that way will the opportunity the appeal site provides be properly taken. The proposals fail to achieve that and, as such, they fail to accord with the development plan read as a whole.
- 11.77 I recognise however that while I attach weight in the way I have set out, the Secretary of State might, perfectly reasonably, do so differently and conclude the opposite in terms of accord with the development plan read as a whole.
- 11.78 Even if the Secretary of State agrees with me in terms of the failure of the proposal to accord with the development plan read as a whole, it may be that the Framework is treated as a material consideration that would point towards a decision contrary to its provisions. That might especially be the case when,

as is the case here, the Council is unable to demonstrate a five year supply of deliverable housing sites.

- 11.79 The route to a decision through the vehicle of the Framework is a relatively complex one. I have concluded that the proposal would cause less than substantial harm to the significance of a series of designated heritage assets. That triggers the balancing exercise in paragraph 196. This provides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The Council carried out that balancing exercise and found that the public benefits of the proposal would outweigh the less than substantial harm identified.
- 11.80 I do not suggest that is a wholly unreasonable conclusion in the context of the housing supply situation the Council finds itself in. However, it is not a conclusion I agree with.
- 11.81 It is well established that the workings of s.66(1) of the Act means that considerable importance and weight must be given to any harmful impact on the setting of a listed building. Several would be so harmed, including some listed at Grade I (the highest status of protection), and Grade II*. Paragraph 193 of the Framework says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). That confers protection not only on the significance of listed buildings affected, but also that of the Registered Park and Garden, and the conservation areas.
- 11.82 I appreciate that the Framework sets great store on the delivery of housing, the efficient use of land, and economic factors. Nevertheless, I consider that the public benefits of the proposals are not sufficient to outweigh the harm that would be caused to the significance of what are very important listed buildings (in the case of those listed at Grade I and II*) and spaces. These considerations are no less important and, as far as I am concerned, the proposal fails to accord with the Framework.
- 11.83 I reach that conclusion because the proposal would cause harm to the setting and thereby the significance of these designated heritage assets largely because of its design. It seems to be that the Council's position is somewhat conflicted because notwithstanding its conclusion on paragraph 196 of the Framework, its overall design objection is maintained. In my view, if the design is considered wanting to the extent that it warrants a refusal of planning permission, then it must be unacceptable in the way it responds to designated heritage assets (a consideration of great weight) because that is a part of its overall impact in design terms.
- 11.84 I recognise that the Secretary of State may not agree with that finding. If the Secretary of State agrees with the Council, and the appellant, that the public benefits outweigh the less than substantial harm to the significance of the designated heritage assets set out, then, as the Council and the appellant agree, the next port of call is paragraph 11d)ii of the Framework. This says

that planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, considered as a whole.

- 11.85 If the Secretary of State reaches this stage in considering the proposal, another balancing exercise would need to be carried out with all the adverse impacts on one side and all the benefits on the other, weighed in the context of the Framework considered as a whole. Unless the adverse impacts significantly and demonstrably outweigh the benefits, then planning permission should be granted for the proposals. **[6.76-6.79, 7.74-7.82, and 7.108-7.113]**

12 Recommendation

- 12.1 For the reasons set out above, I conclude that the appeal should be dismissed, and planning permission should not be granted for the proposals.
- 12.2 Should the Secretary of State reach a different conclusion, through the routes I have set out above, then planning permission should be granted subject to the conditions (1 to 45) in Annex E and the Agreement under s.106 amended in relation to the provision of affordable housing in accordance with the appellants' wishes.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anjoli Foster of Counsel

Instructed by Hilary Woodward, Senior Planning and Highways Solicitor, Brighton and Hove CC

She called

Fraser McQuade BA MArch PGDip RIBA Principal Planning Officer (Urban Design) Brighton and Hove CC

Lesley Johnston BSc(Hons) PGDip IHBC Principal Planning Officer (Conservation) Brighton and Hove CC

Paul J Littlefair MA PhD CEng MCIBSE FSLL MILP Principal Lighting Consultant BRE³⁷⁴

Carl Griffiths BA(Hons) MPlan Principal Planning Officer for Regional Enterprise³⁷⁵

FOR THE APPELLANT:

Rupert Warren QC

Instructed by Michelle Spark DWF LLP

He called

Ian Absolon BSc Senior Director, Avison Young³⁷⁶

Cecilia Fellows MA MRICS Director, Avison Young³⁷⁷

Michael Squire MA Dip Arch (Cantab) RIBA Principal Partner, Squire & Partners

Richard Coleman Dip Arch (Cantab) ARB RIBA RIAI Architecture, Heritage and Townscape Consultant Principal, Citydesigner

Robert Aspland BA(Hons) DipLA MA CMLI Director, LDA Design

Nicholas Alston BA(Hons) DipTP MRTPI Principal, Avison Young

INTERESTED PERSON

Robert Mellor

Local Resident

³⁷⁴ Took part in the round table on Daylight/Sunlight/Overshadowing

³⁷⁵ Gave evidence and took part in the round table on Affordable Housing

³⁷⁶ Took part in the round table on Daylight/Sunlight/Overshadowing

³⁷⁷ Took part in the round table on Affordable Housing

ANNEX B: THE EVIDENCE

FOR THE COUNCIL

- C1 Proof of Evidence (including Summary) of Fraser McQuade
- C2 Proof of Evidence (including Summary) of Lesley Johnston
- C3 Proof of Evidence (including Summary) of Paul J Littlefair
- C4 Proof of Evidence (including Summary) of Carl Griffiths
- C5 Rebuttal Proof of Evidence of Paul J Littlefair
- C6 Rebuttal proof of Evidence of Carl Griffiths

FOR THE APPELLANT

- A1 Proof of Evidence of Ian Absolon
- A2 Appendices to Proof of Evidence of Ian Absolon
- A3 Summary Proof of Evidence of Ian Absolon
- A4 Proof of Evidence and Appendices of Cecilia Fellows
- A5 Summary Proof of Evidence of Cecilia Fellows
- A6 Proof of Evidence of Michael Squire
- A7 Reference Images to Proof of Evidence of Michael Squire
- A8 Summary Proof of Evidence of Michael Squire
- A9 Video Stills
- A10 Presentation by Michael Squire (see also CD338)
- A11 Proof of Evidence (including Summary) of Richard Coleman
- A12 Appendices to Proof of Evidence of Richard Coleman
- A13 Proof of Evidence of Robert Aspland
- A14 Appendices to Proof of Evidence of Robert Aspland
- A15 Summary Proof of Evidence of Robert Aspland
- A16 Proof of Evidence of Nicholas Alston
- A17 Summary Proof of Evidence of Nicholas Alston

ANNEX C: CORE DOCUMENTS

CD1	Application Forms and Certificates
CD2	Planning Application Specification
CD3	Existing Site Layout and Sections
CD4	Red Line Boundary Plan
CD5	Development Schedule
CD6	Parameter Plans (Outline Components)
CD7	Design Principles Document (Outline Components)
CD8	Proposed Plans, Sections, and Elevations (Detailed Components)
CD9	Proposed Plans, Sections, and Elevations of Temporary Access Route
CD10	Proposed Landscape Drawings (Detailed Components)
CD11	Proposed Highways Drawings (Detailed Components)
CD12	Technical (Engineering) Drawings (Detailed Components)
CD13	Illustrative Masterplan
CD14	Planning Statement (including s.106 Heads of Terms)
CD15	Design and Access Statement (including Lighting Scheme and Tall Buildings Statement)
CD16	Environmental Statement Non-Technical Summary
CD17	Environmental Statement (Volume I)
CD18	Environmental Statement (Volume II)
CD19	Environmental Statement (Volume III)
CD20	Transport Assessment
CD21	Travel Plan Framework
CD22	Flood Risk Assessment and Drainage Strategy
CD23	Energy Strategy
CD24	Sustainability Statement
CD25	Utilities Strategy
CD26	Internal Daylight, Sunlight, and Overshadowing Report
CD27	Statement of Community Involvement
CD28	Financial Viability Statement
CD29	Affordable Housing Statement
CD30	Navigation Assessment

CD31	Cover Letter
CD32	Application Summary
CD33-155	Application Plans
CD156-182	Updated Plans and Details (Submitted 14 October 2019)
CD183-194	Updated Plans and Details (Submitted 10 February 2020)
CD195	Response to Council's Urban Design Offer's Comments
CD196	Response to Meeting with Council (Alternative Phase 3 Proposals)
CD197	Townscape, Heritage, Visual Impact Assessment Addendum
CD198	Highways Response tracker and Additional Information
CD199	Supplementary Transport Statement including Appendices A to H with Stage 1 Road Safety Audit at Appendix F
CD200	Transport Response to the Council
CD201	Transport Response to the Council (including Appendices A to R)
CD202	Transport response to the Council
CD203	Bridge Provision Note
CD204	Wind Micro-Climate Peer Review Return Comments including Draft Outline Closure Management Strategy
CD205	Environmental Statement Volume 1 Chapter 6 Update
CD206	Environmental Statement Volume 1 Chapter 6 Update
CD207	Environmental Statement Addendum (including Appendix A)
CD208	Note on BREEAM
CD209	Domestic Overheating Report
CD210	Simplified Sea Water Source Heat Pump Schematic
CD211	Phase 2 and 3 Undercroft Plant Block Layout
CD212	Revised Affordable Housing Statement (March 2019) Revision P4
CD213	Application Validation Letter
CD214	Comments from the Council's Urban Design Officer
CD215	Further comments from the Council's Urban Design Officer
CD216	Further comments from the Council's Urban Design Officer
CD217	Response from Sussex Police
CD218	Suggested Design Changes
CD219	Private Amenity Space E-mail and Additional Information

CD220	DRP Presentation and Panel Report
CD221	DRP Presentation and Panel Report
CD222	DRP Presentation and Panel Report
CD223	Comments from the Council's Heritage Officer
CD224	Comments from the Council's Heritage Officer
CD225	Historic England Response
CD226	BRE Peer Review of Microclimate Assessment
CD227	Wind Microclimate Meeting Minutes
CD228	E-mail to the Council and attached condition precedents at Stratford Waterfront (Ref.18/00470/OUT – LLDC)
CD229	Response from BRE
CD230	Response to BRE
CD231	Post Planning Peer Review Response
CD232	Post Planning Diagram
CD233	BRE Review of Daylight, Sunlight, and Overshadowing
CD234	Originally Agreed PPA
CD235	Correspondence with the Council
CD236	Correspondence with the Council
CD237	Updated PPA Programme
CD238	Response from the Council's Development Control Officer
CD239	Response from the Council's Economic Development Officer
CD240	The Council's Private Sector Housing Officer
CD241	Formal Pre-Application Response
CD242	Formal Pre-Application Response
CD243	Formal Pre-Application Response
CD244	Review of Existing Planning Permissions by Avison Young
CD245	Extant Permission Decision Notice (ref.BH/2006/01124)
CD246	Extant Permission Design and Access Statement (ref.BH/2006/01124)
CD247	Brighton Marina Act 1968
CD248	Agreement dated 2 September 2010 pursuant to the Brighton Marina Act 1968 and associated correspondence with the Council
CD249	National Planning Policy Framework (2019)

CD250	National Planning Practice Guidance
CD251	National Design Guide (2019)
CD252	Brighton and Hove Local Plan (2005) Saved Policies (2016)
CD253	Brighton and Hove City Plan Part 1 (2016)
CD254	Draft Brighton and Hove City Plan Part 2 (2020)
CD255	Adopted Brighton and Hove Policies Map (2020)
CD256	SPGBH20: Brighton Marina (Volume 1 – Urban Design; and Volume 2 – Development Brief)
CD257	PAN04: Brighton Marina Masterplan (2008)
CD258	Draft SPGBH9: A guide for Residential Developers on the Provision of Outdoor Recreation Space
CD259	SPGBH9: Ancillary Update Document – Updated Open Space Contributions Calculator (2011)
CD260	SPGBH15: Tall Buildings (2004)
CD261	SPD11: Nature Conservation and Development (2010)
CD262	SPD14: Parking Standards for New Development (2016)
CD263	SPD16: Sustainable Drainage (2019)
CD264	South Downs National Park Local Plan (2019)
CD265	BHCC Local transport Note 1/20 (Cycle Infrastructure Design)
CD266	BHCC Biodiversity Action Plan (Adopted February 2012)
CD267	The Government's 2020 Housing Delivery Test Measurement (2021)
CD268	Planning for the Future (2020)
CD269	The Brighton and Hove Housing Delivery Action Plan (2019)
CD270	The Brighton and Hove Strategic Housing Land Availability Assessment (SHLAA) Update (2021)
CD271	Objectively Assessed Need for Housing: Brighton and Hove (2015)
CD272	Brighton and Hove CIL Charging Schedule Inspector's Report (2020)
CD273	BHCC Draft Urban Design Framework SPD
CD274	BHCC East Cliff Conservation Area Study and Enhancement Plan (2002)
CD275	BHCC Kemp Town Conservation Area Study and Enhancement Plan (1992)
CD276	BHCC Sussex Extensive Urban Survey (EUS) - Brighton and Hove Historic Character Assessment Report (2007)
CD277	BHCC Brighton and Hove Urban Characterisation Study (2009)

CD278	BHCC Open Space, Sport and Recreation Study (2008)
CD279	Design Council/CABE – A Design Wayfinder (2012)
CD280	HE Historic Environment Good Practice Advice in Planning: 2. Managing Significance in Decision-Taking in the Historic Environment (2015)
CD281	HE Historic Environment Good Practice Advice in Planning: 3. The Setting of Heritage Assets (2017)
CD282	HE Advice Note 4: Tall Buildings (2015) and Second Edition Consultation Draft 2020
CD283	HE Advice Note 1 (Second Edition): Conservation Area Appraisal, Designation, and Management (2019)
CD284	HE Advice Note 12: Statements of Heritage Significance: Analysing Significance in Heritage Assets (2019)
CD285	SDNPA: Dark Skies Technical Advice Note (2018)
CD286	LUC South Downs Integrated Landscape Character Assessment (SDILCA) (2011)
CD287	LUC South Downs National Park: View Characterisation and Analysis (2015)
CD288	LUC South Downs landscape Character Assessment (2020)
CD289	Building Better Building Beautiful Commission (BBBBC): Living with Beauty (2021)
CD290	MHCLG/BBBBC: Government's Response to the Living with Beauty Report (2021)
CD291	Natural England National Character Area 125: South Downs (2015) Proof
CD292	BRE Green Guide to Specification
CD293	TfL: London Cycling Design Standards (2014, updated 2016)
CD294	DfT: Local Transport Note 1/20: Cycle Infrastructure Design (2020)
CD295	Brighton and Hove Planning Committee Report and Minutes (30 June 2006)
CD296	Brighton and Hove Planning Committee Report and Minutes (10 June 2020)
CD297	Brighton and Hove Planning Committee Report and Minutes (30 September 2020)
CD298	Brighton and Hove Planning Committee Report and Minutes (10 February 2021)
CD299	Appellant Statement of Case
CD300	BHCC Statement of Case

CD301	Statement of Common Ground
CD302	BHCC SPD12: Design Guide for Extensions and Alterations
CD303	The Brighton and Hove Strategic Housing Land Availability Assessment (SHLAA) Update (2019/2020)
CD304	Avison Young: Affordable Housing Position Note (January 2020)
CD305	BRE Guidance - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2011 Edition)
CD306	BHCC Rottingdean Conservation Area Character Statement (2012)
CD307	BHCC Ovingdean Conservation Area Character Statement (2012)
CD308	Register of Listed Buildings and Registered Parks and Gardens (Historic England)
CD309	BHCC Brighton and Hove Local List of Heritage Assets (2015)
CD310	ICOMOS Guidance on Heritage Impact Assessments (Appendix 3A Example Guide for Assessing Value of Heritage Assets) (2011)
CD311	Conservation Principles Policies and Guidance (Historic England) (2008)
CD312	Brighton and Hove Tall Building Study (2003)
CD313	East Sussex County Council Landscape Consultee Comments
CD314	Extant 2006 Permission – Environmental Statement – Volume 3 (Appendix 10.2)
CD315	Extant 2006 Permission – Environmental Statement – Volume 2: Final Townscape and Visual Impact Assessment
CD316	Extant 2006 permission – Illustrative Landscape and Public Realm Strategy
CD317	E-mail from Fraser McQuade to Carl Griffiths (26 June 2020)
CD318	Natural England Consultation Response (14 May 2019)
CD319	Environment Agency Consultation Responses (14 May 2019 and 5 February 2020)
CD320	South Down National Park Authority Consultation Response
CD321	Premier Marinas Consultation Responses (19 August 2019 and 21 February 2020)
CD322	Not Used
CD323	Landsec Consultation Response
CD324	Brighton Marina Neighbourhood Forum Consultation Response
CD325	Brighton Society Consultation Response
CD326	Regency Society of Brighton and Hove Consultation Response

CD327	Roedean Residents' Association Consultation Response
CD328	The Kingscliffe Society Consultation Response
CD329	UK Power Networks Consultation Response
CD330	Southern Water Consultation Response
CD331	Scotia Gas Networks Consultation Response
CD332	Inspector's Report relating to the Examination of the BHCC City Plan Part 1
CD333	Appeal Decision: APP/Q1445/A/09/2102048 – Explore Living (April 2010)
CD334	Marina 2006 Application - Design Statement (Parts 1 and 2)
CD335	Brighton Open Space Study 2011 Update
CD336	Supplementary Statement of Common Ground
CD337	Review of Development Viability Appraisal by Jeffrey Solomon of DVS (May 2020)
CD338	Presentation by Michael Squire Update (26 March 2021)
CD339	Selected Plans, Sections and Elevations from Extant 2006 Permission (BH/2006/01124)
CD340	Agreement under s.106 relating to the Extant 2006 Permission
CD341	CIL Compliance Statement prepared by BHCC

ANNEX D: INQUIRY DOCUMENTS

ID1	Appearances for Appellant
ID2	Opening Statement on behalf of the Appellant
ID3	Opening Statement on behalf of the Council
ID4	Agenda for the Round Table session on Daylight, Sunlight and Overshadowing
ID5	Submission from Mr Mellor
ID6	Submissions from Mr Wilson
ID7	Site Visit Itinerary
ID8	A4 Visuals for Site Visit
ID9	Folder of Application Plans (A3) and Final Schedule of Plans/Documents
ID10	Update to Appendix B of the Supplementary Statement of Common Ground (Agreed Conditions)
ID11	Completed Agreement under s.106
ID12	Closing Statement on behalf of the Council
ID13	Closing Statement on behalf of the Appellant
ID14	Agreed Condition on Children's Play-Space

ANNEX E: Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans and documents listed in Annex F.
- 2) The detailed phase (Phase 2) of the development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Phase 3 shall begin no later than two years from: (i) the approval of the Reserved Matters application pursuant to condition 3; or (ii) the final approval of any pre-commencement condition associated with that Phase.
- 3) Applications for the approval of the Reserved Matters (being scale, layout, appearance, and landscaping) for Phase 3 shall be made to the local planning authority before the expiration of five years from the date of this permission. The development shall be carried out as approved.
- 4) Prior to the commencement of development, a Phasing Plan identifying the proposed phasing of the construction deck, buildings and associated structures within the development) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Phasing Plan.
- 5) Prior to commencement of development of each Phase, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The CEMP shall include: (i) the phases of the proposed development including the forecasted completion date(s); (ii) a commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to commence development until such consent has been obtained; (iii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme); (iv) a scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site; (v) details of hours of construction including all associated vehicular movements; (vi) details of the construction compound; (vii) a plan showing construction traffic routes; (viii) a commitment to using all reasonable endeavours to a) promote use of minimum euro-VI emission standard HGVs for demolition and construction and b) comply with Stage IIIB of EU directive 97/68/EC for NOx emissions limits from non-mobile construction machinery in accordance with DfT's 2018 guidance Improving Air Quality Reducing Emissions from non-road mobile machinery; and (ix) details in relation to temporary access route between Phase 2 and Phase 1. Construction shall be carried out in accordance with the approved CEMP.
- 6) No development (except for demolition and enabling works) shall take place until full details of existing and proposed ground levels (referenced as Ordnance Datum) within Phase 2, and on land and buildings adjoining the site, by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the local planning authority. The development shall then be implemented in accordance with the approved level details.
- 7) Prior to the commencement of Phase 3, a suitable barrier (such as a steel net) shall be placed between the Phase 3 southernmost (outer) line of piles, to prevent boats getting underneath the podium. This should extend above the

waterline so as to be clearly visible at all predicted states of tide. When designing the barrier, consideration should be given to allowing emergency access to the area beneath the podium.

- 8) Prior to the commencement of the development (except for demolition and enabling works), physical modelling should be undertaken to verify that the impacts of the final detailed design upon wave conditions is broadly in line with those forecast in the numerical modelling work; and opportunities explored to enhance the detailed design to reduce or improve impacts upon the forecast wave conditions. On completion of this assessment and exploration, the applicant shall submit in writing to the Council: (i) a report on the assessment undertaken; and ii) details of the final design. Development shall be carried out in accordance with the approved details.
- 9) Any commercial units (Use Classes A1-A4) hereby permitted shall not be open or in use except between the hours of 07.00 and 23.30 hours Mondays to Thursday, and between 07.30 and 00.30 hours on Fridays and Saturdays and between 08.00 hours and 23.00 hours on Sundays and Bank Holidays.
- 10) No odour control equipment associated with any A3 and A4 uses hereby permitted shall be fitted to the building until a scheme, that includes reference to sound insulation measures, has first been submitted to and approved in writing by the local planning authority. The odour control measures and associated sound insulation of such equipment shall be implemented in strict accordance with the approved details prior to the first occupation of any A3 or A4 uses within the development and retained as such thereafter.
- 11) The development hereby permitted shall not be first occupied until: (i) details of external lighting, which shall include details of levels of luminance, predictions of both horizontal illuminance across the site and vertical illuminance affecting immediately adjacent receptors, hours of operation, and details of maintenance, have been submitted to and approved in writing by the local planning authority; and (ii) the predicted illuminance levels have been tested by a competent person to ensure that the illuminance levels agreed in part (i) are achieved. Where these levels have not been met, a report shall demonstrate what measures have been taken to reduce the levels to those agreed in part (i). The external lighting shall be installed, operated and maintained in accordance with the approved details and retained as such thereafter.
- 12) Notwithstanding the details of the application, hereby approved, no more than 50% of the flexible use floorspace within Phase 2 shall be occupied under Use Class A4.
- 13) Prior to the commencement of works above podium level, a scheme indicating measures taken to insulate the residential and non-residential units from the transmission of noise shall be submitted to and approved in writing by the local planning authority. These measures shall be implemented in accordance with the approved details before first occupation of any buildings constructed above podium level, within each respective phase of the Phasing Plan (agreed under condition 4).
- 14) No plant or machinery associated with the development (not including during construction) shall be first brought into use until a scheme to insulate the plant/machinery against the transmission of sound/or vibration has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented to in accordance with the approved

details before any buildings within which the plant/machinery are proposed are first occupied. The mechanical plant associated with the development shall not give rise to an increase in noise levels above -5dB LAeq in respect of the background levels expressed as LA90 measured 1m from the facade of the nearest residential premises. Measurement periods and conditions are to be agreed with the local planning authority.

- 15) Prior to the occupation of non-residential uses where a tenant requires amplified music or other entertainment noise, the tenant shall have its volume controlled by the installation of a tamper-proof noise limiting device of a type to be agreed with the local planning authority and its level shall be set and maintained at a volume as agreed with the local planning authority before it is first brought into use.
- 16) Prior to the commencement of the development (except for demolition and enabling works), details of the materials within the undercroft parking structures and the northern elevation in Phase 2 (as set out in the Phasing Plan agreed in condition 4) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) Prior to commencement of development above podium slab, details of the proposed materials to be used on the external facades of all buildings and structures above podium level within Phase 2 shall be submitted to and approved in writing by the local planning authority. These details for Phase 2 shall include large scale drawings and/or constructional details and samples if required, of the following: (i) balustrades; (ii) roof parapets; (iii) surface cladding systems; (iv) windows; (v) entrances; (vi) roof plant; and (vii) shop-fronts. Development shall be carried out in accordance with the approved details.
- 18) Prior to commencement of development above podium level, a Management Plan setting out details for the long-term maintenance and replacement of materials within Phase 2 of the development including undercroft parking areas (as set out in the Phasing Plan agreed by condition 4) shall be submitted to and approved in writing by the local planning authority. The development shall be maintained thereafter in accordance with the approved Management Plan.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no satellite dishes or aerials other than those shown on the approved plans shall be installed.
- 20) Prior to the first occupation of Phase 2, details of the children's play-space, including proposed surfacing, layout and specifications of the proposed equipment, and a timetable for its installation and completion shall be submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details and be retained as such thereafter.
- 21) Prior to commencement of development above podium level, details of all hard-surfaced external areas shall be submitted to and approved in writing by the local planning authority. These details for Phase 2 shall include large scale drawings and/or constructional details and samples if required, of: (i) hard surfacing; (ii) decking; (iii) railings; (iv) seating; (v) lighting; and (vi) a

- timetable for installation and completion. Development shall be carried out in accordance with the approved details.
- 22) Prior to commencement of development above podium level, a scheme for soft landscaping and planting in the development, which shall include details of ongoing maintenance and management, shall be submitted to and approved in writing by the local planning authority. The landscaping schemes for all Phases shall include plants chosen to enhance biodiversity. All planting, seeding or turfing agreed as part of the approved landscaping schemes for all the Phases shall be carried out in the first planting and seeding seasons following occupation of the buildings in each respective Phase. Any plants or trees that die or become seriously damaged between planting and up to 5 years after completion of the development, shall be replaced with others of a similar size and species unless otherwise agreed in writing with the local planning authority.
- 23) No development (excluding demolition and enabling works) shall take place until details of the proposed means of foul and surface water disposal, and a timetable for installation and completion, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 24) Prior to the commencement of development above podium level, a detailed surface water drainage strategy for the development shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 25) All the communal refuse areas serving residents shall provide recycling provision and separated storage for a minimum of two separated waste streams. Sufficient space shall also be provided within the development to enable the incorporation of communal composting facilities for use by residents and others, such as landscape contractors. No buildings of each respective phase of the development (and as set out in the Phasing Plan agreed by condition 4) shall be occupied until the refuse and recycling storage facilities indicated on the approved plans serving each building have been fully implemented, and made available for use. These facilities shall be retained for their intended use thereafter.
- 26) The development shall be carried out in accordance with the submitted flood risk assessment (dated March 2019) and the following mitigation measures it details: (i) finished floor levels within Phase 2 to be set no lower than 9.5 metres above Ordnance Datum; (ii) finished floor levels within Phase 3 to be set no lower than 6.5 metres above Ordnance Datum; and (iii) car park to be protected against flooding to a level of 5.9 metres above Ordnance Datum. These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the approved phasing arrangements. The measures detailed above shall be retained and maintained thereafter.
- 27) Prior to the topping-out of any building, details of any on-site wind mitigation measures shall be submitted to, and approved in writing by, the local planning authority. These details shall include the size, location, orientation, porosity and appearance of any such measures. The approved measures shall be completed prior to the occupation of the building they serve and retained in their approved form thereafter.
- 28) Prior to the topping-out of any building, details of the proposed on-site wind mitigation shall be assessed by further wind-tunnel modelling. This shall include

- the following: (i) mitigation measures; (ii) phasing of development; (iii) site entrances and locations; and (iv) amenity/leisure areas and locations. Any resulting features shall be implemented on site prior to occupation of any building.
- 29) Prior to topping out of any building, the details of proposed on-site wind management strategy shall be submitted to and approved in writing by the local planning authority. This strategy shall include the following: (i) detail of monitoring arrangements – particularly of the reference anemometer and controls; (ii) the trigger points for temporary closure during high wind events; (iii) locations where cordons will be positioned; (iv) locations of signage, responsible personnel, pedestrian routes and review/improvement of the strategy; and (v) details of alternative pedestrian routes. The strategy shall be implemented in accordance with the approved details prior to the occupation of any building.
- 30) No development above podium level shall take place until details of the construction of the brown roofs have been submitted to and approved in writing by the local planning authority. The details shall include a cross-section, construction method statement, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and retained as such thereafter.
- 31) Prior to the commencement of works associated with the roads and footways within Phase 2 of the development (as set out in the Phasing Plan approved under condition 4), details of those roads and footways, including construction drawings, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the roads and footways shall be completed prior to first occupation of Phase 2 of the development (as set out in the Phasing Plan approved under condition 4).
- 32) The vehicle parking areas within the undercroft car park on approved plan SQP-ZZ-B1-DP-A-PL01100 P03 shall not be used other than for the parking of private vehicles (including any potential Car Club bays), servicing vehicles and motorcycles belonging to the occupants of and visitors to the residential development hereby approved. The car parking area shall be clearly laid out and signed for the respective users and shall be retained as such thereafter. No car parking (other than loading/unloading and dropping off/setting down) shall occur within the application site except within the designated parking spaces hereby approved as indicated on the approved plans.
- 33) Prior to first occupation a detailed Car Parking Management Plan shall be submitted to and approved in writing by the local planning authority. Unless otherwise agreed, the details shall include: (i) location and layout of car parking spaces; (ii) allocation of car parking spaces; (iii) on-site parking controls and charges (if any); (iv) enforcement against any unauthorised parking; (v) location of car club spaces; (vi) location and specification of electric charging points (for residential parking spaces, 10% of parking spaces shall be active, and 10% shall be passive electric charging points); and (vii) details of disabled parking provision which shall include a minimum of 97 spaces. The car parking spaces shall not thereafter be used for any purpose other than for the parking and turning of vehicles associated with the development. The Car Parking Management Plan and the abovementioned provisions shall be implemented in

- accordance with the approved details before the buildings hereby permitted, within each phase, are occupied, and retained in their approved form thereafter.
- 34) Prior to first occupation a detailed Cycle Parking Management Plan shall be submitted to and approved in writing by the local planning authority. The details shall include (as necessary): (i) the location and layout of cycle parking spaces (which shall make provision for a minimum of 512 spaces); (ii) control of access to long-stay cycle parking spaces; (iii) any enforcement processes around unauthorised cycle parking; (iv) the location of any BTN Bike Share spaces; (v) full details of disabled long-stay cycle parking provision which shall include a minimum of 5% of total long-stay provision; and (vi) processes for agreeing a relocation of cycle parking within the development should this be required on either a temporary or permanent basis. The Cycle Parking Management Plan and the abovementioned provisions shall be implemented in accordance with the approved details before the buildings hereby permitted, within each phase, are occupied, and retained thereafter.
- 35) No phase of the development shall be occupied until the cycle parking and storage facilities (including residential, commercial and visitor cycle facilities) associated with that particular phase (as set out in the Cycle Parking Management Plan approved under condition 34) have been implemented and made available for use. The cycle parking facilities shall thereafter be retained for their intended use.
- 36) Prior to the first occupation of Phase 2, details of a Waste Storage and Collection Strategy for the residential and non-residential units of Phase 2 (as set out in the Phasing Plan agreed by condition 4) shall be submitted to and approved in writing by the local planning authority. The Strategy shall include details of: (i) access arrangements, including measures to ensure communal refuse is placed at agreed collection points that can be accessed by council vehicles; (ii) types and sizes of containers; and (iii) frequency of collection. The agreed Waste Storage and Collection Strategy for Phase 2 of the development (as set out in the Phasing Plan agreed by condition 4) shall be implemented thereafter in accordance with the approved details prior to first occupation of the associated unit.
- 37) No buildings shall be occupied until details of a Design Strategy for pedestrian, cycling and general informative signage throughout Phase 2 of the development, including a timetable for its installation, has been submitted to and approved in writing by the local planning authority. The Design Strategy shall be implemented in accordance with the approved details.
- 38) Prior to the first occupation of the development, an access control strategy setting out measures to ensure the safe and efficient use of the breakwater access for all pedestrian, cycle, and disabled users shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented in full prior to the first occupation of the development.
- 39) The development hereby permitted shall be carried out in accordance with the Residential Travel Plan prepared by Arup (dated 26 March 2019). Monitoring and Reporting of the Residential Travel Plan will be undertaken in accordance with the Table 5 of the Residential Travel Plan.
- 40) Prior to the first occupation of the development, a travel plan relating to the commercial uses and covering the period from the first commercial occupation of the development to the final monitoring point, shall be submitted to and

approved in writing by the local planning authority. This Commercial Travel Plan shall be structured as follows: (i) baseline travel information; (ii) objectives; (iii) indicators and surveys; (iv) targets; (v) measures; (vi) Travel Plan Coordinator and management support; (vii) monitoring and reporting; and (viii) action plan. The Commercial Travel Plan shall be implemented in accordance with the approved details.

- 41) Prior to the commencement of works associated with the roads and footways in Phase 3 of the development (as set out in the Phasing Plan approved under condition 4), details of an extension of the BTN Bike Share scheme, providing cycle parking for up to 30 BTN Bike Share bicycles, shall be submitted to and approved in writing by the local planning authority for approval. The approved scheme extension shall be implemented in accordance with the approved details prior to first occupation of Phase 3 of the development (as set out in the Phasing Plan approved under condition 4).
- 42) Development shall not take place above ground floor slab level until details have been submitted to and approved in writing by the local planning authority to demonstrate that the energy plant room has the capacity to connect to a future district heat network in the area. Evidence should demonstrate the following: (i) energy centre size and location with facility for expansion for connection to a future district heat network: for example, physical space to be allotted for installation of heat exchangers and any other equipment required to allow connection; (ii) a route onto and through site: space on site for the pipework connecting the point at which primary piping enters the site with the on-site heat exchanger/plant room/energy centre. Proposals must demonstrate a plausible route for heat piping and demonstrate how suitable access could be gained to the piping. That route is to be protected throughout all planned phases of development; and (iii) metering: installed to record flow volumes and energy delivered on the primary circuit. Development shall be carried out in accordance with the approved details.
- 43) Prior to the first residential occupation of the development, a scheme showing water efficiency measures to be implemented within each residential unit shall be submitted to and approved in writing by the local planning authority. The measures shall allow for a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption. Development shall be carried out in accordance with the approved scheme.
- 44) Within 6 months of first occupation of the non-residential development hereby permitted, a BREEAM Building Research Establishment Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction Shell Only rating of 'Very Good' shall be submitted to, and approved in writing by, the local planning authority.
- 45) Notwithstanding the details shown on the approved plans, prior to the commencement of works above podium level in Phase 2, detailed drawings showing the positioning of the Juliet balcony balustrades in Phase 2 shall be submitted to and approved in writing by the local planning authority. The enhanced Juliet balconies shall be constructed in accordance with the approved details.

ANNEX F: Approved Plans and Documents

Red Line Boundary Plan

Existing Location Plan Existing Site Phase 2 and 3 - SQP-ZZ-ZZ-DP-A-PL01000 P02

Existing Site Plans

Existing Plan GA Phase 2 & 3 - SQP-ZZ-00-DP-A-PL01010 P01

Existing Plan GA Phase 2 - SQP-ZZ-00-DP-A-PL01099 P01

Elevations Site Elevations Existing - SQP-ZZ-ZZ-DE-A-PL01030 P01

Demolition Plan

Demolition Plan - SQP-ZZ-00-DP-A-PL01036 P01

Site-wide Development Schedule

Development Schedule - BMOHD5 (March 2019) including Phase 2 Accommodation Schedule (26th March 2019)

Phase 2 Buildings – Detailed Plans, Sections, Elevations (Blocks)

Block 01

Block 01 GF Detailed Floor Plans Phase2 - SQP-01-00-DP-A-PL01102 P01

Block 01 Floor 01 Detailed Floor Plans - SQP-01-01-DP-A-PL01103 P01

Block 01 Roof Detailed Floor Plans Phase2 - SQP-01-RF-DP-A-PL01114 P01

Block 01 Detail Elevation 01 & Section - SQP-01-ZZ-DE-A-PL01310 P01

Block 01 Detail Elevation 02 & Section - SQP-01-ZZ-DE-A-PL01311 P01

Block 01 Detail Elevation 03 & Section - SQP-01-ZZ-DE-A-PL01312 P01

Block 01 Detail Elevation 04 & Section - SQP-01-ZZ-DE-A-PL01313 P01

Block 01 Detail Elevation 05 & Section - SQP-01-ZZ-DE-A-PL01314 P01

Block 01 Detail Elevation 06 & Section - SQP-01-ZZ-DE-A-PL01315 P01

Block 01 Bay Study - SW- Level 0 – 1 - SQP-01-ZZ-DB-A-PL01500 P01

Block 01 Bay Study - SW - Level 2 – 5 - SQP-01-ZZ-DB-A-PL01501 P01

Block 01 Bay Study - SW - Level 6 – 8 - SQP-01-ZZ-DB-A-PL01502 P01

Block 01 Bay Study - SW - Level 9 – 11 - SQP-01-ZZ-DB-A-PL01503 P01

Block 01 Apartment Plan 01 Ground Lvl Ph2 - SQP-01-00-DP-A-PL01600 P01

Block 01 Lvl 00 -08 Typical Apt Plan 02 - SQP-01-ZZ-DP-A-PL01601 P01

Block 01 Lvl 01 Typical Apt Plan 03 Phase2 - SQP-01-01-DP-A-PL01602 P01

Block 01 Lvl 00 -11 Typical Apt Plan 04 - SQP-01-ZZ-DP-A-PL01603 P01

Block 01 Lvl 00 -08 Typical Apt Plan 05 - SQP-01-ZZ-DP-A-PL01604 P01

Block 01 Floor 02-05 Detailed Floor Plans - SQP-01-ZZ-DP-A-PL01104 P01

Block 01 Floor 06-08 Detailed Floor Plans - SQP-01-ZZ-DP-A-PL01108 P01

Block 01 Floor 09-11 Detailed Floor Plans - SQP-01-ZZ-DP-A-PL01111 P01

Block 02

Block 02 GF Detailed Floor Plans Phase2 - SQP-02-00-DP-A-PL01120 P01

Block 02 Floor 1-2 Detailed Floor Plans - SQP-02-ZZ-DP-A-PL01121 P01

Block 02 Floor 3-12 Detailed Floor Plans - SQP-02-ZZ-DP-A-PL01123 P01

Block 02 Floor 13-15 Detailed Floor Plans - SQP-02-ZZ-DP-A-PL01133 P01

Block 02 Roof Detailed Floor Plans Phase2 - SQP-02-RF-DP-A-PL01136 P01

Block 02 Bay Study - NE- Level 0 – 2 - SQP-02-ZZ-DB-A-PL01504 P01

Block 02 Bay Study - NE- Level 3-12 - SQP-02-ZZ-DB-A-PL01505 P01

Block 02 Bay Study - NE- Level 13-16 - SQP-02-ZZ-DB-A-PL01506 P01

Block 02 Bay Study - SW - Level 0-2 - SQP-02-ZZ-DB-A-PL01507 P01

Block 02 Bay Study - SW - Level 3-12 - SQP-02-ZZ-DB-A-PL01508 P01

Block 02 Bay Study - SW - Level 13-16 - SQP-02-ZZ-DB-A-PL01509 P01
Block 02 Typical Apartment Plan 06 Phase2 - SQP-02-ZZ-DP-A-PL01606 P01
Block 02 Typical Apartment Plan 07 Phase2 - SQP-02-ZZ-DP-A-PL01607 P01
Block 02 Detail Elevation 01 & Section - SQP-02-ZZ-DE-A-PL01320 P01
Block 02 Detail Elevation 02 & Section - SQP-02-ZZ-DE-A-PL01321 P01
Block 02 Detail Elevation 03 & Section - SQP-02-ZZ-DE-A-PL01322 P01
Block 02 Detail Elevation 04 & Section - SQP-02-ZZ-DE-A-PL01323 P01

Block 03

Block 03 Bay Study - NE- Level 0 – 2 – SQP-03-ZZ-DB-A-PL01510 P01
Block 03 GF Detailed Floor Plans Phase2 - SQP-03-00-DP-A-PL01140 P01
Block 03 Plant Level 28 Detailed Plans Ph2 - SQP-03-RF-DP-A-PL01168 P01
Block 03 Bay Study - NE- Level 0-02 - SQP-03-ZZ-DB-A-PL01510 P01
Block 03 Bay Study - NE- Level 3-23 - SQP-03-ZZ-DB-A-PL01511 P01
Block 03 Bay Study - NE- Level 24-27 - SQP-03-ZZ-DB-A-PL01512 P01
Block 03 Bay Study - SW - Level 0-2 - SQP-03-ZZ-DB-A-PL01513 P01
Block 03 Bay Study - SW - Level 3-23 - SQP-03-ZZ-DB-A-PL01514 P01
Block 03 Bay Study - SW - Level 24-27 - SQP-03-ZZ-DB-A-PL01515 P01
Block 03 Detail Elevation 01 & Section - SQP-03-ZZ-DE-A-PL01331 P02
Block 03 Detail Elevation 02 & Section - SQP-03-ZZ-DE-A-PL01332 P02
Block 03 Detail Elevation 03 & Section - SQP-03-ZZ-DE-A-PL01333 P02
Block 03 Detail Elevation 04 & Section - SQP-03-ZZ-DE-A-PL01334 P02
Block 03 Floor 1-2 Detailed Floor Plans Ph2 - SQP-03-ZZ-DP-A-PL01141 P01
Block 03 Floor 3-23 Detailed Floor Plans - SQP-03-ZZ-DP-A-PL01143 P01
Block 03 Floor 24-27 Detailed Floor Plans - SQP-03-ZZ-DP-A-PL01164 P01
Block 03 Typical Apartment Plan – 08 - SQP-03-ZZ-DP-A-PL01609 P01
Block 03 Typical Apartment Plan – 09 - SQP-03-ZZ-DP-A-PL01613 P01

Phase 2 Buildings – Detailed Plans, Sections, Elevations (Whole Phase)

Phase 2 (all blocks)

Ground Floor GA Plan Phase 2 - SQP-ZZ-00-DP-A-PL01101 P03
Ground Floor GA Plans Phase 2 Temporary Condition - SQP-ZZ-00-DP-A-PL01014 P01
Undercroft General Plan Ph2 - SQP-ZZ-B1-DP-A-PL01100 P03
South & North Elevations Site - Phase 2 - SQP-ZZ-ZZ-DP-A-PL01033 P01
Sitewide Elevations GA Phase 2 Temp - SQP-ZZ-ZZ-DS-A-PL01061 P01
Elev1 & Sections Phase 2 Temp Condition - SQP-ZZ-ZZ-DE-A-PL01300 P01
Elev2 & Sections Phase 2 Temp Condition - SQP-ZZ-ZZ-DE-A-PL01301 P01
Access&Circulation Proposed DevelopmentPh2 - SQP-ZZ-ZZ-DP-A-PL01003 P03
Typ Upper Floor GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DP-A-PL01016 P01
Details Stairs and Ramps Phase 2 - SQP-ZZ-ZZ-DR-A-PL01051 P02
Sitewide Section 1 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01063 P01
Sitewide Section 2 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01064 P01
Sitewide Section 3 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01065 P01
Sitewide Section 4 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01066 P01
Sitewide Section 5 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01067 P01
Sitewide Section 6 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01068 P01
Sitewide Section 7 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01069 P01
Sitewide Section 8 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01070 P01
Sitewide Section 9 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01071 P01
Sitewide Section 10 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01081 P01
Sitewide Section 11 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01082 P01
Sitewide Section 12 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01083 P01
Sitewide Section 13 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01084 P01

Sitewide Section 14 GA Phase 2 Temp Condition - SQP-ZZ-ZZ-DS-A-PL01085 P01
Cross Section through Park Square - SQP-ZZ-ZZ-DR-A-SK554 P01
Cross Sections Looking East Site Sections - SQP-ZZ-ZZ-DS-A-PL01042 P02
Undercroft – Phase 2 – Delivery Strategy - SQP-ZZ-B1-DP-A-PL01187 P01
Undercroft – Phase 2 – Refuse Strategy - SQP-ZZ-B1-DP-A-PL01188 P01

Phase 2 Landscape Plans

Landscape Masterplan - Phase 2 (with Temp Condition Works)
Landscape Masterplan Detail 01 - Phase 2 - 6663_101
Landscape Masterplan Detail 02 - Phase 2 - 6663_110
Landscape Masterplan Detail 03 - Phase 2 - 6663_111
Landscape Masterplan Detail 04 - Phase 2 - 6663_112
Landscape Masterplan Detail 05 - Phase 2 - 6663_113
Landscape Masterplan Detail 06 - Phase 2 - 6663_114
Hardworks and Furniture Detail 01 - Phase 2 - 6663_201
Hardworks and Furniture Detail 02 – Phase 2 - 6663_202
Softworks Detail – Phase 2 - 6663_301

Phase 2 – Technical (Engineering) Drawings

Arup Cross Sections Through Development Overall - BMD1-ARP-SK-S-0077 P2
Arup Cross Sections Through Development Overall - BMD1-ARP-SK-S-0078 P2
Arup Cross Sections Through Development Overall - BMD1-ARP-SK-S-0079 P2
Arup Plan on In-Water Development - BMD1-ARP-SK-S-0080 P2

Phase 3 – Outline Parameter Plans

Parameter Plan 1020 Site Location - SQP-ZZ-00-DP-A-PL01020 P01
Parameter Plan 1021 Phasing Plan - SQP-ZZ-00-DP-A-PL01021 P01
Parameter Plan 1022 Existing Structures - SQP-ZZ-00-DP-A-PL01022 P01
Parameter Plan 1023 Building Plots - SQP-ZZ-00-DP-A-PL01023 P01
Parameter Plan 1024 Site Access & Circulation - SQP-ZZ-00-DP-A-PL01024 P03
Parameter Plan 1025 Horizontal Limits - SQP-ZZ-00-DP-A-PL01025 P01
Parameter Plan 1026 Vertical Limits of Deviation - SQP-ZZ-00-DP-A-PL01026 P01
Parameter Plan 1027 Proposed Site Levels - SQP-ZZ-00-DP-A-PL01027 P01
Parameter Plan 1028 Public Open Space - SQP-ZZ-00-DP-A-PL01028 P01
Parameter Plan 1029 Ground Floor Frontages - SQP-ZZ-00-DP-A-PL01029 P01
Parameter Plan 1034 Vertical Limits of Deviation Below Ground - SQP-ZZ-00-DP-A-PL01034 P01
Parameter Plan 1035 Horizontal Limits of Deviation and Access - SQP-ZZ-00-DP-A-PL01035 P01
Open Space Parameter Plan - 6663_400

Phase 3 – Documents

Design Principles Document - BMOHD7 (March 2019)



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.